

Review of the Scottish Planning System – Planning Bill

Strategic Environmental Assessment Draft Post-Adoption Statement

DRAFT

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Scottish Government

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1. Review of the Scottish Planning System – Planning Bill

1.1 Introduction

1.1.1 Following an independent review of the planning system, the Planning Bill sets out a range of changes to the Scottish Planning system. These changes are intended to support sustainable economic development and inclusive growth, through a more responsive and flexible approach to planning in Scotland.

1.1.2 As required by the Environmental Assessment (Scotland) Act 2005 ('the 2005 Act'), the Scottish Government has undertaken a strategic environmental assessment of the Planning Bill. This draft-post adoption statement sets out how the assessment and consultation responses have been taken into account within the Bill. This statement will be updated and finalised following the passage of the bill through parliament.

1.2 Background

1.2.1 The Planning system is used to make decisions about future development and the use of land. It considers where development should happen, where it should not, and how development affects its surroundings. The system aims to balance different interests so that land is used and developed in a way that creates high quality, sustainable places.

1.2.2 The Scottish Government has developed an integrated package of proposed improvements to the planning system. Broadly, these focus on four key areas of change:

- i. Making Plans for the future – proposals to improve development planning, from national to local level.
- ii. People make the system work – Empowering people to decide the future of their places and involving a wider range of people in the planning system.
- iii. Enabling planning to help deliver more high quality homes and create better places where people can live healthy lives and developers are inspired to invest.
- iv. Stronger leadership and smarter resourcing – streamlining processes and improving skills and resources so that Scotland's planning system can focus on creating great places.

1.2.3 Not all of the package will require legislative change, and the SEA is concerned with those proposals that require changes to primary legislation, through a Planning Bill.

2. Strategic Environmental Assessment Process

- 2.1.1 The 2005 Act requires public bodies in Scotland to carry out a Strategic Environmental Assessment (SEA) on their plans, programmes and strategies. SEA is a way of examining plans as they develop to identify any significant effects they may have on the environment. It ensures that environmental considerations are taken into account and, where required, proposes mitigation measures to avoid or minimise any potentially significant adverse environmental effects.
- 2.1.2 The SEA process was undertaken during the earliest stages of the bill preparation process, providing an opportunity to add value by exploring the broad relationships between planning and the environment. The SEA commenced with scoping, and a scoping report was submitted to the SEA Gateway in April 2017 focusing on the proposals set out in *'Places, People and Planning: A consultation on the future of the Scottish planning system'*¹. Given the high level nature of the assessment proposed, all environmental topic areas were scoped into the assessment. The scoping report was followed in June 2017 by the Environmental Report, which was made available for comment alongside the *'Places, People and Planning – Position Statement'*² setting out the changes being considered.
- 2.1.3 The Post Adoption SEA Statement is the final output from the SEA process and is required under the 2005 Act. It outlines how the findings of the SEA and the views of the consultees have been taken into account as the bill was prepared and then finalised for introduction to parliament.

2.2 Structure of this Post Adoption Statement

- 2.2.1 Section 18(3) of the 2005 Act sets out the information that should be included in the SEA Post Adoption Statement. In summary it should include:
- how the environmental considerations have been integrated into the plan, programme or strategy;
 - how the Environmental Report has been taken into account;
 - how the opinions expressed by consultees have been taken into account;
 - the reasons for choosing the plan, programme or strategy as adopted, in light of other reasonable alternatives considered; and,
 - the measures to be taken to monitor the significant environmental effects of the implementation of the plan, programme or strategy.

¹ Available online at: https://consult.scotland.gov.uk/planning-architecture/a-consultation-on-the-future-of-planning/supporting_documents/694570_v4_20170109.pdf

² Available online at: https://consult.scotland.gov.uk/planning-architecture/places-people-and-planning-position-statement/supporting_documents/SCT06174881481_Places_FINAL%202.pdf

3. How the Environmental Report and consultation have been taken into account

3.1 Assessment process

3.1.1 A two-stage assessment was undertaken. An initial assessment was undertaken to broadly consider the likely effects of the package of proposals. These findings were presented in a narrative style alongside a summary table. The findings from the first stage assessment, particularly the finding that some proposals have the potential for in-direct and secondary environmental effects, were taken forward to a second stage assessment providing further more detailed assessment in relation to the SEA topics.

