TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

21st Meeting, 2001 (Session 1)

Wednesday 12 September 2001

The Committee will meet at 10.00 am in the Hub, Castlehill, Edinburgh, to consider the following agenda items:

1. **Areas of Questioning (in private):** The Committee will discuss possible areas of questioning for the Deputy Minister for Transport and Planning, and receive a briefing from the Parliament’s Information Centre on telecommunications developments.

   *Not before 10.15 am*

2. **Items in Private:** The Committee will consider whether to take items 6 and 7 in private.

3. **Declaration of Interests:** The Convener will invite new members of the Committee to declare any relevant interests.

4. **Review of Strategic Planning:** The Committee will take evidence from the Deputy Minister for Transport and Planning on the Scottish Executive’s Review of Strategic Planning.

5. **Telecommunications Developments:** The Committee will take evidence from the Deputy Minister for Transport and Planning on the Scottish Executive’s proposals in relation to telecommunications developments.


7. **Committee Adviser:** The Committee will consider the conclusion of contract arrangements for the adviser to its water inquiry.

Shelagh McKinlay
Clerk to the Transport and Environment Committee

Room 2.02, Committee Chambers
0131 348 (8)5208
e-mail Shelagh.McKinlay@scottish.parliament.uk
The following public papers are relevant for this meeting:

<table>
<thead>
<tr>
<th>Title</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review of Strategic Planning – The Scottish Executive</td>
<td>TE/01/21/1</td>
</tr>
<tr>
<td>Letter from the Convener to the Minister for Environment in response to the Scottish Executive’s consultation on planning and telecommunications – February 2001</td>
<td>TE/01/21/2</td>
</tr>
<tr>
<td>Scottish Parliament Information Centre Research Note 01/74 on Legislative Proposals for Telecommunications Developments</td>
<td>TE/01/21/3</td>
</tr>
</tbody>
</table>

Please note that the following documents are also relevant to this meeting, and have been previously circulated to members:

- The Town and Country Planning (General Development Procedure) (Scotland) Amendment Order 2001, (SSI 2001/245)
- The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No.2) Order 2001, (SSI 2001/266)
- National Planning Policy Guideline on Radio Telecommunications
- Scottish Executive Development Department Circular 5/2001
REVIEW OF STRATEGIC PLANNING

In November 2000 a Review of the arrangements for Strategic Planning was announced.

We have taken this work forward through a range of bilateral discussions with local authorities, transport operators, environmental and other agencies, professional organisations, planning consultants and a number of private sector interests. We have also held a number of wider meetings to share our emerging thinking including a major Seminar in Victoria Quay on 29 May. I am grateful to all those who have contributed so positively to the Review.

I now enclose a consultation paper setting out our proposals for change. This can be viewed on our website at www.scotland.gov.uk/planning/. The implications of the proposals are potentially far reaching. A number cannot be implemented under the present legislative framework although others can be progressed without legislative changes. The Annex to the consultation paper, sets out the key issues on which views are sought. This will provide a structure for commenting on the proposals and analysing responses. Comments may, of course, range more widely.

In order to help informed debate on the issues raised by this consultation paper, the Department would, as usual, like to make copies of the response available to the public on request. The Department will assume that responses may be made available in this way unless respondents indicate that they wish all or part of their reply excluded from this arrangement. Requests for confidentiality will be respected, although the response may be included in any numerical summary of responses received.

The consultation period will run to 31 October 2001. Comments should be sent electronically to strategicplanning@scotland.gsi.gov.uk. Alternatively, comments may be posted to Tony Cruickshank, Scottish Executive Development Department, Planning Division, 2H, Victoria Quay, Edinburgh, EH6 6QQ. Additional copies of the consultation paper can be obtained by telephoning Sandra Gillespie on 0131 244 7543.

Yours sincerely

JAMES G MACKINNON
Chief Planner
Review of Strategic Planning

June 2001
Consultation Paper
Review of Strategic Planning
Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Context</td>
<td>1</td>
</tr>
<tr>
<td>Review Process</td>
<td>3</td>
</tr>
<tr>
<td>Results of Discussions/Seminars</td>
<td>3</td>
</tr>
<tr>
<td>The Way Forward</td>
<td>7</td>
</tr>
<tr>
<td>Principles</td>
<td>8</td>
</tr>
<tr>
<td>Scottish Executive</td>
<td>8</td>
</tr>
<tr>
<td>Local Authorities</td>
<td>9</td>
</tr>
<tr>
<td>Specialist Issues</td>
<td>14</td>
</tr>
<tr>
<td>Next Steps</td>
<td>15</td>
</tr>
<tr>
<td>Conclusion</td>
<td>15</td>
</tr>
<tr>
<td>ANNEX Key Issues on which Views are Sought</td>
<td>17</td>
</tr>
</tbody>
</table>
Introduction

1. In November 2000, at the Annual Conference of the Royal Town Planning Institute in Scotland, a review of the arrangements for strategic planning was announced. Strategic planning means, under present arrangements, structure planning as part of the development plan system. The Minister, Sam Galbraith, confirmed that the status quo was not an option everywhere and indicated that the Review would need to address the “wicked” issues such as who should prepare/approve strategic plans as well as their geographic boundaries. This consultation paper sets out, following an extensive series of discussions and seminars, the Executive’s conclusions and our view on the way forward. The proposals extend beyond structure plans and have significant implications for planning at the national level and for local plans. The proposals outline a general direction for the planning system and do not attempt to set out processes and procedures in detail. A number of the proposals will require changes in primary and secondary legislation.

Context

2. In 1996, regional, district and islands councils were abolished and were replaced with a single tier of 32 local authorities. The requirement to prepare structure plans to cover all of Scotland was retained and 17 areas were identified, 6 of which require councils to work jointly. In Ayrshire and Glasgow and Clyde Valley, joint structure plan committees were established under the Local Government Act. Elsewhere arrangements for joint working are more informal. As at June 2001, 5 structure plans for the revised areas have been approved by the Scottish Ministers; 5 have been submitted for approval; and 4 have reached the consultative draft stage.

3. In January 1999, The Scottish Office issued a consultation paper Land Use Planning Under a Scottish Parliament. This was intended to initiate a wide ranging debate on the future of the planning system. The consultation paper attracted 130 responses and an overview of these was published in October 1999. One of the questions posed in the paper related to strategic planning. There was strong and widespread support across the public and private sector for strategic planning but a wide variety of views on how it should be delivered. Some argued for keeping the existing system of structure plans; others argued for larger scale spatial frameworks such as the Central Belt; and others, such as Pathfinders to the Parliament, argued for a Scottish Strategic Plan considering future infrastructural, industrial and residential requirements.

4. In November 1999, the then Planning Minister, Sarah Boyack, indicated that the main components of the statutory planning system – in particular, the separation of strategic issues from local matters, Ministerial approval of structure plans and opportunities for public involvement – were in place but they needed to work better. As a result, in 2000, an Easy Read Guide to the Planning System was published, National Planning Policy Guideline 1 The Planning System was revised and the work of the Planning Audit Unit was extended to include development planning.

5. Ms Boyack also indicated that, while the Executive was not minded to disturb the components of the planning system, proposals for change which were properly worked up and thought through would be considered. There has been some pressure to move towards larger
scale planning frameworks, prompted in part by the European Spatial Development Perspective and the decision to prepare a National Spatial Strategy for Ireland and a National Spatial Planning Framework in Wales.

