



Council Executive

West Lothian Civic Centre
Howden South Road
LIVINGSTON
EH54 6FF

18 February 2021

A meeting of the **Council Executive** of West Lothian Council will be held within the **MS Teams Virtual Meeting Room** on **Tuesday 23 February 2021** at **10:00am**.

For Chief Executive

BUSINESS

Public Session

1. Apologies for Absence
2. Declarations of Interest - Members should declare any financial and non-financial interests they have in the items of business for consideration at the meeting, identifying the relevant agenda item and the nature of their interest
3. Order of Business, including notice of urgent business, declarations of interest in any urgent business and consideration of reports for information.

The Chair will invite members to identify any such reports they wish to have fully considered, which failing they will be taken as read and their recommendations approved.

4. Confirm Draft Minutes of Meeting of Council Executive held on Tuesday 09 February 2021 (herewith)
5. Correspondence (herewith)

Public Items for Decision

6. COVID-19: Public Inspection of Documents - Suspension of Duties - report by Chief Executive (herewith)
7. Procurement Approval Report - report by Head of Corporate Services

(herewith)

8. Policy on Protection of Children and Protected Adults - report by Head of Corporate Services (herewith)
9. West Lothian Local Development Plan (LDP) : Development Plan Scheme No.13 (DPS No.13) - report by Head of Planning, Economic Development and Regeneration (herewith)
10. Update on Scottish Planning Policy Finalised Amendments, Planning Advice Note (PAN) 1/2020 and the West Lothian Housing Land Position - report by Head of Planning, Economic Development and Regeneration (herewith)
11. Risk Based Verification - report by Head of Finance and Property Services (herewith)
12. Consultation Response - Adult Disability Payment (ADP) Regulations - report by Head of Finance and Property Services (herewith)
13. Investing for Jobs - Capital Spending review 2021/22 to 2025/26 - report by Head of Finance and Property Services (herewith)
14. Land at Crusader Ride, Dedridge, Livingston - proposed sale to Ark Housing Association Limited - report by Head of Finance and Property Services (herewith)
15. Post of Depute Chief Executive (Health & Social Care Partnership) - report by Chief Executive (herewith)
16. Support for Third Sector Core Costs - report by Head of Planning, Economic Development and Regeneration (herewith)

Public Items for Information

17. Action taken in terms of Standing Order 31 (urgent business): - Free School Meal Provision - 22 to 26 February 2021 - report by Depute Chief Executive (herewith)

NOTE **For further information please contact Val Johnston, TelNo.01506 281604 or email val.johnston@westlothian.gov.uk**



Council Executive

West Lothian Civic Centre
Howden South Road
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EH54 6FF

18 February 2021

The following additional item(s) of business will be dealt with at the meeting of the **Council Executive** to be held within **MS Teams Virtual Meeting Room** on **23 February 2021 at 10:00am**.

for Chief Executive

BUSINESS

Public Items for Decision

18. Suspension of Contributions - Adult and Older Peoples Day Services - report by Head of Social Policy (herewith)

NOTE **For further information please contact Val Johnston, Tel No.01506 281604 or email val.johnston@westlothian.gov.uk**

CODE OF CONDUCT AND DECLARATIONS OF INTEREST

This form is to help members. It is not a substitute for declaring interests at the meeting.

Members should look at every item and consider if they have an interest. If members have an interest they must consider if they have to declare it. If members declare an interest they must consider if they have to withdraw.

NAME	MEETING	DATE

AGENDA ITEM NO.	FINANCIAL (F) OR NON- FINANCIAL INTEREST (NF)	DETAIL ON THE REASON FOR YOUR DECLARATION (e.g. I am Chairperson of the Association)	REMAIN OR WITHDRAW

The objective test is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.

Other key terminology appears on the reverse.

If you require assistance, please ask as early as possible. Contact Julie Whitelaw, Monitoring Officer, 01506 281626, julie.whitelaw@westlothian.gov.uk, James Millar, Governance Manager, 01506 281695, james.millar@westlothian.gov.uk, Carol Johnston, Chief Solicitor, 01506 281626, carol.johnston@westlothian.gov.uk, Committee Services Team, 01506 281604, 01506 281621 committee.services@westlothian.gov.uk

SUMMARY OF KEY TERMINOLOGY FROM REVISED CODE

The objective test

“...whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor”

The General Exclusions

- As a council tax payer or rate payer or in relation to the council's public services which are offered to the public generally, as a recipient or non-recipient of those services
- In relation to setting the council tax.
- In relation to matters affecting councillors' remuneration, allowances, expenses, support services and pension.
- As a council house tenant, unless the matter is solely or mainly about your own tenancy, or you are in arrears of rent.

Particular Dispensations

- As a member of an outside body, either appointed by the council or later approved by the council
- Specific dispensation granted by Standards Commission
- Applies to positions on certain other public bodies (IJB, SEStran, City Region Deal)
- Allows participation, usually requires declaration but not always
- Does not apply to quasi-judicial or regulatory business

The Specific Exclusions

- As a member of an outside body, either appointed by the council or later approved by the council
- The position must be registered by you
- Not all outside bodies are covered and you should take advice if you are in any doubt.
- Allows participation, always requires declaration
- Does not apply to quasi-judicial or regulatory business

Categories of “other persons” for financial and non-financial interests of other people

- Spouse, a civil partner or a cohabitee
- Close relative, close friend or close associate
- Employer or a partner in a firm
- A body (or subsidiary or parent of a body) in which you are a remunerated member or director
- Someone from whom you have received a registrable gift or registrable hospitality
- Someone from whom you have received registrable election expenses

MINUTE of MEETING of the COUNCIL EXECUTIVE held within MS TEAMS VIRTUAL MEETING ROOM, on 9 FEBRUARY 2021.

Present – Councillors Lawrence Fitzpatrick (Chair), Kirsteen Sullivan, Frank Anderson, Willie Boyle (substituting for Councillor Janet Campbell), Harry Cartmill, Tom Conn, David Dodds, Damian Doran-Timson, Peter Heggie, Chris Horne, Charles Kennedy, Cathy Muldoon and George Paul

Apologies – Councillor Janet Campbell

1 DECLARATIONS OF INTEREST

Agenda Item 6 - 2020/21 General Fund Revenue Budget – Month 9 Monitoring Report

Councillor Chris Horne declared an interest in that he was a council appointed member to the Board of West Lothian Leisure, for which a special dispensation from the Standards Commission applied, so he would participate in the item of business.

Councillor Tom Conn declared an interest in that he was a council appointed member to the Board of West Lothian Leisure, for which a special dispensation from the Standards Commission applied, so he would participate in the item of business.

2 ORDER OF BUSINESS

1. Council Executive noted that agenda items 15 to 18 were for information only and agreed that in accordance with Standing Order 5(3) they were to be taken as read and their recommendations approved without any further consideration.
2. The Chair ruled in terms of Standing Order 7 that there was an additional item of business (Item 19 - Scheme of Elected Members' Remuneration, Allowances and Reimbursement of Expenses) which had been circulated to members and which he considered to be urgent as it had not been circulated with the original agenda due to oversight. The item would be considered after agenda item 14.
3. Agenda Item 6 - 2020/21 General Fund Revenue Budget - Month 9 Monitoring Report - The Chair ruled in terms of Standing Order 28 regarding recommendation B2 that there had been a material change in circumstances since decision was taken on 18 August 2020 to set aside £994,000 from reserves to go towards the 2020/21 forecast overspend. The basis for that was in Part D1 paragraph 3 of the report and related to new budget monitoring information and forecasts and Scottish Government finance

settlement. The recommendation was now to use that money for the budgets for 2021/22 and 2022/23. The Chair also explained that recommendation B6 was not related to a previously agreed budget saving measure and therefore was competent.

4. Agenda Item 10 - The Vennel Update - The Chair ruled in terms of Standing Order 28 regarding recommendations B2 and B3 that there had been a material change of circumstances since Council Executive's decision on 6 October 2020. The basis for the ruling was set out on Part D3.1.

3 MINUTE

The Council Executive approved the minute of its meeting held on 19 January 2021.

4 LEARNING ESTATE INVESTMENT PROGRAMME UPDATE

The Council Executive considered a report (copies of which had been circulated) by the Head of Education (Learning, Policy and Resources) and the Head of Finance and Property Services providing an update on the outcomes of the council's submission for proposed projects for inclusion in Phase Two of the Learning Estate Investment Programme funding programme, outlining feasibility work on the identified priority (schools for the future) projects which were not successful in the bid and providing an update on the progress of developing the new Learning Estate Strategy and Learning Estate Management Plan.

It was recommended that the Council Executive:

1. Note the confirmed inclusion of East Calder Primary School as part of Phase Two of the Learning Estate Investment Programme with Deans, Eastertoun and St Joseph's Primary Schools not being included;
2. Approve the undertaking of further feasibility assessments and appraisals for alternative investment proposals at Deans, Eastertoun, and St Joseph's Primary Schools, and the associated budgets, as set out in the report;
3. Note that updates will be provided, on the outcome of the feasibility assessments and appraisals at Deans, Eastertoun and St Josephs;
4. Note the initial assessment outcomes for Riverside and Letham Primary Schools which had been previously identified as emerging priority projects and agree to progress with detailed options

appraisals and business case development for their replacement;
and

5. Note the progress, proposed timescales and governance arrangements for the Learning Estate Strategy and Learning Estates Management Plan.

Decision

To approve the terms of the report.

5 2020/21 GENERAL FUND REVENUE BUDGET – MONTH 9 MONITORING REPORT

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services providing an update on the outcome of the General Fund revenue budget monitoring exercise at month 9, including an update on recurring budget pressures and delivery of approved budget savings for the period 2020/21 to 2022/23.

It was recommended that the Council Executive:

1. Note that the outcome of the month 9 monitoring exercise was a breakeven position, after accounting for all currently confirmed funding from Scottish Government;
2. Agree that £994,000, from the General Fund Balance, which had been previously earmarked for managing the projected 2020/21 overspend should be considered as part of the revenue budget report for 2021/22 and 2022/23;
3. Note the recurring pressures of £1.294 million, and the agreed actions being progressed to mitigate those pressures;
4. Note the good progress in delivery of approved budget savings for 2020/21 to 2022/23;
5. Agree to approve payment of £457,000 to West Lothian Leisure (WLL) for the proportion of additional government grant funding the council had received that related to WLL lost income
6. Agree the proposed allocation of the flexible fund for welfare and social support of £506,000 as set out in section D.2.15 of the report and in Appendix 4;
7. Agree that Heads of Service take all management action necessary to ensure, wherever possible, that 2020/21 expenditure

was managed within budgeted resources; and

8. Agree that officers should continue to engage with Scottish Government and COSLA around further government funding for the council so that additional costs which would be incurred in relation to Covid-19 were fully funded.

Decision

To approve the terms of the report.

6 2020/21 GENERAL SERVICES CAPITAL BUDGET – MONTH 9 MONITORING REPORT

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services providing an update on the financial position in relation to the General Services capital programme following the completion of the month 9 monitoring exercise.

It was recommended that the Council Executive:

1. Note the outcome of the month 6 monitoring exercise and the projected outturn;
2. Agree that Asset Lead Officers and the Head of Finance and Property Services keep under review factors that impact on delivery of the approved capital programme; and
3. Note the progress on the delivery of the overall programme.

Decision

To approve the terms of the report.

7 SCOTTISH DRAFT BUDGET 2021 AND LOCAL GOVERNMENT FINANCE SETTLEMENT 2021/22

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services providing an update on the Scottish Draft Budget presented to the Scottish Parliament on 28 January 2021, and the local government finance settlement for 2021/22, as published in Finance Circular 1/2021 dated 1 February 2021.

It was recommended that the Council Executive:

1. Note the issue of the Scottish Draft Budget 2021/22, which includes Scottish Government departmental spending plans for

2021/22;

2. Note the outcome of the local government finance settlement in respect of revenue and capital funding for 2021/22;
3. Note that the anticipated revenue grant funding for West Lothian contained in the settlement, including assumed recurring items yet to be distributed, was £354.334 million;
4. Note the general capital grant of £12.640 million was £4.712 million less than budgeted, with £802,000 ring fenced capital funding for Cycling, Walking and Safer Streets in 2020/21;
5. Note that COSLA has described the revenue grant funding package set out by the Scottish Government as falling short of the fair funding required for Local Government to meet unavoidable cost pressures and that, as a result, significant budget savings would be required in 2021/22;
6. Note the net reduction in core revenue funding to the council since 2014/15 and the significant savings that had been required since 2007/08;
7. Agree that the Head of Finance and Property Services updates the 2021/22 revenue budget report taking account of the outcome of the finance settlement and latest circumstances and updated the capital programme taking account of latest funding position and circumstances; and
8. Agree that the Head of Finance and Property Services should keep the position regarding Scottish Government funding under review and report to elected members on any developments.

Decision

To approve the terms of the report.

8

CIPFA FINANCIAL MANAGEMENT CODE

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services providing a summary of the Chartered Institute of Public Finance and Accountancy (CIPFA) Financial Management Code and outlining proposed officer responses which demonstrated compliance with the financial management standards set out in the code, as well as a suggested action plan to ensure full compliance with the code by 2021/22.

It was recommended that the Council Executive:

1. Note the CIPFA Financial Management Code;
2. Agree that the council would comply with the code by financial year 2021/22;
3. Note the financial management standards and key messages included in the code;
4. Note the officer responses to demonstrate how existing processes in the council met the standards of the code; and
5. Approve the action plan to ensure full compliance with the code by 2021/22.

Decision

To approve the terms of the report.

9 THE VENNEL UPDATE

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services providing an update on proposals for development at the Vennel, Linlithgow.

It was recommended that the Council Executive:

1. Note that the Planning Guidance approved by Council Executive 6 October 2020 and formally adopted on 27 November 2020 establishes a framework for all future development proposals associated with the Vennel, Linlithgow to be considered;
2. Approve the proposed development framework, the outline key stages and proposed timescales together with governance arrangements;
3. Approve the proposed approach to stakeholder engagement recognising the various interests involved; and
4. Note the intention to seek expressions of interest from appropriate development partners with a closing date of 31 March 2021; and
5. Note the significance and complex nature of the area to be developed and therefore the timescales and resources initially estimated to progress and deliver viable development proposals.

Decision

To approve the terms of the report.

10 UPDATE – LOCAL BUS CONTRACTS AND COMMUNITY TRANSPORT PROVISION

The Council Executive considered a report (copies of which had been circulated) by the Head of Operational Services providing an update on the further impact of COVID 19 on the timescales for implementation of the Total Transport Review (TTR) outcomes and to inform the next steps required.

It was recommended the Panel:

1. Note the further impact of COVID 19 on the local bus network and the implementation of the TTR outcomes;
2. Instruct officers to progress the extension of local bus contracts; and
3. Instruct officers to progress with community transport related TTR outcomes separate from the revised contract review period and commence a community bus pilot.

Decision

To approve the terms of the report.

11 PLANNING GUIDANCE ON THE HISTORIC ENVIRONMENT & PLANNING GUIDANCE FOR THE MANAGEMENT AND AFTER USE OF SOILS ON DEVELOPMENT SITES

The Council Executive considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration advising of the outcome of consultation on draft Planning Guidance related to West Lothian's historic environment and on draft Planning Guidance related to the management and after-use of soils on development sites and seeking approval of the guidance.

It was recommended that the Council Executive:

1. Approve the responses to the comments received during consultation on the draft Planning Guidance on the Historic Environment (Appendix 1);
2. Approve the content of the revised Planning Guidance on the Historic Environment (Appendix 2);

3. Approve the responses to the comments received during consultation on the draft Planning Guidance for the Management and After-use of Soils on Development Sites (Appendix 3);
4. Approve the content of the revised Planning Guidance on the Management and After-use of Soils on Development Sites (Appendix 4);
5. Approve the 'Screening Reports' for Planning Guidance on the Historic Environment (Appendix 5) and Planning Guidance on the Management and After-use of Soils on Development Sites (Appendix 6) which were to be submitted to SEA Gateway and the Consultation Authorities and which set out the council's justification that the guidance was exempted from additional Strategic Environmental Assessment because they would not in themselves have any significant environmental effects and there were no additional environmental effects not previously considered in the SEA for the LDP; and
6. Delegate authority to the Head of Planning, Economic Development and Regeneration to issue a 'Screening Determination' in the event that SEA Gateway and the Consultation Authorities confirm their agreement that the guidance would not in itself have any significant environmental effects, and, where the SEA Gateway and the consultation authorities agreed that a SEA was required, to report matters to a future meeting of the Council Executive.

Decision

To approve the terms of the report.

12 NATIONAL PLANNING FRAMEWORK 4 POSITION STATEMENT

The Council Executive considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration advising members of publication by Scottish Government of a Position Statement on National Planning Framework 4 (NPF4) for informal consultation and to set out the council's response to that consultation.

It was recommended that the Council Executive:

1. Note the terms of the report; and
2. Agree the response as set out in Appendix 2 for submission to

Scottish Government as the council's response to the consultation.

Motion

The public have gained a greater appreciation of nature during lockdown as evidenced in the wide media.

The British Trust for Ornithology established that in the last decades of the 20th century, 44 million birds have gone from the British countryside. Birds are warm-blooded invertebrates, high in the food chain, and are rooted in the wide divergence of small mammal, insect and plant communities. For many people they conjure up a great sense of pleasure and conversely sadness in loss of numbers and species with many being re-designated as 'red list' status.

Also, a vanishingly small amount of ancient woodland and hedges remain in Scotland not assisted by the little protection given by Scottish Planning Policy which is determined by Scottish Government. In this regard, ancient woodland is arbitrarily defined as woodland in which trees have grown for over 400 years and that in that period a rare and special ecology has evolved. Bacterial and fungal infection is waging war on our woodlands and in urban areas of West Lothian from pressure for housing development.

Over the last four decades, national and devolved governments in the UK have retreated extensively from state policy and protection of nature. It is left to voluntary agencies which require charitable and membership funds aided by caring volunteers to act as lead players.

Therefore, Council Executive agrees:

- To approve the recommendations in the report
 - To instruct the Chief Executive to write to the First Minister to request that Scottish Government without delay, in the vein of this amendment, introduce updated Scottish Planning Policy to give absolute protection to ancient woodland and hedges, and for developments exceeding 0.25 hectares, provide an ecological report carried out at a time of year when plant/mammal/insect and bird life are most readily identifiable.
- Moved by the Chair and seconded by Councillor Cathy Muldoon.

Decision

To unanimously approve the terms of the motion.

13 WEST LOTHIAN STATUTORY RETURN TO SCOTTISH GOVERNMENT
ON PUBLIC BODY REPORTING ON BIODIVERSITY DUTY: 2018–2020

The Council Executive considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration seeking members' agreement on the council's report on West Lothian Council's Biodiversity Duty for the three-year period between 2018–2020 and for its submission to the Scottish Government.

It was recommended that the Council Executive:

1. Note the contents of the general review of West Lothian's commitment to biodiversity (as detailed in Appendix 1);
2. Agree to forward the report to the Scottish Government as evidence that the council, as a public body, has met its reporting duty on biodiversity over the three-year period (2018 to 2020); and
3. Agree to publicise the report on the council's website as advised by the Scottish Government.

Decision

To approve the terms of the report.

14 SCHEME OF ELECTED MEMBERS REMUNERATION, ALLOWANCES
AND REIMBURSEMENT OF EXPENSES

The Council Executive considered a report (copies of which had been circulated) by the Head of Corporate Services requesting approval for the adoption of a Scheme of Elected Members Remuneration, Allowances and Reimbursement of Expenses for 2021/22.

It was recommended that the Council Executive approve the revised Scheme of Elected Members Remuneration, Allowances and Reimbursement of Expenses for 2021/22 as set out in Appendix 1 of the report.

Decision

To approve the terms of the report.

15 2020/21 HOUSING CAPITAL REPORT – MONTH 9 MONITORING
REPORT

The Council Executive considered a report (copies of which had been circulated) by the Depute Chief Executive providing an update on the

financial position in relation to the Housing Capital Programme following the completion of the month 9 monitoring exercise.

It was recommended that Council Executive note the outcome of the month 9 monitoring exercise and the projected outturn for 2020/21.

Decision

To note the terms of the report.

16 2020/21 HOUSING REVENUE ACCOUNT – MONTH 9 MONITORING REPORT

The Council Executive considered a report (copies of which had been circulated) by the Depute Chief Executive providing an update on financial performance following the month 9 monitoring exercise.

It was recommended that Council Executive note the outcome of the month 9 monitoring exercise and the projected outturn for 2020/21.

Decision

To note the terms of the report.

17 CONSULTATION ON CYCLE 2 OF THE FORTH ESTUARY FLOOD RISK MANAGEMENT STRATEGY AND PLAN – UPDATE ON WEST LOTHIAN COUNCIL'S ACTIONS

The Council Executive considered a report (copies of which had been circulated) by the Head of Operational Services advising members of the proposed Flood Risk Management Actions for the Council for Cycle 2 of the Flood Risk Management (Scotland) Act 2009, and informing members of the delayed launch of the full public consultation on the Draft 2021–2027 Forth Estuary Flood Risk Management Strategy and the Draft 2022–2028 Forth Estuary Flood Risk Management Plan.

It was recommended that the Council Executive note the draft prioritised actions for the council and the revised public consultation dates for the Cycle 2 Forth Estuary Flood Strategy and Plan.

Decision

To note the terms of the report.

18 ACTION TAKEN IN TERMS OF STANDING ORDER 31 (URGENT BUSINESS)

The Council Executive noted the action taken in terms of Standing Order 31 (urgent business) to provide approval for the following:

- a. Suspension of the face-to-face elements of the Unpaid Work Order Scheme operated by the Criminal and Youth Justice Service as recommended by the Head of Social Policy in her report dated 13 January 2021; and
- b. Service delivery plans for the provision of free school meals to children eligible for the 10-day period from 1 to 12 February 2021, and for the increase of the previously agreed holiday payment of £10 per eligible child during the February Half Term Holiday 2021 to £15 per eligible child for the period from 15 to 19 February 2021 (inclusive of the February Half Term Holiday) as recommended by the Depute Chief Executive in his report dated 29 January 2021.



**West Lothian
Council**

Chief Executive Office

Meeting Date - 23 February 2021
Item No.5

**West Lothian Civic Centre
Howden South Road
Livingston
West Lothian
EH54 8FF**

**Our Ref: CEO/MH
Your Ref:**

**Contact: Graham Hope
Tel: 01506 281697
e-mail: graham.hope@westlothian.gov.uk**

Private and Confidential
The Rt Hon. Nicola Sturgeon MSP
First Minister
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

10 February 2021

Dear First Minister

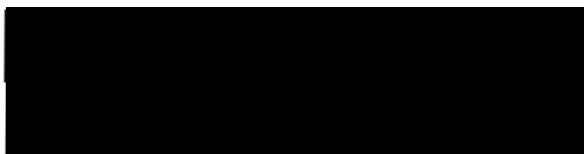
National Planning Framework 4 Position Statement

A meeting of Council Executive was held on 9 February 2021, at which the above matter was discussed.

It was agreed that I write to you to request that the Scottish Government, without delay, introduces updated Scottish Planning Policy to give absolute protection to ancient woodland and hedges, and for developments exceeding 0.25 hectares, provide an ecological report carried out at a time of year when plant / mammal / insect and bird life are most readily identifiable.

I attach a copy of the agreed Notice of Motion for your consideration.

Yours sincerely



Graham Hope
Chief Executive

Encl.



westlothian.gov.uk

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

COVID-19: PUBLIC INSPECTION OF DOCUMENTS – SUSPENSION OF DUTIES

REPORT BY GOVERNANCE MANAGER

A. PURPOSE OF REPORT

To review and extend the temporary suspension of statutory duties to make documents open to the public for physical inspection and copying.

B. RECOMMENDATIONS

1. To note the powers given to the council to provide alternative means of access to documents instead of complying with statutory duties to allow physical access for inspection and copying
2. To note that the temporary suspension of these duties in relation to the documents listed in the appendix was last implemented through Council Executive on 6 October 2020, with an undertaking to review the position before 31 March 2021
3. To extend the suspension during any prolonged coronavirus emergency period until 30 September 2021 of the duties listed in the appendix, with full compliance resuming if and when the emergency period ends

C. SUMMARY OF IMPLICATIONS

I	Council Values	Being honest, open and accountable; making the best use of our resources
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Coronavirus (Scotland) Act 2020; legislation referred to in the appendix
III	Implications for Scheme of Delegations to Officers	None
IV	Impact on performance and performance Indicators	N/a
V	Relevance to Single Outcome Agreement	N/a
VI	Resources - (Financial, Staffing and Property)	N/a
VII	Consideration at PDSP	None

VIII Other consultations

Corporate Management Team; Legal Services; Committee Services

D. TERMS OF REPORT

- 1 The council is subject to many and varied statutory duties to make documents available in its offices for physical inspection and copying by members of the public. In most cases members of the public exercise their corresponding rights by accessing documents online or by receipt of copies attached to emails. However, rights to come to council offices to have sight of hard copies and to make photocopies still exist.
- 2 The legislation passed by the Scottish Parliament to deal with the coronavirus emergency acknowledged that compliance with those duties during the emergency period might have implications for public health and for council resources. A power was made available to waive compliance in specified circumstances and subject to conditions, as follows:-
 - The duty must be in legislation in the control of the Scottish Parliament
 - The power can only be used during the existence of the COVID-19 emergency (initially until 30 September 2020, extended till 31 March 2021 and with the potential to be extended further to 30 September 2021)
 - It does not apply to the publication of annual and other reports concerning the exercise of council functions or services. Separate rules exist for those
 - Compliance must be considered to be likely to impede the council's ability to take effective action to tackle coronavirus, and/or may give rise to a significant risk of the transmission of coronavirus
 - The council must give public notice of its use of the new powers and of any alternative means by which the public can secure access without visiting council premises.
- 3 The appendix contains a list of the inspection duties where it is currently considered that the new powers apply and ought to be used. The basis is principally the risk of transmission of the coronavirus to and through members of the public and to council staff should the right of inspection be exercised during the emergency period. In all these cases documents can be made available by electronic means. That will be achieved though publication on the council's website or by sending documents or information by email. If required, photocopies can be sent by post. These arrangements have been in place since 11 May 2020 without posing any challenges or incurring complaint or adverse comment.
- 4 If the emergency period ends on or before 30 September 2021 then full compliance will be resumed. If the emergency period is extended beyond that date a report will be brought to committee to review the position and consider continuing the use of the powers.

E. CONCLUSION

- 1 Suspending duties to allow inspection and copying of documents at council premises will contribute in a small way to measures to tackle the coronavirus emergency. Rights to information will not be materially affected due to the use of electronic means of transmission.

F. BACKGROUND REFERENCES

- 1 Coronavirus (Scotland) Act 2020, section 7 and Schedule 3, paragraphs 10 and 11
- 2 Council Executive, 11 May 2020 (SO31), 26 May 2020 and 6 October 2020

Appendices/Attachments: 1. List of duties suspended

Contact Person: James Millar, Governance Manager, Chief Executive Office, West Lothian Civic Centre, Howden Road South, Livingston, EH54 6FF, 01506 281613
james.millar@westlothian.gov.uk

Graham Hope, Chief Executive

Date of meeting: 23 February 2021

APPENDIX

DOCUMENTS FOR PUBLIC INSPECTION – WAIVER OF REQUIREMENTS

	FUNCTION	DOCUMENT	LEGISLATION	REQUIREMENTS
1	Committee Services	Agendas, reports, minutes, background references	Local Government (Sc) Act 1973, sections 50B to 50F	Hard copy for inspection in Civic Centre, hard copy to press on request, provide photocopy on request
2	Governance	Members' register	Ethical Standards etc., (Sc) Act 2000, section 7	Keep hard copy, make hard copy available for inspection in Civic Centre
3	Member Services	Register of names and addresses of all elected members and committee appointments	Local Government (Sc) Act 1973, section 50G	Hard copy for inspection in Civic Centre
4	Committee Services	Summary of rights of members of the public to attend meetings and access documents	Local Government (Sc) Act 1973, section 50G	Hard copy for inspection in Civic Centre
5	Governance	Scheme of Delegations to Officers enduring for longer than 6 months	Local Government (Sc) Act 1973, section 50G	Hard copy for inspection in Civic Centre
6	Committee Services	Local Review Body case papers	Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013, regulation 11	Hard copy for inspection and making copies at Civic Centre
7	Finance	Unaudited accounts and financial statements	Local Government (Sc) Act 1973, section 101	Hard copies available for inspection and making copies at Civic Centre
8	Committee Services	Asset Transfer Review Body case papers	Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016, regulation 5	Hard copy for inspection and making copies at Civic Centre
9	Planning	Planning application files and lists of cases	Development Management (Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013m regulation 22, and Town & Country Planning (Scotland) Act 1997,	Hard copies for inspection and copying at council office

	FUNCTION	DOCUMENT	LEGISLATION	REQUIREMENTS
			section 36A	
10	Planning	Planning enforcement files and register	Town and Country Planning (Enforcement of Control) (No.2) (Scotland) Regulations 1992, Part IV	Hard copies for inspection and copying at council office
11	Planning	Core Paths Plan and maps	Land Reform (Sc) Act 2003, section 18	Keep Core Paths Plan and maps available for inspection and for purchase of copies

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

PROCUREMENT APPROVAL REPORT

REPORT BY THE HEAD OF CORPORATE SERVICES

A. PURPOSE OF REPORT

To seek Council Executive approval to enter into a contract where Committee authorisation is required by Standing Orders.

B. RECOMMENDATION

It is recommended that the Council Executive approves a direct award to the City of Edinburgh Council for the funding of the regional specialist service, Keycomm Lothian Technology Service, for a period of 5 years from 1 April 2021 to 31 March 2026, at a total estimated value of £165,000.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Focusing on our customers' needs; being honest, open and accountable; making best use of our resources.
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Standing Orders of West Lothian Council and the Public Contracts (Scotland) Regulations 2015.
III	Implications for Scheme of Delegations to Officers	None
IV	Impact on performance and performance Indicators	None
V	Relevance to Single Outcome Agreement	Our public services are high quality, continually improving, efficient and responsive to local people's needs.
VI	Resources - (Financial, Staffing and Property)	See section D of the report

VII	Consideration at PDSP	N/A
VIII	Other consultations	See section D of the report

D. TERMS OF REPORT

D.1 Keycomm Lothian Technology Service

Keycomm Lothian Communication Technology Service is presently jointly funded by the City of Edinburgh Council and NHS Lothian. West Lothian Council currently has a Service Level Agreement for the provision of Technology Services which support Alternative and Augmentative Communication for children with communication impairments to allow them to control their environment.

Keycomm Lothian Communication Technology Service is the existing specialist Alternative and Augmentative Communication facilitating delivery of service to all Local Authorities within NHS Lothian. The Service Level Agreement provides a number of core services including but not limited to:

- a complete communication technology assessment;
- an extensive loan bank of equipment;
- support to develop and implement communication technology programmes; and
- access to training support and courses.

Regulation 13 (8) of the Public Contracts (Scotland) Regulations 2015 provide that the Procurement Regulations do not apply to the award of a public contract exclusively between two or more contracting authorities where:

- (a) the contract is for the purpose of establishing or implementing co-operation between the contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- (b) the implementation of that co-operation is governed solely by considerations relating to the public interest; and
- (c) the contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.

The Council are satisfied that these criteria have been met. Therefore, Council Executive is asked to approve a direct award to the City of Edinburgh Council for the funding of the regional specialist service for a period of 5 years from 1 April 2021 to 31 March 2026, at a total estimated value of £165,000. The annual budget of £33k will be met from the Service.

E. CONCLUSION

It is recommended that the Council Executive approves the procurement set out in the report, which will support delivery of effective Council Services.

F. BACKGROUND REFERENCES

None

Appendices/Attachments: None

Julie Whitelaw
Head of Corporate Services

23 February 2021

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

POLICY ON PROTECTION OF CHILDREN AND PROTECTED ADULTS

REPORT BY HEAD OF CORPORATE SERVICES

A. PURPOSE OF REPORT

To advise the Council Executive on the outcome of an internal audit of the administration of the council's requirements in relation to the Protection of Vulnerable Groups (PVG) and seek approval of the subsequently reviewed Policy & Procedure on the Protection of Children and Protected Adults.

B. RECOMMENDATION

It is recommended that Council Executive;

1. Notes the outcome of the internal audit and the related action plan;
2. Approves the revised Policy and Procedure on the Protection of Children and Protected Adults and notes the revised supplementary PVG Referral Panel Guidance and Process.

C. SUMMARY OF IMPLICATIONS

I Council Values	Being honest, open and accountable
	Making best use of our resources
	Working in partnership
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Protection of Vulnerable Groups (Scotland) Act 2007. The council has a statutory obligation to ensure that individuals, who are unsuitable, do not gain access to children or protected adults through their work with the council.
III Implications for Scheme of Delegations to Officers	None
IV Impact on performance and performance Indicators	None
V Relevance to Single Outcome Agreement	None

VI Resources - (Financial, Staffing and Property)	None
VII Other consultations	Consultation has taken place with the council's recognised Trade Unions.

D. TERMS OF REPORT

D.1 Background

In accordance with the annual audit plan for 2020/21, Internal Audit conducted a review of the administration of the council's requirements in relation to the Protection of Vulnerable Groups (PVG).

The audit report found a number of key controls to be in place but noted that control over the submission of the annual service manager PVG checklists and the processes in place to evidence compliance require improvement; and that control over the governance arrangements and operation of the PVG Referral Assessment Panel is unsound. This report will focus on the actions required to address the soundness of the governance arrangements and operation of the PVG Referral Assessment Panel.

An action plan has been developed in conjunction with Human Resources and the Performance Improvement Team to address the findings of the audit and includes the requirement to:

- conduct a review of the Policy and Procedure on the Protection of Children and Protected Adults;
- establish a PVG referral process to supplement the PVG revised policy which clearly defines the responsibilities of PVG panel members; and
- implement a more robust process for recording the proceedings of future PVG Referral Assessment Panels

D.2 REVISED POLICY AND PROCEDURE ON THE PROTECTION OF CHILDREN AND PROTECTED ADULTS

In line with the agreed actions of the PVG audit report, a review of the Policy and Procedure on the Protection of Children and Protected Adults was conducted in December 2020.