3.2 Conclusions and recommendations of the assessment

3.2.1 The Planning Bill will make largely procedural changes. Such changes will not approve development or infrastructure, but rather will define the structure of planning and decision making, streamlining the system and giving communities more influence in plans and decisions. The assessment found that such changes were unlikely to have significant direct environmental effects, but there is potential for indirect positive effects – for example from those changes that aim to increase transparency and community engagement in planning.

3.2.2 Other aspects of the changes which are intended to improve resources, grow skills and increase expertise for planning authorities, as well as the introduction of a 'Gatecheck' as part of the examination of local development plans, were also found to have potential to help strengthen environmental consideration at the plan and project level.

3.2.3 The assessment concluded that there may be positive and negative indirect / secondary effects from proposals that aim to improve the delivery of development and infrastructure. Positive effects could arise from earlier identification of infrastructure requirements and support for infrastructure delivery, including green infrastructure. The assessment identified opportunities for environmental benefits if increased delivery of green infrastructure is recognised as a priority.

3.2.4 The second stage SEA assessment identified the potential for increased development to have indirect, localised adverse environmental effects on most of the SEA topic areas. Existing mechanisms are in place within Scotland's planning system to identify and manage the potential for adverse environmental impacts arising from proposed development.

3.2.5 In relation to Local Place Plans, the assessment recommended that community groups be provided with sufficient guidance and information to produce sustainable plans that are in line with environmental objectives. It also suggested that communities should be afforded flexibility in defining their own approaches in influencing the local development planning process.

3.2.6 Finally, the assessment considered the alignment of environmental assessment processes with development planning to be crucial in ensuring that the full benefits of applying SEA and HRA are realised; including the early

consideration of alternatives. The development of guidance for proportionate and effective consideration of environmental issues in Local Place Plans would also be beneficial.

4. Opinions expressed during the Consultation

4.1 The Consultation Process

- 4.1.1 In January 2017 we published a consultation on the future of planning in Scotland which ran until April 2017. The consultation paper, *Places, People and Planning*, set out 20 proposals for change to strengthen the planning system and support sustainable economic growth across the country. The proposals built on the recommendations of the independent review. An independent analysis³ of the consultation responses was published in June 2017.
- 4.1.2 The consultation responses received informed the subsequent development of the Scottish Government's Position Statement, which was open to consultation alongside the Environmental Report from 29th June – 11th August 2017. A total of 122 responses were received from a wide range of stakeholders with views invited on four questions, one related to the proposals within the position statement and three questions regarding the Strategic Environmental Assessment (SEA). The responses received were analysed by independent consultants, and their report is available online on the Scottish Government's web pages⁴. Views expressed are summarised below.

4.2 Comments on the Position Statement

- 4.2.1 **Making Plans for the future:** There was broad support for proposals in this section, including: Introducing a statutory link between community and spatial planning; for stronger partnership working that provides a robust platform at the regional scale; for enhancing the status of both the National Planning Framework and Scottish Planning Policy; for the introduction of a 'gatecheck' process to support the resolution of issues at an early stage; and, for the principle of enhanced engagement for planning applications for sites which are not allocated in the development plan. There was a high level of interest in proposals for Local Place Plans (LPP), but with divergent views both across and within the respondent categories on issues such as the need for additional resources and aid for communities, and on whether this creates an additional burden for the planning service.
- 4.2.2 SG response: In considering the proposals, we have sought to reduce the potential burden on both communities and planning by removing many of the statutory requirements attached to the original proposals whilst ensuring that the process will be appropriately robust.
- 4.2.3 **People make the system work:** Respondents were supportive of Local Place Plans that are informed by Local Development Plans; for early

³ <https://beta.gov.scot/publications/planning-review-analysis-of-consultation-responses-june-2017/>

⁴ Available online at: <https://beta.gov.scot/publications/planning-review-analysis-of-consultation-responses-june-2017/>

engagement, and engagement with young people; and for mandatory training for elected members.