6. Representations continue to be made to the Scottish Ministers from a range of interests that many structure and local plans do not provide a sound basis for guiding investment in development or a sufficiently robust framework for the conservation of important natural and cultural heritage resources. It is pointed out that too many development plans are either not up to date or fail to give clear guidance on the scale and location of development. This places increased pressures on the development control process leading to delays in processing planning applications and heightened concerns over inconsistent decision making.

7. There have also been continuing concerns that in some parts of Scotland, the current structure plan areas do not reflect current and likely future geographic realities. Some areas are perceived to be too small while the process by which structure plans are prepared and approved is felt to be too complex and time consuming. Examinations in Public have not been held for some time in Scotland and, as a result, some argue that decision making on structure plans lacks transparency. It is also argued that, by not holding a public examination of strategic issues such as land supply for housing, increasingly these matters are debated at local plan inquiries resulting in additional delays and costs. There are, however, others who argue that the current arrangements, which were introduced in 1996, have not had sufficient time to bed down and that, in general, progress with the present generation of structure plans has been good.

8. The statutory basis for the current system of structure and local planning is 30 years old. The context within which development plans are prepared has, however, changed markedly:

- Higher public expectations about the output of planning but concerns about the process in terms of efficiency, transparency and accountability.
- Greater involvement of the legal profession in planning in terms of leading evidence/cross examining at public inquiries and more court challenges to planning policies and decisions.
- Greater number and variety of agencies and organisations whose policies and spending priorities have the potential to impact significantly on planning.
- Uncertainty about the relationship of development plans to other plans and strategies, in particular community planning.
- Challenges of e-government in terms of wider use of ICT and of Best Value to provide a more efficient and effective development plan system.

Although good progress has been made in a number of areas on structure plans, there is still considerable variation in their form and content. In other parts of Scotland, particularly where there is no dedicated structure plan team, it could be some time before there is an approved structure plan.

9. The Executive has therefore decided to look again at structure planning and examine whether the present arrangements are fit for purpose. Although the focus is on physical
planning above the level of the individual local authority, there are inevitably implications for planning at the national level and local planning. The review is not about the role of planners or the function of planning in local government. The Executive recognises that many of the planners employed in local government undertake a wide variety of work, for example in relation to economic development, European Funds and promoting biodiversity which may have a limited connection to the statutory planning system.

Review Process

10. The Review has involved Executive officials in a series of bilateral and multilateral meetings and discussions with local authorities, agencies, professional institutes, voluntary organisations, transport operators, planning schools as well as private sector interests such as house builders and planning consultants. A feedback form was also placed on the Executive's website. In addition, seminars were held to explore in more detail the main issues about process and product. An invitation to the main seminar, which was held in Victoria Quay on 29 May 2001, was also extended to members of the Transport and Environment Committee of the Scottish Parliament.

Results of Discussions/Seminars

11. The discussions and seminars confirmed the strengths of structure planning within the current system as follows:

- The statutory basis gives it considerable authority – structure and local plans are the main statutory vehicle for coordinating the land use and spatial implications of economic, social and environmental change.

- Ministerial approval of structure plans provides additional status and importance.

- The separation of strategic from local issues, in particular the disengagement of central government from local decisions.

- Opportunities for public involvement.

- In some areas, local authority officials argued that individuals and communities could relate to the areas for structure plans, although it was difficult to engage with strategic issues.

12. There was also general agreement on the weaknesses of the current system:

- Delays in plan preparation and approval.

- In some areas, plans are not up to date and are not, therefore, a suitable basis for the promotion and control of development.

- While the statutory basis of development plans is a strength, the procedures are perceived as cumbersome in contrast with other policy documents and investment strategies which are seen as more dynamic and responsive.

- Perceived inability/reluctance of plans to make adequate provision for development in the longer term.
Lack of clarity and certainty about where development will be allowed and where it will be restrained.

Tenuous relationship between plans and implementation.

A number of these problems arise from the way in which the process is managed and this was one of the main reasons for extending the work of the Planning Audit Unit to identify best practice in development planning. Other weaknesses are perceived as deriving from the structure and components of the system.

A number of key points about structure planning, the context in which it operates and how it is delivered emerged in the discussions and seminars:

- **NPPG series**
  There continued to be widespread support for the NPPG series and the attempt to make NPPG preparation more transparent has been well received. Many felt that the content and language of the NPPGs was particularly important in the context of public inquiries and allowed a more consistent approach to decision making across boundaries, for example on major retail development. There were, however, concerns that advisory material needs to be more clearly separated from policy. There was also a general view that many structure (and local) plans rested content with the NPPGs and did not advance policy development or interpret and apply the guidance to suit their particular circumstances. There was also an acceptance that a structure plan should not repeat NPPGs and a statement that the plan accepted national guidance, except where indicated otherwise, would suffice.

- **Scotland – Context Document**
  There was a strong feeling across the public and private sector that an overall national context for planning was lacking. A statutory document was not seen as necessary but there was a general desire to see a “light touch” statement that would provide a context for planning at the sub-national and local levels. There were, however, different views on the form this should take. Some thought this should involve a forward look at where Scotland was likely to be in 20 years and how the planning system might deliver sustainable solutions. Others thought that some form of spatial development framework should be prepared, while some were looking for a document which addressed regional imbalances within Scotland. Such a document was seen as sitting alongside the Framework for Economic Development in Scotland and the Social Justice Action Plan. It should also be linked to future initiatives such as the neighbourhood renewal statement and the review of cities. There was a fairly widespread view that some form of parliamentary scrutiny and endorsement was required, with many envisaging a key role for the Transport and the Environment Committee.

- **Central Belt**
  There was little support for a strategic plan for the Central Belt which some felt might concentrate too much on the contrasts between Edinburgh and Glasgow. While people could relate to individual local authority areas or joint structure plan areas such as Ayrshire, few saw the Central Belt as a coherent planning unit to which the public could relate. It was recognised that some issues, such as elements of the transport network,
the canal system and the Central Scotland Forest have a central belt dimension but the
overriding view was that urban Scotland functions (and will continue to function) as a
series of city regions. Few wished to see a top-down prescription for the Central Belt
and a bottom-up approach, involving possibly over 20 local authorities plus agencies
and other organisations could make for a very unwieldy process.

- **Rural Dimension**

In general, in much of rural Scotland, development has been small scale and
incremental. The limited scale of development pressure meant that there was
considerable scepticism about the need for 2 tiers of development planning, particularly
in remoter rural and islands areas. It was generally felt that the requirement to prepare
a structure plan and a local plan is unduly onerous, while the time involved in preparing
and approving/adopting plans leads to reduced elected member and community
interest.

- **Agency Involvement/Commitment**

There was concern among some local authorities that agencies were not sufficiently
signed up to the delivery of strategic (and local) planning policy. Particular concerns
were expressed about the spending programmes and priorities of some of the local
corporate companies and the water authorities. But this is balanced by a view that
structure plans do not take sufficient account of the commitments and priorities of the
agencies. In some areas such as Fife and Ayrshire, however, effective joint working
takes place.

- **Other Plans/Initiatives**

Related to the concerns about agency involvement there are uncertainties about the
relationship between structure planning and other plans, in particular community
planning. The Executive’s view on the relationship between development plans
generally and community planning is set out in NPPG1 The Planning System (revised
November 2000).