The following key amendments have been made to the policy and procedure to address the findings of the audit:

- Introduction of the requirement for Nominated Officers to consult the HR Services Manager on whether it is appropriate to convene a PVG referral panel
- Clarification of the council officers that are required to be present at a PVG referral panel. The core Panel comprises three members; the Head of Corporate Services, the council's Chief Solicitor and the Head of Social Policy or the Head of Education Services.
- Introduction of the requirement for the decision of the PVG panel, whether to refer or not, to be endorsed by the Chief Executive. Previously only decisions to refer were passed to the Chief Executive for endorsement.
- Clarification of the roles and responsibilities of the PVG panel chairperson to ensure that decisions of the PVG referral panel are appropriately recorded and

endorsed by the Chief Executive, and to ensure that referrals are made to Disclosure Scotland within the required timeframe.

- Introduction of the requirement for Human Resources to maintain a record of decisions not to hold PVG referral panels and a record of any PVG panels conducted and the outcome of those panels.

Further amendments have been made to the Policy and procedure as follows:

- Addition of a document control page to the Policy and procedure;
- Clarification on the content of PVG records in line with the Age of Criminal Responsibility Act 2019; and
- Revision of the PVG risk assessment form to bring it into line with the current health and safety risk assessment process.

A copy of the revised Policy and Procedure on the Protection of Children and Protected Adults is attached at Appendix 1.

D.3 PVG PANEL REFERRAL GUIDANCE AND PROCESS

While PVG referral panel guidance was already in place, it focussed on the legal duties of the panel. In line with the agreed actions of the PVG audit report, the guidance has been supplemented with a step by step process to be followed from notifying the Head of Corporate Services of a matter to be considered by a PVG panel through to sign off and recording of panel decisions. The process also clearly identifies the officer(s) responsible for each action.

In addition, the guidance has been supplemented with a comprehensive PVG referral record form to be used by the panel to record the reason for the panel, evidence considered by the panel and ultimately the panel's decision and decision rationale. The PVG referral record form will also be used to record the Chief Executive's endorsement of the panel decision before any subsequent referral to Disclosure Scotland is completed.

The PVG referral record form will be a key tool in ensuring a robust process for recording the proceedings of future PVG Referral Assessment Panels as it will contain all the relevant information in one place. Using the completed PVG referral record form, the Senior HR Adviser will also ensure that key dates and information are recorded on case management to support future compliance reporting.

A copy of the revised PVG Referral Panel Guidance and Process is attached at Appendix 2, for information.

Consideration at PDSP

The revised Policy and procedure were considered at the Partnership and Resources PDSP on 5 February and the Panel agreed that the report be submitted to Council Executive for approval.

E. CONCLUSION

The revisions to the PVG Policy and Procedure on the Protection of Children and Protected adults and the supplementary PVG Referral Panel Guidance are considered to satisfactorily meet the relevant requirements of the PVG Audit Report action plan.

The revised documents, processes and recording arrangements will ensure a more robust process that in particular ensures PVG referral to Disclosure Scotland is conducted appropriately and will stand up to internal or external scrutiny.

Council Executive are therefore requested to approve the revised Policy and Procedure for immediate implementation.

F. BACKGROUND REFERENCES

- Internal Audit Report – Protection of Vulnerable Groups

Appendices/Attachments: Appendix 1 – Policy and Procedure on the Protection of Children and Protected Adults

Appendix 2 – PVG Referral Panel Guidance and Process

Contact Person: Sophie McKinney, Senior HR Adviser – 01506 284132
Sophie.mckinney@westlothian.gov.uk

Julie Whitelaw

Head of Corporate Services

23 February 2021



Policy and Procedure on Protection of Children and Protected Adults



Approved Council Executive: 9 October 2012
Last Revised: December 2020

DOCUMENT CONTROL

Policy

Title:	Policy on the Protection of Children and Protected Adults
Owner:	Human Resources

History

Version	Revision Date	Summary of Changes	Future Review Date
2	26 February 2014	Removal of umbrella body status. Clarification of third-party checking. Introduction of appendix on storage and retention.	26 February 2019
3	31 December 2020	Amended PVG referral process following PVG Audit and introduction of PVG Referral Record form.	31 December 2025

Committee Approval

Version	Committee	Committee Date
1	Council Executive	9 October 2012



POLICY AND PROCEDURE ON PROTECTION OF CHILDREN AND PROTECTED ADULTS

(Covering Employees, Volunteers and Other Workers)

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POLICY AND PROCEDURE ON PROTECTION OF CHILDREN AND PROTECTED ADULTS

1. POLICY STATEMENT

- 1.1 The council is committed to complying fully with the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007 by ensuring that robust procedures are in place to protect children and protected adults from harm while under its care or in receipt of its services.
- 1.2 Only individuals who have membership of the Protection of Vulnerable Groups (PVG) Scheme will be made an unconditional offer by the council to undertake regulated work with children or protected adults as defined within the 2007 Act.
- 1.3 The responsibilities of those officers in the council, who have a key role in ensuring compliance with the 2007 Act, are set out in **Appendix 1** to this document.
- 1.4 This policy and procedure should be read in conjunction with the council's [Policy and Procedure on Recruitment and Selection](#), [Disciplinary Procedures and Disciplinary Code](#) and the [Code of Conduct for Employees](#).

2. PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

- 2.1 The Protection of Vulnerable Groups (Scotland) Act 2007 provides statutory protection to children and protected adults from harm and defines work (paid or unpaid) with children or protected adults as 'regulated work'.
- 2.2 The Protection of Vulnerable Groups (PVG) Scheme is central to the Act and is designed to ensure that those individuals, who are unsuitable, do not gain access to children or protected adults through their work. It also aims to ensure that those individuals who become unsuitable are detected early and prevented from continuing to work, or from seeking work, with children or protected adults.
- 2.3 The PVG Scheme is managed by Disclosure Scotland, which is the body responsible for establishing lists of individuals who are barred from working with children and/or protected adults. Those lists provide the council and other registered bodies with the means of identifying whether prospective or existing employees, volunteers or workers are barred from undertaking regulated work. It is an offence under the PVG Act for the council to employ or offer regulated work to an individual who is listed as barred from undertaking that work.

3. REGULATED WORK

- 3.1 Regulated work falls into two categories - regulated work with Children and regulated work with Protected Adults. Both types of work are defined within Schedules 2 and 3 of the PVG Act by reference to:
 - the activities that a person does;
 - the establishments in which a person works;
 - the position that they hold;
 - or the people for whom they have day to day supervision or management responsibility

- 3.2 Detailed guidance for the purposes of assisting Services identify roles that fall within the definition of regulated work is set out within **Appendix 2** of this document.

4. LISTING AND BARRING

- 4.1 The PVG Act establishes two separate lists, one which contains the names of those individuals who are unsuitable to do regulated work with children and another for those who are unsuitable to do regulated work with protected adults.
- 4.2 'Listing' refers to the inclusion of an individual in the PVG Children's List or the PVG Adults List. 'Barring' is the consequence of listing.
- 4.3 Through the PVG Scheme checking process, Disclosure Scotland will advise the council if an applicant is being considered for listing or is barred from carrying out regulated work with children and/or protected adults (where the council has requested a disclosure record for the type of work to which the consideration for listing or barring relates). Where an individual is listed they can no longer be a PVG Scheme Member for the type of work to which the listing relates.
- 4.4 Disclosure Scotland will issue a PVG Scheme Record to individuals who are not barred. Where an individual is being considered for listing, this would be disclosed on the Scheme Record. The Scheme Record provides vetting information relating to any unspent and some spent criminal convictions that an individual may have and/or relevant information held by the Police. This information enables the employing service to carry out a risk assessment to determine an applicant's suitability for the position for which they have applied.

5. RECRUITMENT & VETTING

- 5.1 The PVG Act makes it a criminal offence for an individual to undertake regulated work from which he/she has been barred and also for the council to offer the person that type of work.

Offers of Employment

- 5.2 PVG Scheme Record checks will only be carried out on the preferred candidate who will be issued with a conditional offer of employment.
- 5.3 No unconditional offer of employment or engagement (either verbal or written) will be made to any applicant for a role designated as regulated work with children and/or protected adults until a satisfactory PVG check and other satisfactory recruitment checks have been received. This applies equally to casual workers, contracted workers and volunteers.
- 5.4 The PVG Scheme provides the following categories of checks;
- PVG Scheme Membership Statement (applied for by individuals)
 - PVG Scheme Record (undertaken by organisations)
 - PVG Scheme Record Update (undertaken by organisations)

- 5.5 Only individuals with a satisfactory PVG Scheme Record or a PVG Scheme Record Update obtained by the council (as the employing organisation) will be engaged in a regulated role. It should be noted in this regard that, the PVG Scheme Membership Statement (available to an individual from Disclosure Scotland) confirms that the individual is not barred from participating in regulated work but **does not itself provide vetting information and therefore is not suitable for assessing overall suitability for employment.**
- 5.6 **An unconditional offer of employment to carry out regulated work with children and/or protected adults will not be made until all satisfactory employment checks have been received including the PVG Scheme Record check.**

Internal Appointments

- 5.7 PVG checks must also be obtained for internal applicants who are successful in applying for posts that involve regulated work. If an internal applicant is already a PVG member there will be no requirement to obtain a new PVG record unless the employee is applying to work with a different protected group (eg. moving from regulated work with children to protected adults).
- 5.8 Where an employee is moving to work with a different protected group, the employee would need to join the PVG Scheme in respect of work with the relevant workforce.

Unsatisfactory PVG Checks

Barred from Regulated Work

- 5.9 Where confirmation is received that a preferred candidate is barred from regulated work, any conditional offer of employment made to that individual will be withdrawn in writing in accordance with the provisions of the council's [Policy and Procedure on Recruitment and Selection](#).

Under Consideration for Listing

- 5.10 If confirmation is received that a preferred candidate is being considered for listing, the Service Manager will decide whether to;
- a) await the outcome of the consideration process, or
 - b) withdraw the conditional offer prior to employment.

The consideration for listing process can be a lengthy one (PVG Act limits the process to 6 months) and accordingly managers will need to consider the impact of the potential delay on the recruitment process/service needs.

Following the consideration process, an individual will either be listed and barred from regulated work or will become a PVG member. If, an individual's PVG membership is subsequently confirmed, it will not be an offence for the council to employ that individual subject to satisfying the normal risk assessment process to determine suitability for employment.

Criminal Convictions

- 5.11 Where it is confirmed that the preferred candidate is not barred or being considered for listing, but vetting information on criminal convictions is provided by Disclosure Scotland, the Service Manager will determine suitability in consultation with Human Resources. If, having discussed the position with the candidate, the individual is considered to be unsuitable for the post, the conditional offer of employment will be withdrawn in writing.

Assessing Vetting Information and Determining Suitability

- 5.12 The PVG Scheme Record will list any unspent and some spent criminal convictions in accordance with the Rehabilitation of Offenders Act 1974 and the Age of Criminal Responsibility (Scotland) Act 2019.
- 5.13 When considering vetting information and determining an individual's suitability for employment in a regulated role, the recruiting manager should consider:
- the nature and relevance of the offence
 - the date of the offence
 - the individual's age at the time of the offence
 - the penalties applied (as an indication of the gravity of the offence)
- 5.14 If, as a result of the vetting information, it is likely that a conditional offer of employment will be withdrawn, the recruiting manager should meet with the candidate to discuss the matter and obtain any additional information necessary to inform his/her decision.
- 5.15 A PVG Scheme Record Update does not contain vetting information, but will indicate whether any new vetting information has been added to the PVG Scheme Membership Record. Recruiting managers must be satisfied that they have all relevant vetting information from previous records. If the manager is not satisfied that all vetting information is available or where new vetting information has been added, application for a fresh PVG Scheme Membership Record that details all current vetting information should be made.

Professional Registration

- 5.16 Where it is a condition of professional registration that an employee/prospective employee has PVG Scheme membership, the relevant governing body (eg GTCS, SSSC) will be responsible for conducting the necessary check as part of the registration process. The council will, however still be required to carry out a PVG Scheme Record Update as part of the recruitment process. This Scheme Record Update will register the council's interest in the individual for the purposes of obtaining future information from Disclosure Scotland. Where new vetting information has been added then an upgrade to a Scheme Record would be required. Where no new vetting information has been added then the Scheme Record Update along with a copy of the original Scheme Record will provide the Council with vetting information.

6. PVG REFERRAL PROCESS

- 6.1 If the council becomes aware of information or conduct which indicates that an individual may be unsuitable to do regulated work, the council is obliged to pass

on information to Disclosure Scotland so that a full evaluation can be made and appropriate action taken as necessary. A summary of the PVG Referral Process is attached at **Appendix 4**.

- 6.2 Information calling into question an individual's suitability to engage in regulated work may come to the council's attention as a result of for example, misconduct in the workplace, an incident reported by a member of the public or a client, or a police report received.

Grounds for Referral to Disclosure Scotland

- 6.3 The process of providing information to Disclosure Scotland in relation to an employee's conduct is called 'making a referral'. The PVG (Scotland) Act 2007 places a duty on the council to make a referral in circumstances whereby;
- (a) an individual doing regulated work is considered to have done something to harm a child or a protected adult; and
 - (b) the impact is sufficiently serious for the employing organisation to permanently remove (or would have removed) the individual from regulated work
- 6.4 Behaviour which may result in referral does not necessarily have to take place in the course of employment. The person who is the subject of the referral must have done one or more of the following;
- harmed a child or protected adult
 - placed a child or protected adult at risk of harm
 - engaged in inappropriate conduct involving pornography
 - engaged in inappropriate conduct of a sexual nature involving a child or a protected adult
 - given inappropriate medical treatment to a child or protected adult

Further guidance on the definition of 'harm' and 'risk of harm' is contained in **Appendix 5**.

Notification of Incidents Requiring Potential Referral

- 6.5 Where there are grounds to suspect that an individual, who is currently working in a regulated role, has done something to harm a child or a protected adult (whether or not in the course of his/her work) the matter must be immediately notified to the relevant Head of Service.
- 6.6 Information regarding an employee's conduct or recent conviction may come from a variety of sources including: colleagues, customers, clients, a member of the public or confidential police disclosure. Receipt of any such information should be discussed with Human Resources to agree appropriate action.

Risk Assessment and Investigation Process

Employees

- 6.7 If the individual concerned is employed by the council under a contract of employment, the Head of Service in conjunction with Human Resources, will consider the information available and conduct an immediate risk assessment (Appendix 3). Based on the outcome of that risk assessment, the Head of Service will determine the most appropriate course of action including whether the matter is to be investigated under the terms of the council's disciplinary procedures. Temporary removal from regulated work or precautionary suspension from duty may be appropriate at this stage depending on the outcome of the risk assessment.

Volunteers/Other Workers

- 6.8 If the individual is engaged in a capacity other than under a contract of employment (for example, a volunteer) the Head of Service will ensure that as much relevant information as possible is gathered to enable a decision to be taken regarding the individual's continued engagement by the council and any necessary subsequent referral to Disclosure Scotland.

Former Employees/Workers

- 6.9 Should information subsequently come to light that an individual formerly employed/engaged by the council in a regulated position, has harmed a child/protected adult or put a child/protected adult at risk of harm (whether or not in the course of their work), the matter must be immediately notified to the relevant Head of Service so that a decision on referral can be determined.

Role of the PVG Referral Assessment Panel

- 6.10 The PVG Referral Assessment Panel is responsible for determining whether the criteria have been satisfied to merit a referral to Disclosure Scotland under the relevant provisions of the Protection of Vulnerable Groups (Scotland) Act.
- 6.11 The core Panel comprises three members, the Head of Corporate Services, the council's Chief Solicitor and the Head of Social Policy or the Head of Education Services. Where a member of the core panel is unavailable, another officer of equivalent seniority may be nominated to attend. Other officers may be required to attend the panel to provide additional background information where necessary.
- 6.12 A member of the Human Resources team will also attend in an advisory capacity and will ensure that all relevant supporting information and formal referral documentation is available to the Panel members.
- 6.13 On each occasion it meets, a Chairperson will be appointed from the core panel members. Where the Panel determines that a referral is to be made to Disclosure Scotland, the Panel Chairperson will sign off the official referral documentation on behalf of the council. The decision of the Panel, whether to refer or not must be endorsed by the Chief Executive.

- 6.14 Specific guidance to assist members of the panel in determining whether or not referral is appropriate in any given circumstance is provided separately to this policy and procedure and can be accessed on Mytoolkit.

Referral Assessment Process

Referral Following Disciplinary Action - Timescales

- 6.15 If a decision is taken to either dismiss the employee or permanently remove the employee from regulated work, the Nominated Officer must consult the HR Services Manager on whether it is appropriate to convene a PVG referral panel. The decision whether or not to convene a PVG referral panel will be recorded on case management.
- 6.16 Where it is determined that a PVG panel should be convened, the Nominated Officer will request that the Head of Corporate Services arranges for a meeting of the PVG Referral Assessment Panel.
- 6.17 In order to assist the council in meeting Disclosure Scotland referral timescales (see Paragraph 6.20 below), **a panel should normally be convened within 4 weeks of the decision being taken to either dismiss or permanently remove the employee from regulated work.** It would be helpful however, if the panel were aware of any appeal lodged by the employee before meeting. Any such appeal must be lodged within 10 days of the effective date of dismissal.
- 6.18 The Nominated Officer, in conjunction with Human Resources, will ensure that all the relevant information is made available for consideration by the PVG Referral Assessment Panel in determining whether the criteria for referral to Disclosure Scotland have been met.
- 6.19 Where an employee, who is suspected of harming a child or a protected adult, leaves the council's employment, for whatever reason, before an investigation or subsequent disciplinary proceedings have been concluded, the PVG Referral Assessment Panel must consider the available evidence and determine whether it is reasonable to conclude that dismissal or removal from regulated work would have been a likely outcome.
- 6.20 Where the PVG Referral Assessment Panel has determined that the relevant criteria have been met, referral must be made to Disclosure Scotland **within 3 months of the decision being taken to either dismiss or permanently remove the employee from regulated work.** Disclosure Scotland provide a referral form for this purpose which can be downloaded from the [Disclosure Scotland website](#)
- 6.21 **It should be noted that, where there are grounds, a referral must still be made irrespective of whether the individual challenges the decision through the council's Disciplinary Appeals process or external Employment Tribunal process.**
- 6.22 Following a decision to make a referral, the Head of Corporate Services will arrange for the employee concerned to be advised of the decision in writing. Any subsequent acknowledgement or notifications from Disclosure Scotland will be advised to the PVG Referral Assessment Panel.

Retrospective Receipt of Information

- 6.23 Where the council subsequently receives information that a former employee harmed or placed a child or protected adult at risk of harm (whether or not in the course of the employee's work), and this information was not available at the time the employee left the council's employment, a referral must still be made to Disclosure Scotland in the circumstances set out in paragraph 6.9.
- 6.24 If the PVG Referral Assessment Panel concludes that had the information been available before the individual left the council's employment, he/she would or might have been dismissed or removed from regulated work a referral must be made to Disclosure Scotland.
- 6.25 There is no time bar on making referrals. The nature of the harm or risk of harm to a child or protected adult, the availability and adequacy of evidence and the wider public interest will determine whether referral is to be made by the council rather than merely the passage of time since the alleged incident took place.

Referral of Other Workers

- 6.26 Where a decision has been taken to dispense with the services of a volunteer/worker engaged by the council in a regulated role, on the basis that there are grounds to believe that they have harmed or placed at risk of harm a child or protected adult, the PVG Referral Assessment Panel shall refer the details to Disclosure Scotland.
- 6.27 The same considerations that apply in respect of retrospective information received concerning former employees will also apply to volunteers/helpers formerly engaged by the council in a regulated role in relation to whether they are to be referred to Disclosure Scotland.

7. CONSIDERATION FOR LISTING & BARRING

Consideration for Listing

- 7.1 The Council will be notified automatically by Disclosure Scotland if a PVG Scheme member working for the council is under consideration for listing or is barred if the Council has requested a disclosure record for the type of work for which the individual is considered for listing or barred.

Notification by Council's PVG Scheme Lead Signatory - Listing

- 7.2 Where the Council is advised that an employee/worker is being considered for listing the Council's Lead Signatory for the PVG Scheme shall notify the relevant Head of Service immediately.
- 7.3 The Head of Service in conjunction with Human Resources must arrange for a risk assessment (Appendix 3) to be undertaken to consider whether, pending the decision of the consideration process, the individual should be:
- allowed to continue in the regulated post (subject to appropriate risk management measures);

- temporarily transferred into a non-regulated post (where temporary transfer is considered appropriate, the individual should be transferred to a post on the same salary grade where possible. Where this is not possible, the employee should continue to be paid at their substantive grade);
 - suspended on full pay pending a disciplinary investigation; or
 - in the case of a volunteer/supply worker, temporarily removed from their regulated role.
- 7.4 If Disclosure Scotland have not provided sufficient information on the reasons for the employee being considered for listing, the line manager or other appropriate officer, may need to meet with the employee to obtain as much information as possible to inform the risk assessment process. It may also be necessary to obtain a new PVG scheme record in order to view the latest vetting information.

Notification by Council's PVG Lead Signatory - Barred Individuals

- 7.5 Where the Council is notified that an employee/worker is listed and therefore barred from undertaking regulated work, the council's PVG Scheme Lead Signatory shall notify the Head of Service who will arrange for the immediate removal of the employee from regulated work.
- 7.6 Pending a full investigation, the employee shall be transferred to non-regulated work or where that is not practicable, the employee shall be suspended on full pay. The Head of Service or other nominated senior officer will meet the employee and the action taken will be confirmed to the employee in writing in accordance with the council's Disciplinary Procedures.
- 7.7 The Head of Service will nominate an appropriate senior officer to investigate the matter under the terms of the council's Disciplinary Procedures.
- 7.8 Becoming barred from undertaking regulated work will not necessarily result in an employee's dismissal and the possibility of redeployment into a non-regulated post may be an option depending on the merits of the case.
- 7.9 Where a volunteer/helper is barred from undertaking regulated work, the Head of Service will confirm the termination of their engagement by the council in writing.

8. RE-CHECKING POLICY

- 8.1 As a registered body for PVG Scheme purposes, the Council is notified automatically if an employee is being considered for listing or has been barred from regulated work if the Council has requested a disclosure record for the type of work for which the individual is considered for listing or barred. However, the council is not automatically advised of convictions of a less serious nature which would not trigger consideration for listing or barring. For example: An individual employed in residential care who was convicted of theft may not be barred from regulated work, however by its very nature the conviction is likely to render such an individual unsuitable for work in a residential care home.

- 8.2 To ensure the continued suitability of individuals for regulated work therefore, the Council requests a PVG Scheme Record Update **every 3 years** in line with Care Inspectorate recommended best practice. Should a Scheme Record Update indicate that new vetting information has been added since the last check, a full up to date PVG Scheme Membership Record will be obtained to enable the information to be assessed. If a full up to date PVG Scheme Membership Record is to be obtained this will require the employee's consent.

9. DUTY TO DISCLOSE

- 9.1 In addition to disclosing criminal convictions, it is a condition of employment for council employees who carry out regulated work with children or protected adults that they disclose details of any of the following that occur prior to commencing, or during the course of employment:

- Involvement in police investigations
- Criminal charges
- Police cautions
- Disciplinary action taken by professional or regulatory bodies.

- 9.2 The Council will assess the information disclosed and decide whether or not it materially affects the individual's suitability to work with children or protected adults. Minor issues or offences will be disregarded if they have no direct relevance to an individual's job.

- 9.3 The relevant provisions are reflected in the following policies and procedures:

- Disciplinary Procedures (Paragraph 9.2) and Teachers' Procedures, Paragraph 10.2)
- Disciplinary Code (sections relating to Theft, Fraud and Misrepresentation and to Other Forms of Gross Misconduct)
- Code of Conduct for Employees (Section 13, Duty to Disclose Personal Information)

10. ENGAGEMENT OF CONTRACTORS

- 10.1 The Council must be satisfied that contractors (including the Council's own in-house contracting services) comply with the terms of the Protection of Vulnerable Groups (Scotland) Act 2007. Contractors should be subject to the same restrictions and arrangements that apply to non-disclosed employees. The Service Manager responsible for engaging a contractor must undertake a risk assessment before a contractor commences work. Where staff of the contractor are to carry out regulated work with children or protected adults or both, that Service Manager must ensure that he/she is provided with written confirmation that all such staff have been PVG vetted. However, the Council is not entitled to view PVG disclosure records in these circumstances.

- 10.2 Where contractors/trades persons are to carry out maintenance/repairs/works at (a) schools, or (b) homes which are exclusively or mainly for children or (c) care homes or residential establishments (provided under the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003) occupied mainly or exclusively by individuals aged 16

years or over the Head Teacher or Manager responsible for engaging the contractor/trades persons must apply the following tests:

Tests numbered 1 and 2 below apply to regulated work with children and tests numbered 1, 2 and 3 below apply to regulated work with protected adults.

1. Is it part of the individual's normal duties? Normal duties are something the individual might be expected to do as part of their post on an ongoing basis (e.g. appearing in a job description). For example, a plumber called in for one emergency would not be working as part of his normal duties. If the normal duties test is satisfied, the test below should be considered.
2. Does anything permitted or required in connection with the position give the opportunity for unsupervised contact with children or protected adults? This does not include individuals who may have the opportunity for unsupervised contact if they act outside their authority. For example, a builder permitted to work in part of a school which is sealed off for refurbishment who goes into part of the school which is in use is going beyond what is permitted or required of him.
3. Where there is contact with protected adults, is the individual doing anything permitted or required in connection with the position which is more than incidental? For example, in the case of a repairman on a call out contract to a care home to carry out repair work which involves being in residents' rooms, the contact would be more than incidental as being in residents' rooms is an essential part of carrying out the repair. However, in the case of a decorator who has been contracted to carry out work in part of a care home which has been sealed off for refurbishment (and has to walk through functioning parts of the home to get to his work location), any contact with protected adults would only be incidental.

If tests 1 or 2 are not satisfied it is not regulated work with children. If tests 1, 2 or 3 are not satisfied it is not regulated work with protected adults. If it is not regulated work, good recruitment practices can still be used e.g. checking references, skills and qualifications. Any individual can also apply for a basic disclosure in their own name. This only discloses unspent convictions. PVG vetting is not applicable where it is not regulated work.

If it is regulated work, confirmation should be obtained from the contractor that the individual has been PVG vetted. However, the Council is not entitled to view the PVG disclosure records.

11. ENGAGEMENT OF VOLUNTEERS AND OTHER WORKERS

- 11.1 Services must assess whether volunteers and other workers engaged in work with children or protected adults are carrying out regulated work and require PVG membership.

12. SECURITY ACCESS

- 12.1 Managers must ensure that staff whose jobs may require them to visit schools, nurseries or other premises where children or protected adults are present comply strictly with the security measures in place at those establishments at all times. It is essential that individuals display their employee identification badge or be prepared to provide alternative evidence of their identity on request.

13. STORAGE OF INFORMATION

- 13.1 Counter-signatories (under the direction of the council's Lead Signatory) are responsible for ensuring that PVG records are stored in secure conditions in accordance with the Code of Practice in connection with the use of disclosure information and with the functions of registered persons. Certain of the requirements of that Code are set out in a sub-policy covering at **Appendix 6**.
- 13.2 Documents should be kept in lockable and non-portable containers. Access to documents should be restricted to the council's Human Resources Administration Team or counter-signatories.
- 13.3 Legislation prohibits the photocopying or retention of other images of PVG Scheme Records. Disclosure information must not be retained in an employee's personal file.
- 13.4 Once a recruitment decision has been made PVG records must be securely shredded.
- 13.5 For the purposes of providing evidence to inspection bodies that appropriate checks have been carried out, Human Resources will retain details on a secure database (limited to: Date the PVG check was requested, disclosure Reference Number, Date of the PVG Record and Name of the individual for whom it was carried out).
- 13.6 The purpose of PVG disclosure is to determine suitability for regulated work and aside from certain limited exceptions, it is an offence to share PVG records with a third party.

Human Resources
December 2020

Appendix 1

ROLES AND RESPONSIBILITIES

The PVG Referral Assessment Panel

The role of the Panel is to determine whether the criteria have been satisfied to merit a referral to Disclosure Scotland under the relevant provisions of the Protection of Vulnerable Groups (Scotland) Act 2007.

Where the Panel concludes that the individual in question is to be referred to Disclosure Scotland, the Panel Chairperson will sign off the official referral form on behalf of the council. It is the responsibility of the Panel Chairperson to ensure that:

- Decisions of the PVG referral panel are appropriately recorded;
- Decisions of the PVG referral panel to refer or not refer are endorsed by the Chief Executive prior to any subsequent referral; and
- Referrals are made to Disclosure Scotland within 3 months of the decision to dismiss or permanently remove from regulated work.

Heads of Service

Heads of Service are responsible for ensuring that:

- managers, teachers and other supervisory staff in their services are aware of and comply with the PVG Act in so far as it impacts on their roles and functions.
- communication systems are in place to ensure that incidents, which may require the potential referral of individuals to Disclosure Scotland, are reported at the earliest opportunity.
- incidents that may require potential referral of individuals to Disclosure Scotland are investigated and appropriate action taken in line with the council's disciplinary and referral procedures as appropriate.
- where a decision has been taken to refer an individual to the List, appropriate steps are taken to notify the police and any appropriate professional bodies.
- regulated post assessments are conducted within their service in relation to all work with children or protected adults undertaken by employees, volunteers or other workers.
- arrangements are in place to review regulated post assessments annually.
- adequate resources are made available to support the PVG checking process in their service.
- the Recruitment & Vetting procedures set out within Section 5 of this policy and as set out in the council's Recruitment and Selection Policy and Procedure in respect of PVG checks are rigorously applied.

Line Managers and Head Teachers

Line Managers and Head Teachers are responsible for ensuring that:

- through the Human Resources service, PVG Scheme Membership checks are taken up for individuals being recruited to work in regulated positions as defined within the PVG (Scotland) Act 2007.
- incidents that require potential referral to Disclosure Scotland are notified to the Head of Service at the earliest possible opportunity.
- that managers acting in the capacity of Nominated Officers notify the Head of Corporate Services immediately following an employee's dismissal or removal from regulated work to enable a meeting of the PVG Referral Assessment Panel to be convened within appropriate referral timescales.
- the Recruitment and Vetting provisions set out within Section 5 of this Policy and Procedure and Procedure in respect of PVG Scheme Membership checks are rigorously applied.
- individuals who are being considered for listing or are barred from regulated work are not appointed/engaged in posts involving work from which they are barred.
- regulated post assessments are conducted within their service in relation to all work with children or protected adults undertaken by employees, volunteers or other workers.
- arrangements are in place to review regulated post assessments annually.
- regulated post assessments are conducted when changes to posts and working arrangements arise through service restructuring, to identify any implications for protection of vulnerable groups; and that any necessary changes to existing disclosure practice are implemented accordingly.
- approved protocols and practices in respect of the engagement of contractors, engagement of volunteers/helpers and the letting of council premises are rigorously observed.
- identifying all posts that fall within the definition of regulated work as defined under the PVG (Scotland) Act 2007 and as summarised in Appendix 2 of this policy,
- advising Human Resources of changes to the duties and responsibilities of any post that either brings that post under the definition of regulated work or removes it from that definition.

Head of Corporate Services

The Head of Corporate Services is responsible for ensuring that:

- As part of the recruitment process, PVG checks are obtained from Disclosure Scotland for those individuals appointed to regulated posts.

- Advice is provided to managers and Head Teachers on the vetting and appointment of individuals to regulated posts, and the process for referral of individuals to Disclosure Scotland.
- Following notification from the relevant Nominated Officer, PVG Referral Assessment Panels are convened and appropriate advice and support is provided to those panels.
- A written security policy is in place for handling, holding and destroying Disclosure information and that the processing of disclosure information is in line with the Code of Practice published by the Scottish Ministers under Section 122 of the Police Act 1997 – Code of Practice in connection with the use of disclosure information and with the functions of registered persons.

Audit, Risk and Counter Fraud Unit

The council's Audit, Risk and Counter Fraud Unit has a monitoring role and will be responsible for reviewing compliance with the requirements of the PVG Act and this Policy.

In particular, the Audit, Risk and Counter Fraud Unit will consider whether effective systems are in place for ensuring that:

- Services have carried out PVG Scheme Membership checks for all individuals engaged in regulated positions;
- Services have conducted assessments for all regulated posts and put in place a system for reviewing those assessments on an annual basis;
- Arrangements in place for engaging contractors and the letting of council premises satisfy PVG requirements.

Council's PVG Scheme Lead Signatory

The council's PVG Scheme Lead Signatory (currently the council HR Services Manager) is responsible for ensuring that the relevant Head of Service is advised of notifications received from Disclosure Scotland regarding individuals who have either been barred or are being considered for listing for barring from regulated work.

Human Resources

Human Resources are responsible for ensuring that:

- a record of all regulated positions is maintained;
- PVG Scheme Membership applications are processed and managers advised of scheme record information timeously;
- appropriate advice and support are provided to PVG Referral Assessment panels;
- a database of all PVG Scheme Membership Records is maintained for employees in regulated work;

- PVG Membership Scheme Records are handled, stored and destroyed in accordance with the Code of Practice published by the Scottish Ministers under Section 122 of the Police Act 1997 – Code of Practice in connection with the use of disclosure information and with the functions of registered persons;
- a record of the decisions of any PVG referral panels is maintained.

Corporate Procurement Unit

The Corporate Procurement Unit is responsible for ensuring that contracts contain appropriate wording with regard to the Protection of Vulnerable Groups (Scotland) Act 2007 where contracts involve or may involve the contractor, its staff, its sub-contractors or others for whom it is responsible in law carrying out regulated work with children or adults or both as defined in the Protection of Vulnerable Groups (Scotland) Act 2007.

Appendix 2

REGULATED WORK

1. Identification of Regulated Posts

To determine whether a post requires a PVG check to be carried out on an applicant, a regulated post assessment must be conducted. The assessment will involve an analysis of the duties of the post and the potential for the post holder to come into contact with children and/or protected adults.

Regulated post assessments should be reviewed on an annual basis or earlier if changes to posts and working arrangements arise in order to identify any implications for protection of vulnerable groups. A record of the assessment decision should be recorded and retained by the Service.

Services must advise Human Resources of any posts that require to be added or removed from the master list of Regulated Posts held by Human Resources.

Further information on the type of posts that require a PVG check can be found at <https://www.mygov.scot/pvg-scheme/types-of-work-covered-by-pvg/>

2. Regulated Work with Children

The PVG Act defines children as an individual aged under 18 years.