Building more homes and delivering infrastructure: There was support for changes that give greater certainty to housing numbers and reduce debate, and for the overall aim closing the gap between planning consent and the delivery of homes. There was general support for Simplified Planning Zones, and the proposed rebranding, with some calls for more clarity on detail. There was also support for the infrastructure first approach, with mixed views on whether or not a National Agency or national working group is the better approach. There was mixed support for the proposed infrastructure levy. Business and development industry respondents supported retaining the ability to modify or discharge Section 75A obligations. Contrary to the position statement, there was also support for the removal of Section 3F of the Town and Country Planning (Scotland) Act 1997, as introduced by Section 72 of the Climate Change (Scotland) Act 2009. It was felt that building standards control is better positioned to enact change in this area.

SG response: Given our commitment to climate change and the need for every policy area to contribute to reducing emissions, it is not our intention to progress the removal of Section 3F through the Planning Bill.

- 4.2.4 **Stronger leadership and smarter resourcing:** Whilst not matters for the Planning Bill, there was support for skills and service sharing; and for the Royal Town Planning Institute skills audit. There was support for increased fees, however for business and development industry respondents this support was felt to be contingent on a demonstrable improvement in service. There was support for monitoring outcomes rather than performance, and seeking ways to improve under-performing planning departments through support systems rather than penalties. Finally, there was broad support for the principle of expanding permitted development rights.
- 4.2.5 Many respondents indicated that they would like to see further detail on the proposals.
- 4.2.6 SG response: We have listened to comments asking for more detail. On the 2nd October we convened a Working Group session to discuss proposals, following which we published a technical paper⁵ setting out more detail about how we envisage our proposals operating in practice.
- 4.2.7 **Simplified Planning Zones (SPZ)** were generally supported provided there remains adequate protection for heritage and environmental designations, and for design and place quality to be assured.
- 4.2.8 **Equal Rights of Appeal:** Some community organisations and individuals were still calling for some form of Equal Rights of Appeal – even if that was just an exploration of options. Others were strongly opposed.
- 4.2.9 SG response: We are convinced that stronger early engagement through the extensive measures set out above would be much more constructive than further appeals at the end of the process. We will build on the existing provisions to involve people early in the planning process rather than at the

⁵ <https://beta.gov.scot/publications/places-people-planning-working-paper-practice/>

end, and ensure that our system works for all, including those who want to invest in the quality of our places and our economy.

4.3 Comments on the Environmental Report

4.3.1 Questions were used to help frame responses on the Environmental Report. These asked:

- I. What are your views on the accuracy and scope of the information used to describe the SEA environmental baseline set out in the Environmental Report? (Please give details of additional relevant sources)
- II. What are your views on the predicted environmental effects as set out in the Environmental Report?
- III. What are your views on the findings of the SEA and the proposals for mitigation and monitoring of the environmental effects set out in the Environmental Report?

4.3.2 Overall the comments received were supportive of the assessment process and of the findings set out in the Environmental Report. The views and comments received have been summarised below.

4.3.3 **Accuracy and scope of the Environmental Baseline:** Respondents considered the information used to describe the environmental baseline was accurate and captured the key environmental issues. The two-stage approach to the assessment was also considered sensible. SEPA and RSPB suggested additional sources of information which could be utilised in the assessment. These comments have been noted and will be taken into account in future SEAs where relevant. The additional information is helpful, and we are satisfied that it does not alter the findings of the assessment as set out in the Environmental Report. A small number of civil society respondents felt that the SEA Non-Technical Summary was not simple and clear enough, and these comments have also been noted.