> “Community planning is the term given to the process by which a local authority and
other organisations come together to promote, plan and provide for the well being of
the communities they serve. It is a mechanism for partnership working between public,
private and voluntary sectors, encouraging community involvement and fostering a co-
operative approach to develop an agreed Strategic Vision and the tools that will help to
deliver it.

Community planning is essentially about taking action and providing services in a more
integrated way so that the needs of local people are met more effectively. The planning
system is the main means of delivering those aspects of the Community Plan which
impact on the development and use of land. Supplying sites and premises for economic
development, providing land for affordable housing, schools and other community
facilities, maintaining and enhancing the natural and built heritage to realise wider
community aspirations will depend for their implementation on relevant and up-to-date
development plans and on a well managed development control service.”
It is important that the distinctive role of development planning is recognised and that this can, and indeed should, influence other plans and strategies. In turn these plans and strategies should influence the content of development plans. The aim should be to have plans that complement, rather than compete, with each other.

- **Consultation Fatigue**
  Many expressed concern about the number of consultation stages in the current development plan process. In the case of structure plans this could involve consultation on an issues report, draft plan, finalised plan and draft modifications before a final decision is issued. The process, it was generally felt, has become too drawn out and leads to reduced enthusiasm and commitment. It was also seen as making excessive demands on the limited resources of community organisations.

- **Involvement of the Scottish Ministers**
  Although the continued involvement of the Scottish Ministers in decision making on structure plans commands strong support, many felt that the process is too extended (despite the commitment to reduce the time taken to reach decisions from 52 to 40 weeks). Without an Examination in Public (EIP) the process is seen to lack rigour and transparency, although an EIP would add considerably to the time taken to reach a decision on a plan. Decision letters, it is felt, focus on detail at the expense of an overall view of the strategy.

- **Increasing Legal Scrutiny**
  A recurring theme was the extent to which legal argument had become a feature of the process. Structure plans have certainly not proved able to reduce disputes during local plan preparation on subjects such as housing land supply. One Director of Planning commented that development planning should be about setting out and delivering a vision for the long-term development of an area. The debate on that vision was, however, increasingly likely to take place in a courtroom context. Although Planning Advice Note 37 Structure Planning advises that structure plans should not be read as conveyancing documents, the wording in structure and local plan written statements are increasingly subject to an almost forensic scrutiny. Minor differences in wording between NPPGs and structure plans or between structure and local plans become the subject of lengthy debate at inquiry and in Court, although these variations are often matters of drafting style rather than substance.

- **Plan Content**
  A number of structure and local plans have attempted to be very comprehensive and, as a result, too much emphasis has been placed, particularly in some local plans, on policies for the small scale management of change. Many plans contain a number of criteria based policies which are either too vague or require additional appraisal to provide a degree of certainty about the outcome of a planning application. To justify inclusion in a plan, criteria based policies should be capable of being used without the need for further appraisal.
**The Way Forward**

14. In considering the way forward, there are 2 key issues that need to be addressed. The first relates to the essential purpose of the statutory planning system. The second relates to the position of planning in the wider governance context.

15. The purpose and objectives of the planning system are set out in National Planning Policy Guideline 1 The Planning System (revised November 2000):

> “The planning system guides the future development and use of land in cities, towns and rural areas in the long term public interest. The aim is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:

- To set the land use framework for promoting sustainable economic development.
- To encourage and support regeneration.
- To maintain and enhance the quality of the natural heritage and built environment.”

16. The Executive concurs with the statement in a report from the Royal Town Planning Institute Fitness for Purpose: Quality in Development Plans (December 2000):

> “The unique contribution of land use planning is that it indicates where things ought to happen and says where they should not. A plan must be more than a compendium of policies, indexed on a proposals map. It should be clear as to its spatial strategy, indicating, for example, the directions of desired growth and its locations. It may also point to the areas in which regeneration of one sort or another is both needed and practical in the plan period. Beyond this, it needs to make adequate allocations of sites for all of the commonplace land using developments, not forgetting that mixed uses may often be more desirable than single use zones.”

17. On the position of planning in the wider governance context, it is clear that land use planning plays an important role in the management of change to meet the needs of individuals, communities and businesses. Development planning can inform and be informed by parallel strategies, plans and processes, for example community planning, local transport plans and local housing strategies. However, the planning system is the statutory gateway through which development must pass. Planning is about having a longer term view, so that while the planning system may have to deliver short term programmes or policy initiatives, it can contribute significantly to longer term social, economic and environmental policy development and spending priorities. It is in the period 5 years and more beyond the approval/adoptions of development plans that a coherent spatial planning framework should have the greatest influence.
Principles

18. Our proposals for change have been drawn up against the following principles:

- **Diversity** – the structure and components of the system should reflect the diversity in geography, the differing characteristics of communities and variation in the scale/nature of development pressures in Scotland.
- **Consistency** – within this diversity there should be more consistency in the content of plans.
- **Focus** – the priority is for development plans to be clear on what they can deliver and concentrate on doing that well.
- **Subsidiarity** – planning policies should be formulated and planning decisions taken at the level of individual councils unless there are strong reasons for a framework that transcends local authority areas.
- **Inclusion** – development plans must be based on wide consultation with local communities, agencies, as well as the private sector.
- **Responsiveness** – the system must be sufficiently flexible to address new and emerging issues with speed and confidence.
- **Certainty** – plans must be more directional and much clearer about the nature/ scale of development and how it should be carried out in a way that is sustainable and reflects Scotland’s distinctive natural and cultural heritage.

The Annex sets out the key issues on which views are sought. This will provide a structure for commenting on the proposals and for analysing the responses. Comments may, of course, range more widely.

Scottish Executive

National Planning Policy Guidelines

19. There remains strong support for the NPPG series and for the way the Guidelines are now prepared. We would, however, welcome views on whether these should be renamed National Planning Policy Statements (NPPS) as NPPGs are in effect statements of Executive policy on planning issues of national significance. Policies are not binding or inflexible but they should give a general indication as to how a decision maker will act. The process by which they would be prepared would continue to reflect the principles of openness and transparency but there may be scope to separate more clearly analysis and justification from policy.

Scotland – Overview and Implications for Planning

20. There is scope for some NPPGs to have a more explicit spatial dimension. The Executive accepts, however, that there would be value in a document that looks at Scotland as a whole, how the country was likely to develop and change and how the planning system could assist in delivering that change. **The intention is not to produce a national plan for Scotland.** The document would not be comprehensive and all embracing. The aim would be to identify a limited number of subjects at the national level where the Scottish Ministers believe
the planning system has an important role in delivering sustainable solutions. It is proposed that such a spatial perspective, which could be useful in the context of resource allocation under the European Structural Funds programmes, would focus, in the first instance, on the following subjects:

- Settlement pattern, land resources and infrastructure capacity.
- Population and household change, including the spatial dimension of social justice.
- Economic prospects and the implications for planning.
- Environmental challenges and the role of the planning system.
- Strategic priorities for transport (reflecting the Transport Delivery Plan) and other infrastructure investment.

The document might also identify locations where, in the national interest, a co-ordinated approach to planning was required.