2.1 An individual may be doing regulated work with children if their work involves any of the following activities as part of their normal duties:

- Caring for children
- Teaching, instructing, training or supervising children
- Being in sole charge of children
- Unsupervised contact with children under arrangements made by a responsible person
- Providing advice or guidance to a child or to particular children which relates to physical, emotional well-being, education or training
- Moderating a public electronic interactive communication service which is intended for use wholly or mainly by children
- Providing, or working for an organisation which provides an independent health care service which is provided exclusively or mainly for children
- Work on any part of day care premises at times when children are being looked after in that part.
- Being a host parent.
- Providing, or working for an organisation which provides, a care home service which is provided exclusively or mainly for children.

2.2 An individual may be doing regulated work with children if they work in any of the following establishments as part of their normal duties:

- An institution which is exclusively or mainly for the detention of children
- A hospital which is exclusively or mainly for the reception and treatment of children
- A school
- A further education institution

- A hostel used mainly by pupils attending a school or further education institution
- A home which is exclusively or mainly for children and is provided by a council under social work or mental health legislation.

One exception applies to positions in all these establishments, namely that such positions are not regulated work unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with children.

2.3 An individual is doing regulated work with children if they hold any of the following positions without exception:

- Manager, or member of a governing body, body of trustees or other body responsible for the management, of a school, further education institution or hostel – as defined in establishments (but not a member of a council).
- Member of certain council committees, joint committees or sub-committees concerned with the provision of education, accommodation, social services or health care services to children
- Member of a children's panel or certain related committees
- Chief Social Worker of a council
- Commissioner for Children and Young People in Scotland or member of that Commissioner's staff
- Registrar of Independent Schools in Scotland
- Foster Carer
- Charity trustee of a children's charity
- National Convener of Children's Hearings Scotland.
- Principal Reporter.
- Chief education officer (however called) of a council.

2.4 An individual may be doing regulated work with children if they are responsible for the day to day supervision or management of an individual doing regulated work through the activities the individual performs or the establishments in which the individual works. This provision on supervision of an individual does not cover supervising an individual who is in one of the particular positions of trust or responsibility.

3. Regulated Work with Adults

3.1 The PVG Act defines a protected adult as an individual aged 16 or over who is provided with (and thus receives) certain care, support or welfare services.

3.2 There are four categories of services receipt of any one of which makes an individual a protected adult:

- Registered Care Services – a service by a person carrying on a support service; an adult placement service; a care home service; or a housing support service
- Health Services
- Community Care Services – social work and mental health services provided or secured by a council, or self-directed support paid for by a council
- Welfare Services – a welfare service includes any service which provides support, assistance, advice or counselling to individuals with particular

needs, meeting out the following conditions. The service must be a service that:

- (a) is provided in the course of work to one or more persons aged 16 or over
 - (b) is delivered on behalf of an organisation
 - (c) requires training to be undertaken by the person delivering the service
 - (d) has a frequency and formality attached to the service and
 - (e) either requires a contract to be agreed between the service provider and the recipient of the service prior to the service being carried out, or is personalised to an individual adult's needs.
- 3.3 Most adults are likely to be a protected adult at some time in their lives, for example receiving treatment in hospital or receiving care in later life. But an individual is only a protected adult at the time they receive the service.
- 3.4 It is possible for 16 and 17 year olds to be both children and protected adults. The assessment as to whether or not they are protected adults is no different to that undertaken in respect of any other adult.
- 3.5 An individual may be doing regulated work with adults if their work involves any of the following activities as part of their normal duties:
- caring for protected adults
 - teaching, instructing, training or supervising protected adults
 - being in sole charge of protected adults
 - providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training
 - inspecting adult care services (including inspecting any premises used for the purposes of providing such services).
- 3.6 An individual may be doing regulated work with adults if they work in any of the following establishments as part of their normal duties:
- a care home – meaning accommodation occupied mainly or exclusively by individuals aged 16 or over which is provided by an organisation carrying on a care home service
 - a residential establishment or accommodation occupied exclusively or mainly by individuals aged 16 or over which is provided by, or the provision of which is secured by, a council under social work or mental health legislation
- 3.7 One exception applies to positions in all these establishments, namely that such positions are not regulated work unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with protected adults; and where contact with protected adults, when the holder of the position is doing anything permitted or required in connection with the position, which is more than incidental.
- 3.8 An individual is doing regulated work with adults if they hold any of the following positions without exception:

- member of certain council committees, joint committees or sub-committees concerned with the provision of education, accommodation, social services or health care services to protected adults.
 - Chief social work officer of a council
 - Charity trustee of certain charities
- 3.9 An individual may be doing regulated work with adults if they are responsible for the day to day supervision or management of an individual doing regulated work through the activities the individual performs or the establishments in which the individual works. This provision on supervision of an individual does not cover supervising an individual who is in one of the particular positions of trust or responsibility.
4. Normal Duties
- 4.1 The concept of normal duties is extremely important in limiting the scope of regulated work. For an activity or work in an establishment to be regulated work, the carrying out of an activity or the work in the establishment must be part of the individual's normal duties.
- 4.2 An activity or work is likely to be normal duties when:
- it appears in an individual's job description, task description or contract
 - it can be reasonably be anticipated; or
 - it occurs regularly
- 4.3 An activity or work is unlikely to be 'normal duties' when:
- done in response to an emergency (unless by an emergency worker)
 - arranged at the last minute to stand in for sickness or other unexpected absence of another worker; or
 - done as a one-off activity of short duration which is not part of the individual's normal routine or occupation.

Further guidance on the definition of regulated work can be found in the [Protecting Vulnerable Groups Scheme](#)

PVG RISK ASSESSMENT FORM

This form should be used when:

- investigating an allegation of harm to a child or protected adult and/or awaiting the outcome of PVG referral
- awaiting the outcome of a consideration for listing process

SECTION A - POST/POSTHOLDER DETAILS

Post:		Postholder/Candidate:	
Service:		Date of Assessment:	

SECTION B - INVESTIGATION OR CONSIDERATION FOR LISTING

Please describe the background to the situation.

What are the perceived risks of allowing the individual to continue in regulated work?

What control measures could be put in place to minimise risks?

With control measures in place, please assess the severity and likelihood of potential risks (See attached Impact & Probability Rating form for severity, likelihood and risk rating definitions/scores).

Severity:		Likelihood:		Risk Rating:	
High Risk:	Employee must be removed from regulated duties or suspended on full pay.				
Medium Risk:	Employee must be removed from regulated duties or appropriate supervisions arrangements put in place.				
Low Risk:	Employee may be allowed to continue in regulated work with appropriate supervision arrangements in place.				

Completed by: _____ Date: _____

Appendix 3

PVG RISK ASSESSMENT

IMPACT AND PROBABILITY RATING

CONSEQUENCE- Potential impact of an incident

Catastrophic	5	Broad range of extremely serious implications, such as loss of life, which would be subject to external review
Major	4	Generating a number of substantive issues of a serious nature, which could be subject to external review
Moderate	3	Some serious issues arising, requiring internal review
Minor	2	Some potential issues, but not of a serious nature
Insignificant	1	Little or no perceptible ramifications

LIKELIHOOD - The possibility of there being an issue

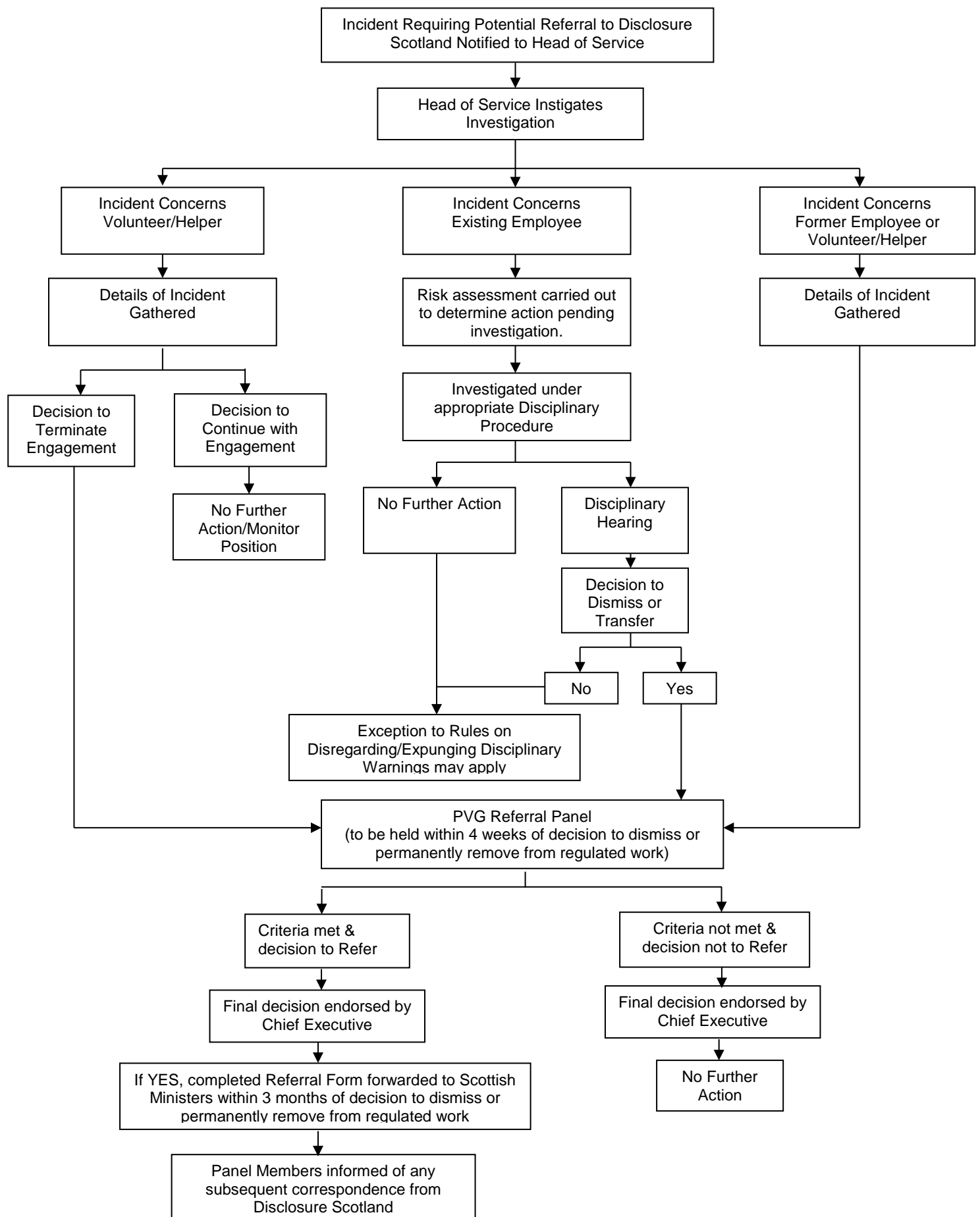
Very likely	5	A high probability of this issue arising
Likely	4	It's more likely than not this will be an issue
Fairly Likely	3	Given the circumstances it's conceivable this could be an issue
Unlikely	2	It's unlikely that this risk might be realised
Very Unlikely	1	Wouldn't anticipate this ever being a problem

Consequence (C) x Likelihood (L) = Risk Rating

	L = 1	L = 2	L = 3	L = 4	L = 5	
C=1	1	2	3	4	5	RISK RATING 1 - 5 = ACCEPTABLE Risk is being managed appropriately. Continue to monitor controls to ensure safe working methods are being maintained. 6 - 9 = ADEQUATE Controls are adequate but the appropriate level of supervision must be in place to ensure safe working methods are being maintained. 10 - 15 = TOLERABLE Risks remain and consideration should be given to lowering the risk level further. This may involve an element of dynamic risk assessment prior to and whilst the activity is being carried out. Increased level of supervision may be required to ensure the safe working methods are being adhered to at all times. 17 - 25 = UNACCEPTABLE STOP the activity cannot take place. The risk of injury is too high! Further actions are required and stronger controls introduced to reduce the level of risk involved. Once new controls have been identified the activity/task should be re-assessed.
C=2	2	4	6	8	10	
C=3	3	6	9	12	15	
C=4	4	8	12	16	20	
C=5	5	10	15	20	25	

PVG REFERRAL PROCESS

Appendix 4



EXTRACT FROM THE PROTECTING VULNERABLE GROUPS SCHEME

MEANING OF HARM

The meaning of the word 'harm' is key to the first two grounds for referral.

Harm includes:

- physical harm
- psychological harm (for example: causing fear, alarm or distress); and
- unlawful conduct which appropriates or adversely affects another person's property, rights or interests (for example: theft, fraud, embezzlement or extortion).

The Act also provides a meaning for 'risk of harm' which includes:

- attempting to harm another;
- trying to get someone else to harm another;
- encouraging someone to harm themselves; or
- conduct otherwise causing, or likely to cause, another to be harmed.

When considering the terms 'harm' and 'risk of harm', it is important for individuals and employers to develop an understanding of what sort of actions might result in someone being harmed, or placed at risk of harm. Examples of harmful behaviours include:

- emotional abuse, perhaps by controlling a child with extreme verbal threats;
- neglecting a person's needs, for example by inappropriate feeding or failing to provide appropriate sanitation;
- inappropriate physical restraint;
- failing to attend to whatever health and safety requirements may be in force;
- supplying illegal or unauthorised drugs.

POLICY ON THE SECURE HANDLING, USE, STORAGE, RETENTION AND DESTRUCTION OF DISCLOSURE INFORMATION

Policy Statement

The council complies with the Code of Practice in connection with the use of disclosure information and with the functions of registered persons. The Code is published by Scottish Ministers under Section 122 of Part V of The Police Act 1997 ("the 1997 Act").

The Code sets out obligations for registered bodies, counter-signatories and other recipients of disclosure information issued under the 1997 Act and the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act") with particular reference to the handling, holding, storage, destruction and retention of disclosure information provided by Disclosure Scotland.

The Council also complies with the Data Protection Act 1998 ("the 1998 Act") in regard to the use of disclosure information.

Usage

The council will use disclosure information only for the purpose for which it was requested and provided. Disclosure information will not be used or disclosed in a manner incompatible with that purpose nor will it be shared with a third party unless the subject has given their written consent and has been made aware of the purpose of the sharing.

Handling

In accordance with Section 124¹ of the 1997 Act and Sections 66 and 67 of the 2007 Act, it is a criminal offence to disclose disclosure information to any unauthorised person. Disclosure information is only shared with those authorised to see it in the course of their duties. The Council will not disclose information provided under subsection 113B(5)² of the 1997 Act, namely information which is not included in the certificate, to the subject.

1 The Serious Organised Crime and Police Act 2005 ("the 2005 Act") schedule 14, paragraph 12 amended section 124

2 Subsection 163(2) of the 2005 Act inserted subsection 113B into the 1997 Act. Subsection 113B(5) of the 2005 Act replaces subsection 115(8) of the 1997 Act.

Access and Storage

The Council does not keep disclosure information on an individual's personnel file. It is kept securely, in lockable, non-portable storage containers. Access to storage units is strictly controlled and is limited to authorised named individuals, who are entitled to see such information in the course of their duties.

Retention

To comply with the 1998 Act, the Council does not keep disclosure information for longer than necessary. For the 1997 Act, this will be the date the relevant decision has been taken, allowing for the resolution of any disputes or complaints. For the 2007 Act, this will be the date an individual ceases to do regulated work for this organisation.

The Council will not retain any paper or electronic image of the disclosure information. The Council will, however, record the date of issue, the individual's name, the disclosure type and the purpose for which it was requested, the unique reference number of the disclosure and details of our decision. The same conditions relating to secure storage and access apply irrespective of the period of retention.

Disposal

The Council will ensure that disclosure information is destroyed in a secure manner i.e. by shredding. Disclosure information which is awaiting destruction will not be kept in any insecure receptacle (e.g. a waste bin or unlocked desk/cabinet).

Human Resources
Reviewed December 2020

PVG REFERRAL PANEL GUIDANCE & PROCESS

1. PURPOSE

- 1.1 This guidance is designed to assist members of the council's internal PVG Referral Panel in determining whether a referral to Disclosure Scotland is merited under the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007.
- 1.2 The document comprises relevant extracts from the [Protecting Vulnerable Groups Scheme](#) and should be read in conjunction with the council's [Policy and Procedure on Protection of Children and Protected Adults](#)

2. DUTY TO MAKE A REFERRAL

- 2.1 The PVG Act aims to provide a robust system by which unsuitable people are prevented from doing regulated work with children or protected adults, and by which people who become unsuitable are identified. To facilitate this aim, it is necessary for the council to pass on information to Disclosure Scotland that indicates an individual may be unsuitable to do regulated work so that it can be properly evaluated and appropriate action taken. The process of providing such information to Disclosure Scotland is called 'making a referral'.
- 2.2 The PVG Act places a duty on the council to make a referral when certain criteria are met. Broadly speaking, the criteria are that:
 - a) An individual doing 'regulated work' has done something to harm a child or protected adult and,
 - b) The impact is so serious that the council has (or would) permanently remove the individual from regulated work
- 2.3 Failure to refer an individual may mean that an individual who is unsuitable to do regulated work does not get barred from doing that type of work and can go on and harm other vulnerable people in other settings.
- 2.4 If, as a result of any of the referral grounds being met, the council dismisses an individual who was doing regulated work or transfers them to other duties that do not involve that type of regulated work the council must make a referral.
- 2.5 The referral process to Disclosure Scotland is entirely separate from any dispute with the individual as to whether the dismissal was fair or otherwise. Even if a dismissal is challenged by the individual through an internal appeal or Employment Tribunal claim, the referral must still be made to Disclosure Scotland.

3. FAILURE TO REFER

- 3.1 It is an offence not to make a referral **within 3 months** of the criteria for referral being met. Failure to refer can result in a fine and a prison sentence of up to 5 years. Individuals within the council may be prosecuted, alongside the council itself, if it can be demonstrated that the offence was committed with their consent, connivance or through their negligence.

4. GROUNDS FOR REFERRAL

- 4.1 A prerequisite for the council to make a referral is that at least one of the referral grounds set out at Section 2 of the PVG Act has been met. First of all, the individual must be doing '*regulated work*'. The definition of regulated work is provided in Appendix 1 to this guidance document.
- 4.2 An individual must also have done something *harmful or inappropriate* in respect of a child or protected adult.
- 4.3 The referral grounds for those doing regulated work with children and referral grounds for those doing regulated work with adults mirror each other. The subject of the referral must have done one or more of the following:
- Harmed a child or protected adult
 - Placed a child or protected adult at risk of harm
 - Engaged in inappropriate conduct involving pornography
 - Engaged in inappropriate conduct of a sexual nature involving a child or protected adult
 - Given inappropriate medical treatment to a child or protected adult.

5. MEANING OF HARM

- 5.1 The meaning of the word harm is key to the first two grounds for referral. Harm is defined in Section 93 of the PVG Act and includes:
- Physical harm;
 - Psychological harm (e.g. causing fear, alarm or distress); and
 - Unlawful conduct which appropriates or adversely affects another person's property, rights or interests (e.g. theft, fraud, embezzlement or extortion)
- 5.2 The PVG Act also provides a meaning for 'risk of harm' which includes:
- Attempting to harm another;
 - Trying to get someone else to harm another;
 - Encouraging someone to harm themselves;
 - Conduct otherwise causing, or likely to cause, another to be harmed.
- 5.3 Examples of harmful behaviours include:
- Emotional abuse, perhaps by controlling a child with extreme verbal threats
 - Neglecting a person's needs, for example by inappropriate feeding or failing to provide appropriate sanitation

- Inappropriate physical restraint
- Failing to attend to whatever health and safety requirements may be in force
- Supplying illegal or unauthorised drugs

6. REFERRAL INFORMATION

- 6.1 Schedule 1 of the Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Organisations and Other Bodies) (Prescribed Information) Regulations 2010 sets out the information required for referrals by organisations, employment agencies and employment businesses.
- 6.2 Disclosure Scotland provide an [employer referral form](#) along with guidelines for its completion, to assist organisations in ensuring they include all necessary information when making a referral. Use of the form is not mandatory but it makes the referral process easier for both the referring organisation and Disclosure Scotland if it is used.
- 6.3 In brief, the information which must be submitted with any referral includes identity details relating to the individual; details about the referral ground; contact details for the referring organisation; details of the regulated work done by the individual; details of any relationship between the child or protected adult involved; and details of any action taken by the referring organisation.

7. KEY ISSUES TO BE DETERMINED BY THE PANEL

- 7.1 In determining whether or not a referral is appropriate, the PGV Assessment Panel should consider the following questions in the light of supporting evidence (disciplinary documentation etc);
- **Was the employee engaged in regulated work, either with children or protected adults as defined within the PVG (Scotland) Act 2007 (see Appendix for definition of regulated work)?**
 - **Has the individual done something to 'harm' a child or protected adult or placed a child or protected adult at risk of harm?**
 - **If so, was the impact of the individual's actions sufficiently serious to require the permanent removal of that individual from regulated work?**
- 7.2 If the answer to the foregoing questions is in the affirmative, a referral to Disclosure Scotland will be required.

8. REFERRAL PROCESS

- 8.1 The table in Appendix 2 summarises the PVG referral process and identifies the officer responsible for each action in the process. Further details are contained in section 6 of the [Policy and Procedure on Protection of Children and Protected Adults](#)

Human Resources
December 2020

Appendix 1

REGULATED WORK

1. Identification of Regulated Posts

- 1.1 To determine whether a post requires a disclosure check to be carried out on an applicant, a risk assessment must be conducted. The risk assessment will involve an analysis of the duties of the post and the potential for the post holder to come into contact with children and/or protected adults.
- 1.2 Risk assessments should be reviewed on an annual basis or earlier if changes to posts and working arrangements arise in order to identify any implications for protection of vulnerable groups.
- 1.3 A Regulated Post Self-Assessment Tool designed to assist employers to conduct the risk assessment process can be found on Disclosure Scotland's website at www.disclosurescotland.co.uk A record of the risk assessment decision should be recorded on a Regulated Post Risk Assessment form as attached at Appendix 2.
- 1.4 A list of Regulated Posts in the council for which a PVG check must be carried out on applicants is held by Human Resources.

2. Regulated Work with Children

The PVG Act defines children as an individual aged under 18 years.

- 2.1 An individual may be doing regulated work with children if their work involves any of the following activities as part of their normal duties:
 - Caring for children
 - Teaching, instructing, training or supervising children
 - Being in sole charge of children
 - Unsupervised contact with children under arrangements made by a responsible person
 - Providing advice or guidance to a child or to particular children which relates to physical, emotional well-being, education or training
 - Moderating a public electronic interactive communication service which is provided exclusively for children
 - Providing, or working for an organisation which provides an independent health care service which is provided exclusively or mainly for children
 - Work on any part of day care premises at times when children are being looked after in that part.
 - Being a host parent.
- 2.2 An individual may be doing regulated work with children if they work in any of the following establishments as part of their normal duties:
 - An institution which is exclusively or mainly for the detention of children

- A hospital which is exclusively or mainly for the reception and treatment of children
 - A school
 - A further education institution
 - A hostel used mainly by pupils attending a school or further education institution
 - A home which is exclusively or mainly for children and is provided by a council under social work or mental health legislation.
- 2.3 One exception applies to positions in all these establishments, namely that such positions are not regulated work unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with children.
- 2.4 An individual is doing regulated work with children if they hold any of the following positions without exception:
- Manager, or member of a governing body, body of trustees or other body responsible for the management, of a school, further education institution or hostel – as defined in establishments (but not a member of a council).
 - Member of certain council committees, joint committees or sub- committees concerned with the provision of education, accommodation, social services or health care services to children
 - Member of a children's panel or certain related committees
 - Chief Social Worker of a council
 - Commissioner for Children and Young People in Scotland or member of that Commissioner's staff
 - Registrar of Independent Schools in Scotland
 - Foster Carer
 - Charity trustee of a children's charity
- 2.5 An individual may be doing regulated work with children if they are responsible for the day to day supervision or management of an individual doing regulated work through the activities the individual performs or the establishments in which the individual works. This provision on supervision of an individual does not cover supervising an individual who is in one of the particular positions of trust or responsibility.
3. Regulated Work with Adults
- 3.1 The PVG Act defines a protected adult as an individual aged 16 or over who is provided with (and thus receives) a type of care, support or welfare service.
- 3.2 There are four categories of services receipt of any one of which makes an individual a protected adult:
- Registered Care Services – a service by a person carrying on a support service; an adult placement service; a care home service; or a housing support service
 - Health Services

- Community Care Services – social work and mental health services provided or secured by a council, or self-directed support paid for by a council
 - Welfare Services – a welfare service includes any service which provides support, assistance, advice or counselling to individuals with particular needs, meeting out the following conditions. The service must be a service that:
 - (a) is provided in the course of work to one or more persons aged 16 or over
 - (b) is delivered on behalf of an organisation
 - (c) requires training to be undertaken by the person delivering the service
 - (d) has a frequency and formality attached to the service and
 - (e) either requires a contract to be agreed between the service provider and the recipient of the service prior to the service being carried out or is personalised to an individual adult's needs.
- 3.3 Most adults are likely to be a protected adult at some time in their lives, for example receiving treatment in hospital or receiving care in later life. But an individual is only a protected adult at the time they receive the service.
- 3.4 It is possible for individuals aged 16 and 17 to be both children and protected adults. The assessment as to whether or not they are protected adults is no different to that undertaken in respect of any other adult.
- 3.5 An individual may be doing regulated work with adults if their work involves any of the following activities as part of their normal duties:
- caring for protected adults
 - teaching, instructing, training or supervising protected adults
 - being in sole charge of protected adults
 - providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training
 - inspecting adult care services (including inspecting any premises used for the purposes of providing such services).
- 3.6 An individual may be doing regulated work with adults if they work in any of the following establishments as part of their normal duties:
- a care home – meaning accommodation occupied mainly or exclusively by individuals aged 16 or over which is provided by an organisation carrying on a care home service
 - a residential establishment or accommodation occupied exclusively or mainly by individuals aged 16 or over which is provided by, or the provision of which is secured by, a council under social work or mental health legislation
- 3.7 One exception applies to positions in all these establishments, namely that such positions are not regulated work unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with protected adults; and any contact with protected adults, when the holder of the position is doing anything permitted or required in connection with the position, is more than incidental.

3.8 An individual is doing regulated work with adults if they hold any of the following positions without exception:

- member of certain council committees, joint committees or sub- committees concerned with the provision of education, accommodation, social services or health care services to protected adults.
- Chief social work officer of a council
- Charity trustee of certain charities

3.9 An individual may be doing regulated work with adults if they are responsible for the day to day supervision or management of an individual doing regulated work through the activities the individual performs or the establishments in which the individual works. This provision on supervision of an individual does not cover supervising an individual who is in one of the particular positions of trust or responsibility.

4. Normal Duties

4.1 The concept of normal duties is extremely important in limiting the scope of regulated work. For an activity or work in an establishment to be regulated work, the carrying out of an activity or the work in the establishment must be part of the individual's normal duties.

4.2 An activity or work is likely to be normal duties when:

- it appears in an individual's job description, task description or contract
- it can be reasonably be anticipated; or
- it occurs regularly

4.3 An activity or work is unlikely to be 'normal duties' when:

- done in response to an emergency (unless by an emergency worker)
- arranged at the last minute to stand in for sickness or other unexpected absence of another worker; or
- done as a one-off activity of short duration which is not part of the individual's normal routine or occupation.

Further guidance on the definition of regulated work can be found in 'Protecting Vulnerable Groups Scheme Guidance for individuals, organisations and personal employers' which can be accessed at www.disclosurescotland.co.uk

PVG REFERRAL PROCESS

The table below summarises the steps in the PVG referral process and identifies the officer responsible for each action in the process. Further details are contained in section 6 of the Policy and Procedure on Protection of Children and Protected Adults

Process	Action	Responsible Officer
Step 1	Notify the Head of Corporate Services of a matter for consideration by the PVG Referral Panel.	Head of Service/ Nominated Officer
Step 2	Convene a PVG Referral Panel (comprising 3 panel members and relevant officers) within 4 weeks of the decision to dismiss or permanently remove an individual from regulated work.	Head of Corporate Services
Step 3	Ensure that all relevant information is made available for consideration by the PVG Referral Assessment Panel in order to determine whether the criteria for referral to Disclosure Scotland has been met.	Nominated Officer/ Human Resources
Step 4	Meet and reach a conclusion as to whether the criteria for referral has been met.	PVG Panel
Step 5	Ensure that the decision whether or not to make a referral to Disclosure Scotland and the reasons for the decision of the panel are recorded on a PVG Referral Record (Appendix 3) and seek endorsement of the panel's decision by the Chief Executive.	Panel Chairperson
Step 6	Endorse the decision whether or not to make a referral to Disclosure Scotland.	Chief Executive
Step 6	Where a decision to make a referral to Disclosure Scotland, notify the subject of the PVG referral panel of the outcome of the panel in writing.	Panel Chairperson
Step 7	Complete the employer referral form ready for sign off.	Nominated Officer/ Human Resources
Step 8	Sign off PVG referral documentation and ensure referral is made to Disclosure Scotland within 3 months of the decision to dismiss or permanently remove an individual from regulated work.	Panel Chairperson
Step 9	Record the decision of the PVG referral panel and date of referral on case management.	Human Resources

PVG REFERRAL RECORD

PANEL MEMBERS	
Members required at each panel: <i>(tick to confirm attendance)</i>	One additional Panel Member from: <i>(tick to confirm attendance)</i>
Head of Corporate Services: <input type="checkbox"/>	Head of Social Policy: <input type="checkbox"/>
Chief Solicitor: <input type="checkbox"/>	Head of Education: <input type="checkbox"/>
Panel Chair:	
Other officers in attendance:	
Date of Panel Hearing:	Click or tap to enter a date.
REFERRAL SUBJECT	
Name:	
Regulated Role:	
Service:	
Status:	Choose an item.
REGULATED WORK	
Which protected group does the referral subject work with? <i>(select as appropriate)</i>	
Children: <input type="checkbox"/>	
Protected Adults: <input type="checkbox"/>	
Both: <input type="checkbox"/>	
ACTION LEADING TO REFERRAL PANEL <i>(tick as appropriate)</i>	
Employee/volunteer dismissed:	<input type="checkbox"/>
Employee/volunteer permanently removed from regulated work:	<input type="checkbox"/>
Employee/volunteer resigned during disciplinary process – outcome would likely have been dismissal or permanent removal from regulated work:	<input type="checkbox"/>
Information received regarding an ex-employee that would have led the council to dismiss or permanently remove the individual from regulated work:	<input type="checkbox"/>
INCIDENT	
Please describe the incident that led to the decision above: <div style="border: 1px solid black; height: 150px; margin-top: 10px;"></div>	

EVIDENCE	
What evidence has been considered by the panel:	
GROUNDS FOR REFERRAL	
<p>Having considered the evidence, it is the opinion of the panel that the subject of the referral: <i>(tick as appropriate)</i></p> <p>*Harmed a child or a protected adult: <input type="checkbox"/></p> <p>*Placed a child or a protected adult at risk of harm: <input type="checkbox"/></p> <p>Engaged in inappropriate conduct involving pornography: <input type="checkbox"/></p> <p>Engaged in inappropriate conduct of a sexual nature involving a child or protected adult: <input type="checkbox"/></p> <p>Gave in appropriate medical treatment to a child or protected adult: <input type="checkbox"/></p> <p>None of the above – grounds for referral not met: <input type="checkbox"/></p> <p><small>* For a definition of 'harm' refer to section 5 of the PVG Referral Panel Guidance.</small></p>	
DECISION RATIONALE	
Provide rationale for decision as to whether grounds for referral have been met or not:	
PANEL OUTCOME <i>(tick as appropriate)</i>	
<p>It is the decision of the PVG referral panel that the subject of the referral should be Referred to Disclosure Scotland: <input type="checkbox"/></p> <p>It is the decision of the PVG referral panel that the subject of the referral should Not be Referred to Disclosure Scotland: <input type="checkbox"/></p>	
Signed (Panel Chair):	Click or tap to enter a date.
CHIEF EXECUTIVE ENDORSEMENT	
Panel decision endorsed <i>(select as appropriate)</i> :	Choose an item.
Signed (Chief Executive):	Click or tap to enter a date.

Completed form to be passed to the Senior HR Adviser who will arrange for the decision to be recorded on case management.

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

**WEST LOTHIAN LOCAL DEVELOPMENT PLAN (LDP): DEVELOPMENT PLAN SCHEME
No.13 (DPS No. 13)**

REPORT BY HEAD OF PLANNING, ECONOMIC DEVELOPMENT & REGENERATION

A. PURPOSE OF REPORT

The purpose of this report is to advise Council Executive of the proposed Development Plan Scheme (DPS No. 13) for the West Lothian Local Development Plan (LDP 2) and to seek approval for DPS No. 13.

B. RECOMMENDATION

It is recommended that Council Executive:

1. Approves the content of Development Plan Scheme No.13 (Appendix 1).

C. SUMMARY OF IMPLICATIONS

I	Council Values	Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; working in partnership.
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	<p>The Planning etc. (Scotland) Act 2006 introduced a new statutory basis for development planning in Scotland. It inserted a new 'Part 2' into the Town and Country Planning (Scotland) Act 1997 ('the Act') requiring the replacement of structure plans and local plans with strategic development plans (SDPs) and local development plans (LDPs).</p> <p>West Lothian LDP 1 forms part of the development plan alongside the Strategic Development Plan (SDP 1) and provides the statutory framework for land use planning in West Lothian.</p>
III	Implications for Scheme of Delegations to Officers	None.

IV	Impact on performance and performance Indicators	The West Lothian LDP provides the policy and development framework to support improving opportunities in West Lothian and sustainable growth. The Development Plan Scheme sets out a programme for replacement of the LDP.
V	Relevance to Single Outcome Agreement	<p>Outcome 3 - Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.</p> <p>Outcome 8 - We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.</p>
VI	Resources - (Financial, Staffing and Property)	Much of the development proposed in the West Lothian LDP will require new supporting infrastructure and the LDP explains that this is expected to be funded in part by the council through the capital programme but also by the development industry itself. Supplementary Guidance setting out developer contribution rates has been prepared in support of the LDP. The council's Local Infrastructure Fund and City Region Deal may also have a part to play in assisting with forward funding some improvements.
VII	Consideration at PDSP	DPS No.13 was considered by Development & Transport PDSP on 2 February 2021. The panel was supportive of the proposals set out in the report.
VIII	Other consultations	No consultations were required in the preparation of this report.

D. TERMS OF REPORT

D1 Background

Section 20B of the Planning etc. (Scotland) Act 2006 requires planning authorities to prepare a development plan scheme (DPS) at least annually for the LDP. The DPS is a document which sets out the programme for preparing, reviewing and consulting on the next LDP and it must be in place by 31 March each year. Once agreed it requires to be publicised and lodged with Scottish Ministers.