4.3.4 **The predicted effects as set out in the Environmental Report:** The SEA consultation authorities and respondents generally agreed that the Planning Bill is unlikely to have significant direct environmental effects. Some respondents commented or expressed concern about individual aspects of the proposals, and these are discussed further below. HES commented that it would have been useful to understand why some of the recommendations set out in the *Places, People and Planning* Consultation⁶ were not taken forward.

4.3.5 **Views on the findings of the SEA, and the proposals for mitigation and monitoring.** Generally the proposals for mitigation and monitoring were welcomed, in particular a number of respondents commented on the importance of guidance on the alignment of proposals for SEA and HRA procedures. A number of respondents raised specific concerns, which are discussed further below.

⁶ Places, People and Planning: A consultation on the future of the Scottish Planning System: The Scottish Government, January 2017. <http://www.gov.scot/Publications/2017/01/3486>

- 4.3.6 **Statutory supplementary planning guidance:** A few respondents indicated that further clarification was required on the environmental implications of removing supplementary planning guidance. A small number of respondents were of the view that this would remove an opportunity for environmental scrutiny.
- 4.3.7 SG response: Removing current provisions for statutory supplementary guidance will help to simplify and improve the accessibility and scrutiny of local development plans, including on environmental matters. It will also ensure that significant policies are included in the main body of the local development plan, rather than in an appended document and help to support more place based plans which take into account the environment as an integral part of the spatial strategy.
- 4.3.8 **Regional partnership working:** A small number of respondents commented on the assessment of proposals around regional partnerships, including on the need to ensure environmental effects of proposals are fully assessed, and on the need to ensure anticipated benefits are fully realised. There was support for aspirations to improve landscape-scale ecological networks, with some calling for progress in the establishment of a National Ecological Network across Scotland.
- 4.3.9 SG response: NPF3 confirmed our intention to implement the Scottish Biodiversity Strategy, including completing the suite of protected places and improving their connectivity through a National Ecological Network centred on these sites. Currently SNH is progressing this work, informed by a stakeholder workshop which took place in September. The NPF and local development plans are subject to environmental assessment as a matter of course.
- 4.3.10 **Timescales for Local Development Plans:** There were some comments on the move from a 5 year to 10 year plan review cycle, and whether and how longer-term plans can best cope with rapid environmental change.
- 4.3.11 SG response: In many cases, the natural pace of environmental change may be better reflected in a longer term outlook provided by a 10 year plan. The Planning Bill includes provision for updates to be made to NPF and local development plans between full review cycles.
- 4.3.12 **Local Place Plans:** Some respondents asked for clarification on aspects of proposals around Local Place Plans, including on who would be responsible for undertaking SEA / HRA, as well as on the relationship between these plans and the local development plan.
- 4.3.13 SG response: Local Place Plans are required to be in accordance with the local development plan, which will have been subject to SEA. The local development plan has to have regard to any Local Place Plans within its area of responsibility. Where the planning authority are minded to incorporate the Local Place Plan into the local development plan, there would be a requirement and an opportunity for the planning authority to consider and then undertake any environmental assessment, if required, as part of the normal local plan preparation or modification process. We will set out further guidance in due course.