21. The document, which should be aspirational but realistic, would be drawn up with extensive stakeholder involvement. The commitment to inclusion must be balanced by the need to ensure the preparation process is efficient and responsive. The document would be non-statutory and the subject of periodic review. Some form of scrutiny by MSPs is also envisaged. The aim is to produce the first overview before any new arrangements for development planning are in place. We will be using the consultation period to develop our thinking and in the light of the emerging consultation responses on the form and content of the overview, the processes by which it will be drawn up and the arrangements for scrutiny/approval.

Model Policies

22. A point which emerged during the review was the extent to which many basic and common planning policies were being reinvented by 32 councils. Indeed there are examples of differences in wording between policies on the same subject on adjoining local plan areas in the same authority, even when there was no material difference in the circumstances justifying the policies. It was argued that planning policy for say the protection of listed buildings, development in green belts and in areas where there is a national or international designation, should not differ between councils. It was therefore suggested that the Scottish Executive and local authorities should together draft model policies which might be generally applicable across Scotland. Some of these could derive from the NPPG series. This would, of course, leave councils free to develop or vary policies to reflect their particular circumstances on subjects such as development in the countryside, density of development and design principles.

Local Authorities

Structure Plans

23. At present, structure plans are required for every part of Scotland. We are not convinced it is necessary to retain the current 2-tier approach to planning in all areas. We propose that the higher tier of plan should concentrate on genuinely strategic issues which cross the boundaries of council areas. In many parts of Scotland there are few, if any, strategic land use
planning and development issues with a strong locational dimension. There may be locally controversial policies or proposals but these are not necessarily the same thing as strategic issues. Strategic planning was originally conceived as a means of guiding large scale population growth and economic expansion which involved a substantial degree of locational choice. The outcome was invariably large scale land releases, including new settlements, and the identification of priorities for investment in new or improved infrastructure. We propose that structure planning should return to addressing this scale of issue against the need to promote development that is sustainable. Not all parts of Scotland are facing pressures associated with population growth. In some parts urban regeneration is the priority and there is a clear spatial dimension to this issue.

24. We intend to end the requirement for full coverage of structure plans. Instead we propose that strategic development plans be prepared only for the 4 largest cities and their hinterlands. The results of the 2001 Census will be useful in defining the most appropriate areas for strategic development planning but it will also be important to consider future changes in travel to work and housing market areas. We welcome views on the boundaries of these areas. We believe that only in city regions are there genuinely strategic planning issues which require to be addressed across local authority boundaries (although see later sections of the paper dealing with the specific issues of minerals and waste). These will include the demand for economic and housing development which need to be considered in a city region context. The proposals would not dilute, far less remove, the autonomy of councils in respect of planning policies and decisions which are entirely local in character.

25. The proposal that strategic development plans should only focus on the 4 largest cities should not be interpreted as giving sustainable rural development a lesser priority. Indeed the revised arrangements could see a stronger focus on rural issues in areas where the current structure plans are primarily concerned with the management of urban change. In National Parks, the requirement to prepare a National Park Plan, which will bring together the activities of a wide range of organisations, will be the vehicle for dealing with strategic planning issues. Such plans are statutory documents which require the approval of Ministers.

26. We have not, at this stage, extended the list to other areas. We are well aware that many authorities work effectively with neighbouring councils and other interests to produce good quality structure plans and our proposals should not be read as implying a lack of recognition of that work. However, our impression is that, in the main, the number and scale of cross boundary issues in these areas are limited. We are not therefore convinced that a strategic development plan for these additional areas is essential. If, however, other or groups of councils can present a convincing case of the need for a strategic development plan, the Scottish Ministers will consider whether those councils should be added to the list of authorities that would be required to draw up such a plan. Any councils considering doing this should be aware that the areas for which a strategic development plan would be required to be prepared will be listed in legislation. They would not be able to opt in and out at will.

27. We propose that there should be a statutory requirement to establish a joint committee to oversee the preparation of the strategic development plan and that a dedicated team be appointed to this task. We do not believe that this should necessarily require additional resources for strategic planning. A small, focused team should be able to concentrate on strategy rather than detail and we believe that this can largely be done through redeployment
of existing staff. Moreover we believe that the general approach outlined in this consultation paper will make more effective use of staff and other resources.

28. We propose that these strategic development plans - which are, in effect, reinvigorated and more focused, action oriented structure plans - should concentrate on employment, housing and transport. Environmental factors, in particular conservation of the built and natural heritage, landscape considerations, water quality and flood protection are key inputs in identifying land for development and priorities for regeneration if development is to be sustainable. Not only are these factors key inputs they are also key outputs of the process, for example in the form of green belts, and the plans must provide a robust and enduring basis for the conservation of built and natural heritage resources. Ministers wish to see a much stronger spatial component in these plans. Too often policies on housing, employment and transport run in parallel while the distinctive character and potential of places is not given sufficient attention.

29. If councils believe that additional items should be included in strategic development plans, they may do so with the agreement of the Scottish Ministers who will wish to be satisfied that such issues have clear strategic spatial implications and their inclusion will genuinely add value. Strategic development plans should not restate NPPGs (or NPPS as they may become). If issues such as retailing are to be addressed, plans must provide a greater degree of precision on the scale and location of development. Similarly renewable energy development should only be addressed if search areas are to be identified. Where a joint committee disagrees with national planning policy, the strategic development plan should reflect this.

30. Key diagrams are not, in the main, easy to use and do not generally provide an effective basis for consultation. Formerly, in urban Scotland, structure plans were prepared by the former Regional councils and local plans by District councils. Currently structure plans are prepared by individual councils or councils acting together and they should be clearer about the areas that are to be released for development and where development will be strongly resisted or only allowed in special circumstances. The current process whereby structure plans are not site specific means that the precise allocations are not made until a local plan is prepared. This process can create uncertainty over a prolonged period. We propose, therefore, that all strategic development plans should take a long term perspective (15 years minimum). They should also be site specific for strategic land releases (defined as say housing sites above 100 houses or business parks above 5 ha), priorities for regeneration as well as identifying areas which should generally be protected from development. Strategic planning is about the exercise of choice and these plans will require hard decisions to be taken about the scale and location of development and redevelopment.

31. Strategic development plans should also contain an action plan setting out what should happen in respect of matters such as phasing of development, land acquisition, infrastructure provision and the preparation of development briefs. These action plans should be reviewed every 2 years to assess progress with the strategy and to identify the next action over the following 2 years. This should be part of a monitoring statement reviewing the underlying assumptions on which the plan is based and the extent to which these assumptions and the policies in the plan remain valid. A formal alteration to the plan should not normally be required.
32. We propose that a public examination of strategic development plans be made a requirement where there are objections which are not withdrawn. It would be the responsibility of the joint committee to organise this. For this stage in the process to be managed efficiently it is important that those who wish to make representations or objections on the plan should express their views concisely. This is particularly important where objectors are professionally represented. The relevance of the representation/objection should not be determined by the volume of material submitted. To make the process less formal and intimidatory, we also propose that inquiries take the form of an exchange of views moderated by a Reporter as distinct from adversarial exchanges between competing parties and interests.