LDP 1, prepared in the context of SDP 1, was adopted by the council on 4 September 2018 and provides the spatial land use policy and development framework for West Lothian for the next ten years. The LDP is a vital component in ensuring economic growth and business support, seeking to meet housing need in all tenures, and ensuring the protection/enhancement of built and natural heritage resources, all within an overarching aim of protecting and enhancing the environment.

The council's strategy for preparing the next LDP requires to be informed by The Planning (Scotland) Act 2019 which was enacted in July 2019 and which makes substantive changes to the Town & Country Planning (Scotland) Act 1997.

The most significantly relevant changes include:

- removing the requirement to prepare Strategic Development Plans;
- making the National Planning Framework (NPF) part of the Development Plan;
- introducing Regional Spatial Strategies (RSS) to provide long term spatial development frameworks at regional level;
- introducing potential for local communities to prepare new Local Place Plans

SDP 2 was rejected by Scottish Ministers on 16 May 2019 and the Planning (Scotland) Act 2019 has in any event removed the requirement for strategic development plans in the four largest city regions.

Instead it has introduced a requirement for all authorities, working together, to prepare Regional Spatial Strategies (RSS) setting out strategic development priorities. Details of requirements for the preparation of RSSs are to be set out in secondary legislation but this is not expected before the end of 2021. The council has, nevertheless, been working collaboratively with the other SESplan member authorities to prepare a RSS and which will help inform an emerging new National Planning Framework 4 (NPF 4). An 'interim' RSS was drafted and submitted to Scottish Government at the end of 2020 and is intended be finalised in early 2021.

This does, however, create something of a void in terms of strategic spatial planning direction in the interim, and it also creates a very practical 'real time' dilemma with regard to identifying the housing land requirements for the next LDP. These would ordinarily have been identified in SDP2, but now that it has been abandoned there is no consensus on what these figures should be.

A key significance of NPF 4 is that it will take over the task of defining housing land requirements for all local development plan areas and for all tenures and set out a long-term spatial strategy for Scotland with a time horizon to 2050. It will also incorporate Scottish Planning Policy (SPP) which will have enhanced status as part of the statutory development plan as a consequence.

However, the Coronavirus pandemic has already delayed the publication of NPF 4, pushing it back to autumn 2021 and it ultimately remains dependent on the Scottish Parliament finding the time to conclude it in the context of a crowded and competing legislative programme. While it is currently anticipated that NPF 4 will be adopted by Summer 2022 this cannot be guaranteed and it will be appreciated that the council will therefore be unable to make substantive progress in relation to housing land allocations in the plan until this issue resolves.

Another new element introduced by the Planning (Scotland) Act 2019 which will require to be addressed in LDPs is the concept of 'Local Place Plans' (LPPs). While LPPs are not part of the development plan per se, they are intended to stimulate and encourage debate in local communities about the future of a place and the planning authority is required to have regard to them in the preparation of LDPs. Guidance on the preparation of LPPs is to be brought forward by Scottish Government early in 2021. LPPs are the communities' plans and planning authorities will not be leading this process.

D2 Development Plan Scheme No.13

In view of the foregoing it is proposed that the council should commence preliminary preparation of LDP 2 in the early part of 2021 and for this to be done within the context of the current legislative framework established by The Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006). It is, however, recognised that LDP 2 will most likely require to be concluded and adopted under the new regulatory regime introduced by The Planning (Scotland) 2019 Act.

Scottish Government published [Transitional Guidance](#) in November 2020 which recognised that planning authorities across Scotland were at varying stages in the development plan process and advises that only proposed local development plans that are published before June 2022 will be able to proceed to adoption under the existing procedures and that emerging local development plans which have been commenced but which have not yet reached Proposed plan stage would be subject to the new process introduced by the 2019 Act.

As it is unlikely that the council can accelerate the preparation and completion of its second LDP from a standing start to June 2022, especially given the current Coronavirus pandemic and the limitations which this imposes on the ability to effectively consult and engage with our communities, it is almost inevitable that the preparation of LDP 2 will have to have regard to both existing and new regulatory regimes. It will, therefore, need to be sensitive and alert to the content and procedural changes that have yet to be enacted in order to ensure that the document can be satisfactorily aligned and made compliant with the requirements of the new Act at this later date and this will present additional challenges. At this time, the key changes envisaged will be to reflect the first new Regional Spatial Strategy and the emerging NPF 4 and consolidated SPP.

Taking this into account a draft DPS (DPS No.13) for the next West Lothian Local Development Plan (LDP 2) has been prepared and is attached as Appendix 1.

It will be appreciated that the absence of a comprehensive framework of legislation relating to the new development plan preparation process at this time, coupled with an ever-changing Coronavirus situation, significantly impacts on the ability to reliably forecast programming and timetabling for development plan preparation and it is therefore important to recognise that dates shown in the proposed DPS No.13 may be subject to change as events unfold. Because of this, it is intended that an interim DPS incorporating an updated timetable for the production of LDP 2 will be brought forward later in 2021 once there is more clarity. It does however remain the council's aspiration to achieving the adoption of LDP 2 sometime in 2024.

Notwithstanding the current state of flux in terms of legislation, it has always been the intention to make best use of the time available to 'front load' work to inform the preparation of LDP 2 in order to enable the plan to be brought forward for adoption as soon as possible and this remains the case.

Thorough evidence gathering exercises will be required to inform LDP 2 prior to its publication. Despite the planning system facing unprecedented challenges as a consequence of the Coronavirus pandemic, it is nevertheless proposed to conduct a programme of focused public engagement events in accessible locations throughout West Lothian, albeit that this will be dependent on the public health situation improving and in compliance with prevailing government guidance at the time.

A formal Participation Statement setting out proposals for engagement and interaction with interested parties (and also for those who wish to progress the preparation of Local Place Plans) will be prepared at a future date.

Over the coming months it is intended that timely reports will be presented to elected members to ensure they are kept advised on the progress of LDP 2.

E. CONCLUSION

There is a legislative requirement for the council to prepare a DPS for the LDP at least annually. The DPS sets out the council's programme for preparing and reviewing the Local Development Plan and indicates what will be involved at each stage. Once the council has agreed and adopted the DPS it requires to be given publicity and sent to Scottish Ministers.

DPS No.13 advises that LDP 2 is to be commenced in the context of the current legislative framework but will in due course transition to being concluded under the new regulatory regime introduced by The Planning (Scotland) 2019 Act once the associated regulations and guidance is expected to come into force in Spring/Summer 2022, in line with the publication of NPF 4 and RSSs. Further alterations to the timetable for the preparation of LDP 2 may require to be made at a future date to reflect emerging legislative requirements and progress on NPF4.

Officers will engage with communities and stakeholders and initiate a programme of consultation events when it is meaningful and practicable to do so to and a formal Participation Statement will be issued in due course. However, in the meantime, no consultation is anticipated before March 2021.

F. BACKGROUND REFERENCES

- [West Lothian Local Development Plan](#)
- [DPS No.12](#)

Appendices/Attachments: One – West Lothian Local Development Plan Development Plan Scheme No.13 (DPS No. 13)

Contact Person: Steve Lovell, Principal Planning Officer, Development Planning, 01506 282430
Email: steve.lovell@westlothian.gov.uk

Craig McCorriston
Head of Planning, Economic Development & Regeneration

23 February 2021

APPENDIX 1



West Lothian Local Development Plan
DEVELOPMENT PLAN SCHEME

DPS No.13

FEBRUARY 2021

Approved by West Lothian Council Executive on TBC

Development Plan Scheme No.13 is available to view online at
<https://www.westlothian.gov.uk/article/33809/Local-Development-Plan-Scheme-DPS->

During the plan-making process, regular progress updates will appear on the council's website
at <https://www.westlothian.gov.uk/LDP>

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What is a Development Plan Scheme (DPS)?

1. Planning legislation requires each planning authority in Scotland to prepare a **Development Plan Scheme** (DPS) at least annually. The scheme is to set out the authority's programme for preparing and reviewing their Local Development Plan and to indicate what will be involved at each stage.
2. The DPS must include a **Participation Statement** stating when, how and with whom consultation on the plan will take place and authorities are expected to make use of a range of innovative techniques and activities for consulting stakeholders, tailored to local circumstances and the issues being dealt with in the plan.
3. Once the authority has agreed and adopted a DPS it requires to be sent to Scottish Ministers and given publicity and will therefore be published online on the council's [web site](#). However, due to the ongoing Coronavirus pandemic, the Coronavirus (Scotland) Act 2020 has placed a requirement on local authorities to consider if any of its actions would give rise to a significant risk of transmission of the virus and has meant that the opportunity to inspect documents at a physical location such as a council office or a library has had to be suspended at this time.



4. This is the thirteenth Development Plan Scheme for West Lothian and replaces the previous scheme (February 2020). This new edition recognises reforms made to the development planning system arising from the [Planning \(Scotland\) Act 2019](#) and sets out the council's programme for the preparation and adoption of what will be the second West Lothian Local Development Plan (LDP 2).

What is a Development Plan?

5. A development plan is a document that sets out policies and proposals for the future development and use of land and identifies where development should or shouldn't take place. It seeks to identify the most appropriate locations for new development while at the same time protecting the places people value or which are environmentally sensitive. Once adopted it becomes the basis for assessing and making decisions on applications for planning permission.
6. Development Plans are also supported by an **Action Programme (AP)** which outlines how and when the policies and proposals of the plan are to be delivered. The AP is an important part of the framework for how the council monitors the performance of the LDP.
7. The adopted development plan for West Lothian is provided by the [Strategic Development Plan for Edinburgh and South East Scotland 2013](#) (SDP 1) which was approved with modifications by Scottish Ministers on 27 June 2013, and the [West Lothian Local Development Plan 2018](#) (LDP 1) which was adopted on 4 September 2018.
8. To support policies of LDP 1 and to assist decision making, the council has prepared a comprehensive suite of statutory and non-statutory [planning guidance](#). These documents have been subject to public consultation, approved by Council Executive, and in the case of statutory guidance, subjected to additional scrutiny by Scottish Ministers before being adopted. Some of the guidance has yet to be completed, however this continues to be addressed by the council and it, and all of the other guidance will remain in force until LDP 1 has been superseded.
9. Work to replace the Strategic Development Plan had been at an advanced stage but in May 2019 the Scottish Ministers rejected the proposed second [Strategic Development Plan for South East Scotland](#) (SDP 2) and the constituent local authorities of the Strategic Development Planning Authority for Edinburgh and South East Scotland (SESplan) collectively decided not to prepare a revised SDP. This however ceased to be an issue when the Planning (Scotland) Act 2019 came into force (also in May 2019) and disbanded strategic planning authorities and abolished Strategic Development Plans. Arrangements for formal wind up of SESplan are awaited from Scottish Government.
10. For as long as LDP 1 remains in force there are a number of ongoing tasks which require to be undertaken, one of which is updating the Action Programme (AP) that runs alongside and supports the delivery of the LDP. Under the new Planning (Scotland) Act 2019, Action Programmes are renamed 'Delivery Programmes' and West Lothian Council will adopt this terminology when preparing the second update of the Action Programme in 2021.
11. Planning authorities are ordinarily required to update their APs at least every two years. However, the Scottish Ministers have specifically required that the West Lothian Local Development Plan Action Programme is updated and re-published annually until the end of the current LDP plan period.
12. The council is required to consult on draft versions of the Action Programme with the Key Agencies, the Scottish Ministers and anyone the council proposes specifying by name in the Action Programme. The council must also consider their views when finalising the Action Programme for adoption. The [first annual revision](#) was approved by Council Executive on 15 December 2020.

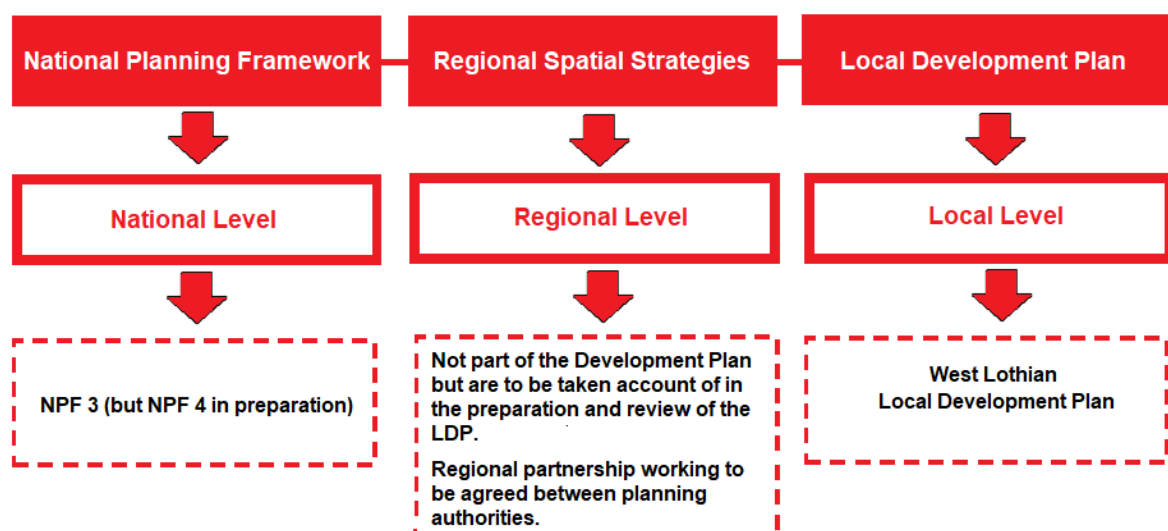
The Changing Legislative Position

13. The new Planning (Scotland) Act 2019, enacted in July 2019, makes substantive changes to the Town & Country Planning (Scotland) Act 1997 and specifically the process for preparing development plans. The Scottish Government's overarching aim is to make development plans more delivery focused, effective and achieve greater community involvement.
14. The most significantly relevant changes include:
 - removing the requirement to prepare Strategic Development plans;
 - removing provisions which allowed statutory Supplementary Guidance to form part of the development plan;
 - incorporating Scottish Planning Policy (SPP) into the National Planning Framework;
 - making the National Planning Framework part of the Development Plan;
 - introducing Regional Spatial Strategies (RSS) to provide long term spatial development frameworks at regional level;
 - replacing Main Issues Reports with a new "Evidence Reports"
 - changing regulations to allow the Proposed Plan to be more of a consultative document;
 - changing the current 5-year timescale for development plans to 10 years; and
 - introducing the potential for local communities to prepare new "Local Place Plans"
15. While secondary legislation to enable implementation of the new Act has begun to come forward (with some sections of the Act already commenced) much of the guidance and detailed transitional arrangements have been delayed, due in part to the Coronavirus pandemic, and they are now not expected to be in place until the early part of 2022. The Scottish Government is progressing a detailed work programme which will implement the new Planning Act and which can be linked to [here](#).
16. This, together with the fact that LDP 2 had been premised on SDP 2 being adopted in 2019 (but which is no longer feasible) has required the council to reassess and modify the arrangements for preparing LDP 2 previously set out in DPS No.12.
17. It remains the council's intention to commence preliminary preparation of LDP 2 in the early part of 2021 and for this to be done within the context of the current legislative framework established by The Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006).
18. It is however recognised that LDP 2 will most likely require to be concluded and adopted under the new regulatory regime introduced by The Planning (Scotland) 2019 Act. Transitional guidance issued by Scottish Government in November 2020 advises that only proposed local development plans that are published before June 2022 will be able to proceed to adoption under the existing procedures and it states that emerging local development plans which have been commenced but which have not yet reached that stage are to be subject to the new process introduced by the 2019 Act.

19. Notwithstanding, preparation of LDP 2 will be sensitive and alert to the content and procedural changes that have yet to be enacted in order to ensure that the document can be satisfactorily aligned and made compliant with the requirements of the new Act at this later date with minimal need for adjustment. At this time, the key changes envisaged will be to reflect the first new Regional Spatial Strategy and the emerging NPF 4 and consolidated SPP.
20. Evolving changes to the development plan process coupled with the unpredictability of the Coronavirus situation creates unprecedented challenges in setting out detailed work programmes and engagement activity. There is a requirement to build in enough flexibility to be able to commit resource to contribute to the plan making processes and all that is involved in developing an approach suitable for West Lothian which will also fit within the new Act. As a consequence the council gives notice that the programming and timetabling set out in the DPS should be recognised as aspirational and which may be subject to change as events unfold.

The New Development Plan Process Explained

21. Following the introduction of the Planning (Scotland) Act 2019, there are to be two levels of development planning in Scotland – the National Planning Framework (informed by Regional Spatial Strategies) and Local Development Plans.



The National Planning Framework for Scotland (NPF)

22. The NPF is authored by the Scottish Government and sets out a long-term spatial strategy for the development of Scotland as a whole and what Scottish Ministers consider to be development priorities. The [Third National Planning Framework for Scotland](#) (NPF 3) was published in June 2014. It references a number of 'National Developments' and other provisions. Those impacting on West Lothian include the Central Scotland Green Network and High-Speed Rail.
23. NPF 3 is however scheduled to be replaced and the most recent update from the Scottish Government suggests the publication of a draft NPF 4 in autumn 2021 when it will be laid before Scottish Parliament and a finalised version in spring/summer 2022. It is however important to be aware that the timetable has already been impacted by the Coronavirus pandemic and further delays cannot be ruled out.

24. Significantly, NPF 4 will incorporate [Scottish Planning Policy \(SPP\)](#) which contains detailed national policy on a number of planning topics and for the first time spatial and thematic planning policies will be addressed in one place. NPF 4 has also been made the vehicle for identifying the housing land requirements for LDPs, taking over this role from the soon to be abolished SDPs, and its enhanced status as an integral part of the development plan will give it a much stronger role in informing day to day decision-making.
25. As a consequence, NPF 4 is expected to look very different from NPF 3, with a longer time horizon to 2050, fuller regional coverage and improved alignment with wider programmes and strategies, including on infrastructure and economic investment. NPF 4 will also be capable of being amended at any time.
26. Further information on changes to the planning system is available on the [Scottish Government](#) webpage.

Regional Spatial Strategies

27. The Planning (Scotland) Act 2019 removed the requirement to prepare SDPs and instead requires the preparation and adoption of **Regional Spatial Strategies** (RSS). Although not part of the Development Plan, these documents will provide a framework for both the preparation of the NPF and Local Development Plans. They are long-term spatial strategies which identify the need for strategic development, the outcomes to which strategic development will contribute, the priorities for the delivery of strategic development and proposed locations, all shown in the form of a map or diagram. West Lothian Council has worked collaboratively with the SESplan member authorities to prepare a RSS and this will help inform the emerging National Planning Framework 4. An 'interim' RSS was drafted and submitted to Scottish Government at the end of 2020 and was finalised in early 2021. It can be viewed [here](#).

Local Development Plans (LDP)

28. As before, LDP's are prepared by local planning authorities and set out detailed policies and proposals for their particular area to guide the use of land and buildings over a 10-year period. The new Local Development Plan preparation process under the requirements of the Planning (Scotland) Act 2019 is however to firstly comprise of an **Evidence Report** setting out the council's position on a range of social, economic and environmental planning matters. This is then submitted to Scottish Ministers for review (referred to as a 'gatecheck').
29. Following confirmation that the Scottish Ministers are content with the Evidence Report, Local Planning Authorities are then enabled to progress with the Proposed Plan. This requires to be submitted to Scottish Ministers and is subject to Examination. Following this, Planning Authorities can then adopt their Local Development Plan, taking account of the findings and recommended modifications from the Examination.
30. Under the new Planning (Scotland) Act 2019 provisions relating to supplementary guidance are repealed, so that it will no longer be possible for local planning authorities to prepare non-statutory supplementary guidance that forms part of the development plan. However, the ability to continue to prepare non-statutory guidance in order to support the delivery of the plan strategy and policies is retained.

Local Place Plans (LPPs)

31. The Planning (Scotland) Act 2019 introduces the concept of **Local Place Plans**, and while these are not part of the development plan they are intended to stimulate and encourage debate in local communities about the future of a place and are to be taken account of by the planning authority in the preparation of an LDP.
32. Formal guidance on how Local Place Plans are to be prepared is to be brought forward by the Scottish Government early in 2021 but it has already been made clear that these will be the communities' plans and that local planning authorities will not be required to lead this process.

The West Lothian Local Development Plan (LDP 2) Process and Timeline

33. It is the council's intention to devote time during the early part of 2021 to 'front load' work to inform the preparation of LDP 2 in order to enable the plan to be brought forward for adoption as quickly as possible once all of the relevant new legislative and procedural arrangements are known and have been confirmed.
34. Figure 1 sets out the process and timeline for the preparation of LDP 2 on the basis that it is commenced under current regulations. The dates shown are however provisional and may be subject to change.

Figure 1: West Lothian Local Development Plan 2 (LDP 2) Process and Timeline

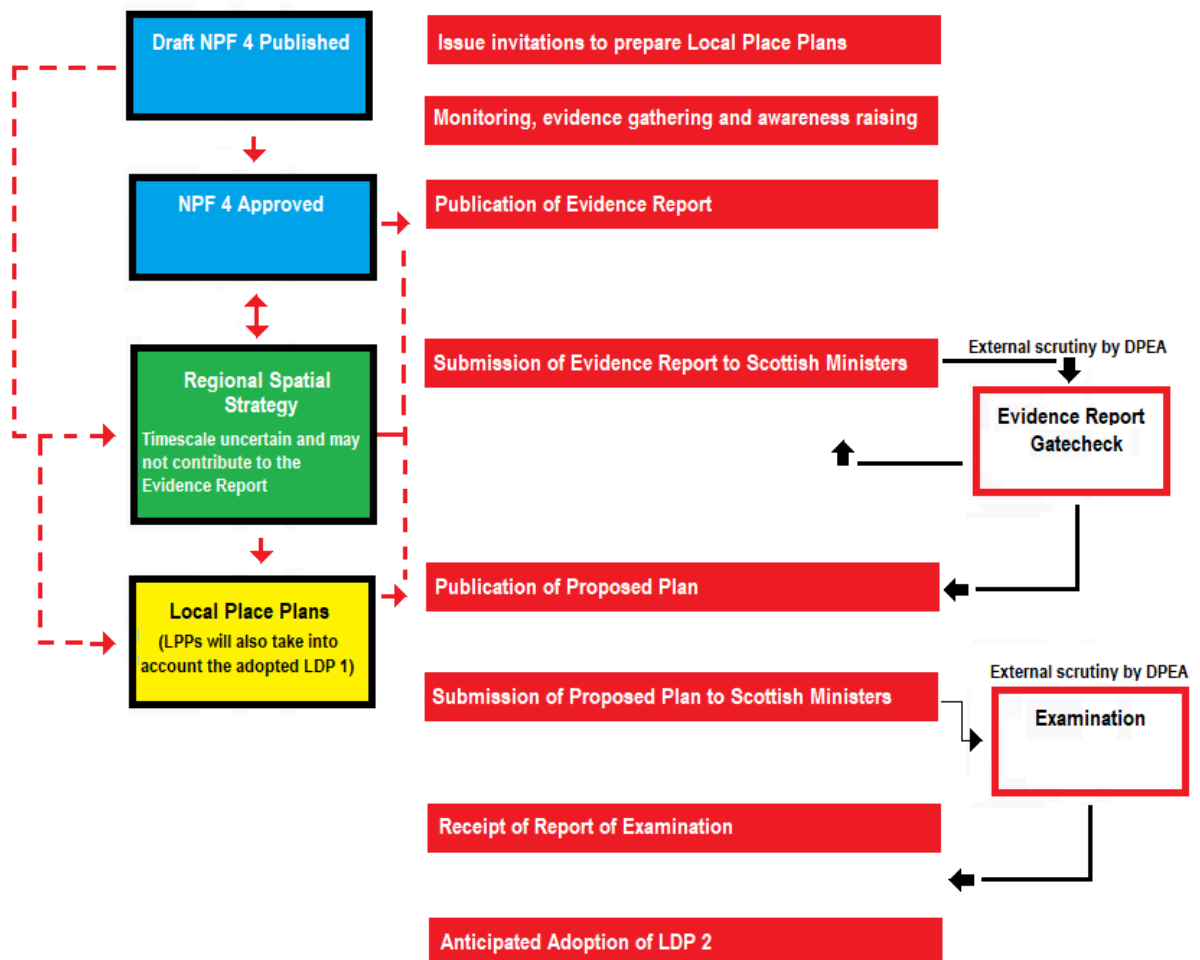
Q1 2022	Publication of Main Issues Report, Monitoring Report and Strategic Environmental Assessment (SEA)
Q4 2022 / Q1 2023	Publication of Proposed Plan including Environmental Report and Action Programme
Q2 2023	Submission of Proposed LDP, representations and a summary of unresolved issues to the DPEA for examination
Q4 2023 / Q1 2024	Examination Report
2024	Anticipated Adoption of LDP 2

35. Under this regime, the Plan will contain a spatial strategy, proposals map, action programme for identified developments and a schedule of the local authority's land interests affected by LDP policies or proposals. It will focus on specific proposals for the period up to Year 10 from the date of adoption.

36. The purpose of the LDP is to provide a clear basis for determining planning applications and to allocate land to meet the needs and targets (previously set out in the Strategic Development Plan) but now enunciated in the [Regional Spatial Strategy](#) which are to form part of NPF4.
37. The key components of the Plan are as follows:
 - **Publish the Development Plan Scheme (DPS)**
 - **Main Issues Report (MIR)**
38. The MIR is accompanied by an Environmental Report and Monitoring Statement. It is a consultation document that sets out the options for LDP 2. A wide range of stakeholders are consulted at this time including members of the public, community councils, community groups, businesses, infrastructure providers, key consultation agencies, neighbouring authorities and the Scottish Government. The MIR is the main consultation stage of the LDP process.
 - **Proposed Local Development Plan**
39. The Proposed LDP provides a stronger view of proposed development locations proposed by the council, informed by consultation responses at the previous stage. There is a formal consultation period following the publication of the Proposed LDP which provides an opportunity for formal representations (both in support and against the plan).
 - **Examination**
40. Following the consideration of representations, the Proposed LDP and a summary of unresolved issues is submitted to the Scottish Government's Planning and Environmental Appeals Division (DPEA) for examination. The Examination process is largely expected to be undertaken by way of written submissions but it is not uncommon for there also to be a number of hearing sessions to which interested parties are invited by the Examination Reporter to attend.
 - **Adoption**
41. The LDP is published and adopted with changes recommended by the Reporter.
42. An Action Programme is also adopted and published. The Action Programme identifies what developments are to be taken forward, who is responsible for delivery of these and when they will be delivered.
43. To ensure the LDP takes account of effects on the environment and does not adversely affect protected European nature conservation sites or any particular social group, the following assessments require to be undertaken as a part of the LDP preparation:
 - Strategic Environmental Assessment (SEA)
 - Equalities and Human Rights Impact Assessment
 - Habitats Regulations Appraisal
 - Monitoring Statement
 - Action Programme
 - Transport Appraisal

44. For information, Figure 2 illustrates the new process for preparing local development plans under the Planning (Scotland) Act 2019 and which LDP 2 will likely be transitioned to as it is progressed.

Figure 2: West Lothian Local Development Plan 2 (LDP 2) Process



Engagement and Participation

45. Regardless of which legislation governs the preparation of LDP 2, engagement and consultation will continue to be key elements of the plan-making process. As a place-based document that is designed to meet local planning needs and aspirations, it is important that LDP 2 reflects as far as possible the land use changes that people would wish to see in their communities.
46. The Planning etc. (Scotland) Act 2006 requires that a Development Plan Scheme includes a **Participation Statement** which describes how and when people can get involved in the preparation of LDP 2.

47. There will be several consultation periods and initiatives during the preparation of the LDP:
- Publication of statutory notices in the locally circulating newspapers (Lothian Courier and the Linlithgow Journal and Gazette) giving details of the consultation including where and when documents can be accessed/viewed and how to submit comments;
 - Publication of the consultation on the West Lothian Council website; and
 - Publication of where documents can be examined, principally West Lothian Council Libraries and Partnership Centres (Coronavirus restrictions permitting)
48. Additionally, public input will be obtained through a range of techniques and may include surveys, questionnaires and bespoke invitations to key agencies, community representatives, the West Lothian Citizen Panel, 'difficult to reach groups', neighbouring planning authorities and Scottish Government to comment.
49. While the planning system is facing unprecedented challenges during the Coronavirus pandemic the council nevertheless proposes to conduct a programme of focused public engagement events in accessible locations throughout West Lothian, albeit that this will be dependent on the public health situation prevailing at the time. Should this prove impractical it will endeavor to communicate and engage through video conferencing and social media.
50. Following the close of this public consultation period, representations will be recorded and reported to Council Executive for consideration.
51. Publication of the Proposed Plan will be confirmation of the council's settled view on the policies and proposals that make up LDP 2. However, there will be a final opportunity for representations to be made to the Proposed Plan.
52. In the event that there are remaining unresolved representations they will be notified to Scottish Ministers who would then appoint an independent planning Reporter as part of a public examination of the plan. Depending on the volume and nature of the representations the Examination could take many months and it could therefore be some time before a Report of Examination is issued to Scottish Ministers to consider.
53. Ministers may approve the plan with or without requiring modifications to be made. In the case of the former, the planning authority would be invited to modify the Plan as necessary, re-submit it to the Scottish Ministers and advertises its intention to adopt the Plan. The Plan may then be adopted after 28 days unless the Scottish Ministers direct otherwise.
54. An interim Participation Statement and a Participation Strategy are required and these are provided as Appendices A & B respectively.
55. A review of LDP 1 will commence in early 2021 and will include a policy review and a sustained period of evidence gathering which will focus on the views of a wide cross-section of groups on land use related matters.
56. Drawing on the review, feedback from the early engagement exercise and the conclusions of technical background work, the council will prepare a Monitoring Report setting out its views on the characteristics of West Lothian and addressing the capacity of infrastructure and the requirement for any additional development land.

57. The council is aware that the Planning (Scotland) Act 2019 introduces a particular requirement to consult with disabled persons, gypsies and travellers, and children & young people and undertakes to have particular regard to these social groups notwithstanding that the new plan is to be commenced under current regulations.
58. The new Act also requires a planning authority to make arrangements that they consider appropriate to promote and facilitate participation by children and young people in the preparation of the LDP. This in addition to the public sector equality duty established in the Equality Act 2010 which includes a requirement for public authorities in the exercise of their functions to advance equality of opportunity between people who share a relevant protected characteristic and those who do not, and it is once again intended that these matters are taken account of.
59. An Equality Impact Assessment (EqIA), which assesses the impact of the plan on the identified protected characteristics groups (which include age, disability, and race – including gypsies and travellers) will be published in the course of preparing LDP 2.

LDP 2 Programme Summary

60. In terms of the timetable for the production of LDP 2, it is known that the current Coronavirus pandemic is affecting the Scottish Government's own timescales for producing NPF 4 and associated guidance. Detailed timescales for key stages of development are anticipated to be confirmed once there is more clarity around content and expectations and at which time the council would propose to [republish the Development Plan Scheme](#) with an updated timetable for production of LDP 2.

	2021				2022				2023				2024			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Publish MIR, Monitoring Report and SEA																
Publish Proposed Plan including Environmental Report and Action Programme																
Submit Proposed Plan for Examination																
Examination Report Published																
Adopt LDP 2																

Keeping You Informed

West Lothian Council undertakes to keep the public, interested parties and stakeholders informed and engaged throughout the LDP 2 process and will have due regard to the provisions of the Scottish Government's [Planning Advice Note 3/2010](#) on 'Community Engagement'.

We have established a contact mailing list to enable you to be kept advised on the progress of LDP 2, particularly at key stages in the process when the council will be actively seeking input. To register, click [here](#) and enter 'LDP 2 - PARTICIPATE' in the subject line of the email that opens up. Then enter your name, email/postal address and phone number in the body of the email and press 'send'. Receipt will be acknowledged within 3 working days and you will be provided with a copy of our data sharing privacy notice.

Alternatively, you can:

- visit the Local Development Plan website at:
<https://www.westlothian.gov.uk/developmentplans>
- email us at:
wldp@westlothian.gov.uk
- phone us on:
[01506 280000](tel:01506280000)
- write to us at:
[Development Planning & Environment, Civic Centre, Howden South Road, Livingston, West Lothian, EH54 6FF](#)

APPENDIX 1: PARTICIPATION STATEMENT

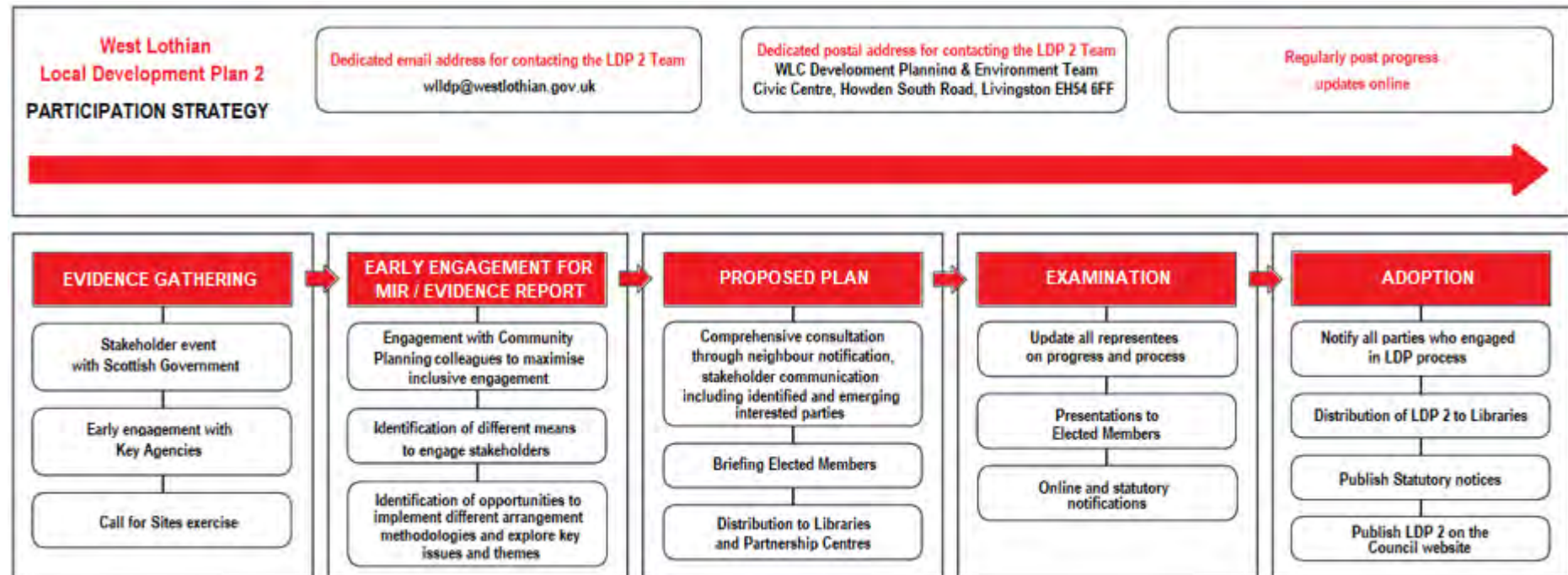


- Participation in the plan-making process is open to everyone.
- The Planning (Scotland) Act 2019 puts particular emphasis on empowering and engaging with local communities in the preparation of local development plans, and the council is committed to adhering to these principles.
- The council is mindful of its responsibilities to be as inclusive as possible and will make a particular effort to reach out to previously 'hard to reach' groups and overcome barriers to their participation.
- We will make the best use of our resources to establish and maintain meaningful engagement with all stakeholders. This includes individuals, local communities, employers, community councils, community planning partners, community interest groups, key agencies, the development industry, infrastructure providers, council service providers and Scottish Government.
- This will include an explanation of **why** we are consulting, **how** we will be consulting and **what** will happen with the responses that we hope to receive.
- We want to ensure that anyone taking the time and making the effort to actively engage in the process can do so in the knowledge that their contribution matters and can make a difference.