- 4.3.14 **Gatecheck:** Some respondents asked for more guidance / clarification on what the Gatecheck process would entail.
- 4.3.15 SG response: The purpose of the gatecheck is to improve the quality of the plan by ensuring consideration and agreement of key matters, including environmental matters, is frontloaded. The statutory consultation authorities have raised views and ideas on how the gatecheck could assist with mainstreaming the SEA process, and we will continue to liaise with them and wider practitioners to develop this thinking further. We will update our current guidance on Strategic Environmental Assessment of development plans and continue to promote proportionality within the process through good practice and advice. Sharing of expertise in this area may also be an opportunity that can be explored as part of wider work on skills and resourcing.
- 4.3.16 **Reasonable alternatives:** A few respondents considered that the 'do nothing' option was not appropriate for consideration as a 'reasonable alternative' and these comments have been noted. The Scottish Government remains of the view that this is a valid consideration for the purposes of the SEA.
- 4.3.17 **Shared services, resourcing for planning authorities and guidance:** Comments were received on the potential role of shared services in providing more support to authorities in undertaking statutory environmental assessment obligations, on the importance of integrating such assessments fully into the planning process, and on the importance of proper resourcing as well as guidance to support implementation in practice.
- 4.3.18 SG response: We are committed to exploring the opportunities for shared services further and will consider these comments along with the recommendations from the Heads of Planning Scotland report [Shared Services in Planning](#).
- 4.3.19 We will publish updated guidance in due course setting out how SEA and HRA obligations can be fully integrated into the amended LDP process.
- 4.3.20 **Health and well-being:** One respondent considered that the assessment may underplay the inherent benefits on health and wellbeing of active participation in planning and placemaking, whilst another respondent considered that health impact assessment should have been undertaken as part of the SEA. These comments are noted – we agree that health is an important consideration for the Planning Bill but remain of the view that the SEA has provided an appropriate and proportionate means of exploring potential impacts.
- 4.3.21 **Historic Environment:** A small number of respondents considered that the second stage assessment on cultural heritage and the historic environment would have benefited from more explicit consideration of the breadth and value of undesignated historic assets. There were also suggestions that local authority historic environment records should be identified as a key source of information and advice.
- 4.3.22 One respondent clarified there are now 6 World Heritage Sites within Scotland, not the 5 stated within the report.
- 4.3.23 SG response: These comments have been noted and will be taken into account in future SEAs where relevant. The additional information and

clarification is helpful, and we are satisfied that it does not alter the findings of the assessment as set out in the Environmental report.

- 4.3.24 **Simplified Planning Zones ('SPZs')**: A small number of respondents expressed concern that changes to SPZs had the potential to impact on the environment, or that the proposals themselves were not detailed enough to reach a view. Others felt this was an area where more clarification was required.
- 4.3.25 SG response: We propose rebranding the mechanism as Simplified Development Zones (SDZs). The new provisions for SDZs, in the Bill and the secondary legislation will ensure that impacts on the environment are considered before SDZ schemes are made or altered.
- 4.3.26 The Bill provides that the Scottish Ministers can make regulations restricting the type of land that can be included in a SDZ scheme, and may also set out types of development for which schemes may not grant authorisation. Detailed provisions on SDZs will be introduced through secondary legislation to require an EIA is undertaken before any SDZ likely to have significant environmental effects is made. As part of the preparation of schemes there will be consultation requirements, including with key agencies, allowing agencies to highlight any concerns and potential solutions. SDZs can include conditions or limitations on the authorisation given by the scheme. Additionally, the Bill proposes powers for Ministers to issue directions to one, various or all authorities requiring them to notify them of any proposals for making or altering a scheme. This may be in respect of particular types of proposals, or if a particular event occurs in connection with the proposals (which could be where there is an unresolved agency objection). To provide added scrutiny of potential environmental impacts, the Bill includes provision that Ministers can call-in any SDZ scheme for their own consideration.
- 4.3.27 **Extending Permitted Development Rights ('PDR')**: Whilst not a matter for the Planning Bill, it was commented that clarification was required on the process for extending PDR. There were also comments generally on the need to undertake SEA and / or HRA where required as secondary legislation is brought forward more generally following the Planning Bill.
- 4.3.28 SG response: We agree that the choice of PDR should be informed by early and thorough consideration of environmental impacts. Work to extend PDR will be progressed in stages. As a first step we have commissioned a sustainability appraisal (incorporating an SEA) to inform the prioritisation and development of draft legislative proposals. We anticipate progressing the detailed work on changes to permitted development, alongside a wider suite of secondary legislation, following the passage of the Planning Bill through the Scottish Parliament. This would include further detailed consideration and stakeholder engagement prior to amending legislation.
- 4.3.29 **Mitigation and monitoring**: There were a range of suggestions around opportunities for mitigation and monitoring, with some respondents commenting in particular on the need to ensure environmental assessment, where appropriate, of related work following the Planning Bill, including those

proposals which will require secondary legislation. There was also support for the role of the SEA research⁷ in proposing mitigation measures.