33. The Scottish Ministers would retain a role in the approval of strategic development plans. We propose that after holding an examination the joint committee should draw up a list of proposed modifications. This should then be submitted to the Scottish Ministers who, if they are satisfied that the plan is consistent with national policy, would issue a certificate of conformity. This process should take no longer than 3 months. Where the Scottish Ministers are of the view that a strategic development plan does not conform with national policy, they may still issue a certificate of conformity if they accept that there are circumstances, for example as a result of more up to date information, justifying a different approach. Alternatively Ministers may direct the action that requires to be taken which would enable such a certificate to be issued.

34. It may not always be possible for the councils represented on the joint committee to reach an agreement on the scale and location of development, the priorities for regeneration or infrastructure investment. In that case they should submit to the examination their proposals and consider, in the light of the Reporter’s recommendations, whether they wish to accept these or pursue a different approach. It would then be for the Scottish Ministers to reach a final decision based on the original proposals, the objections/representations, the report of the examination and the views of councils and others on this report. The decision of the Scottish Ministers will be final.

35. The requirement to make strategic development plans site specific and include an action plan should enable individuals, communities and other stakeholders to relate more easily to the issues. This is consistent with the Executive’s commitment to improved public involvement in planning. Indeed the Executive will be consulting later this summer on ways of making public involvement more effective. The aim should be to build a consensus as plan preparation proceeds. Open and participative approaches to plan preparation could make the present emphasis on the consultative draft stage less important. The requirement to hold a public examination into formal objections guarantees that the later stages of the process are open and transparent in making final adjustments to policy. Strategic development plans should be prepared as partnership documents even to the extent that the agencies responsible for delivering the strategy could appear as co-signatories.

36. The Executive attaches great importance to monitoring strategic development plans. While a formal review of the plan every 2 years should not be necessary, we believe there is considerable merit in joint committees taking stock of progress with the strategy and the action plan. Some policies in the plan are not likely to be greatly influenced by the passage of time, for example policies which afford protection to the built and natural heritage. But the revisions of population and household projections, revisions to housing land audits and economic
forecasts can be more volatile. However, the plan should be sufficiently robust to withstand these changes in the short to medium term. Stock taking should, therefore, identify which policies in the plan continue to be fully effective and those that might require adjustment when the plan is formally reviewed after 5 years. Before the end of 5 years from the issue of a certificate of conformity the joint committee must decide on whether it wishes to formally review the plan or whether it regards the plan as continuing to provide an effective basis for the promotion and control of development. In reaching a decision on whether to formally review the plan, the views of stakeholders should be sought.

Local Plans

37. As set out above, we propose, in the 4 city regions, 2 tiers of development plan, a strategic development plan and a local development plan. Together they will comprise the statutory development plan for the area. The local development plan should conform to the strategic development plan and, only in exceptional circumstances, should matters examined at the examination of the strategic development plan be reopened in the context of the local development plan examination.

38. Most of Scotland will, therefore, be covered by a single plan, to be known as the development plan. These will be similar in most respects to the present local plans but should draw in any necessary land use information and policy which would otherwise be lost with the removal of structure plans as we currently know them. A development plan might cover the entire area of a council or comprise a number of plans. There may, however, be circumstances where a strategic view might be required. For example, if an area is experiencing significant population or employment growth, there may well require to be a choice about the preferred location(s) for development. We propose that each council should prepare and submit to the Scottish Ministers for approval a scheme for development planning for their area, including the timetable within which the Plan(s) shall be prepared. The Scottish Ministers will aim to issue a decision on that scheme within 2 months of receipt.

39. The process for drawing up and reviewing development plans and local development plans should be broadly similar to that outlined for strategic development plans and should include:

- Strong emphasis on community involvement.
- Targeted consultation with key players.
- Provision for public examination.
- Certificate of conformity with national policy from the Scottish Ministers.
- Provision for revalidation.

40. Development plans and local development plans should be more comprehensive in their coverage of subjects than the strategic development plan but they should not seek to cover every eventuality. They should bring forward smaller scale sites for development as well as setting out policies on key development control issues. Like strategic development plans, they should be more than a compendium of policies and must provide greater certainty about the nature and scale of change in an area. Local plans should also contain a section on the action that will follow from the approval of the plan. Again this should be rolled forward every 2 years.
41. Where local plan policies have essentially the same intention and effect, we see scope for greater consistency across Scotland using model policies as described in paragraph 22. We also envisage greater use being made of supplementary guidance. As well as guidance on matters such as siting and design of housing in the countryside, development briefs and urban design guidance for conservation areas, there may be a need to prepare detailed plans for areas subject to intensive change. If this is likely to involve substantial restructuring of an area, for example in a town centre this would be more properly handled through an alteration to the statutory development plan or local development plan. Supplementary guidance has the advantage of being more focused and quickly prepared with consultation arrangements - which should be an integral part of the process of preparing guidance - better tailored to the particular circumstances which the guidance is addressing. The weight to be placed on this in decisions on planning applications, enforcement and appeals will depend largely on the relevance and precision of the arguments presented in the guidance.

Specialist Issues

42. Paragraph 23 refers to issues which are controversial but not necessarily strategic. Waste and minerals are certainly subjects which provoke considerable controversy and they have a clear strategic planning dimension. We are not, however, convinced that these subjects, because of their very specialist nature are best handled in strategic development plans or local development plans or development plans. Our view is that the planning issues that these subjects raise require to be addressed in a separate and distinctive manner.

Waste

43. We propose that the provision of land and other facilities for waste is best handled in future by Waste Subject Plans separate from development plans. Changes are already taking place in the arrangements for waste management following the publication of the National Waste Strategy but there are concerns that the elements of Area Waste Plans which require to be delivered through the planning system are proving problematic. We believe that some of these problems can be addressed by aligning the boundaries of Waste Subject Plans with Area Waste Plans. This should build on the co-ordination that is already developing and provide a more effective mechanism for addressing those issues such as the location of waste management facilities which are the primary concern of the land use planning system.

Minerals

44. Our discussions have suggested that planning for minerals must distinguish between opencast coal and aggregates. The distribution of resources, the issues they raise and the markets they serve are generally very different.

- Opencast Coal

NPPG16 Opencast Coal and Related Minerals was issued in 1999. This required planning authorities to alter their structure plans to bring them into line with the revised guidance. Most structure plans for areas where opencast coal issues exist now have an up-to-date strategic planning policy framework and we believe that a period of stability
is now required. The relevance and effectiveness of the policy framework will, however, be subject of a formal review in the medium term.

- Aggregates

Aggregates make an essential contribution to the construction industry which is a key sector of the economy. Current policy on aggregate working is contained in NPPG 4 Land for Mineral Working. This was published in 1994. The Scottish Executive has recently commissioned a review of NPPG 4 through research by independent consultants. This is due to be completed in the summer of this year and this will inform how we should approach strategic planning for aggregates in the future.

Next Steps

45. We propose to allow a 4 month period for consultation on these proposals which have potentially very far reaching implications. The Executive hopes to announce its conclusions on the exercise in Spring 2002. Some of the changes are likely to require alterations to primary legislation, others will require the substantial revision of secondary legislation such as the Town and Country Planning (Structure and Local Plan) (Scotland) Regulations 1983. Other issues can be progressed without any legislative change. Meantime councils should continue to progress structure and local plan in line with current procedures, while the reviews of NPPGs 2 and 3 will be taken forward on the basis outlined in November 2000. The proposals set out in this consultation paper reflect our wish to modernise and streamline the planning system.