- It is important that people are aware of the process and of the opportunities to comment, particularly at key stages in the production of LDP 2, and we will use the media, newspaper notices and the council's website to achieve this. We will also employ the council's extensive community planning network and will work through our community councils to share and distribute information.
- We will make every effort to produce clear, concise and accessible documents that are written in everyday language and which people can readily understand.
- We will engage with communities and stakeholders and initiate a programme of consultation events as soon as it is meaningful and practicable to do so to. However, no consultation is expected in the period to March 2021 and the [council's website](#) will be updated as and when there is anything new to report.
- While it is anticipated that an increasing amount of engagement and exchange of information is likely to take place via the internet, we recognise that not everyone has access to an online facility or broadband and some people may choose not to use them. We will therefore seek to adopt and offer alternative consultation and engagement methods wherever possible.
- Above all, the council is committed to actively engaging and involving all communities and all stakeholders in the preparation of the second West Lothian Local Development Plan.

APPENDIX 2:

PARTICIPATION STRATEGY



If you have any questions specifically relating to the preparation of LDP 2
please email the Development Planning & Environment team at wlldp@westlothian.gov.uk

If you have any questions of a more general nature related to the Development Planning process or
you want to provide feedback and comments on our service, please email the Development Planning
and Environment team at DPgeneral@westlothian.gov.uk

Development Plan Scheme (DPS) No. 13

Approved by West Lothian Council Executive on **DATE TO BE CONFIRMED**

West Lothian Council, Development Planning & Environment, Civic Centre, Howden South Road,
Livingston, EH54 6FF

Tel: 01506 28 00 00 Email: wlldp@westlothian.gov.uk



DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

UPDATE ON SCOTTISH PLANNING POLICY FINALISED AMENDMENTS, PLANNING ADVICE NOTE (PAN) 1/2020, and THE WEST LoTHIAN HOUSING LAND POSITION

REPORT BY HEAD OF PLANNING, ECONOMIC DEVELOPMENT & REGENERATION

A. PURPOSE OF REPORT

The purpose of this report is to advise the Council Executive of the publication of finalised amendments to Scottish Planning Policy (SPP) and Planning Advice Note (PAN) 1/2020 and to advise on the preparation of a Housing Land Position Statement which sets out the council's effective housing land supply calculation. If endorsed by Council Executive the Housing Land Supply Position Statement will be a material consideration to be taken into account when determining planning applications and defending decisions at appeal.

B. RECOMMENDATION

It is recommended that the Council Executive:

1. notes the terms of the finalised amendments to Scottish Planning Policy and the reasons for the amendments (Appendices 1 and 2);
2. notes the publication of Planning Advice Note 1/2020 (Appendix 3);
3. notes that the West Lothian effective housing land supply is above the five year requirement;
4. notes that the revised Scottish Planning Policy and the new Planning Advice Note 1/2020 are material considerations in the determination of planning applications and should carry considerable weight in any determination; and
5. approves the content of the West Lothian Housing Land Position Statement, which will become a material consideration in the assessment of planning applications (Appendix 4).

C. SUMMARY OF IMPLICATIONS

I	Council Values	Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; and working in partnership.
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Scottish Planning Policy (SPP) was first published by the Scottish Government in 2014. It sets out the Scottish Government's policy on land use planning matters. It is also used to inform decisions on planning applications. The content of SPP is thus a material consideration in planning matters.

Amendments to SPP were published on 18 December 2020. Scottish Planning Policy with finalised amendments will be a material consideration until the publication of National Planning Framework 4 in 2022.

Maintenance of a five-year effective housing land supply is a specific requirement of Scottish Planning Policy (SPP), SDP Policy 7 and LDP Policy HOU 2.

There are no equality, health or risk assessment issues, or SEA issues at this stage.

III	Implications for Scheme of Delegations to Officers	None.
IV	Impact on performance and performance Indicators	None.
V	Relevance to Single Outcome Agreement	Outcome 8 - We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.
VI	Resources - (Financial, Staffing and Property)	None.
VII	Consideration at PDSP	A report on the revisions to SPP and the proposed Housing Position Statement was considered by the D&T PDSP on 2 February 2021. The panel noted the changes including the five year land supply position.
VIII	Other consultations	None.

D. TERMS OF REPORT

D1 Background

Scottish Planning Policy (SPP) is a Scottish Government policy statement on how important land use planning matters should be addressed across the country. Development Plans are required to be consistent with the terms of SPP. Amongst other things, SPP requires Planning Authorities to maintain a 5-year effective housing land supply at all times.

D2 The Finalised Amendments

Scottish Ministers consulted on interim changes to SPP July 2020. The consultation was prompted by concern over the impact of the coronavirus pandemic on the ability of planning authorities to maintain the review cycle of local development plans within the timeframes they intended, affecting LDP delivery programmes and the rate of housing completions and a decision by the Court of Session, *Gladman v Scottish Ministers* which raised a number of issues relating to the policy wording used in SPP and which Scottish Government believed to require clarification.

The council's response to the consultation was reported to Council Executive on 6 October 2020 with the agreed response subsequently issued to Scottish Government.

Following consideration of the consultation responses Scottish Government published finalised amendments to SPP (Appendix 1) and a further document explaining the Scottish Government's response to the consultation (Appendix 2).

The finalised amendments have made changes to paragraphs 28, 29, 30, 32, 33 and 125 of SPP. Planning Advice Note (PAN) 1/2020: Assessing the Extent of the 5-Year Supply of Effective Housing Land was also published by the Scottish Government at the same time to reflect the amendments to SPP in relation to housing land matters (Appendix 3).

The main changes to SPP can be summarised as follows:

- The presumption in favour of development that contributes to sustainable development has been reworded to simply be a 'presumption in favour of sustainable development'.
- Provisions that previously elevated the presumption to a significant material consideration in circumstances where Development Plans are out of date, or where there is a shortfall in the effective housing land supply have been removed.
- If a shortfall in a 5-year housing land supply is established, the weight afforded to any such shortfall is a matter for the decision maker.
- A method for calculating a 5-year housing land supply has been established in a new Planning Advice Note – PAN 1/2020.
- The primacy of the development plan in the determination of planning applications is affirmed.

The finalised amendments to SPP are a welcome amendment and will provide communities and investors with greater certainty that planning applications will be assessed in accordance with the development plan. Further, the introduction of a definitive methodology for the calculation of a 5-year effective housing has been long-awaited and should hopefully remove the lengthy and time consuming debates over which methodology is the most appropriate. It should be noted however, that the amended policy is only in force until National Planning Framework 4 is adopted, which is anticipated to be in 2022.

Previously there was dubiety over whether the presumption in favour of sustainable development was triggered because a development plan was out of date. The development plan is defined as a 'Local Development Plan supported by Supplementary Guidance and in the four largest city regions, the development plan also includes a Strategic Development Plan (SDP), which may also be supported by Supplementary Guidance'. It was not clear if one or both plans had to be over five years old for the presumption to be triggered. The changes now remove the link between the presumption of sustainable development and out of date plans, therefore removing any dubiety if the presumption is triggered due to the SDP, in this case SDP1 approved in 2013 and the associated Supplementary Guidance on housing land, being more than 5-years old.

D3 PLANNING ADVICE NOTE 1/2020. ASSESSING THE EXTENT OF THE 5 YEAR SUPPLY OF EFFECTIVE HOUSING LAND

Planning Advice Note (PAN) 1/2020 introduces a methodology for calculating the 5-year effective housing land supply which is welcomed and will provide clarity for all involved in the planning process when determining whether or not a 5-year supply is being maintained. There are two important features with the method set out in PAN 1/2020.

Firstly, it uses the average approach, which ignores shortfalls accumulated over the development plan period. This is the same approach that has been historically adopted by the council, but notably not, in all cases, by Reporters in previous appeal decisions affecting West Lothian. The Scottish Government whilst accepting any methodology has limitations found that the residual approach (i.e. to take account of shortfalls) can lead to unrealistic revised housing targets, particularly at the end of a plan period, whilst the average approach (ignoring shortfalls accumulated) is more straightforward and predictable.

Secondly, the method set out in PAN 1/2020 uses a 'housing land requirement' figure from development plans. This figure is derived by adding the 'housing land target' to a generosity allowance. The generosity allowance as set out in the adopted West Lothian Local Development Plan (LDP) is 10%. Historically, calculations used by the council and planning applicants have usually used the 'housing land target' figure, however the *Gladman V Scottish Ministers* ruled the appropriate figure to use is the 'housing land requirement' figure and this is now embedded into Scottish Government planning policy.

The annual Housing Land Audit is used as a tool to assess the 5-year effective housing land supply and this is to continue, as does PAN 2/2010 – Affordable Housing and Housing Land Audits. The latest Audit for West Lothian is the 2020 Audit which demonstrates a 5-year effective land supply of 8,363 homes. In preparing the Housing Land Audit consultation is carried out with Homes for Scotland, a national body representing housebuilders. Homes for Scotland disputed 3 sites which leaves an agreed total of 8,157 homes.

D4 Housing Land Position Statement

In light of the amendments to SPP and PAN 1/2020 a housing land supply position paper has been prepared which sets out the council's position on the housing land supply, using the 2020 Housing Land Audit. This demonstrates that a five year effective supply exists therefore satisfying Scottish Government requirements to maintain a 5-year effective housing land supply at all times. The Position Statement is attached as Appendix 4.

PAN 1/2020 provides decision makers with increased clarity. Although the SDP outlines the housing land requirement until 2024 and the current five year supply period extends beyond that the methodology in the PAN is clear that a simple approach should be taken and that is the approach adopted by the council.

It is, however, worth noting that Housing Need and Demand Assessment (HNDA2) provides a more up to date assessment of the current need and demand for housing than is included in the Strategic Development Plan. HNDA2 was certified 'robust and credible' by the Scottish Government in March 2015 and was used to inform SDP2.

The Reporter for the SDP2 used HNDA2 as an evidence base in which the housing supply targets were derived after taking into account wider economic, social and environmental factors, issues of capacity, resource and deliverability, as required by para. 115 of SPP.

Paragraph 21 of the SDP2 Report of Examination (page 238) notes that HNDA2 clearly points to the demand for market housing in the future being significantly lower than was built during the years before the recession and that no convincing evidence had been provided to undermine the findings of HNDA2. The HNDA2 figures could, therefore, be used to assess demand in the latter year of the five year period. A table showing this assessment is included in the appendix and it will be noted that this approach further increases the surplus over and above the 5 year requirement.

E. CONCLUSION

The finalised amendments to SPP are a welcome amendment and will provide communities and investors with greater certainty that planning applications will be assessed in accordance with the development plan.

Further, the introduction of a definitive methodology for the calculation of a 5-year effective housing as set out in PAN 1/2020 has been long-awaited and should hopefully remove the lengthy and time consuming debates over which methodology is the most appropriate. Using this methodology the council can demonstrate that a 5 year effective housing supply exists.

F. BACKGROUND REFERENCES

Scottish Planning Policy 2014

Appendices/Attachments: four

Appendix 1: The Scottish Government's response to the recent consultation on changes to the Scottish Planning Policy

Appendix 2: Scottish Planning Policy: finalised amendments, December 2020

Appendix 3: Planning Advice Note 1/2020

Appendix 4: West Lothian Council Housing Position Paper January 2021.

Contact Person: Margaret Stone, Planning Officer.

Email: margaret.stone@westlothian.gov.uk

Craig McCorriston
Head of Planning, Economic Development & Regeneration

23 February 2021

Scottish Planning Policy

Finalised Amendments

December 2020

Scottish Planning Policy - Finalised Amendments - December 2020

1. BACKGROUND

On 17 July 2020 the Scottish Government published a consultation paper setting out proposed interim changes to the Scottish Planning Policy (SPP) (2014).ⁱ The consultation period closed on 9 October 2020.

The Scottish Ministers have since reflected on the responses to the consultation, including evidence highlighted by respondents and gathered during the consultation period. This paper:

- Summarises the key issues arising from responses to the consultation. A fuller analysis is set out in an independent report.ⁱⁱ
- Reflects on available evidence.
- Sets out the Scottish Government's response, in light of the comments and evidence received.
- Sets out our finalised interim policy position including revised text of the relevant sections of the Scottish Planning Policy 2014.

Enabling the delivery of good quality development is an important objective for the Scottish Government. The Scottish Ministers wish to see homes and other essential developments delivered in a way that respects and is consistent with development plans that have been drawn up with input from local communities and other interests.

Our final policy position reflects our view that the planning system requires co-operation from all parties to work together effectively to deliver good quality development. It is clear that there are many different views on how that can best be achieved, and that this is a key issue for the wider review of national planning policies to consider further.

The amended interim policy is intended to make the system more transparent, fairer and more consistent with these objectives, ahead of National Planning Framework 4 being adopted in 2022.

The consultation process

We considered the consultation to be necessary, as a result of recent litigation and complexity arising from certain parts of the Scottish Planning Policy. Some of the proposed changes also aimed to respond to the impact of COVID-19 on the planning system and housing developments. Overall, views on the proposals were divided, with some supporting the changes and others opposing them.

Some responses expressed concern about the consultation process, its timing and the lack of a transition period, forewarning or scope for earlier involvement. Issues included the scale and significance of the changes proposed (with suggestions that the paper's title and assessments underplay its impacts), a perceived lack of supporting evidence and impact assessments, the accessibility / language used in the consultation paper and presentation of the proposals as relating only to housing matters rather than wider development proposals. In response to these views:

- **There was a good level and range of responses to the consultation.** We received 244 responses by the deadline from a wide range of stakeholders including public and private sector organisations, community groups and individuals, as set out in the independent consultation analysis report. This number and range exceeds the response from the consultation undertaken when the presumption was introduced in the 2014 version of the Scottish Planning Policy (160 responses).
- **There is no evidence to suggest there was widespread or universal dissatisfaction with the consultation process.** In response to a specific question on the Citizen Space platform, a minority of respondents (28) who expressed a view felt dissatisfied with the consultation, a majority (83) were satisfied, and the remainder did not express a view or a preference either way.
- **The title of the consultation was not intended to minimise its importance.** This is undoubtedly a complex area of planning, the paper was titled as a 'technical consultation' to accurately describe its content, rather than as an attempt to minimise its significance. We fully appreciate the importance of the issues and this is reflected in our decision to formally consult on the proposals.
- **We provided extra support to a range of stakeholders.** To help stakeholders understand the proposals, we offered support to a range of representative organisations by meeting with them to answer their questions and clarify issues.
- **Sufficient time was allowed for responses.** The consultation period was of sufficient length to allow respondents to submit their views in a timely manner.
- **Overall this has been a meaningful and effective consultation.** Whilst we recognise that this is a difficult topic for some people to engage with, taking into account the number and range of responses we have received, we do not agree with assertions that this consultation has been underplayed or that people have not had an opportunity to express their views as a result.

2. THE PRESUMPTION IN FAVOUR OF DEVELOPMENT THAT CONTRIBUTES TO SUSTAINABLE DEVELOPMENT

- Question 1 in the consultation paper focused on the presumption in favour of development that contributes to sustainable development.
- We proposed removing the statement that *“This SPP introduces a presumption in favour of development that contributes to sustainable development.”*
- We also proposed removing paragraphs 32 and 33 of the SPP which explain how the presumption should be applied in development management. Paragraph 32 states that the presumption will be a material consideration for proposals that do not accord with up-to-date development plans. Paragraph 33 states that where relevant policies in a development plan are out-of-date the presumption will be a significant material consideration. Paragraph 33 also gives significant weight to the presumption if there is not enough ‘effective’ land available for housing development. A minor adjustment to the wording of paragraph 30 was also proposed for cross-referencing.
- The consultation paper did not propose changes to paragraph 29 of the SPP which sets out the principles of sustainable development in more detail.

Views

As set out in our consultation analysis report there was both support for, and opposition to, these proposals. In summary, the analysis of responses showed that there are strong and contrasting views on a number of issues:

- A large majority of individual respondents supported the proposals as did all members of the community and third sector groups and local authorities who indicated a clear view. In contrast, all energy and housing developers and all but one planning consultancy opposed the proposals. Representative bodies were evenly divided, with their position reflecting the sectors of their members.
- Many respondents supported the proposal to remove the overall wording on the presumption because:
 - the proposed changes were considered consistent with a plan led system;
 - considerable resources are spent on calculating and debating the 5 year effective housing land supply;
 - there is concern about the impact of Court decisions on encouraging speculative / unsustainable development;
 - there is doubt about the benefit of the presumption in addressing a shortfall in housing;

- there is agreement that there is no provision for a ‘tilted balance’ in the SPP; and
- it was recognised that the principles supporting sustainable development would remain in place.
- Many respondents also broadly agreed with changes to address the issue of plans being considered out-of-date (paragraph 33) but felt that clarification would still be required for handling of proposals where there are no relevant policies.
- Many respondents, largely energy and housing developers, opposed the proposal on the basis that:
 - The presumption is important for housing delivery in responding to failures to provide sufficient land for housing development.
 - The presumption is also relevant to non-housing developments.
 - The presumption was considered to be clear and consistent with a plan-led approach.
 - The Court’s views on a number of recent statutory appeals clarifies the application of the SPP.
 - The proposals would be more than a clarification or a technical change and so the matter should be addressed in National Planning Framework 4 rather than an interim policy.
 - There is wide support for sustainable development and the changes would send out mixed messages on this.
 - The presumption does not bring forward ‘bad’ or unsustainable development.
 - The presumption ensures that development can come forward where plans are out of date or not explicit.
 - Paragraphs 32/33 play an essential role in keeping plans up to date.
 - The changes would exacerbate the impacts of the pandemic on the housing supply.

Evidence

The following evidence has been taken into account in reaching our final policy position.

The need to clarify the policy

The extent of recent litigationⁱⁱⁱ demonstrates that there are different interpretations of the existing policy. Legal cases, including *Gladman vs The Scottish Ministers*, have shown that the policy as currently drafted alters or tilts the balance of decision making.

The Scottish Planning Policy aims to achieve the right development in the right place; it is not to allow development at any cost. The presumption as part of this sought to support development which is sustainable. A 'tilted balance', which has the potential to alter the assessment on sustainability of development that would be inconsistent with our broader understanding of sustainable development, was not an intended feature of our policy. The *Gladman* case established that the assessment of whether development is sustainable involves the use of the tilted balance. It also brings out that, where paragraph 33 of the current policy is engaged, it is sufficient that development "contributes" to sustainable development for the tilted balance to apply.

In addition, the information we have gathered on the application of the presumption to date (see below) demonstrates the complexity of the policy as it stands.

The impact of the COVID-19 pandemic on housebuilding and development planning

It is clear that the restrictions arising from COVID-19 have impacted on the construction sector. Stakeholders reported to us that there were high levels of applications to the job retention scheme and furloughing of employees, at least in the initial period where restrictions applied, and business confidence earlier in 2020 was reported to be low.

In terms of available evidence, data set out by the Construction Leadership Forum^{iv} notes that output in the Scottish construction sector contracted by 28.6% in June 2020 compared to June 2019. The Scottish Housing Market Review (July – September 2020)^v shows a significant fall in residential property sales (down by 63.5%) during the second quarter of 2020 and a subsequent strong recovery during July and August.

Figures relating to the housing supply (i.e. all sector new build completions) in 2020 are not yet available, but the affordable housing supply programme shows a significant fall in completions (by 84%). The extent to which the recent recovery signs arise from a catching up with activity that stalled during lockdown and will be sustained is not known at this point in time. However, Homes for Scotland gave evidence on the impact of COVID-19 to the Scottish Parliament's Economy, Energy and Fair Work Committee in May 2020.^{vi} This set out that the prospects for long term recovery of the housing market are very uncertain and that it may be 2 to 3 years before construction rates return to 'anything like' pre-COVID levels. Homes for

Scotland submitted evidence to the Advisory Group on Economic Recovery (AGER) which stated *that “even on best case scenarios...we may expect a reduction in completions for the year of around 30 to 40% from where they would otherwise have been”* and referred to low levels of consumer confidence being expected *‘for a while’*. Homes for Scotland also produced a Recovery Plan^{vii} which sets out the continuing impact of restrictions on capacity and the longer timescales required to complete homes.

Earlier this year we published advice on COVID-19 and development planning consultation and engagement.^{viii} This aimed to balance the limitations on engagement arising from a ban on public gatherings and the need for physical distancing with the need to keep plans up to date as far as possible. It also took into account concerns expressed by industry representatives about their limited capacity to engage in development planning and housing land audits at that time. The advice acknowledges that some delays to development plan timescales would be unavoidable and this conclusion informed comments on this in the paper.

We have since noted evidence provided by some respondents which suggests that COVID-19 is not the primary reason for several plans becoming out of date. We have also taken into account information we gathered to inform the preparation of transitional arrangements for development planning which have since been published.^{ix} Delays are likely to arise in the coming months for a number of reasons, including the revised NPF4 timescales, planning reform and the ongoing work to shape new style development plans, resources, and the ability of planning authorities to engage effectively with stakeholders and the public during the pandemic.

Application of the presumption to date

It is not possible to identify every case where the presumption has been applied or to ascertain whether or not it has been the determining consideration in granting approval. In responses to the consultation, examples were provided of the presumption having led to developments being approved. Some of these examples aimed to illustrate a point that the presumption is necessary to ensure the need and demand for homes can be met. Other examples were provided of the presumption being used to support homes without sufficient infrastructure or which were counter to community views about the future of their areas.

Since the consultation paper was published, we have considered a sample of appeal cases to assess the current impact of the presumption on delivering homes. This shows that the presumption is generally only referred to in appeal decisions relating to larger developments. In appeal cases, where the presumption has been applied prior to the *Gladman* case, an initial judgement has generally been made by the Reporter as to whether the proposal was sustainable development. Where applicable (i.e. there was a shortfall in housing land available or the development plan policies were out of date), the presumption was then subsequently applied by Reporters. In terms of the scale of the application of the presumption to appeal cases to date:

- 275 decisions were issued for appeals relating to 10 or more homes between April 2015 and August 2020. Of these 101 were allowed.

- 78 appeals related to proposals for development outwith an urban area (exceptional release sites) to address a housing land shortfall and 26 cases were allowed.
- Approximately 5500 houses were granted planning permission in such cases. Whilst it is not possible to say whether these consents were entirely driven by the presumption, we do know that it was a consideration in the decision.

This evidence suggests that the presumption has been of less direct relevance to individual decisions than may be thought to be the case by some stakeholders.

We reviewed the Homes for Scotland evidence on the scale of cases approved as a result of the presumption, drawing conclusions on the number of homes that it has delivered. We consider this to be an over-estimate when compared with our own analysis. Whilst no data can provide a complete picture, our estimate is that since 2015, 5500 units (rather than 8000 suggested by Homes for Scotland) have been approved on the basis of the presumption. The role of the presumption in determining these applications cannot be fully determined. Our research also shows that a smaller proportion of these consents has been built to date (around 1000 homes over 5 years).

Implications of Gladman vs Scottish Ministers on the application of the presumption

We accept that some of these types of proposals may have different outcomes in light of the Court's decision. This is supported by some responses – for example an example of a recent appeal decision where the Reporter indicated that had the policy changes been made, his decision would have been different.

The Court's decision suggests that rather than the approach generally taken by Reporters to date:

- The decision-maker should first identify whether or not there is a shortfall, based on the housing land requirement and comparing this with the amount of effective land included in the 5 year programme in the latest Housing Land Audit to determine the scale of any shortfall.
- Where a shortfall is identified, this shortage becomes a significant material consideration in favour of granting planning permission. The scale of the shortfall should determine the angle of the 'tilt' in the tilted balance.
- To refuse planning permission, the adverse impacts must significantly and demonstrably outweigh the benefits of reducing the shortfall (i.e. the tilted balance applies).
- Identifying the scale of the shortfall is important because it sets the angle of "tilt". The greater the shortfall the greater the weight should be attached to helping reduce the shortfall and so the harder it should be to refuse planning permission. Helping address a housing shortfall is of itself almost inevitably a contribution to sustainable development.

Applying this approach, in the same sample of cases we reviewed the presumption would become a significant material consideration, before assessing whether or not the proposed development met the principles set out under paragraph 29.

Following the *Gladman* decision, more applicants may seek to argue the case for more exceptional releases of housing land. However, the influence of the presumption and the outcome of decisions cannot be predicted with any confidence. The Scottish Planning Policy should be read and applied as a whole. The planning judgement, and outcome, would remain variable given the breadth of considerations that would still need to be taken into account.

Key points

We have therefore concluded that:

- The presumption has some influence on decisions, but this appears to be limited and cannot be fully gauged.
- Appeal decisions show that because the presumption is complex and tends to be contested in large scale housing cases, it does take considerable time and resources to engage with it.
- Litigation, together with the polarised responses to this consultation demonstrate the range of interpretations of its meaning and application.
- The SPP presumption aimed to support sustainable development, not development at any price or in any location. Appeal decisions to date have generally focused first on ensuring proposals are sustainable in line with this intention.
- However the interpretation of the policy as established by the *Gladman* case and so the use of a strongly 'tilted balance', has the potential to mean that developments that may otherwise (i.e. without the use of a tilted balance) be judged to be unsustainable may be granted consent where there is a shortfall in the housing land supply.
- The pandemic is creating uncertainty. The proposal to remove the presumption was not primarily driven by the pandemic – but it did inform our consideration of paragraphs 123 and 125 (see below) as we expect that it will impact on the overall rate of housebuilding this year. Fuller data on the impact of COVID-19 will take some time to emerge but it is clear that this is a challenging period for construction including housebuilding, and that there is uncertainty about the timescale of future recovery. Available evidence shows that there will be an impact on the rate of homes constructed during the time when site restrictions were in place.
- We are aware from general practice that there is confusion / a range of interpretations about when plans (or the relevant policies) are, or are not, considered to be 'up-to-date'. More plans may become older than 5 years in the coming months for a range of reasons, but may well still contain relevant policies. A wide range of factors can influence whether local authorities review

their development plans – including COVID-19, resourcing and the revised NPF4 timescale.

- Sustainable development remains a key objective of the Scottish Planning Policy. The UN Sustainable Development Goals are embedded across our national outcomes^x. Section 3E of the 1997 Act applies to planning authorities exercising functions under Part 2 of the 1997 Act, and under section 3E(3) the Scottish Ministers may issue guidance for the purposes of section 3E. This is addressed by the Scottish Planning Policy including paragraphs 28, 29 and 30.
- We also accept that plans cannot include policies covering every eventuality and that although the development plan has primacy in all cases, some flexibility is needed.
- In response to these issues, section 7 sets out our final policy amendments.

3. DEFINITION OF EFFECTIVE HOUSING LAND

- Question 2 in the consultation paper focused on making the definition of effective housing land as set out in paragraph 123 and associated glossary definitions more flexible.
- Sites currently need to be proven to be 'effective' when assessed against a range of criteria set out in planning advice. This is important because, as explained in Section 2, if there is not enough effective housing land available, then it is more likely that sites that are not in a local development plan could be brought forward for planning permission.
- We were aiming to reduce disagreement about whether sites are, or are not, suitable for housing development and whether these sites are effective. We also wanted to reflect the fact that the programming of sites (i.e. when they are built out) is determined by a range of wider factors and is subject to change.
- We were of the view that the potential impact of COVID-19 could mean that sites which might normally be considered 'effective' are not counted as part of the land supply.
- The changes we proposed in the consultation paper would mean that land that is technically suitable for housing could still form part of the 5 year effective land supply, regardless of changes to programming or subjective views on marketability in a changing context.

Views

As set out in our consultation analysis report there was both support, and opposition, to these proposals. In summary, the analysis of responses showed that there are strong and contrasting views on a number of issues:

- Amongst respondents who supported and opposed changes, there was, to a degree, a shared recognition of and support for agreeing a methodology.
- Those respondents who supported the proposal to revise the definition of effective land, did so on the basis that:
 - There is concern about uncertainty and different interpretations of the existing wording of the SPP - clarity is needed to make the system easier to follow and transparent.
 - There is a need to address disputes about the 5 year effective land supply and in particular programming assumptions.
 - Communities reported damage to their area owing to the presumption.
 - Calculations can conflate the matter of available land and the rate of programming of its build.

- There was support for clarification that ownership should include reference to a 'willing seller' as this is often a source of dispute.
- Alternatives were suggested including differentiating between the land supply and the delivery programme or judgements, a fuller definition and an approved source of evidence on completions. More detailed wording was also suggested for both the policy wording and the glossary. It was suggested that communities should be involved in Housing Land Audits.
- Other respondents opposed the proposal to revise the definition of effective land because:
 - They would not clarify the situation and would have a significant impact.
 - There is a lack of evidence to support the reasons.
 - This should be considered within the context of NPF4 rather than interim policy changes.
 - There is agreement on the importance of Housing Land Audits, although also some views on shortcomings and inaccuracies / as well as views that their figures are 'manipulated'. Nevertheless there was concern that the changes would undermine their role, leading to more confusion.
 - Programming is considered essential including for action programmes and infrastructure providers.
 - A more useful change would be to require sites to be in the hands of a developer to be considered effective.
 - Exclusion of 'marketability' was considered irrational.
- Further alternatives suggested by those opposing the change included retaining the policy and the advice, or issuing informal advice on how planning authorities should adjust their approach to take into account the temporary / short term impacts of the pandemic.
- There was concern about removal of section 2 of PAN 2/2010^{xi} given the need for clarity, although reasons for this vary.
- Stakeholders who supported and opposed the changes raised questions about the proposed reference to 'normal market circumstances'. Examples were provided of varying circumstances. Those who opposed the changes highlighted their view that demand in the market is currently strong and that there is therefore an urgent need for delivery to address this and assist with recovery from the pandemic through supply.

Evidence

The following evidence has been taken into account in reaching our final policy position.

Accuracy of information on site programming

Housing Land Audits play a key role in monitoring the availability and build-out of sites and so many of the responses focused on their role in the system. The responses included examples of current practice in undertaking Housing Land Audits and it was reported that programming within them is often inaccurate:

- Some examples were given of programming assumptions leading to a requirement to allocate further land, despite the fact that sufficient land was allocated at the point of plan adoption.
- Others reported that the audit process is 'largely harmonious' with limited disputes and Homes for Scotland stated that their members have not withdrawn sites from the effective land supply as a result of COVID-19.

We have previously undertaken research on Housing Land Audits including most recently work to inform our ongoing work on planning reform^{xii} as well as work in 2008 which assessed current practice at that time. The later research established that around 60% of audits were disputed, although the number of individual sites which are contested was low. Difficulties were identified in establishing completions and future site programming. Wider research reported by the Scottish Land Commission also highlights the role of the market absorption rate in defining build-out programmes.^{xiii}

To further establish an evidence base to inform our consideration of the proposed changes, we built on this work by examining examples of Housing Land Audits. This work shows that:

- There are continuing difficulties in establishing completions and future site programming within Housing Land Audits, as a result of natural uncertainties and changing circumstances.
- Some audits overestimate completions in relation to their programme, whilst others underestimate them.
- Their findings with regard to the availability of housing land at any given point in time should be treated with caution.

Key points

We have therefore concluded that:

- We recognise that maintaining a land supply is important and should be more than a theoretical exercise.

- However, there is variation and uncertainty within Housing Land Audits and limitations on the extent to which the programming assumptions provide a reliable source of evidence.
- It is reasonable to expect that numbers of homes delivered during 2020 will be impacted by the closure of construction sites earlier this year and ongoing requirements for operational adjustments.
- We were also concerned about the exclusion of sites on the basis of marketability, and its impact on the ability of authorities to maintain a supply of effective housing land. To some extent industry reports and evidence of a more buoyant housing market emerging following the initial lockdown period allay these concerns.
- We also recognise views that our proposals could generate further confusion and are therefore not minded to remove PAN 2/210 at this time.
- Section 7 sets out our final policy amendments, taking into account these issues.

4. CALCULATING THE EXTENT OF THE 5 YEAR EFFECTIVE HOUSING LAND SUPPLY

- Question 3 in the consultation paper focused on changes to paragraph 125 of the Scottish Planning Policy.
- Different views on the best calculation to use have caused considerable debate. We wanted the approach to this calculation to be clearer and more consistent.
- We proposed that the 'housing supply target' is averaged out over the life of the plan to provide a broad guide on how many homes should be expected over 5 years. The extent of land available for housing at any given time would then be compared with that number.
- Our view was that this would be more appropriate, as well as easier to understand and apply consistently, than more complex and detailed calculations that take into account any shortfall in the number of homes built.

Views

As set out in our consultation analysis report there was both support, and opposition to, these proposals. In summary, the analysis of responses showed that there are strong and contrasting views on a number of issues:

- There was wide, but not unanimous, agreement that a clearer approach to calculating the extent of the 5 year land supply would be beneficial for all.
- Many respondents supported the proposal because:
 - An agreed approach would help to reduce disputes and debates, if robust and straightforward.
 - It would be helpful to planning authorities in defending their local development plan and making balanced planning judgements.
 - It was viewed as consistent with the approach taken to Housing Land Audits and the planning performance frameworks.
 - It would be helpful if decisions were based on the most recently adopted Housing Land Audits, rather than ad-hoc assessments on a case by case basis.
 - The proposed approach is flexible where a shortfall arises as it allows for programming and delivery to vary over the life of the plan.
 - The residual approach was not supported given its reliance on inaccurate figures on completions.