4.3.30 SG response: We will ensure all subsequent workstreams are subject to SEA / HRA where appropriate. We have also added to the Table of Proposals for Mitigation and Monitoring included in the Environmental Report. An updated version of that table is included in chapter 6 below.

4.3.31 **Planning Policy:** Comments were received on a wide range of policy (rather than structural or procedural) matters, which will be for consideration through the next review of SPP, rather than for the Planning Bill. We will commence early work on the review of NPF and SPP in 2018 following the passage of the Bill.

5. Finalisation of the draft Strategy

5.1 Reasons for selecting the preferred alternative

5.1.1 The information gathered through the environmental assessment, and through the views and opinions of consultees, have been used to inform the proposals contained in the Planning Bill.

5.1.2 [*To be completed following the passage of the bill through parliament.*]

6. Mitigation and Monitoring

6.1.1 Section 19 of the 2005 Act requires the Responsible Authority to monitor significant environmental impacts arising as a result of the implementation of the plan, programme or strategy. The purpose of the monitoring is to identify any unforeseen adverse effects at an early stage and to enable appropriate remedial action to be taken.

6.1.2 In light of the comments received on the position statement and Environmental Report, we have further developed and added to the Table of Proposals for Mitigation and Monitoring included in the Environmental Report. An updated version of the table is included below:

⁷ Historic Environment Scotland (HES), Scottish Environment Protection Agency (SEPA), Scottish Natural Heritage (SNH) and The Scottish Government (SG) commissioned Land Use Consultants to undertake research into Strategic Environmental Assessment (SEA) of Local Development Plans in Scotland. A copy of the final report is available online at: www.historicenvironment.scot/archives-and-research/publications/publication/?publicationId=2c4ee110-e421-4515-aeac-a808009f9584

Table 1. Updated Table of Proposals for Mitigation and Monitoring

Action	Responsible Authority
1. Prepare guidance on alignment of SEA / HRA procedures to ensure these can be fully embedded into the new LDP preparation process. This should take into account the findings of research undertaken on behalf of the Consultation Authorities and the Scottish Government, to review the relationship between development plans and SEA and to identify examples of good practice and proportionate reporting (the 'SEA research').	Scottish Government
2. Prepare guidance on the application of SEA/ HRA to Local Place Plans, and alignment of this with the SEA/HRA of the LDP. Publish updated planning advice on the new development plan process.	Scottish Government
3. Continue to work with the High Level Group on arrangements for monitoring the performance of the amended planning system.	Scottish Government
4. Greater and more meaningful community engagement in development planning; for example, via Local Place Planning and links to LDP.	Planning Authorities and Communities
5. Consider opportunities for sharing skills and expertise in environmental assessment across Planning Authorities. <ul style="list-style-type: none"> We will convene the national SEA / HRA forum in Spring 2018 to share advice and best practice on SEA / HRA and to inform the development of future guidance. 	Scottish Government and Planning Authorities
6. Introduce detailed provisions on SDZs through secondary legislation to require an EIA is undertaken before approving any SPZ likely to have significant environmental effects. Issue a direction setting out the instances where SDZ schemes should be notified to Scottish Ministers before they are made.	Scottish Government
7. Commission a sustainability appraisal to inform the prioritisation and development of draft legislative proposals on Permitted Development Rights. We will also undertake further detailed consideration and stakeholder engagement prior to amending legislation.	Scottish Government
8. Ensure all future review related workstreams are subject to SEA / HRA where appropriate.	Scottish Government
9. Work with the SEA consultation authorities and planning authorities, following publication of the SEA research, to develop and progress an action plan for implementing the research recommendations, where appropriate, to support more proportionate and effective SEA in Scotland.	The Scottish Government, SEPA, HES, SNH, & planning authorities
10. Ensure that consideration of the environmental baseline is frontloaded in the new LDP process through the introduction of a Gatecheck; and, work with the SEA consultation authorities and Planning Authorities to consider how the Gatecheck can assist with mainstreaming SEA within the new LDP process.	Scottish Government