Conclusion

46. NPPG 1 indicated how the planning system could contribute to the Scottish Executive’s wider objectives on sustainable development, economic competitiveness, social justice and environmental quality. Planning must also embrace more fully the modernisation agenda and the proposals set out in this consultation paper reflect our wish to modernise and streamline the planning system. Statutory plans should continue to be at the heart of the planning system. However, we believe the current structure and processes are not allowing development plans to realise their full potential in contributing to the management of change in Scotland for the long term public good.

47. Some of the proposals in this consultation paper involve a radical change to the development plan system. But they represent an evolution, building on its strengths. We think there is scope to make the policy content of NPPGs more explicit and indeed to rename these as National Planning Policy Statements. We also believe that there would be merit in the Executive preparing a document (non-statutory) that looks at how Scotland functions as a place, the key drivers of change and the implications for planning.

48. Land will remain the central feature of the development plan system but there will be much greater emphasis on spatial relationships. The Scottish Ministers will have a continuing role in relation to development plans but the nature of that role will change. Strategic development plans will be required but only in areas where there are genuinely strategic land use issues
which transcend individual local authority boundaries. Plans in general will be expected to become less all embracing, more focused and action oriented and with an expanded role for supplementary guidance. Development control policies will, however, remain a key feature of both development plans. Positive planning is not a free for all; it requires effective regulation and that should be based on the statutory development plan. That does not, however, require plans to have policies to cover every situation or eventuality.

49. The implications of the proposals outlined in this paper are potentially far reaching. They involve significant changes to the form, content and procedures for preparing and approving development plans. But to be truly effective, these changes will require to be supported by better management of the process. If this can be achieved, it should enhance the reputation of planning so that it can play a more positive role in the governance of Scotland.
ANNEX

Key Issues on which Views are Sought

Scottish Executive

- Should National Planning Policy Guidelines be renamed National Planning Policy Statements?
- Should some form of national overview document be prepared? If so:
  - what issues should it address?
  - how should it be prepared?
  - what sort of scrutiny/approval process should be involved?
- Should model development plan policies be drawn up? If so, for what subjects?

Local Authorities

Structure Plans

- Should the current requirement to prepare structure plans for all parts of Scotland be removed?
- Do you agree strategic development plans be prepared only for the 4 largest city regions? What should the boundaries of these areas be?
- Do you agree joint committees be set up to oversee the preparation of strategic development plans?
- Do you agree strategic development plans should concentrate on a limited number of strategic issues and that they should not restate national planning policy?
- Do you agree that strategic development plans should be site specific?
- Do you agree an action plan should be prepared as part of the strategic development plan and that it should be reviewed every 2 years as part of the process of monitoring and review?
- Do you agree that a public examination of objections should be made mandatory?
- Do you agree the Scottish Ministers should issue a certificate of conformity with national policy rather than formally approve structure plans as at present?
- Do you support the arrangements for monitoring set out in paragraph 36?
Local Plans

- Do you agree that, outwith the 4 city regions, there is no need for 2 tiers of development planning?
- Do you think there should be a requirement for councils to submit a development plan scheme for the agreement of the Scottish Ministers?
- Do you agree the processes for drawing up development plans and local development plans should be the similar to the procedures for strategic development plans?
- Do you agree more use should be made of supplementary guidance?

Specialist Subjects

Waste

- Do you agree Waste Subject Plans should be drawn up and their boundaries should be aligned with Area Waste Plans?

Minerals

- Do you agree a period of stability is now required in respect of the strategic planning policy framework for opencast coal? In the case of aggregates, strategic planning arrangements will be informed by the current review of NPPG 4.
Dear

PLANNING AND TELECOMMUNICATIONS: CONSULTATION ON PROPOSED CHANGES TO PERMITTED DEVELOPMENT ARRANGEMENTS AND DRAFT NATIONAL PLANNING POLICY GUIDELINE

This letter sets out the response of the Transport and the Environment Committee to the above consultation.

The Committee recognises the social and economic benefits of a modern telecommunications system. Members welcome the opportunity to continue to contribute to ensuring that the right balance is struck between legitimate development by the telecommunications industry and the protection of the environment and the rights of the general public.

The Committee welcomes the moves made by the Executive to address public concern over the siting of telecomms infrastructure and particularly its acceptance in full or in part of a number of the recommendations made by the Transport and the Environment Committee in its report on the issue published in March 2000.

The Committee notes that additional issues may have come to the fore in the period since the report was published. However, the Committee did not wish to express a view on new issues which it had not been able to substantively consider. Accordingly, the Committee’s response is based on an evaluation of the extent to which the Executive’s proposals address the Committee’s earlier recommendations. The Committee believes that the recommendations contained in its report continue to be relevant and appropriate.

The Committee is concerned about a number of areas where it considers that the Executive’s proposals do not go far enough. This response particularly highlights those areas where the Executive’s proposals do not envisage implementation of
earlier recommendations made by the Committee—recommendations which were made after wide discussion and careful deliberation.

These areas of concern are set out below:

**Full Planning Control: non ground based masts and antenna**

The Committee is concerned at the retention of permitted development rights for non-ground based masts and antennas which do not exceed 4 metres in height and 2 metres in other directions. In the Committee’s view the ability to erect such sizeable structures without planning permission, undermines the intention to subject developments to greater control and public scrutiny. The Committee therefore strongly urges the Executive to amend its proposals and implement the recommendations made by the Committee in its earlier report, namely that all:

- masts;
- antenna transmitting and power levels transmitting above those currently associated with “micro cells”; and
- equipment housing and associated buildings in excess of 90m3 and 3 metres in height

should be subject to full planning control.

The Committee would also welcome clarification of the impact of proposals to allow permitted development rights for replacement masts, provided that they are no more than 2 metres higher than the existing mast. In particular, if a mast is replaced more than once, this should not lead to incremental or “creeping” growth in its height. The Committee would therefore welcome reassurance that the increase of 2 metres in height will be judged against the height of the original mast.

**Mast Sharing**

In its report the Committee recommended that the opportunities for mast and/or site sharing should be explored in discussions and promoted as being the first priority in the development of planning policies.

The Committee notes that the draft NPPG encourages the sharing of masts on *buildings*, where it represents the best environmental solution. The Committee sees no reason why mast/site sharing should be promoted in relation to the use of buildings and not in relation to ground based masts.

The Committee acknowledges the possibility that in some instances the infrastructure changes to facilitate mast sharing might be more significant than the erection of a new mast. In order to address this concern, while ensuring that mast and/or site sharing is seen as the preferred option, the Committee recommends that
the draft NPPG should be amended to stipulate that there will be a presumption in
favour of mast or site sharing - unless the applicant demonstrates that a new mast
would be less intrusive. The Committee believes that as currently drafted, the
proposals would actually discourage mast sharing. The Committee therefore
recommends that they be amended to ensure that there are incentives for
companies in mast sharing. The presumption in favour of sharing should apply to
ground masts and masts sited on buildings.

Health Issues and the Precautionary Approach

The Committee notes and welcomes the instruction in paragraph 43 of the draft
NPPG that all new base stations must meet the ICNIRP exposure guidelines.
However, it is disappointed by the limited scope of the NPPG’s guidance on health
considerations in other respects and by its interpretation of how the precautionary
approach applies to this issue.