- They support an approach for proposals where a shortfall in the supply emerges, but different views on the steps that should be taken to address this including that it should not be 'determinative'.
- There were broader concerns about the role of this calculation.
- Detailed further amendments were suggested by those who supported the proposed changes to the policy including: clarification of the roles of the housing land requirement and housing supply target; a clearer definition of the effective housing land supply; clarification of the role of the programme as opposed to land supply; the timescale for the land supply (whether it should be for 5 years or the plan period); clarification of the base date for the calculation; a tenure-based approach; sub-market area calculations; and prioritisation of brownfield development over greenfield.
- Those who supported the approach also raised concerns that where build out rates are achieved early in a plan's lifetime there may still be a need to identify further land.
- Many respondents opposed the proposal because:
 - The proposed methodology allows authorities to 'write-off' shortfalls in housing delivery. This is critical and should be a material consideration.
 - The proposals do not reflect the approach taken by Reporters and the Court.
 - Plans should over-provide for housing in the first place, and it is important that there is flexibility to respond to emerging shortfalls.
 - The pandemic is not a reasonable basis for using the average methodology, given that shortfalls were arising before this.
 - The problem is of supply rather than demand and there is a significant backlog in affordable housing.
 - The residual approach is needed to establish whether the land requirement will be met.
 - The average approach will lead to thousands of new homes not being delivered.
 - The proposals remove accountability from the system and does not encourage local authorities to work with others to deliver homes.
 - The changes would cause difficulties in infrastructure provision.
 - The proposed approach to addressing the shortfall would in fact be a type of tilted balance.

- Alternatives were suggested including; a universal, plain-English methodology for planning authorities (prepared and proposed by Homes for Scotland); limiting changes to clarify that the housing supply target forms the basis of calculations; requiring a shortfall to be recovered by the end of the plan period, rather than within 5 years.

Evidence

The following evidence has been taken into account in reaching our final policy position.

Current approaches to calculating the 5 year effective housing land supply

Some respondents suggested that decision-makers, including Reporters, routinely apply the residual approach, and that there is no need for the proposed clarification. However, our analysis of a sample of appeal cases shows that whilst the residual approach has been recognised in many cases, other methods have also been taken into account. Whilst a reliable conclusion can generally be made that a shortfall exists, Reporters have often come to a view that it is not possible to quantify its scale whilst there is no single methodology to refer to.

Examples referred to in responses showed that where the pace of delivery is being factored into housing land calculations, in some areas it would be extremely difficult for a planning authority to sustain a 5 year effective land supply, particularly in the latter years of a plan period where delivery has been lower than originally programmed. This may be the case despite the fact that there is arguably sufficient land and consents available which are not being built out quickly enough for a range of reasons.

Heads of Planning Scotland has produced evidence on the availability of housing land across all local authorities in Scotland, from planning performance reporting.^{xiv} Whilst the data may be approximate and is not complete, this shows that:

- There was an established housing land supply in 2018-19 for more than 390,000 homes to be built across Scotland.
- The approximate / estimated **requirement** for the same period is for 110,000 homes – 22,000 homes per year over 5 years.
- **Planning permission** was granted for around 36,000 homes in 2018-19.
- In 2018-19 around 160,000 homes were **programmed** to be built over the next 5 years – around 32,000 per year.
- **Previous completions** (based on analysis of historic information) have been around 86,000 over the last five years or 17,200 per year.
- The **highest annual completions** in recent years for Scotland was approximately 26,000 in 2007-8.

Reasons for a shortfall in homes delivered emerging

Whilst we acknowledge that the figures provided by planning authorities are likely to be approximate, we suggest that it shows that lower levels of completions than programmed (i.e. an emerging shortfall) are unlikely to have arisen as a result of the availability of land or in securing planning permission for proposals.

This is supported by evidence we received outlining the reasons for a shortfall arising including:

- the capacity of the industry;
- the market absorption rate;
- access to finance by purchasers;
- delays in the planning system / protracted consenting processes;
- refusal of applications contrary to officer recommendations;
- land controlled by non-developers;
- plans not including sufficient or effective housing land for housing.

It is clear that there are multiple reasons perhaps including, but not limited to, the availability of land for a shortfall in the number of homes being built. Housing delivery is a complex issue that we are seeking to address in the fuller review of policy in NPF4. In the meantime, the evidence suggests the need for a cautious approach when considering whether or not releasing additional land or development is justified in specific cases. A shortfall in homes delivered is unlikely to be substantially resolved by exceptional releases of housing land, potentially on sites that are not sustainable and with no guarantee that they will progress to construction as programmed.

Strengths and weaknesses of the average and residual methodologies

We have undertaken analysis of land supply assessments applying the residual and average approaches, focusing on the local authorities which experience the greatest number of planning appeals for the exceptional release of housing land. This shows that:

- During times in which completions are low (for a range of reasons, as set out above) the residual method often leads to a substantial uplift in the number of homes to be achieved in meeting the land supply – for example, in one area (West Lothian) the annual requirement would be more than three times average completion rates since 2011.
- This issue can become very acute towards the end of a plan period when more homes have to be delivered in fewer years.

- This methodology can lead to an adjusted 5 year effective housing supply target which appears to be unrealistic when taking into account data on completions to date.
- A shortfall demonstrated by the residual approach does not necessarily arise as a result of a lack of available land but can be due to the programming assumptions of developers which are subject to change.
- Therefore, this approach may not lead to an accurate conclusion about the sufficiency of the land supply.

In comparison the average method:

- Tends to require a lower number of units to be met to achieve the 5 year effective land supply.¹ This is considered to be realistic for the period between now and NPF4 being adopted, given that it is broadly similar to past levels of completions.
- Is not re-adjusted to account for actual delivery rates and is therefore less responsive and flexible.
- If applied, is likely to require planning authorities to maintain a supply of land which is similar to a rolling average of completions.
- For the plan areas where the presumption is triggered most often, would still require previous completion rates to be exceeded and therefore remains ambitious.

We accept that neither approach is perfect, but our view is that the arguments against the average method, and for the residual method, may be overstated. This, together with the inaccuracy of data involved in audits, the subjectivity associated with the effectiveness of housing land, and the externalities affecting programming suggests that calculations on the land supply should not be the determining factor in planning decisions to the extent that it outweighs other factors required to make a development sustainable.

Key points

We have therefore concluded that:

- There is a wide range of views on the approach to calculating the 5 year effective land supply. In our view, there is no perfect methodology and data on land and programming should be interpreted with caution.
- Planning authority statistics suggest that there is, overall, more than enough land allocated than is required.
- The benefits of the residual method are, in our view, overstated. It conflates land availability with the rate at which homes are being built-out. The latter is

¹ It should be noted that if plans are being delivered as intended or progress exceeds expectations, a higher figure would be required by this method.

influenced by many different factors including, but not only, the availability of effective land. Sites may be suitable for development, and land may be available, but a technical 'shortfall' could still arise based on the residual calculation. This can lead to undeliverable requirements that cannot be recovered by planning authorities when the delivery rate is shaped by many other factors.

- It is not in the public interest to recommend a methodology which leads to conclusions that there is insufficient land available when completions are influenced by a variety of different factors.
- We recognise that the average method also has weaknesses and may be viewed as less precise and inflexible as it does not factor in emerging shortfalls in the number of homes being delivered. However, we are reassured that it is reasonable and realistic as an interim approach, as it is broadly similar to levels of completion that have been achieved in recent years. As a result, we believe that it has a valid role as a consistent benchmark to inform decision making.
- The housing land requirement is applicable when the development plan is being prepared to ensure that it includes a generous supply of land. We initially proposed that the housing supply target, which does not include an allowance for generosity, should form the basis of this calculation. However, we also recognise the importance of a positive approach to planning which aspires to deliver a generous supply of land for homes to meet our future needs. We have therefore decided that the housing land requirement, which includes an additional percentage for generosity (generally between 10 and 20 per cent), should form the basis of this calculation.
- The disputed nature of the evidence and unreliability of data in housing land audits suggests that the calculated 5 year land supply should only ever be used as an indicative number. Whether or not further land should be released for development should be a matter for planning judgement taking into account the facts and circumstances of each case.
- There should still be scope to support applications where it is clear that there is unmet demand for housing and this could be achieved by retaining a simpler and clearer version of the presumption. A clearer policy on this has been set out in the final policy amendments in Section 7.

5. IMPACTS ON DEVELOPMENT OTHER THAN HOUSING

- Question 4 in the consultation paper focused on this.
- The consultation paper aimed to address issues arising from planning for housing. However we invited views and evidence to establish whether it would affect other types of development.

Views

Some agreed that the proposals would impact on housing, rather than other types of development, recognising that the key changes focused on procedures relating to the housing land supply and associated development management decisions.

Others considered it would have wider impacts:

- It was noted that many housing developments may be part of a mixed-use proposal or include infrastructure improvements.
- Responses pointed out that development plans cannot include policies to cover every potential type of development.
- Several respondents felt the presumption has an important role to play in supporting proposals for renewable energy development as well as grid infrastructure. The renewable energy sector called for the presumption to be retained, or if removed to be replaced by an alternative that carries the same level of weight supporting sustainable development. It was also noted that electricity consents have a different relationship with the development plan and so changes that aim to rebalance this have no relevance to the sector.
- Other types of development raised in responses included mixed use sites, essential infrastructure, waste infrastructure, tourism development, business expansion or restructuring.

Evidence

The following evidence has been taken into account in reaching our final policy position.

Application of the presumption to non-housing applications

Examples were given of wind farm cases where the presumption has been viewed as a relevant consideration.

To inform our consideration of this matter, we have reviewed a sample of renewable energy appeal cases, including those considered under planning as well as projects considered under section 36 of the Electricity Act 1989. Nearly all of the cases we reviewed referred to the presumption, but it was only a significant material consideration in 3 of 15 cases on the basis of the plan being viewed as 'out-of-date'. However, in all cases, a balanced judgement was made taking into account the principles set out under paragraph 29.

The wider policies (e.g. paragraph 33) that we proposed changing, would not change that assessment.

Taking into account these cases, we recognise that the balance in decision-making for other types of development could be altered, and that there is potential for changes to the policy to affect the outcomes of decisions. As with housing, however, given the role of planning judgement in each case and taking into account the application of wider policies within the SPP, it is not possible to determine with any degree of confidence the extent of impacts from either the initial proposals or our final policy position.

Key points

- The presumption is not usually a determining factor in non-housing applications. However, we accept there is potential for the *Gladman* decision to change the outcome in some instances for non-housing developments.
- We recognise that there could be benefit in retaining an overarching presumption and that decisions can continue to be made in a way that supports sustainable development where there are no relevant plan policies in place.
- The effect of our revised amendments on non-housing types of development is expected to be limited.
- In response to these issues, section 7 sets out our final policy amendments.

6. IMPACT ASSESSMENTS

- Question 5 in the consultation paper focused on this.
- We did not consider that the changes would have significant impacts on the environment, business, equalities and children's rights and wellbeing, and therefore our view when preparing the consultation paper was that fuller impact assessments were not required.
- However, we invited views and evidence on this.

Views

A majority of respondents (61% of all responses) agreed with our conclusion that full impact assessments are not required, given the procedural and technical changes, their lack of significance, their role in clarifying processes and their temporary lifespan ahead of NPF4 being published.

Others (39% of all responses) disagreed with our conclusion because:

- They considered the proposals to have significant effects, potentially impacting on national outcomes.
- The intent is to change the way that planning decisions are taken.
- They considered that further assessment is needed to ensure the consultation is valid.

In terms of the specific assessments, some respondents suggested that a strategic environmental assessment (SEA) was required to assess the impacts on net zero emissions, and to take into account the impact on providing renewable energy schemes, energy efficient homes, green infrastructure, and the reuse of vacant and derelict land.

Some responses suggested that equalities and human rights could be affected by the impact on affordability for those on low incomes, and that health could also be affected. Similarly, some respondents considered there may be wellbeing or health impacts arising from the economic impact on the housebuilding industry, construction sector and supply chain.

A BRIA was considered necessary by some, given their views on the potential impacts on businesses and the economy. Evidence was presented which has been considered in more detail in the following section.

Detailed comments received

Strategic Environmental Assessment

Housing developers and their representatives considered that the changes would result in lost opportunities for sustainable development, with effects on the housing supply, green networks, open space, vacant and derelict land and unproductive

sites. Renewable energy providers also wanted to see an assessment of the impact on meeting net zero targets.

Equality Impact Assessment and Child Rights and Wellbeing Assessment

It was suggested that fuller assessments were necessary, given the potential impact of the changes on housing affordability. It was suggested that health could be affected, and that unemployment and hardship in the housebuilding sector would also lead to impacts.

Business and Regulatory Impact assessment

It was contended that, based on a series of assumptions about the income generated from each house, the removal of the presumption would mean that more than 10,000 jobs, £13.3 million of 'local spend' and £40 million to the local economy would be lost.

Key points

- Our initial assessments assumed the changes will not affect decisions directly – our view was that the proposed changes would maintain the original policy intention.
- We recognise that the Court's decision could change how the policy is applied, and that amendments may therefore lead to different decisions being made.
- However, the evidence shows that the role of the presumption is neither clear cut nor determinative. The impact, in terms of numbers of homes built or other developments affected cannot be accurately predicted. However the impact on number of homes delivered could reasonably be expected to be neutral given the continuing role of planning judgement in decision-making and taking into account the revised amendments we are now proposing. The effect of changes on other sectors is also expected to be limited.
- We do not accept the evidence submitted by Homes for Scotland as referred to above, because this assumes that without the presumption, all exceptions sites would be refused planning permission, with 2,667 homes not being built as they would depend on the presumption in favour of development that contributes to sustainable development. Our review of the evidence suggests that this is an over-estimate. It is not reliable to conclude that all proposals that may have been approved would be refused permission. This is particularly the case when the amended policy changes set out in Section 7, and the application of planning judgement in each case, are taken into account.
- Nevertheless, we have given further consideration to the likely impacts of the changes, taking into account all of the views and evidence received and in light of the revised proposals. We have published new screening reports which conclude that fuller assessments are not required.

7. CONCLUSION – POLICY CHANGES

Taking into account the views and evidence received and summarised above, we have decided to:

- 1. Retain, but reword the presumption in favour of development that contributes to sustainable development so that it can be applied in a more straightforward way.**

We acknowledge that, overall, the planning system has a vital role in helping to deliver the homes that we need. However, the challenges around delivering housing are complex and not wholly attributable to the extent of effective housing land available. This requires further consideration to inform our fuller review of national planning policies in National Planning Framework 4.

In the meantime, we want to ensure that the existing system is flexible and able to operate effectively within the context of COVID-19 and economic uncertainties in the coming months.

In our view, taking into account views and available evidence, the role of the presumption in decision-making to date may be overstated. However, we recognise the concerns raised by respondents about the broad and positive role of 'the presumption' in the SPP as a confirmation of our commitment to supporting sustainable development. We are concerned that, if the current policy remains un-amended, its application may now lead to approval of some development proposals which are not sustainable. The presumption was never intended to be used to support development which is not sustainable development and the changes we make will make it clear that the policy is to support development that is sustainable development rather than development that contributes to sustainable development.

We are therefore amending the policy so that it more clearly supports sustainable development. It will now provide that there is 'a presumption in favour of sustainable development.'

- 2. Remove references to plans being 'out of date' and the direct link with calculating the land supply to the presumption and replace them with a more straightforward policy.**

Ideally housing should be built on sites allocated in the plan, and the plan and its policies should be kept up-to-date. However, we accept that plans cannot foresee every eventuality. In addition, whilst planning authorities should strive to keep their plans up-to-date, in the months ahead this may not be feasible in some cases, as a result of the constraints arising from the pandemic, the limitations on people who may wish to be involved, as well as the significant changes to the system and NPF4 that will be coming forward in 2021-22.

A shortfall in the land supply should not be the sole or overriding factor in determining whether or not a planning consent should be granted. In the first instance wider policies within development plans can still apply to assess whether developments are sustainable.

In the absence of such policies, reworded paragraphs 32 and 33 would provide decision-makers with more clarity on how the amended presumption should be taken into account.

3. Undertake further work to inform an updated approach to housing land audits within the new system.

We recognise that the proposed amended paragraph 123 and definitions may not provide sufficient clarity and that removal of PAN 2/2010 may generate further confusion. It is clear that there is scope for improvement, but also that there are different views on the best way forward.

We are not proposing to take forward changes to paragraph 123 of the SPP.

We consider that a more fundamental review of this aspect of the system is needed, as part of the development of a new policy approach for National Planning Framework 4, and will take this forward in the months ahead. In the meantime PAN 2/2010 was prepared prior to SPP (2014) and this should be taken into account when applying it.

4. Support the use of the average method to determine whether or not there is a 5 year land supply as a reasonable benchmark to be taken into account in assessing applications.

A single methodology for calculating the 5 year land supply is needed to make the system clearer and more consistent. However, as this is a methodological and operational matter, we have decided to set this out in associated advice rather than in the policy itself.

We accept that any methodology has limitations. Whilst the residual approach takes into account any emerging shortfall in the number of homes being built out, it can lead to unrealistic revised targets. The average approach is more straightforward and predictable, but it is not responsive to variations in the number of homes that are delivered. We recognise that there is an important question about how planning policies can better support delivery, and this will be addressed in National Planning Framework 4.

In the meantime, in our view the average method provides the most appropriate methodology at a time when external factors, including COVID-19 restrictions, market uncertainty, and economic challenges are more likely to influence housing delivery than the availability of land in the planning system. We consider this to be reasonable, taking into account evidence on the land supply across Scotland as a whole. We have also decided to base the calculation on the housing land requirement set out in the development plan, so that the calculation is based on an assumption that we should be planning for a generous supply of land.

The approach will apply between now and a new policy in National Planning Framework 4 being adopted in summer 2022.

5. Monitor decisions to establish how the revised policy is being applied, and consider calling in applications where Ministers consider it would be necessary.

We will commit to monitoring the impact of the revised policy to establish its application in practice and would be willing to intervene by considering the need to call in decisions, should any unintended consequences of this policy arise.

The amended text and new advice is set out below.

Scottish Planning Policy – 2014 – Amendments²

Policy Principles

This SPP introduces a presumption in favour of sustainable development.

28. The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.

29. Planning policies and decisions should support sustainable development. For the purposes of this policy, to assess whether a policy or proposal supports sustainable development, the following principles should be taken into account:

- giving due weight to net economic benefit;
- responding to economic issues, challenges and opportunities, as outlined in local economic strategies;
- supporting good design and the six qualities of successful places;
- making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;
- supporting delivery of accessible housing, business, retailing and leisure development;
- supporting delivery of infrastructure, for example transport, education, energy, digital and water;
- supporting climate change mitigation and adaptation including taking account of flood risk;
- improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;
- having regard to the principles for sustainable land use set out in the Land Use Strategy;
- protecting, enhancing and promoting access to cultural heritage, including the historic environment;
- protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;
- reducing waste, facilitating its management and promoting resource recovery; and
- avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

Delivery

² new / replacement text is shown as underlined

Development Planning

30. Development plans should:

- be consistent with the policies set out in this SPP including the presumption in favour of sustainable development;
- positively seek opportunities to meet the development needs of the plan area in a way which is flexible enough to adapt to changing circumstances over time;
- support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new or emerging sectors likely to locate in their area;
- be up-to-date, place-based and enabling with a spatial strategy that is implemented through policies and proposals; and
- set out a spatial strategy which is both sustainable and deliverable, providing confidence to stakeholders that the outcomes can be achieved.

Development Management

32. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. The 1997 Act requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. Proposals that accord with development plans should be considered acceptable in principle and the consideration should focus on the detailed matters arising.

33. Proposals that do not accord with the development plan should not be considered acceptable unless material considerations indicate otherwise. Where a proposal is for sustainable development, the presumption in favour of sustainable development is a material consideration in favour of the proposal. Whether a proposed development is sustainable development should be assessed according to the principles set out in paragraph 29.

Maintaining an effective housing land supply

125. Planning authorities, developers, service providers and other partners in housing provision should work together to ensure a continuing supply of effective land and to deliver housing, taking a flexible and realistic approach. Proposals that do not accord with the development plan should not be considered acceptable unless material considerations indicate otherwise. Where a proposal for housing development is for sustainable development and the decision-maker establishes that there is a shortfall in the housing land supply in accordance with Planning Advice Note 1/2020, the shortfall is a material consideration in favour of the proposal. Whilst the weight to be afforded to it is a matter for decision-makers to determine, the contribution of the proposal to addressing the shortfall within a five year period should be taken into account to inform this judgement. Whether a proposed development is sustainable development should be assessed according to the principles set out in paragraph 29.

Planning Advice Note 1/2020

ASSESSING THE EXTENT OF THE 5 YEAR SUPPLY OF EFFECTIVE HOUSING LAND

To calculate the 5 year supply of effective housing land required, the housing land requirement set out in the adopted development plan should be divided by the plan projection period (i.e. the plan period) (years), in order to identify an annual figure.

This annual figure should then be multiplied by 5.

5 year supply of effective land requirement =

(development plan housing land requirement / plan period) x 5

This figure should then be compared with the 5 year supply of effective housing land, based on information collected as part of the housing land audit process, to establish whether or not there is a shortfall or surplus.

REFERENCES

- ⁱ Scottish Government, 2020, Scottish Planning Policy and Housing: Technical Consultation on Proposed Policy Amendments <https://www.gov.scot/publications/scottish-planning-policy-housing-technical-consultation-proposed-policy-amendments/pages/4/>
- ⁱⁱ Scottish Government, 2020, Scottish Planning Policy and Housing: Technical Consultation: Analysis <https://www.gov.scot/publications/scottish-planning-policy-housing-technical-consultation-proposed-policy-amendments-analysis-consultation-responses/>
- ⁱⁱⁱ <https://www.scotcourts.gov.uk/search-judgments/court-of-session>
- ^{iv} Scottish Construction Leadership Forum, 2020, Approved Recovery Plan: October 2020 <https://www.constructionforum.scot/recovery-plan/#covid-19-construction>
- ^v Scottish Government, 2020, Scottish Housing Market Review, July – September 2020, <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2020/03/scottish-housing-market-review-2020/documents/scottish-housing-market-review-q3-2020/scottish-housing-market-review-q3-2020/govscot%3Adocument/Scottish%2BHousing%2BMarket%2BReview%2B-%2BQ3%2B2020%2B-%2BFinal.pdf>
- ^{vi} Homes for Scotland, 2020, Submission to the Economy, Energy and Fair Work Committee of the Scottish Parliament, COVID-19 – impact on Scotland’s businesses, workers and economy. https://www.parliament.scot/S5_EconomyJobsFairWork/Inquiries/EEFW-S5-20-COVID-39-HomesforScotland.pdf
- ^{vii} Homes for Scotland, 2020, The Role of Home Building in Scotland’s Recovery <https://homesforscotland.com/our-work/>
- ^{viii} Scottish Government, 2020, COVID-19: development planning consultation and engagement advice <https://www.gov.scot/publications/coronavirus-covid-19-development-planning-consultation-and-engagement-advice---may-2020/>
- ^{ix} Scottish Government, 2020, The Planning (Scotland) Act 2019, Development Planning – Transitional Guidance <https://www.transformingplanning.scot/media/2122/development-planning-transitional-arrangements-guidance-transforming-planning-20112020.pdf>
- ^x Scottish Government National Performance Framework <https://nationalperformance.gov.scot/what-it>
- ^{xi} Scottish Government, 2010, Planning Advice Note 2/2010: Affordable Housing and Housing Land Audits <https://www.gov.scot/publications/planning-advice-note-2-2010-affordable-housing-housing-land-audits/>
- ^{xii} Scottish Government, 2019, Housing land audits: research project <https://www.gov.scot/publications/research-project-housing-land-audits-january-2019/>
- ^{xiii} Scottish Land Commission, 2020 <https://landcommission.gov.scot/news-events/news-blog/land-for-housing-and-development-time-for-change>
- ^{xiv} Heads of Planning Scotland, Planning Performance Framework, <https://hopscotland.org.uk/publications/planning-performance-framework-reports/>



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APPENDIX 2

Scottish Planning Policy

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Scottish Planning Policy

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Planning Series

The Scottish Government series of Planning and Architecture documents are material considerations in the planning system.

Planning and Architecture Policy

Circulars

SG policy on implementing legislation

Scottish Planning Policy

SG policy on nationally important land use planning matters

National Planning Framework

SG strategy for Scotland's long-term spatial development

Creating Places

SG policy statement on architecture and place

Designing Streets

SG policy and technical guidance on street design

Planning and Design Advice and Guidance

Planning Advice

Technical planning matters

Design Advice

Design matters including practical projects and roles

Web Advice

Best practice and technical planning matters

Further information is available at: www.scotland.gov.uk/planning

This SPP replaces SPP (2010) and Designing Places (2001)

statutory

non-statutory

Scottish Planning Policy (SPP)

Purpose

i. The purpose of the SPP is to set out national planning policies which reflect Scottish Ministers' priorities for operation of the planning system and for the development¹ and use of land. The SPP promotes consistency in the application of policy across Scotland whilst allowing sufficient flexibility to reflect local circumstances. It directly relates to:

- the preparation of development plans;
- the design of development, from initial concept through to delivery; and
- the determination of planning applications and appeals.

Status

ii. The SPP is a statement of Scottish Government policy on how nationally important land use planning matters should be addressed across the country. It is non-statutory. However, Section 3D of the Town and Country Planning (Scotland) 1997 Act requires that functions relating to the preparation of the National Planning Framework by Scottish Ministers and development plans by planning authorities must be exercised with the objective of contributing to [sustainable development](#). Under the Act, Scottish Ministers are able to issue guidance on this requirement to which planning authorities must have regard. The Principal Policy on Sustainability is guidance under section 3E of the Act.

iii. The 1997 Act requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. As a statement of Ministers' priorities the content of the SPP is a material consideration that carries significant weight, though it is for the decision-maker to determine the appropriate weight in each case. Where development plans and proposals accord with this SPP, their progress through the planning system should be smoother.

¹ The Planning (Scotland) Act 2006 extends the definition of development to include marine fish farms out to 12 nautical miles.

iv. The SPP sits alongside the following Scottish Government planning policy documents:

- the [National Planning Framework](#) (NPF)², which provides a statutory framework for Scotland's long-term spatial development. The NPF sets out the Scottish Government's spatial development priorities for the next 20 to 30 years. The SPP sets out policy that will help to deliver the objectives of the NPF;
- [Creating Places](#)³, the policy statement on architecture and place, which contains policies and guidance on the importance of architecture and design;
- [Designing Streets](#)⁴, which is a policy statement putting street design at the centre of placemaking. It contains policies and guidance on the design of new or existing streets and their construction, adoption and maintenance; and
- [Circulars](#)⁵, which contain policy on the implementation of legislation or procedures.

v. The SPP should be read and applied as a whole. Where 'must' is used it reflects a legislative requirement to take action. Where 'should' is used it reflects Scottish Ministers' expectations of an efficient and effective planning system. The Principal Policies on Sustainability and Placemaking are overarching and should be applied to all development. The key documents referred to provide contextual background or more detailed advice and guidance. Unless otherwise stated, reference to Strategic Development Plans (SDP) covers Local Development Plans outwith SDP areas. The SPP does not restate policy and guidance set out elsewhere. A [glossary](#) of terms is included at the end of this document.

2 www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Framework

3 www.scotland.gov.uk/Publications/2013/06/9811/0

4 www.scotland.gov.uk/Publications/2010/03/22120652/0

5 www.scotland.gov.uk/Topics/Built-Environment/planning/publications/circulars

Introduction

The Planning System

1. The planning system has a vital role to play in delivering high-quality places for Scotland. Scottish Planning Policy (SPP) focuses plan making, planning decisions and development design on the Scottish Government's Purpose of creating a more successful country, with opportunities for all of Scotland to flourish, through increasing [sustainable economic growth](#).
2. Planning should take a positive approach to enabling high-quality development and making efficient use of land to deliver long-term benefits for the public while protecting and enhancing natural and cultural resources.
3. Further information and guidance on planning in Scotland is available at www.scotland.gov.uk/planning⁶. An explanation of the planning system can be found in [A Guide to the Planning System in Scotland](#)⁷.

Core Values of the Planning Service

4. Scottish Ministers expect the planning service to perform to a high standard and to pursue continuous improvement. The service should:
 - focus on outcomes, maximising benefits and balancing competing interests;
 - play a key role in facilitating sustainable economic growth, particularly the creation of new jobs and the strengthening of economic capacity and resilience within communities;
 - be plan-led, with plans being up-to-date and relevant;
 - make decisions in a timely, transparent and fair way to provide a supportive business environment and engender public confidence in the system;
 - be inclusive, engaging all interests as early and effectively as possible;
 - be proportionate, only imposing conditions and obligations where necessary; and
 - uphold the law and enforce the terms of decisions made.

People Make the System Work

5. The primary responsibility for the operation of the planning system lies with strategic development planning authorities, and local and national park authorities. However, all those involved with the system have a responsibility to engage and work together constructively and proportionately to achieve quality places for Scotland. This includes the Scottish Government and its agencies, public bodies, statutory consultees, elected members, communities, the general public, developers, applicants, agents, interest groups and representative organisations.

⁶ www.scotland.gov.uk/Topics/built-environment/planning

⁷ www.scotland.gov.uk/Publications/2009/08/11133705/0

6. Throughout the planning system, opportunities are available for everyone to engage in the development decisions which affect them. Such engagement between stakeholders should be early, meaningful and proportionate. Innovative approaches, tailored to the unique circumstances are encouraged, for example charrettes or mediation initiatives. Support or concern expressed on matters material to planning should be given careful consideration in developing plans and proposals and in determining planning applications. Effective engagement can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the planning process.

7. Planning authorities and developers should ensure that appropriate and proportionate steps are taken to engage with communities during the preparation of development plans, when development proposals are being formed and when applications for planning permission are made. Individuals and **community** groups should ensure that they focus on planning issues and use available opportunities for engaging constructively with developers and planning authorities.

8. Further information can be found in the following:

- [Town and Country Planning \(Scotland\) Act 1997](#)⁸ as amended, plus associated legislation: sets out minimum requirements for consultation and engagement
- [Circular 6/2013: Development Planning](#)⁹
- [Circular 3/2013: Development Management Procedures](#)¹⁰
- [The Standards Commission for Scotland: Guidance on the Councillors' Code of Conduct](#)¹¹
- [Planning Advice Note 3/2010: Community Engagement](#)¹²
- [A Guide to the Use of Mediation in the Planning System in Scotland \(2009\)](#)¹³

Outcomes: How Planning Makes a Difference

9. The Scottish Government's Purpose of creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth is set out in the Government Economic Strategy. The aim is to ensure that the entire public sector is fully aligned to deliver the Purpose. The relationship of planning to the Purpose is shown on page 8.

10. The Scottish Government's [16 national outcomes](#)¹⁴ articulate in more detail how the Purpose is to be achieved. Planning is broad in scope and cross cutting in nature and therefore contributes to the achievement of all of the national outcomes. The pursuit of these outcomes provides the impetus for other national plans, policies and strategies and many of the principles and policies set out in them are reflected in both the SPP and NPF3.

8 www.legislation.gov.uk/ukpga/1997/8/contents

9 www.scotland.gov.uk/Publications/2013/12/9924/0

10 www.scotland.gov.uk/Publications/2013/12/9882/0

11 www.standardscommissionscotland.org.uk/webfm_send/279

12 www.scotland.gov.uk/Publications/2010/08/30094454/0

13 www.scotland.gov.uk/Publications/2009/03/10154116/0

14 www.scotland.gov.uk/About/Performance/scotPerforms/outcome

11. NPF3 and this SPP share a single vision for the planning system in Scotland:

We live in a Scotland with a growing, low-carbon economy with progressively narrowing disparities in well-being and opportunity. It is growth that can be achieved whilst reducing emissions and which respects the quality of environment, place and life which makes our country so special. It is growth which increases solidarity – reducing inequalities between our regions. We live in sustainable, well-designed places and homes which meet our needs. We enjoy excellent transport and digital connections, internally and with the rest of the world.

12. At the strategic and local level, planning can make a very important contribution to the delivery of [Single Outcome Agreements](#)¹⁵, through their shared focus on 'place'. Effective integration between land use planning and community planning is crucial and development plans should reflect close working with [Community Planning Partnerships](#)¹⁶.

13. The following four planning outcomes explain how planning should support the vision. The outcomes are consistent across the NPF and SPP and focus on creating a successful sustainable place, a low carbon place, a natural, resilient place and a more connected place. For planning to make a positive difference, development plans and new development need to contribute to achieving these outcomes.

Outcome 1: A successful, sustainable place – supporting sustainable economic growth and regeneration, and the creation of well-designed, sustainable places.

14. NPF3 aims to strengthen the role of our city regions and towns, create more vibrant rural places, and realise the opportunities for sustainable growth and innovation in our coastal and island areas.

15. The SPP sets out how this should be delivered on the ground. By locating the right development in the right place, planning can provide opportunities for people to make sustainable choices and improve their quality of life. Well-planned places promote well-being, a sense of identity and pride, and greater opportunities for social interaction. Planning therefore has an important role in promoting strong, resilient and inclusive communities. Delivering high-quality buildings, infrastructure and spaces in the right locations helps provide choice over where to live and style of home, choice as to how to access amenities and services and choice to live more active, engaged, independent and healthy lifestyles.

16. Good planning creates opportunities for people to contribute to a growing, adaptable and productive economy. By allocating sites and creating places that are attractive to growing economic sectors, and enabling the delivery of necessary infrastructure, planning can help provide the confidence required to secure private sector investment, thus supporting innovation, creating employment and benefiting related businesses.

Outcome 2: A low carbon place – reducing our carbon emissions and adapting to climate change.

15 www.scotland.gov.uk/Topics/Government/PublicServiceReform/CP/SOA2012

16 www.scotland.gov.uk/Topics/Government/PublicServiceReform/CP

17. NPF3 will facilitate the transition to a low carbon economy, particularly by supporting diversification of the energy sector. The spatial strategy as a whole aims to reduce greenhouse gas emissions and facilitate [adaptation](#) to climate change.

18. The Climate Change (Scotland) Act 2009 sets a target of reducing greenhouse gas emissions by at least 80% by 2050, with an interim target of reducing emissions by at least 42% by 2020. Annual greenhouse gas emission targets are set in secondary legislation. Section 44 of the Act places a duty on every public body to act:

- in the way best calculated to contribute to the delivery of emissions targets in the Act;
- in the way best calculated to help deliver the Scottish Government's climate change adaptation programme; and
- in a way that it considers is most sustainable.