Paragraph 25 states that the Government accepts the precautionary approach
recommended by the Independent Expert Group on Mobile Phones (IEGMP) and
outlines its responses to specific recommendations. The Committee notes that a
precautionary approach is not explicitly discussed in paragraphs 42 and 43 which
deal with planning and health. The inference which the Committee draws from this is
that the Executive sees adherence to a precautionary approach as being fulfilled by
implementation of the IEGMP recommendations and do not advocate that planning
authorities also take a precautionary approach in relation to their consideration of
applications. The Committee does not agree with such a stance.

The Committee believes that it is right that authorities exercise a precautionary
approach in their consideration of telecomms development applications and that this
will complement the measures being implemented under other regulatory
frameworks.

The Committee also believes that more comprehensive guidance on the weight to be
given to health considerations should be provided to authorities by the Executive.

Consequently the Committee calls on the Executive to amend the draft NPPG to
adopt recommendations 19 and 20 from its earlier report, namely that:

- a precautionary approach should be adopted for telecommunications
developments based on health issues, which should be regarded as being a
material consideration within the planning framework for this purpose ; and
- that the Scottish Executive should provide clear and detailed guidance to local
authorities on how health should be incorporated into the planning system as a
material consideration, including the weight that should be given to it, and
guidance should be provided on the application of the precautionary approach.
The Committee further recommends that such guidance should include a stipulation that authorities seek advice from environmental health departments and health boards in considering applications and that applicants should submit to the authority the risk assessment report which they currently have to produce under health and safety legislation.

Local Authorities Policy Framework and Development Plans

The Committee made a number of recommendations in relation to the framework within which decisions on applications should be made. These recommendations included:

- that developers should seek to avoid locating developments in environmentally sensitive areas
- that local authorities should establish a hierarchy of preferred locations for telecomms equipment, avoiding more densely populated areas.

In addition to these specific recommendations which the Committee wishes to press the Executive to adopt, the Committee also wishes to emphasise more generally the importance of dialogue between local authorities and telecomms companies – particularly in relation to the development of local plans. This should provide the framework for companies and local authorities to enter into early discussions about companies’ development plans for rolling out the network.

If a telecomms company submits an application for a development that deviates from the agreed policy and local plan, they should be required to provide technical reasons justifying why the site was chosen. The Committee believes that this process in relation to the development of the local plan is necessary for local authorities to gain the leverage they need to protect the broader public interest - beyond the acceptability of the aesthetics or size of a particular mast.

The Committee wishes to particularly highlight the significance of this issue. Full and prompt dialogue between companies and authorities can and should provide a mechanism for the early resolution of a range of issues such as mast sharing, inappropriate installations, and improving communication with local communities. Such an approach places a duty on both companies and local authorities to pro-actively manage the process from the earliest stage.

A National Plan

The Committee continues to believe that a national plan should be developed. The Committee look forward to discussing this and other issues with the Executive as part of the planned review of the arrangements for strategic planning in Scotland.
Finally, the Committee wishes to lend its support for the early introduction of the final NPPG and regulations to give clarity to all those involved in the issue.

I hope these comments have been helpful.

Andy Kerr MSP
Convener
LEGISLATIVE PROPOSALS FOR TELECOMMUNICATIONS DEVELOPMENTS

In April 2000, the Transport and Environment Committee reported on their inquiry into the proposals by the Scottish Executive to introduce new planning procedures for telecommunications developments. Following a report by the Independent Expert Group on Mobile Phones (‘The Stewart Inquiry’) into mobile phones and health, the Scottish Executive undertook a consultation to move towards full planning control for mobile phone masts. Legislative proposals were initially laid before Parliament in June 2001 and subsequently in July 2001. The proposals introduce full planning control for ground based masts. This paper has been produced for the Transport and Environment Committee, and provides an overview of the current position.

BACKGROUND

Until 23 July 2001, Telecommunications developments in Scotland benefited from permitted development rights that (broadly speaking) allowed operators to erect free standing masts and towers up to 15 metres in height without the need to seek planning consent¹.

¹ This is not always the case, and reference should be made to Class 67 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 for further detail.
The Scottish Executive published three consultation papers in 1998 reviewing the position relating to planning procedures for Telecommunications Equipment. The papers proposed the retention of permitted development rights, but introduced:

- an element of consultation and
- the ability for a planning authority to refuse consent.

However, the procedures stopped short of introducing full planning control. See research note 99/36 for a detailed briefing on these proposals.

In 1999, the Scottish Parliament launched an inquiry into the Scottish Executive’s proposals to introduce new planning procedures for telecommunications developments. The committee reported on this enquiry in April 2000. Shortly after this, the Independent Expert Group on Mobile Phones published their report, of which there are a number of notable conclusions relating to health risks associated with this technology. These recommendations included:

- That there is no general risk to the health of people living near to base stations on the basis of exposures
- That there can be indirect adverse effects on well-being in some cases
- There should be an input by health authorities/health boards in the planning process
- That in relation to base stations sited within or near to school grounds, that the beam of greatest intensity should not fall on any part of the school grounds or buildings without agreement from the school and parents

Since then, a number of consultation papers have been published in various parts of the UK detailing proposals to move towards full planning control for telecommunications development.

- 31 July 2000: Revised planning policy guidance for telecommunications development (PPG8) and possible changes to planning legislation were published by the DETR.

However, despite signalling their intention to move towards full planning control, the UK government have now changed their position. The Department of the...
Environment, Transport and the Regions issued a press release\(^8\) in March 2001 announcing strengthened public consultation requirements but retaining the prior approval procedure. They do not propose bringing any developments within full planning control.

A ‘10 minute’ Bill was also proposed by a Member called the ‘Siting of Telecommunications Masts Bill’. This proposed that masts be brought under full planning control and was put forward by Ms Debra Shipley MP. The Bill was dropped in May 2001.

The Scottish Executive published its consultation on the introduction of full planning control on 24 November 2000, along with a draft NPPG on the subject\(^9\). A statutory instrument has now been introduced into the Scottish Parliament, and the remainder of this paper outlines the current position.

**SUMMARY OF COMMITTEE RECOMMENDATIONS**

The following is a brief summary of the Transport and Environment Committee Recommendations:

- That full planning control be introduced for ground based masts, and masts on buildings, except for ‘microcells’ (given their small scale and low power output)
- Full planning control for equipment housing exceeding 90m\(^3\) and 3m in height
- That operators should enter into early discussions with local planning authorities when planning network roll-outs to feed into planning policy.
- That opportunities for site sharing and/or mast sharing should be explored as the first priority
- That the Scottish Executive should produce guidance on treatment to minimise the impact of developments in environmentally sensitive areas
- That environmentally sensitive areas should be avoided where possible
- That residential areas be included as an environmentally sensitive area, with particular care being taken when considering locating in such areas for amenity and health reasons.
- The establishment of a local authority register of existing and proposed infrastructure
- A precautionary approach to telecommunications developments because of ‘reasonable doubt’ about the health risks associated with masts.
- That health should be a material consideration for telecommunication developments
- That the Executive produce clear guidance on how health should be considered within the planning system
- That a hierarchical approach be taken when considering new sites for telecommunications developments, based upon avoiding sensitive areas.
- That a national plan would be an appropriate mechanism for considering the national framework for telecommunication policy (updated annually)

---


CURRENT LEGISLATIVE POSITION AS PROPOSED BY THE SCOTTISH EXECUTIVE

What is the current position?