19. The SPP sets out how this should be delivered on the ground. By seizing opportunities to encourage mitigation and adaptation measures, planning can support the transformational change required to meet emission reduction targets and influence climate change. Planning can also influence people's choices to reduce the environmental impacts of consumption and production, particularly through energy efficiency and the reduction of waste.

Outcome 3: A natural, resilient place – helping to protect and enhance our natural and cultural assets, and facilitating their sustainable use.

20. NPF3 emphasises the importance of our environment as part of our cultural identity, an essential contributor to well-being and an economic opportunity. Our spatial strategy aims to build resilience and promotes protection and sustainable use of our world-class environmental assets.

21. The SPP sets out how this should be delivered on the ground. By protecting and making efficient use of Scotland's existing resources and environmental assets, planning can help us to live within our environmental limits and to pass on healthy ecosystems to future generations. Planning can help to manage and improve the condition of our assets, supporting communities in realising their aspirations for their environment and facilitating their access to enjoyment of it. By enhancing our surroundings, planning can help make Scotland a uniquely attractive place to work, visit and invest and therefore support the generation of jobs, income and wider economic benefits.

Outcome 4: A more connected place – supporting better transport and digital connectivity.

22. NPF3 reflects our continuing investment in infrastructure, to strengthen transport links within Scotland and to the rest of the world. Improved digital connections will also play a key role in helping to deliver our spatial strategy for sustainable growth.

23. The SPP sets out how this should be delivered on the ground. By aligning development more closely with transport and digital infrastructure, planning can improve sustainability and connectivity. Improved connections facilitate accessibility within and between places – within Scotland and beyond – and support economic growth and an inclusive society.

SG Purpose	To focus government and public services on creating a more successful country, with opportunities for all to flourish, through increasing sustainable economic growth.										
SG National Outcomes	The planning system and service contribute to all 16 National Outcomes										
SG National Plans, Policies & Strategies	Government Economic Strategy										
	Infrastructure Investment Plan										
	Scotland's Digital Future	Electricity & Heat Generation Policy Statements	2020 Challenge for Scotland's Biodiversity	Scottish Historic Environment Strategy and Policy	Housing Strategy	National Planning Framework & Scottish Planning Policy	Land Use Strategy	Low Carbon Scotland: Report of Proposals and Policies	National Marine Plan	Regeneration Strategy	National Transport Strategy
Planning Vision	We live in a Scotland with a growing, low carbon economy with progressively narrowing disparities in well-being and opportunity. It is growth that can be achieved whilst reducing emissions and which respects the quality of environment, place and life which makes our country so special. It is growth which increases solidarity – reducing inequalities between our regions. We live in sustainable, well-designed places and homes which meet our needs. We enjoy excellent transport and digital connections, internally and with the rest of the world.										
Planning Outcomes	Planning makes Scotland a successful, sustainable place – supporting sustainable economic growth and regeneration, and the creation of well-designed places.			Planning makes Scotland a low carbon place – reducing our carbon emissions and adapting to climate change.			Planning makes Scotland a natural, resilient place – helping to protect and enhance our natural and cultural assets, and facilitating their sustainable use.			Planning makes Scotland a connected place – supporting better transport and digital connectivity.	
National Planning	National Planning Framework (NPF)										
	Sustainability		Principal Policies		Placemaking						
	Subject Policies										
	Town Centres	Heat and Electricity		Natural Environment	Travel						
	Rural Development			Green Infrastructure	Digital Connectivity						
	Homes										
	Business & Employment	Zero Waste		Aquacultural							
	Historic Environment			Minerals							
				Flooding & Drainage							
	COMMUNITY PLANNING										
Strategic	Strategic Development Plans										
Local	Local Development Plans										
Site	Master Plans										

Principal Policies

Sustainability

NPF and wider policy context

24. The Scottish Government's central purpose is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing **sustainable economic growth**.

25. The Scottish Government's commitment to the concept of **sustainable development** is reflected in its Purpose. It is also reflected in the continued support for the five guiding principles set out in the UK's shared framework for sustainable development. Achieving a sustainable economy, promoting good governance and using sound science responsibly are essential to the creation and maintenance of a strong, healthy and just society capable of living within environmental limits.

26. The NPF is the spatial expression of the Government Economic Strategy (2011) and sustainable economic growth forms the foundations of its strategy. The NPF sits at the top of the development plan hierarchy and must be taken into account in the preparation of strategic and local development plans.

27. The Government Economic Strategy indicates that sustainable economic growth is the key to unlocking Scotland's potential and outlines the multiple benefits of delivering the Government's purpose, including creating a supportive business environment, achieving a low carbon economy, tackling health and social problems, maintaining a high-quality environment and passing on a sustainable legacy for future generations.

Policy Principles

This SPP introduces a presumption in favour of sustainable development.

28. The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.

29. Planning policies and decisions should support sustainable development. For the purposes of this policy, to assess whether a policy or proposal supports sustainable development, the following principles should be taken into account:

- giving due weight to net economic benefit;
- responding to economic issues, challenges and opportunities, as outlined in local economic strategies;
- supporting good design and the six qualities of successful places;
- making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;
- supporting delivery of accessible housing, business, retailing and leisure development;

- supporting delivery of infrastructure, for example transport, education, energy, digital and water;
- supporting [climate change mitigation](#) and [adaptation](#) including taking account of flood risk;
- improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;
- having regard to the principles for sustainable land use set out in the Land Use Strategy;
- protecting, enhancing and promoting access to cultural heritage, including the [historic environment](#);
- protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;
- reducing waste, facilitating its management and promoting resource recovery; and
- avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

Key Documents

- [National Planning Framework](#)¹⁷
- [Government Economic Strategy](#)¹⁸
- [Planning Reform: Next Steps](#)¹⁹
- [Getting the Best from Our Land – A Land Use Strategy for Scotland](#)²⁰
- [UK's Shared Framework for Sustainable Development](#)²¹

Delivery

Development Planning

30. Development plans should:

- be consistent with the policies set out in this SPP, including the presumption in favour of sustainable development;
- positively seek opportunities to meet the development needs of the plan area in a way which is flexible enough to adapt to changing circumstances over time;
- support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new or emerging sectors likely to locate in their area;
- be up-to-date, place-based and enabling with a spatial strategy that is implemented through policies and proposals; and
- set out a spatial strategy which is both sustainable and deliverable, providing confidence to stakeholders that the outcomes can be achieved.

¹⁷ www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Framework

¹⁸ www.scotland.gov.uk/Publications/2011/09/13091128/0

¹⁹ www.scotland.gov.uk/Publications/2012/03/3467

²⁰ www.scotland.gov.uk/Publications/2011/03/17091927/0

²¹ <http://archive.defra.gov.uk/sustainable/government/documents/SDFramework.pdf>

31. Action programmes should be actively used to drive delivery of planned developments: to align stakeholders, phasing, financing and infrastructure investment over the long term.

Development Management

32. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. The 1997 Act requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. Proposals that accord with development plans should be considered acceptable in principle and consideration should focus on the detailed matters arising.

33. Proposals that do not accord with the development plan should not be considered acceptable unless material considerations indicate otherwise. Where a proposal is for sustainable development, the presumption in favour of sustainable development is a material consideration in favour of the proposal. Whether a proposed development is sustainable development should be assessed according to the principles set out in paragraph 29.

34. Where a plan is under review, it may be appropriate in some circumstances to consider whether granting planning permission would prejudice the emerging plan. Such circumstances are only likely to apply where the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new developments that are central to the emerging plan. Prematurity will be more relevant as a consideration the closer the plan is to adoption or approval.

35. To support the efficient and transparent handling of planning applications by planning authorities and consultees, applicants should provide good quality and timely supporting information that describes the economic, environmental and social implications of the proposal. In the spirit of planning reform, this should be proportionate to the scale of the application and planning authorities should avoid asking for additional impact appraisals, unless necessary to enable a decision to be made. Clarity on the information needed and the timetable for determining proposals can be assisted by good communication and project management, for example, use of processing agreements setting out the information required and covering the whole process including planning obligations.

Placemaking

NPF and wider policy context

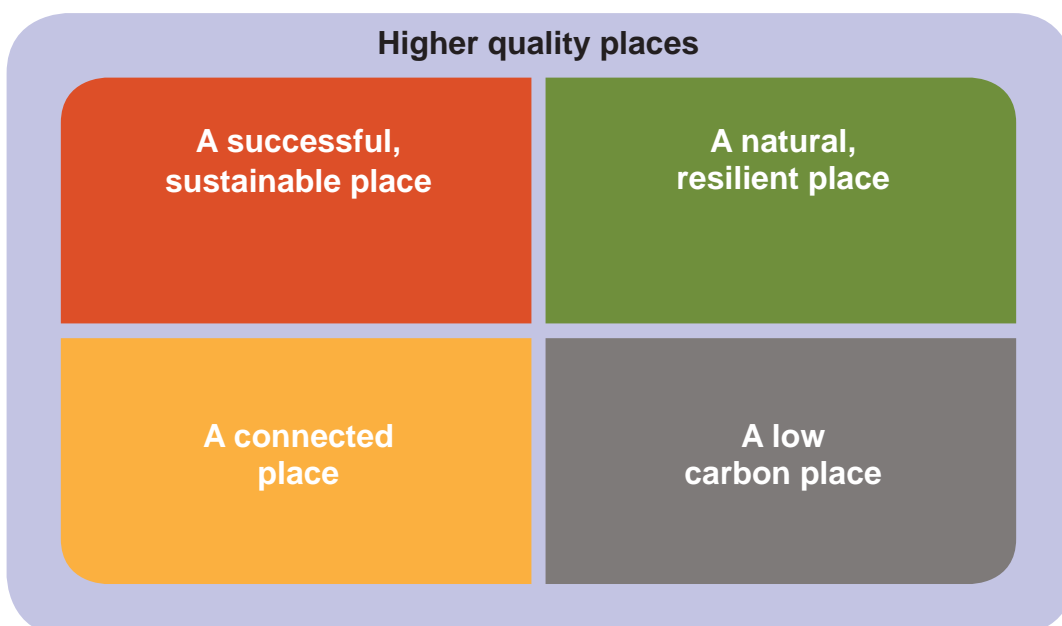
36. Planning's purpose is to create better [places](#). Placemaking is a creative, collaborative process that includes design, development, renewal or regeneration of our urban or rural built environments. The outcome should be sustainable, well-designed places and homes which meet people's needs. The Government Economic Strategy supports an approach to place that recognises the unique contribution that every part of Scotland can make to achieving our shared outcomes. This means harnessing the distinct characteristics and strengths of each place to improve the overall quality of life for people. Reflecting this, NPF3 sets out an agenda for placemaking in our city regions, towns, rural areas, coast and islands.

37. The Government's policy statement on architecture and place for Scotland, Creating Places, emphasises that quality places are successful places. It sets out the value that high-quality design can deliver for Scotland's communities and the important role that good buildings and places play in promoting healthy, sustainable lifestyles; supporting the prevention agenda and efficiency in public services; promoting Scotland's distinctive identity all over the world; attracting visitors, talent and investment; delivering our environmental ambitions; and providing a sense of belonging, a sense of identity and a sense of community. It is clear that places which have enduring appeal and functionality are more likely to be valued by people and therefore retained for generations to come.

Policy Principles

Planning should take every opportunity to create high quality places by taking a design-led approach.

38. This means taking a holistic approach that responds to and enhances the existing place while balancing the costs and benefits of potential opportunities over the long term. This means considering the relationships between:



39. The design-led approach should be applied at all levels – at the national level in the NPF, at the regional level in strategic development plans, at the local level in local development plans and at site and individual building level within master plans that respond to how people use public spaces.

Planning should direct the right development to the right place.

40. This requires spatial strategies within development plans to promote a sustainable pattern of development appropriate to the area. To do this decisions should be guided by the following policy principles:

- optimising the use of existing resource capacities, particularly by co-ordinating housing and business development with infrastructure investment including transport, education facilities, water and drainage, energy, heat networks and digital infrastructure;
- using land within or adjacent to settlements for a mix of uses. This will also support the creation of more compact, higher density, accessible and more vibrant cores;
- considering the re-use or re-development of **brownfield land** before new development takes place on greenfield sites;
- considering whether the permanent, temporary or advanced greening of all or some of a site could make a valuable contribution to green and open space networks, particularly where it is unlikely to be developed for some time, or is unsuitable for development due to its location or viability issues; and
- locating development where investment in growth or improvement would have most benefit for the amenity of local people and the vitality of the local economy.

Planning should support development that is designed to a high-quality, which demonstrates the six qualities of successful place.

- ***Distinctive***

41. This is development that complements local features, for example landscapes, topography, ecology, skylines, spaces and scales, street and building forms, and materials to create places with a sense of identity.

- ***Safe and Pleasant***

42. This is development that is attractive to use because it provides a sense of security through encouraging activity. It does this by giving consideration to crime rates and providing a clear distinction between private and public space, by having doors that face onto the street creating active frontages, and by having windows that overlook well-lit streets, paths and open spaces to create natural surveillance. A pleasant, positive sense of place can be achieved by promoting visual quality, encouraging social and economic interaction and activity, and by considering the place before vehicle movement.

- **Welcoming**

43. This is development that helps people to find their way around. This can be by providing or accentuating landmarks to create or improve views, it can be locating a distinctive work of art to mark places such as gateways, and it can include appropriate signage and distinctive lighting to improve safety and show off attractive buildings.

- **Adaptable**

44. This is development that can accommodate future changes of use because there is a mix of building densities, tenures and typologies where diverse but compatible uses can be integrated. It takes into account how people use places differently, for example depending on age, gender and degree of personal mobility and providing versatile greenspace.

- **Resource Efficient**

45. This is development that re-uses or shares existing resources, maximises efficiency of the use of resources through natural or technological means and prevents future resource depletion, for example by mitigating and adapting to climate change. This can mean denser development that shares infrastructure and amenity with adjacent sites. It could include siting development to take shelter from the prevailing wind; or orientating it to maximise solar gain. It could also include ensuring development can withstand more extreme weather, including prolonged wet or dry periods, by working with natural environmental processes such as using landscaping and natural shading to cool spaces in built areas during hotter periods and using sustainable drainage systems to conserve and enhance natural features whilst reducing the risk of flooding. It can include using durable materials for building and landscaping as well as low carbon technologies that manage heat and waste efficiently.

- **Easy to Move Around and Beyond**

46. This is development that considers place and the needs of people before the movement of motor vehicles. It could include using higher densities and a mix of uses that enhance accessibility by reducing reliance on private cars and prioritising sustainable and active travel choices, such as walking, cycling and public transport. It would include paths and routes which connect places directly and which are well-connected with the wider environment beyond the site boundary. This may include providing facilities that link different means of travel.

Key Documents

- [National Planning Framework](#)²³
- [Getting the Best from Our Land – A Land Use Strategy for Scotland](#)²⁴
- [Creating Places –A Policy Statement on Architecture and Place for Scotland](#)²⁵
- [Designing Streets](#)²⁶
- [Planning Advice Note 77: Designing Safer Places](#)²⁷
- [Green Infrastructure: Design and Placemaking](#)²⁸

23 www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Framework

24 www.scotland.gov.uk/Publications/2011/03/17091927/0

25 www.scotland.gov.uk/Publications/2013/06/9811/0

26 www.scotland.gov.uk/Publications/2010/03/22120652/0

27 www.scotland.gov.uk/Publications/2006/03/08094923/0

28 www.scotland.gov.uk/Publications/2011/11/04140525/0

Delivery

47. Planning should adopt a consistent and relevant approach to the assessment of design and place quality such as that set out in the forthcoming Scottish Government Place Standard.

Development Planning

48. Strategic and local development plans should be based on spatial strategies that are deliverable, taking into account the scale and type of development pressure and the need for growth and regeneration. An urban capacity study, which assesses the scope for development within settlement boundaries, may usefully inform the spatial strategy, and local authorities should make use of land assembly, including the use of [compulsory purchase powers](#)²⁹ where appropriate. Early discussion should take place between local authorities, developers and relevant agencies to ensure that investment in necessary new infrastructure is addressed in a timely manner.

49. For most settlements, a green belt is not necessary as other policies can provide an appropriate basis for directing development to the right locations. However, where the planning authority considers it appropriate, the development plan may designate a green belt around a city or town to support the spatial strategy by:

- directing development to the most appropriate locations and supporting regeneration;
- protecting and enhancing the character, landscape setting and identity of the settlement; and
- protecting and providing access to open space.

50. In developing the spatial strategy, planning authorities should identify the most sustainable locations for longer-term development and, where necessary, review the boundaries of any green belt.

51. The spatial form of the green belt should be appropriate to the location. It may encircle a settlement or take the shape of a buffer, corridor, strip or wedge. Local development plans should show the detailed boundary of any green belt, giving consideration to:

- excluding existing settlements and major educational and research uses, major businesses and industrial operations, airports and Ministry of Defence establishments;
- the need for development in smaller settlements within the green belt, where appropriate leaving room for expansion;
- redirecting development pressure to more suitable locations; and
- establishing clearly identifiable visual boundary markers based on landscape features such as rivers, tree belts, railways or main roads³⁰. Hedges and field enclosures will rarely provide a sufficiently robust boundary.

52. Local development plans should describe the types and scales of development which would be appropriate within a green belt. These may include:

- development associated with agriculture, including the reuse of historic agricultural buildings;
- development associated with woodland and forestry, including community woodlands;
- horticulture, including market gardening and directly connected retailing;

29 www.scotland.gov.uk/Topics/archive/National-Planning-Policy/themes/ComPur

30 Note: where a main road forms a green belt boundary, any proposed new accesses would still require to meet the usual criteria.

- recreational uses that are compatible with an agricultural or natural setting;
- essential infrastructure such as digital communications infrastructure and electricity grid connections;
- development meeting a national requirement or established need, if no other suitable site is available; and
- intensification of established uses subject to the new development being of a suitable scale and form.

53. The creation of a new settlement may occasionally be a necessary part of a spatial strategy, where it is justified either by the scale and nature of the housing land requirement and the existence of major constraints to the further growth of existing settlements, or by its essential role in promoting regeneration or rural development.

54. Where a development plan spatial strategy indicates that a new settlement is appropriate, it should specify its scale and location, and supporting infrastructure requirements, particularly where these are integral to the viability and deliverability of the proposed development. Supplementary guidance can address more detailed issues such as design and delivery.

55. Local development plans should contribute to high-quality places by setting out how they will embed a design-led approach. This should include:


- reference to the six qualities of successful places which enable consideration of each place as distinctly different from other places and which should be evident in all development;
- using processes that harness and utilise the knowledge of communities and encourage active participation to deliver places with local integrity and relevance; and
- specifying when design tools, such as those at paragraph 57 should be used.

Development Management

56. Design is a material consideration in determining planning applications. Planning permission may be refused and the refusal defended at appeal or local review solely on design grounds.

Tools for Making Better Places

57. Design tools guide the quality of development in and across places to promote positive change. They can help to provide certainty for stakeholders as a contribution to sustainable economic growth. Whichever tools are appropriate to the task, they should focus on delivering the six qualities of successful places and could be adopted as supplementary guidance.



32 www.scotland.gov.uk/Publications/2003/08/18013/25389

Subject Policies

A Successful, Sustainable Place

Promoting Town Centres

NPF and wider context

58. NPF3 reflects the importance of town centres as a key element of the economic and social fabric of Scotland. Much of Scotland's population lives and works in towns, within city regions, in our rural areas and on our coasts and islands. Town centres are at the heart of their communities and can be hubs for a range of activities. It is important that planning supports the role of town centres to thrive and meet the needs of their residents, businesses and visitors for the 21st century.

59. The town centre first principle, stemming from the Town Centre Action Plan, promotes an approach to wider decision-making that considers the health and vibrancy of town centres.

Policy Principles

60. Planning for town centres should be flexible and proactive, enabling a wide range of uses which bring people into town centres. The planning system should:

- apply a town centre first policy³³ when planning for uses which attract significant numbers of people, including retail and commercial leisure, offices, community and cultural facilities;
- encourage a mix of uses in town centres to support their vibrancy, vitality and viability throughout the day and into the evening;
- ensure development plans, decision-making and monitoring support successful town centres; and
- consider opportunities for promoting residential use within town centres where this fits with local need and demand.

Key Documents

- [National Review of Town Centres External Advisory Group Report: Community and Enterprise in Scotland's Town Centres](#)³⁴
- [Town Centre Action Plan – the Scottish Government response](#)³⁵
- [Planning Advice Note 59: Improving Town Centres](#)³⁶
- [Planning Advice Note 52: Planning and Small Towns](#)³⁷

33 A town centre first policy is intended to support town centres, where these exist, or new centres which are supported by the development plan. Where there are no town centres in the vicinity, for example in more remote rural and island areas, the expectation is that local centres will be supported. The town centre first policy is not intended to divert essential services and developments away from such rural areas. See section on Rural Development.

34 www.scotland.gov.uk/Resource/0042/00426972.pdf

35 www.scotland.gov.uk/Publications/2013/11/6415

36 www.scotland.gov.uk/Publications/1999/10/pan59-root/pan59

37 www.scotland.gov.uk/Publications/1997/04/pan52

- [Town Centres Masterplanning Toolkit](#)³⁸

Development Plans

61. Plans should identify a network of centres and explain how they can complement each other. The network is likely to include city centres, town centres, local centres and commercial centres and may be organised as a hierarchy. Emerging or new centres designated within key new developments or land releases should also be shown within the network of centres. In remoter rural and island areas, it may not be necessary to identify a network.

62. Plans should identify as town centres those centres which display:

- a diverse mix of uses, including shopping;
- a high level of accessibility;
- qualities of character and identity which create a sense of place and further the well-being of communities;
- wider economic and social activity during the day and in the evening; and
- integration with residential areas.

63. Plans should identify as commercial centres those centres which have a more specific focus on retailing and/or leisure uses, such as shopping centres, commercial leisure developments, mixed retail and leisure developments, retail parks and factory outlet centres. Where necessary to protect the role of town centres, plans should specify the function of commercial centres, for example where retail activity may be restricted to the sale of bulky goods.

64. Local authorities, working with community planning partners, businesses and community groups as appropriate, should prepare a town centre health check. Annex A sets out a range of indicators which may be relevant. The purpose of a health check is to assess a town centre's strengths, vitality and viability, weaknesses and resilience. It will be used to inform development plans and decisions on planning applications. Health checks should be regularly updated, to monitor town centre performance, preferably every two years.

65. Local authorities, working with partners, should use the findings of the health check to develop a strategy to deliver improvements to the town centre. Annex A contains guidance on key elements in their preparation.

66. The spatial elements of town centre strategies should be included in the development plan or supplementary guidance. Plans should address any significant changes in the roles and functions of centres over time, where change is supported by the results of a health check. Plans should assess how centres can accommodate development and identify opportunities.

67. There are concerns about the number and clustering of some non-retail uses, such as betting offices and high interest money lending premises, in some town and local centres. Plans should include policies to support an appropriate mix of uses in town centres, local centres and high streets. Where a town centre strategy indicates that further provision of particular activities would undermine the character and amenity of centres or the well-being of communities, plans should include policies to prevent such over-provision and clustering.

38 <http://creatingplacescotland.org/people-communities/policy/town-centre-masterplanning-toolkit#overlay-context=people-communities/policy>

68. Development plans should adopt a sequential town centre first approach when planning for uses which generate significant footfall, including retail and commercial leisure uses, offices, community and cultural facilities and, where appropriate, other public buildings such as libraries, and education and healthcare facilities. This requires that locations are considered in the following order of preference:

- town centres (including city centres and local centres);
- edge of town centre;
- other commercial centres identified in the development plan; and
- out-of-centre locations that are, or can be, made easily accessible by a choice of transport modes.

69. Planning authorities, developers, owners and occupiers should be flexible and realistic in applying the sequential approach, to ensure that different uses are developed in the most appropriate locations. It is important that community, education and healthcare facilities are located where they are easily accessible to the communities that they are intended to serve.

Development Management

70. Decisions on development proposals should have regard to the context provided by the network of centres identified in the development plan and the sequential approach outlined above. New development in a town centre should contribute to providing a range of uses and should be of a scale which is appropriate to that centre. The impact of new development on the character and amenity of town centres, local centres and high streets will be a material consideration in decision-making. The aim is to recognise and prioritise the importance of town centres and encourage a mix of developments which support their vibrancy, vitality and viability. This aim should also be taken into account in decisions concerning proposals to expand or change the use of existing development.

71. Where development proposals in edge of town centre, commercial centre or out-of-town locations are contrary to the development plan, it is for applicants to demonstrate that more central options have been thoroughly assessed and that the impact on existing town centres is acceptable. Where a new public building or office with a gross floorspace over 2,500m² is proposed outwith a town centre, and is contrary to the development plan, an assessment of the impact on the town centre should be carried out. Where a retail and leisure development with a gross floorspace over 2,500m² is proposed outwith a town centre, contrary to the development plan, a retail impact analysis should be undertaken. For smaller retail and leisure proposals which may have a significant impact on vitality and viability, planning authorities should advise when retail impact analysis is necessary.

72. This analysis should consider the relationship of the proposed development with the network of centres identified in the development plan. Where possible, authorities and developers should agree the data required and present information on areas of dispute in a succinct and comparable form. Planning authorities should consider the potential economic impact of development and take into account any possible displacement effect.

73. Out-of-centre locations should only be considered for uses which generate significant footfall³⁹ where:

- all town centre, edge of town centre and other commercial centre options have been assessed and discounted as unsuitable or unavailable;

³⁹ As noted at paragraph 69, a flexible approach is required for community, education and healthcare facilities.

- the scale of development proposed is appropriate, and it has been shown that the proposal cannot reasonably be altered or reduced in scale to allow it to be accommodated at a sequentially preferable location;
- the proposal will help to meet qualitative or quantitative deficiencies; and
- there will be no significant adverse effect on the vitality and viability of existing town centres.

Promoting Rural Development

NPF Context

74. NPF3 sets out a vision for vibrant rural, coastal and island areas, with growing, sustainable communities supported by new opportunities for employment and education. The character of rural and island areas and the challenges they face vary greatly across the country, from pressurised areas of countryside around towns and cities to more remote and sparsely populated areas. Between these extremes are extensive intermediate areas under varying degrees of pressure and with different kinds of environmental assets meriting protection. Scotland's long coastline is an important resource both for development and for its particular environmental quality, especially in the areas of the three island councils.

Policy Principles

75. The planning system should:

- in all rural and island areas promote a pattern of development that is appropriate to the character of the particular rural area and the challenges it faces;
- encourage rural development that supports prosperous and sustainable communities and businesses whilst protecting and enhancing environmental quality; and
- support an integrated approach to coastal planning.

Key documents

- [Getting the Best from Our Land – A Land Use Strategy for Scotland](#)⁴⁰
- National Marine Plan

Delivery

76. In the pressurised areas easily accessible from Scotland's cities and main towns, where ongoing development pressures are likely to continue, it is important to protect against an unsustainable growth in car-based commuting and the suburbanisation of the countryside, particularly where there are environmental assets such as sensitive landscapes or good quality agricultural land. Plans should make provision for most new urban development to take place within, or in planned extensions to, existing settlements.

77. In remote and fragile areas and island areas outwith defined small towns, the emphasis should be on maintaining and growing communities by encouraging development that provides suitable sustainable economic activity, while preserving important environmental assets such as landscape and wildlife habitats that underpin continuing tourism visits and quality of place.

78. In the areas of intermediate accessibility and pressure for development, plans should be tailored to local circumstances, seeking to provide a sustainable network of settlements and a

40 www.scotland.gov.uk/Publications/2011/03/17091927/0

range of policies that provide for additional housing requirements, economic development, and the varying proposals that may come forward, while taking account of the overarching objectives and other elements of the plan.

79. Plans should set out a spatial strategy which:

- reflects the development pressures, environmental assets, and economic needs of the area, reflecting the overarching aim of supporting diversification and growth of the rural economy;
- promotes economic activity and diversification, including, where appropriate, sustainable development linked to tourism and leisure, forestry, farm and croft diversification and aquaculture, nature conservation, and renewable energy developments, while ensuring that the distinctive character of the area, the service function of small towns and natural and cultural heritage are protected and enhanced;
- makes provision for housing in rural areas in accordance with the spatial strategy, taking account of the different development needs of local communities;
- where appropriate, sets out policies and proposals for leisure accommodation, such as holiday units, caravans, and huts;
- addresses the resource implications of the proposed pattern of development, including facilitating access to local community services and support for public transport; and
- considers the services provided by the natural environment, safeguarding land which is highly suitable for particular uses such as food production or flood management.

80. Where it is necessary to use good quality land for development, the layout and design should minimise the amount of such land that is required. Development on [prime agricultural land](#), or land of lesser quality that is locally important should not be permitted except where it is essential:

- as a component of the settlement strategy or necessary to meet an established need, for example for essential infrastructure, where no other suitable site is available; or
- for small-scale development directly linked to a rural business; or
- for the generation of energy from a renewable source or the extraction of minerals where this accords with other policy objectives and there is secure provision for restoration to return the land to its former status.

81. In accessible or pressured rural areas, where there is a danger of unsustainable growth in long-distance car-based commuting or suburbanisation of the countryside, a more restrictive approach to new housing development is appropriate, and plans and decision-making should generally:

- guide most new development to locations within or adjacent to settlements; and
- set out the circumstances in which new housing outwith settlements may be appropriate, avoiding use of occupancy restrictions.

82. In some most pressured areas, the designation of green belts may be appropriate.

83. In remote rural areas, where new development can often help to sustain fragile communities, plans and decision-making should generally:

- encourage sustainable development that will provide employment;
- support and sustain fragile and dispersed communities through provision for appropriate development, especially housing and community-owned energy;

- include provision for small-scale housing⁴¹ and other development which supports sustainable economic growth in a range of locations, taking account of environmental protection policies and addressing issues of location, access, siting, design and environmental impact;
- where appropriate, allow the construction of single houses outwith settlements provided they are well sited and designed to fit with local landscape character, taking account of landscape protection and other plan policies;
- not impose occupancy restrictions on housing.

National Parks

84. National Parks are designated under the National Parks (Scotland) Act 2000 because they are areas of national importance for their natural and cultural heritage. The four aims of national parks are to:

- conserve and enhance the natural and cultural heritage of the area;
- promote sustainable use of the natural resources of the area;
- promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public; and
- promote sustainable economic and social development of the area's communities.

85. These aims are to be pursued collectively. However if there is a conflict between the first aim and any of the others then greater weight must be given to the first aim. Planning decisions should reflect this weighting. Paragraph 213 also applies to development outwith a National Park that affects the Park.

86. Development plans for National Parks are expected to be consistent with the National Park Plan, which sets out the management strategy for the Park. The authority preparing a development plan for a National Park, or which affects a National Park, is required to pay special attention to the desirability of consistency with the National Park Plan, having regard to the contents.

Coastal Planning

87. The planning system should support an integrated approach to coastal planning to ensure that development plans and regional marine plans are complementary. Terrestrial planning by planning authorities overlaps with marine planning in the intertidal zone. On the terrestrial side, mainland planning authorities should work closely with neighbouring authorities, taking account of the needs of port authorities and aquaculture, where appropriate. On the marine side, planning authorities will need to ensure integration with policies and activities arising from the National Marine Plan, Marine Planning Partnerships, Regional Marine Plans, and Integrated Coastal Zone Management, as well as aquaculture.

Development Plans

88. Plans should recognise that rising sea levels and more extreme weather events resulting from climate change will potentially have a significant impact on coastal and island areas, and that a precautionary approach to flood risk should be taken. They should confirm that new development requiring new defences against coastal erosion or coastal flooding will not be supported except where there is a clear justification for a departure from the general policy to

⁴¹ including clusters and groups; extensions to existing clusters and groups; replacement housing; plots for self build; holiday homes; new build or conversion linked to rural business.

avoid development in areas at risk. Where appropriate, development plans should identify areas at risk and areas where a managed realignment of the coast would be beneficial.

89. Plans should identify areas of largely developed coast that are a major focus of economic or recreational activity that are likely to be suitable for further development; areas subject to significant constraints; and largely unspoiled areas of the coast that are generally unsuitable for development. It should be explained that this broad division does not exclude important local variations, for example where there are areas of environmental importance within developed estuaries, or necessary developments within the largely unspoiled coast where there is a specific locational need, for example for defence purposes, tourism developments of special significance, or essential onshore developments connected with offshore energy projects or (where appropriate) aquaculture.

90. Plans should promote the developed coast as the focus of developments requiring a coastal location or which contribute to the economic regeneration or well-being of communities whose livelihood is dependent on marine or coastal activities. They should provide for the development requirements of uses requiring a coastal location, including ports and harbours, tourism and recreation, fish farming, land-based development associated with offshore energy projects and specific defence establishments.

91. Plans should safeguard unspoiled sections of coast which possess special environmental or cultural qualities, such as wild land. The economic value of these areas should be considered and maximised, provided that environmental impact issues can be satisfactorily addressed.

Supporting Business and Employment

NPF Context

92. NPF3 supports the many and varied opportunities for planning to support business and employment. These range from a focus on the role of cities as key drivers of our economy, to the continuing need for diversification of our rural economy to strengthen communities and retain young people in remote areas. Planning should address the development requirements of businesses and enable key opportunities for investment to be realised. It can support sustainable economic growth by providing a positive policy context for development that delivers economic benefits.

Policy Principles

93. The planning system should:

- promote business and industrial development that increases economic activity while safeguarding and enhancing the natural and built environments as national assets;
- allocate sites that meet the diverse needs of the different sectors and sizes of business which are important to the plan area in a way which is flexible enough to accommodate changing circumstances and allow the realisation of new opportunities; and
- give due weight to net economic benefit of proposed development.

Key Documents

- [Government Economic Strategy](#)⁴²

42 www.scotland.gov.uk/Topics/Economy/EconomicStrategy

- [Tourism Development Framework for Scotland](#)⁴³
- [A Guide to Development Viability](#)⁴⁴

Delivery

Development Planning

94. Plans should align with relevant local economic strategies. These will help planning authorities to meet the needs and opportunities of indigenous firms and inward investors, recognising the potential of key sectors for Scotland with particular opportunities for growth, including:

- energy;
- life sciences, universities and the creative industries;
- tourism and the food and drink sector;
- financial and business services.