The first amends the regulations that define what telecommunications developments can be considered to be permitted development. The Order was due to come into effect on 23 July 2001. The regulations are summarised below.

The second amends the statutory procedure to be followed so that the applicant must submit a declaration that the antenna is designed to comply with the ICNIRP (International Commission on Non-Ionising Radiation Protection) public exposure guidelines. This Order came into effect on 23rd July 2001.

On 20 July 2001, the Scottish Executive laid a new instrument also coming into force on 23rd July 2001. The Order revoked the first instrument laid on 25th June 2001. The reason for replacing the Statutory Instrument was given as follows:

"Views expressed to the Executive by planning authorities, mobile phone operators and members of the public as to what the position will be from 23 July have ranged from: that all work in progress under current permitted development arrangements … would be able to be completed without it being necessary to apply for express planning permission; to, that all work in progress under current permitted development arrangements would have to be suspended on 23 July pending an application for planning permission being made to complete the work and permission being granted. The Executive, therefore, acknowledges the likelihood and undesirability of inconsistent application of the new Order across Scotland and the confusion that would pertain until, potentially, the Courts ruled on cases brought before them."

For this reason, a new section (3(2)) is inserted into the statutory instrument (which otherwise is identical to the previous) that states that the provisions will not apply to developments commenced before the 23 July and completed within fourteen days of 23 July.

What requires planning consent?
Anything that can be defined as being development (including telecommunication equipment, masts and antenna) requires planning permission. However, planning permission can be automatically granted to certain types of development through the Town and Country Planning (General Permitted Development) (Scotland)

---

10 SSI 2001 No.244
11 SSI 2001 No.245
12 Form A (Breach of 21 day rule but where the SSI is laid before it is commenced) accompanying SSI 2001 No.266

providing research and information services to the Scottish Parliament
Order 1992. In the case of telecommunications developments, this removes the need to apply for ‘full planning permission’ by granting consent code operators\textsuperscript{13} for the developments defined in the Statutory Instrument. Until now, this has given a great deal of flexibility to Operators to erect masts and equipment housing. The new Statutory instrument revises this Order to remove certain permitted development rights. The new rights are summarised below.

The Order that has been introduced is largely similar to the draft Order that was consulted on in October 2000. The Order provides Code Operators with permitted development rights to:

1. Construct any telecommunications apparatus, except ground based masts
2. Use land for temporary emergency replacement telecommunications apparatus for a period of up to 6 months
3. Development of ancillary radio equipment housing including means of access except for ground based masts

There are certain exceptions to this general consent that have been discussed in greater length in research note 00/111, and these exceptions remain largely the same in the Statutory Instrument that has been laid before Parliament. In summary, Code Operators still have permitted development rights for up to 8 antennas on a building over 15m in height, with restrictions on the size of the apparatus (4m high) and the antennas (2.8m high). They also have permitted development rights for up to 4 antennas on a building under 15m in height with the same size restrictions. There are also restrictions on equipment housing (90m3 and 3m in height). Up to two ‘small’ antennas are permitted on dwelling houses, and up to 8 ‘small’ antennas are permitted on other buildings. No exceptions are permitted in the setting of category A listed buildings or scheduled ancient monuments.

Where permitted development rights are available, the operator must still notify the planning authority of the intention to install the equipment.

**Ecclesiastical Exemption**

Although certain categories of development are granted permitted development rights, Listed Buildings are generally still required to obtain Listed Building Consent, thus retaining some control over buildings of historical interest. The own and Country Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 imposes a general duty on local planning authorities to,

“have special regard to the desirability of preserving the building or its setting or any features of architectural or historical interest which it possesses.”

Section 7(7) of the Act provides any alteration to a listed building must be authorised. This authorisation is known as ‘Listed Building Consent’. Thus, although works such as telecommunications developments may have permitted

\textsuperscript{13}‘Code operators’ are licensed mobile phone network operators

*providing research and information services to the Scottish Parliament*
development rights within the planning system, they are still controlled for listed buildings through ‘Listed Building Consent’.

The new Statutory Instrument outlined above (SSI 2001 No.266) removes permitted development rights for Category A Listed Buildings (buildings of national or international importance). This means that full planning consent will be required for any development by telecommunication operators. Category B and C(S) listed buildings (buildings of regional or local importance), still have permitted development rights associated with them but generally require listed building consent.

However, the requirement to obtain listed building consent for works of demolition, alteration or extension does not apply to ecclesiastical buildings (for the most part being churches) which are for the time being used for ecclesiastical purposes. This ecclesiastical exemption only applies only to those bodies which subscribe to a code of practice, and which have agreed to bring their internal arrangements for control of works to listed ecclesiastical buildings into conformity with the code. Where religious bodies do not subscribe to the code of practice the exemption is withdrawn in respect of works to the interior as well as to the exterior of their ecclesiastical buildings (the code of practice is set out below). These provisions are set out in ss.54 and 55 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

What this means in practice is that whilst there are internal arrangements for control of works to listed ecclesiastical buildings, there are no statutory requirements to obtain Listed Building Consent. Therefore, there would be no statutory control mechanisms for erecting masts that have permitted development rights on Category B or C(S) Listed ecclesiastical buildings. However, it would appear that there is a pilot system in operation in some parts of the country where applications are being submitted on a voluntary basis to the planning authority.

**NPPG 19: RADIO TELECOMMUNICATIONS**

The Scottish Executive have published their policy on telecommunications developments in the form of a National Planning Policy Guideline (NPPG). It sets out some of the background and legislative context, and then addresses a number of issues. These are summarised below:

The broad principles are as follows:

- To enable the telecommunications industry to expand
- To minimise the environmental impact of telecommunications equipment
- To aim for equipment to become an accepted and unobtrusive feature of urban and rural areas

Also laid out are a number of practicalities such as consultation in development plan preparation, and planning authorities appointing a first point of contact for liaison. Authorities should not question whether the service to be provided is
needed. Operators should ensure staff are conversant with the Scottish system and employ design consultants where necessary. Network roll-out plans and specific sites should be discussed with planning authorities.

The NPPG also lays out guidelines for siting and design, and emphasise its importance in relation to telecommunications. In particular, it states that operators should provide evidence that consideration has been given to siting and design with their applications, and that this may be a material consideration.

The policy guidelines also introduce a ‘series of options’ that is to be considered as a checklist rather than a rigid sequence of steps. In summary they are:

- To choose the smallest suitable equipment
- To use design and camouflage techniques
- To use mast sharing where it is the best environmental solution
- To use site sharing if it is preferable to mast sharing
- To use sympathetic design on buildings
- The siting and design of ground based masts must have regard to the landscape or townscape making use of existing features.

The policy seeks improvement where replacement of equipment takes place, and highlights the sensitivity of rural areas offering suggestions to minimise impact. It also highlights nature conservation and the historic environment in a similar way.

In terms of health, the Scottish Executive have concluded that with regulation by the DTI and Radiocommunications Agency, it is not necessary for planning authorities to treat radio frequency emissions as a material consideration, and there is no need for them to consider power outputs. The role of the planning system therefore remains in addressing public concerns about siting and design. Applications for planning permission involving antennas must be accompanied by a declaration that the equipment and installation is designed to be in full compliance with the appropriate ICNIRP guidelines so that the known health effects have been properly addressed.

**Research Notes** are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.