95. Plans should encourage opportunities for home-working, live-work units, micro-businesses and community hubs.

96. Development plans should support opportunities for integrating efficient energy and waste innovations within business environments. Industry stakeholders should engage with planning authorities to help facilitate co-location, as set out in paragraph 179.

97. Strategic development plan policies should reflect a robust evidence base in relation to the existing principal economic characteristics of their areas, and any anticipated change in these.

98. Strategic development plans should identify an appropriate range of locations for significant business clusters. This could include sites identified in the [National Renewables Infrastructure Plan](#)⁴⁵, [Enterprise Areas](#)⁴⁶, business parks, science parks, large and medium-sized industrial sites and high amenity sites.

99. Strategic development plans and local development plans outwith SDP areas should identify any nationally important clusters of industries [handling hazardous substances](#) within their areas and safeguard them from development which, either on its own or in combination with other development, would compromise their continued operation or growth potential. This is in the context of the wider statutory requirements in the Town and Country Planning (Development Planning) (Scotland) Regulations 2009⁴⁷ to have regard to the need to maintain appropriate distances between sites with hazardous substances and areas where the public are likely to be present and areas of particular natural sensitivity or interest.

100. Development plans should be informed by the Tourism Development Framework for Scotland in order to maximise the sustainable growth of regional and local visitor economies. Strategic development plans should identify and safeguard any nationally or regionally important locations for tourism or recreation development within their areas.

⁴³ www.visitscotland.org/pdf/Tourism%20Development%20Framework%20-%20FINAL.pdf

⁴⁴ www.scotland.gov.uk/Resource/Doc/212607/0109620.pdf

⁴⁵ www.scottish-enterprise.com/~media/SE/Resources/Documents/Sectors/Energy/energy-renewables-reports/National-renewables-infrastructure-plan.ashx

⁴⁶ www.scotland.gov.uk/Topics/Economy/EconomicStrategy/Enterprise-Areas

⁴⁷ These statutory requirements are due to be amended in 2015 as part of the implementation of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances.

101. Local development plans should allocate a range of sites for business, taking account of current market demand; location, size, quality and infrastructure requirements; whether sites are serviced or serviceable within five years; the potential for a mix of uses; their accessibility to transport networks by walking, cycling and public transport and their integration with and access to existing transport networks. The allocation of such sites should be informed by relevant economic strategies and business land audits in respect of land use classes 4, 5 and 6.

102. Business land audits should be undertaken regularly by local authorities to inform reviews of development plans, and updated more frequently if relevant. Business land audits should monitor the location, size, planning status, existing use, neighbouring land uses and any significant land use issues (e.g. underused, vacant, derelict) of sites within the existing business land supply.

103. New sites should be identified where existing sites no longer meet current needs and market expectations. Where existing business sites are underused, for example where there has been an increase in vacancy rates, reallocation to enable a wider range of viable business or alternative uses should be considered, taking careful account of the potential impacts on existing businesses on the site.

104. Local development plans should locate development which generates significant freight movements, such as manufacturing, processing, distribution and warehousing, on sites accessible to suitable railheads or harbours or the strategic road network. Through appraisal, care should be taken in locating such development to minimise any impact on congested, inner urban and residential areas.

105. Planning authorities should consider the potential to promote opportunities for tourism and recreation facilities in their development plans. This may include new developments or the enhancement of existing facilities.

Development Management

106. Efficient handling of planning applications should be a key priority, particularly where jobs and investment are involved. To assist with this, pre-application discussions are strongly encouraged to determine the information that should be submitted to support applications. Such information should be proportionate and relevant to the development and sufficient for the planning authority requirements on matters such as the number of jobs to be created, hours of working, transport requirements, environmental effects, noise levels and the layout and design of buildings. Decisions should be guided by the principles set out in paragraphs 28 to 35.

107. Proposals for development in the vicinity of [major-accident hazard sites](#) should take into account the potential impacts on the proposal and the major-accident hazard site of being located in proximity to one another. Decisions should be informed by the Health and Safety Executive's advice, based on the [PADHI](#) tool. Similar considerations apply in respect of development proposals near licensed explosive sites (including military explosive storage sites).

108. Proposals for business, industrial and service uses should take into account surrounding sensitive uses, areas of particular natural sensitivity or interest and local amenity, and make a positive contribution towards placemaking.

Enabling Delivery of New Homes

NPF Context

109. NPF3 aims to facilitate new housing development, particularly in areas within our cities network where there is continuing pressure for growth, and through innovative approaches to rural housing provision. House building makes an important contribution to the economy. Planning can help to address the challenges facing the housing sector by providing a positive and flexible approach to development. In particular, provision for new homes should be made in areas where economic investment is planned or there is a need for regeneration or to support population retention in rural and island areas.

Policy Principles

110. The planning system should:

- identify a generous supply of land for each housing market area within the plan area to support the achievement of the housing land requirement across all tenures, maintaining at least a 5-year supply of effective housing land at all times;
- enable provision of a range of attractive, well-designed, energy efficient, good quality housing, contributing to the creation of successful and sustainable places; and
- have a sharp focus on the delivery of allocated sites embedded in action programmes, informed by strong engagement with stakeholders.

Key Documents

- [The Housing \(Scotland\) Act 2001](#)⁴⁸ requires local authorities to prepare a local housing strategy supported by an assessment of housing need and demand
- [Planning Advice Note 2/2010: Affordable Housing and Housing Land Audits](#)⁴⁹

Delivery

111. Local authorities should identify functional housing market areas, i.e. geographical areas where the demand for housing is relatively self-contained. These areas may significantly overlap and will rarely coincide with local authority boundaries. They can be dynamic and complex, and can contain different tiers of sub-market area, overlain by mobile demand, particularly in city regions.

112. Planning for housing should be undertaken through joint working by housing market partnerships, involving both housing and planning officials within local authorities, and cooperation between authorities where strategic planning responsibilities and/or housing market areas are shared, including national park authorities. Registered social landlords, developers, other specialist interests, and local communities should also be encouraged to engage with housing market partnerships. In rural or island areas where there is no functional housing market area, the development plan should set out the most appropriate approach for the area.

⁴⁸ www.legislation.gov.uk/asp/2001/10/contents

⁴⁹ www.scotland.gov.uk/Publications/2010/08/31111624/0

Development Planning

113. Plans should be informed by a robust housing need and demand assessment (HNDA), prepared in line with the Scottish Government's HNDA Guidance⁵⁰. This assessment provides part of the evidence base to inform both local housing strategies and development plans (including the main issues report). It should produce results both at the level of the functional housing market area and at local authority level, and cover all tenures. Where the Scottish Government is satisfied that the HNDA is robust and credible, the approach used will not normally be considered further at a development plan examination.

114. The HNDA, development plan, and local housing strategy processes should be closely aligned, with joint working between housing and planning teams. Local authorities may wish to wait until the strategic development plan is approved in city regions, and the local development plan adopted elsewhere, before finalising the local housing strategy, to ensure that any modifications to the plans can be reflected in local housing strategies, and in local development plans in the city regions.

115. Plans should address the supply of land for all housing. They should set out the **housing supply target** (separated into affordable and market sector) for each functional housing market area, based on evidence from the HNDA. The housing supply target is a policy view of the number of homes the authority has agreed will be delivered in each housing market area over the periods of the development plan and local housing strategy, taking into account wider economic, social and environmental factors, issues of capacity, resource and deliverability, and other important requirements such as the aims of National Parks. The target should be reasonable, should properly reflect the HNDA estimate of housing demand in the market sector, and should be supported by compelling evidence. The authority's housing supply target should also be reflected in the local housing strategy.

116. Within the overall housing supply target⁵¹, plans should indicate the number of new homes to be built over the plan period. This figure should be increased by a margin of 10 to 20% to establish the housing land requirement, in order to ensure that a generous supply of land for housing is provided. The exact extent of the margin will depend on local circumstances, but a robust explanation for it should be provided in the plan.

117. The housing land requirement can be met from a number of sources, most notably sites from the established supply which are effective or expected to become effective in the plan period, sites with planning permission, proposed new land allocations, and in some cases a proportion of windfall development. Any assessment of the expected contribution to the housing land requirement from **windfall sites** must be realistic and based on clear evidence of past completions and sound assumptions about likely future trends. In urban areas this should be informed by an urban capacity study.

118. Strategic development plans should set out the **housing supply target** and the housing land requirement for the plan area, each local authority area, and each functional housing market area. They should also state the amount and broad locations of land which should be allocated in local development plans to meet the housing land requirement up to year 12 from the expected year of plan approval, making sure that the requirement for each housing market area is met in full. Beyond year 12 and up to year 20, the strategic development plan should provide an indication of the possible scale and location of housing land, including by local development plan area.

⁵⁰ www.scotland.gov.uk/Topics/Built-Environment/Housing/supply-demand/chma/hnda

⁵¹ Note: the housing supply target may in some cases include a contribution from other forms of delivery, for example a programme to bring empty properties back into use.

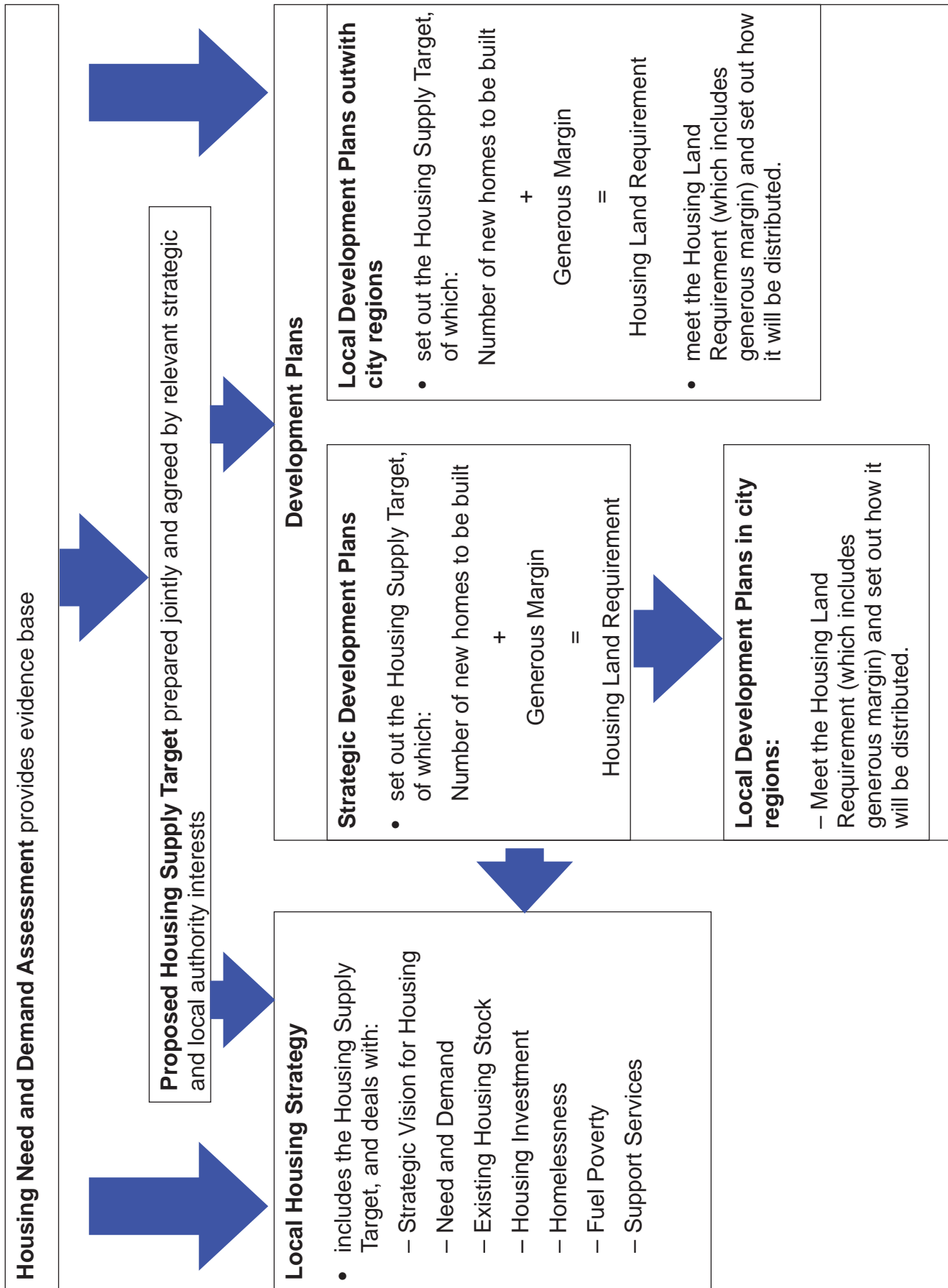
119. Local development plans in city regions should allocate a range of sites which are effective or expected to become effective in the plan period to meet the housing land requirement of the strategic development plan up to year 10 from the expected year of adoption. They should provide for a minimum of 5 years effective land supply at all times. In allocating sites, planning authorities should be confident that land can be brought forward for development within the plan period and that the range of sites allocated will enable the housing supply target to be met.

120. Outwith city regions, local development plans should set out the housing supply target (separated into affordable and market sector) and the housing land requirement for each housing market area in the plan area up to year 10 from the expected year of adoption. They should allocate a range of sites which are effective or expected to become effective in the plan period to meet the housing land requirement in full. They should provide a minimum of 5 years effective land supply at all times. Beyond year 10 and up to year 20, the local development plan should provide an indication of the possible scale and location of the housing land requirement.

121. In the National Parks, local development plans should draw on the evidence provided by the HNDAs of the constituent housing authorities. National Park authorities should aim to meet the housing land requirement in full in their area. However, they are not required to do so, and they should liaise closely with neighbouring planning authorities to ensure that any remaining part of the housing land requirement for the National Parks is met in immediately adjoining housing market areas, and that a 5-year supply of effective land is maintained.

122. Local development plans should allocate appropriate sites to support the creation of sustainable mixed communities and successful places and help to ensure the continued delivery of new housing.

Diagram 1: Housing Land, Development Planning and the Local Housing Strategy



Maintaining a 5-year Effective Land Supply

123. Planning authorities should actively manage the housing land supply. They should work with housing and infrastructure providers to prepare an annual housing land audit as a tool to critically review and monitor the availability of effective housing land, the progress of sites through the planning process, and housing completions, to ensure a generous supply of land for house building is maintained and there is always enough effective land for at least five years. A site is only considered effective where it can be demonstrated that within five years it will be free of constraints⁵² and can be developed for housing. In remoter rural areas and island communities, where the housing land requirement and market activity are of a more limited scale, the housing land audit process may be adapted to suit local circumstances.

124. The development plan action programme, prepared in tandem with the plan, should set out the key actions necessary to bring each site forward for housing development and identify the lead partner. It is a key tool, and should be used alongside the housing land audit to help planning authorities manage the land supply.

125. Planning authorities, developers, service providers and other partners in housing provision should work together to ensure a continuing supply of effective land and to deliver housing, taking a flexible and realistic approach. Proposals that do not accord with the development plan should not be considered acceptable unless material considerations indicate otherwise. Where a proposal for housing development is for sustainable development and the decision-maker establishes that there is a shortfall in the housing land supply in accordance with Planning Advice Note 1/2020, the shortfall is a material consideration in favour of the proposal. Whilst the weight to be afforded to it is a matter for decision-makers to determine, the contribution of the proposal to addressing the shortfall within a five year period should be taken into account to inform this judgement. Whether a proposed development is sustainable development should be assessed according to the principles set out in paragraph 29.

Affordable Housing

126. Affordable housing is defined broadly as housing of a reasonable quality that is affordable to people on modest incomes. Affordable housing may be provided in the form of social rented accommodation, mid-market rented accommodation, shared ownership housing, shared equity housing, housing sold at a discount (including plots for self-build), and low cost housing without subsidy.

127. Where the housing supply target requires provision for affordable housing, strategic development plans should state how much of the total housing land requirement this represents.

128. Local development plans should clearly set out the scale and distribution of the affordable housing requirement for their area. Where the HNDA and local housing strategy process identify a shortage of affordable housing, the plan should set out the role that planning will take in addressing this. Planning authorities should consider whether it is appropriate to allocate some small sites specifically for affordable housing. Advice on the range of possible options for provision of affordable housing is set out in PAN 2/2010.

⁵² Planning Advice Note 2/2010: Affordable Housing and Housing Land Audits sets out more fully the measure of effective sites www.scotland.gov.uk/Publications/2010/08/31111624/5

129. Plans should identify any expected developer contributions towards delivery of affordable housing. Where a contribution is required, this should generally be for a specified proportion of the serviced land within a development site to be made available for affordable housing. Planning authorities should consider the level of affordable housing contribution which is likely to be deliverable in the current economic climate, as part of a viable housing development. The level of affordable housing required as a contribution within a market site should generally be no more than 25% of the total number of houses. Consideration should also be given to the nature of the affordable housing required and the extent to which this can be met by proposals capable of development with little or no public subsidy. Where permission is sought for specialist housing, as described in paragraphs 132-134, a contribution to affordable housing may not always be required.

130. Plans should consider how affordable housing requirements will be met over the period of the plan. Planning and housing officials should work together closely to ensure that the phasing of land allocations and the operation of affordable housing policies combine to deliver housing across the range of tenures. In rural areas, where significant unmet local need for affordable housing has been shown, it may be appropriate to introduce a 'rural exceptions' policy which allows planning permission to be granted for affordable housing on small sites that would not normally be used for housing, for example because they lie outwith the adjacent built-up area and are subject to policies of restraint.

131. Any detailed policies on how the affordable housing requirement is expected to be delivered, including any differences in approach for urban and rural areas, should be set out in supplementary guidance. Where it is considered that housing built to meet an identified need for affordable housing should remain available to meet such needs in perpetuity, supplementary guidance should set out the measures to achieve this. Any specific requirements on design may also be addressed in supplementary guidance.

Specialist Housing Provision and Other Specific Needs

132. As part of the HNDA, local authorities are required to consider the need for specialist provision that covers accessible and adapted housing, wheelchair housing and supported accommodation, including care homes and sheltered housing. This supports independent living for elderly people and those with a disability. Where a need is identified, planning authorities should prepare policies to support the delivery of appropriate housing and consider allocating specific sites.

133. HNDAs will also evidence need for sites for Gypsy/Travellers and Travelling Showpeople. Development plans and local housing strategies should address any need identified, taking into account their mobile lifestyles. In city regions, the strategic development plan should have a role in addressing cross-boundary considerations. If there is a need, local development plans should identify suitable sites for these communities. They should also consider whether policies are required for small privately-owned sites for Gypsy/Travellers, and for handling applications for permanent sites for Travelling Showpeople (where account should be taken of the need for storage and maintenance of equipment as well as accommodation). These communities should be appropriately involved in identifying sites for their use.

134. Local development plans should address any need for houses in multiple occupation (HMO). More information is provided in Circular 2/2012 Houses in Multiple Occupation⁵³. Planning authorities should also consider the housing requirements of service personnel and sites for people seeking self-build plots. Where authorities believe it appropriate to allocate suitable sites for self-build plots, the sites may contribute to meeting the housing land requirement.

⁵³ www.scotland.gov.uk/Publications/2012/06/4191

Valuing the Historic Environment

NPF and wider policy context

135. NPF3 recognises the contribution made by our cultural heritage to our economy, cultural identity and quality of life. Planning has an important role to play in maintaining and enhancing the distinctive and high-quality, irreplaceable historic places which enrich our lives, contribute to our sense of identity and are an important resource for our tourism and leisure industry.

136. The **historic environment** is a key cultural and economic asset and a source of inspiration that should be seen as integral to creating successful places. Culture-led regeneration can have a profound impact on the well-being of a community in terms of the physical look and feel of a place and can also attract visitors, which in turn can bolster the local economy and sense of pride or ownership.

Policy Principles

137. The planning system should:

- promote the care and protection of the designated and non-designated historic environment (including individual assets, related **settings** and the wider cultural landscape) and its contribution to sense of place, cultural identity, social well-being, economic growth, civic participation and lifelong learning; and
- enable positive change in the historic environment which is informed by a clear understanding of the importance of the heritage assets affected and ensure their future use. Change should be sensitively managed to avoid or minimise adverse impacts on the fabric and setting of the asset, and ensure that its special characteristics are protected, conserved or enhanced.

Key Documents

- [Scottish Historic Environment Policy](#)⁵⁴
- [Historic Environment Strategy for Scotland](#)⁵⁵
- [Managing Change in the Historic Environment – Historic Scotland’s guidance note series](#)⁵⁶
- [Planning Advice Note 2/2011: Planning and Archaeology](#)⁵⁷
- [Planning Advice Note 71: Conservation Area Management](#)⁵⁸
- [Scottish Historic Environment Databases](#)⁵⁹

⁵⁴ www.historic-scotland.gov.uk/index/heritage/policy/shep.htm

⁵⁵ www.scotland.gov.uk/Publications/2014/03/8522

⁵⁶ www.historic-scotland.gov.uk/managingchange

⁵⁷ www.scotland.gov.uk/Publications/2011/08/04132003/0

⁵⁸ www.scotland.gov.uk/Publications/2004/12/20450/49052

⁵⁹ <http://smrforum-scotland.org.uk/wp-content/uploads/2014/03/SHED-Strategy-Final-April-2014.pdf>

Delivery

Development Planning

138. Strategic development plans should protect and promote their significant historic environment assets. They should take account of the capacity of settlements and surrounding areas to accommodate development without damage to their historic significance.

139. Local development plans and supplementary guidance should provide a framework for protecting and, where appropriate, enhancing all elements of the historic environment. Local planning authorities should designate and review existing and potential conservation areas and identify existing and proposed [Article 4 Directions](#). This should be supported by Conservation Area Appraisals and Management Plans.

Development Management

140. The siting and design of development should take account of all aspects of the historic environment. In support of this, planning authorities should have access to a Sites and Monuments Record (SMR) and/or a Historic Environment Record (HER) that contains necessary information about known historic environment features and finds in their area.

Listed Buildings

141. Change to a listed building should be managed to protect its special interest while enabling it to remain in active use. Where planning permission and listed building consent are sought for development to, or affecting, a listed building, special regard must be given to the importance of preserving and enhancing the building, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed building or its setting should be appropriate to the character and appearance of the building and setting. Listed buildings should be protected from demolition or other work that would adversely affect it or its setting.

142. Enabling development may be acceptable where it can be clearly shown to be the only means of preventing the loss of the asset and securing its long-term future. Any development should be the minimum necessary to achieve these aims. The resultant development should be designed and sited carefully to preserve or enhance the character and setting of the historic asset.

Conservation Areas

143. Proposals for development within conservation areas and proposals outwith which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area. Proposals that do not harm the character or appearance of the conservation area should be treated as preserving its character or appearance. Where the demolition of an unlisted building is proposed through Conservation Area Consent, consideration should be given to the contribution the building makes to the character and appearance of the conservation area. Where a building makes a positive contribution the presumption should be to retain it.

144. Proposed works to trees in conservation areas require prior notice to the planning authority and statutory Tree Preservation Orders⁶⁰ can increase the protection given to such trees. Conservation Area Appraisals should inform development management decisions.

⁶⁰ www.scotland.gov.uk/Publications/2011/01/28152314/0

Scheduled Monuments

145. Where there is potential for a proposed development to have an adverse effect on a [scheduled monument](#) or on the integrity of its setting, permission should only be granted where there are exceptional circumstances. Where a proposal would have a direct impact on a scheduled monument, the written consent of Scottish Ministers via a separate process is required in addition to any other consents required for the development.

Historic Marine Protected Areas

146. Where planning control extends offshore, planning authorities should ensure that development will not significantly hinder the preservation objectives of [Historic Marine Protected Areas](#).

World Heritage Sites

147. World Heritage Sites are of international importance. Where a development proposal has the potential to affect a World Heritage Site, or its setting, the planning authority must protect and preserve its [Outstanding Universal Value](#).

Gardens and Designed Landscapes

148. Planning authorities should protect and, where appropriate, seek to enhance gardens and designed landscapes included in the Inventory of Gardens and Designed Landscapes and designed landscapes of regional and local importance.

Battlefields

149. Planning authorities should seek to protect, conserve and, where appropriate, enhance the key landscape characteristics and special qualities of sites in the Inventory of Historic Battlefields.

Archaeology and Other Historic Environment Assets

150. Planning authorities should protect archaeological sites and monuments as an important, finite and non-renewable resource and preserve them in situ wherever possible. Where in situ preservation is not possible, planning authorities should, through the use of conditions or a legal obligation, ensure that developers undertake appropriate excavation, recording, analysis, publication and archiving before and/or during development. If archaeological discoveries are made, they should be reported to the planning authority to enable discussion on appropriate measures, such as inspection and recording.

151. There is also a range of non-designated historic assets and areas of historical interest, including historic landscapes, other gardens and designed landscapes, woodlands and routes such as drove roads which do not have statutory protection. These resources are, however, an important part of Scotland's heritage and planning authorities should protect and preserve significant resources as far as possible, in situ wherever feasible.

A Low Carbon Place

Delivering Heat and Electricity

NPF Context

152. NPF3 is clear that planning must facilitate the transition to a low carbon economy, and help to deliver the aims of the [Scottish Government's Report on Proposals and Policies](#)⁶¹. Our spatial strategy facilitates the development of generation technologies that will help to reduce greenhouse gas emissions from the energy sector. Scotland has significant renewable energy resources, both onshore and offshore. Spatial priorities range from extending heat networks in our cities and towns to realising the potential for renewable energy generation in our coastal and island areas.

153. Terrestrial and marine planning facilitate development of renewable energy technologies, link generation with consumers and guide new infrastructure to appropriate locations. Efficient supply of low carbon and low cost heat and generation of heat and electricity from renewable energy sources are vital to reducing greenhouse gas emissions and can create significant opportunities for communities. Renewable energy also presents a significant opportunity for associated development, investment and growth of the supply chain, particularly for ports and harbours identified in the [National Renewables Infrastructure Plan](#)⁶². Communities can also gain new opportunities from increased local ownership and associated benefits.

Policy Principles

154. The planning system should:

- support the transformational change to a low carbon economy, consistent with national objectives and targets⁶³, including deriving:
 - 30% of overall energy demand from renewable sources by 2020;
 - 11% of heat demand from renewable sources by 2020; and
 - the equivalent of 100% of electricity demand from renewable sources by 2020;
- support the development of a diverse range of electricity generation from renewable energy technologies – including the expansion of renewable energy generation capacity – and the development of heat networks;
- guide development to appropriate locations and advise on the issues that will be taken into account when specific proposals are being assessed;
- help to reduce emissions and energy use in new buildings and from new infrastructure by enabling development at appropriate locations that contributes to:
 - Energy efficiency;
 - Heat recovery;
 - Efficient energy supply and storage;

61 www.scotland.gov.uk/Topics/Environment/climatechange/scotlands-action/lowcarbon/meetingthetargets

62 www.scottish-enterprise.com/~media/SE/Resources/Documents/Sectors/Energy/energy-renewables-reports/National-renewables-infrastructure-plan.ashx

63 Further targets may be set in due course, for example district heating targets have been proposed.

- Electricity and heat from renewable sources; and
- Electricity and heat from non-renewable sources where greenhouse gas emissions can be significantly reduced.

Key Documents

- [Electricity Generation Policy Statement](#)⁶⁴
- [2020 Routemap for Renewable Energy in Scotland](#)⁶⁵
- [Towards Decarbonising Heat: Maximising the opportunities for Scotland, Draft Heat Generation Policy Statement](#)⁶⁶
- [Low Carbon Scotland: Meeting Our Emissions Reductions Targets 2013 - 2027](#)⁶⁷

Delivery

Development Planning

155. Development plans should seek to ensure an area's full potential for electricity and heat from renewable sources is achieved, in line with national climate change targets, giving due regard to relevant environmental, community and **cumulative impact** considerations.

156. Strategic development plans should support national priorities for the construction or improvement of strategic energy infrastructure, including generation, storage, transmission and distribution networks. They should address cross-boundary issues, promoting an approach to electricity and heat that supports the transition to a low carbon economy.

157. Local development plans should support new build developments, infrastructure or retrofit projects which deliver energy efficiency and the recovery of energy that would otherwise be wasted both in the specific development and surrounding area. They should set out the factors to be taken into account in considering proposals for energy developments. These will depend on the scale of the proposal and its relationship to the surrounding area and are likely to include the considerations set out at paragraph 169.

Heat

158. Local development plans should use heat mapping to identify the potential for co-locating developments with a high heat demand with sources of heat supply. Heat supply sources include harvestable woodlands, sawmills producing biomass, biogas production sites and developments producing unused excess heat, as well as geothermal systems, heat recoverable from mine waters, aquifers, other bodies of water and heat storage systems. Heat demand sites for particular consideration include high density developments, communities off the gas grid, fuel poor areas and **anchor developments** such as hospitals, schools, leisure centres and heat intensive industry.

159. Local development plans should support the development of heat networks in as many locations as possible, even where they are initially reliant on carbon-based fuels if there is potential to convert them to run on renewable or low carbon sources of heat in the future. Local development plans should identify where heat networks, heat storage and **energy centres** exist or would be appropriate and include policies to support their implementation. Policies should support

64 www.scotland.gov.uk/Topics/Business-Industry/Energy/EGPSMain

65 www.scotland.gov.uk/Publications/2011/08/04110353/0

66 www.scotland.gov.uk/Publications/2014/03/2778

67 www.scotland.gov.uk/Topics/Environment/climatechange/scotlands-action/lowcarbon/meetingthetargets

safeguarding of piperuns within developments for later connection and pipework to the curtilage of development. Policies should also give consideration to the provision of energy centres within new development. Where a district network exists, or is planned, or in areas identified as appropriate for district heating, policies may include a requirement for new development to include infrastructure for connection, providing the option to use heat from the network.

160. Where heat networks are not viable, microgeneration and heat recovery technologies associated with individual properties should be encouraged.

Onshore Wind

161. Planning authorities should set out in the development plan a spatial framework identifying those areas that are likely to be most appropriate for onshore wind farms as a guide for developers and communities, following the approach set out below in Table 1. Development plans should indicate the minimum scale⁶⁸ of onshore wind development that their spatial framework is intended to apply to. Development plans should also set out the criteria that will be considered in deciding all applications for wind farms of different scales – including extensions and re-powering – taking account of the considerations set out at paragraph 169.

162. Both strategic and local development planning authorities, working together where required, should identify where there is strategic capacity for wind farms, and areas with the greatest potential for wind development, considering cross-boundary constraints and opportunities. Strategic development planning authorities are expected to take the lead in dealing with cross-boundary constraints and opportunities and will coordinate activity with constituent planning authorities.

163. The approach to spatial framework preparation set out in the SPP should be followed in order to deliver consistency nationally and additional constraints should not be applied at this stage. The spatial framework is complemented by a more detailed and exacting development management process where the merits of an individual proposal will be carefully considered against the full range of environmental, community, and [cumulative impacts](#) (see paragraph 169).

164. Individual properties and those settlements not identified within the development plan will be protected by the safeguards set out in the local development plan policy criteria for determining wind farms and the development management considerations accounted for when determining individual applications.

165. Grid capacity should not be used as a reason to constrain the areas identified for wind farm development or decisions on individual applications for wind farms. It is for wind farm developers to discuss connections to the grid with the relevant transmission network operator. Consideration should be given to underground grid connections where possible.

166. Proposals for onshore wind turbine developments should continue to be determined while spatial frameworks and local policies are being prepared and updated. Moratoria on onshore wind development are not appropriate.

⁶⁸ For example, Loch Lomond and The Trossachs and Cairngorms National Parks refer to developments of more than one turbine and over 30 metres in height as large-scale commercial wind turbines.

Table 1: Spatial Frameworks

<p>Group 1: Areas where wind farms will not be acceptable:</p> <p>National Parks and National Scenic Areas.</p>		
<p>Group 2: Areas of significant protection:</p> <p>Recognising the need for significant protection, in these areas wind farms may be appropriate in some circumstances. Further consideration will be required to demonstrate that any significant effects on the qualities of these areas can be substantially overcome by siting, design or other mitigation.</p>		
<p>National and international designations:</p> <ul style="list-style-type: none"> • World Heritage Sites; • Natura 2000 and Ramsar sites; • Sites of Special Scientific Interest; • National Nature Reserves; • Sites identified in the Inventory of Gardens and Designed Landscapes; • Sites identified in the Inventory of Historic Battlefields. 	<p>Other nationally important mapped environmental interests:</p> <ul style="list-style-type: none"> • areas of wild land as shown on the 2014 SNH map of wild land areas; • carbon rich soils, deep peat and priority peatland habitat. 	<p>Community separation for consideration of visual impact:</p> <ul style="list-style-type: none"> • an area not exceeding 2km around cities, towns and villages identified on the local development plan with an identified settlement envelope or edge. The extent of the area will be determined by the planning authority based on landform and other features which restrict views out from the settlement.
<p>Group 3: Areas with potential for wind farm development:</p> <p>Beyond groups 1 and 2, wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria.</p>		

Other Renewable Electricity Generating Technologies and Storage

167. Development plans should identify areas capable of accommodating renewable electricity projects in addition to wind generation, including hydro-electricity generation related to river or tidal flows or energy storage projects of a range of scales.

168. Development plans should identify areas which are weakly connected or unconnected to the national electricity network and facilitate development of decentralised and mobile energy storage installations. Energy storage schemes help to support development of renewable energy and maintain stability of the electricity network in areas where reinforcement is needed to manage congestion. Strategic development planning authorities are expected to take the lead in dealing with cross-boundary constraints and opportunities and will coordinate activity between constituent planning authorities.

Development Management

169. Proposals for energy infrastructure developments should always take account of spatial frameworks for wind farms and heat maps where these are relevant. Considerations will vary relative to the scale of the proposal and area characteristics but are likely to include:

- net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities;
- the scale of contribution to renewable energy generation targets;
- effect on greenhouse gas emissions;
- **cumulative impacts** – planning authorities should be clear about likely cumulative impacts arising from all of the considerations below, recognising that in some areas the cumulative impact of existing and consented energy development may limit the capacity for further development;
- impacts on communities and individual dwellings, including visual impact, residential amenity, noise and shadow flicker;
- landscape and visual impacts, including effects on wild land;
- effects on the natural heritage, including birds;
- impacts on carbon rich soils, using the carbon calculator;
- public access, including impact on long distance walking and cycling routes and scenic routes identified in the NPF;
- impacts on the historic environment, including scheduled monuments, listed buildings and their settings;
- impacts on tourism and recreation;
- impacts on aviation and defence interests and seismological recording;
- impacts on telecommunications and broadcasting installations, particularly ensuring that transmission links are not compromised;
- impacts on road traffic;
- impacts on adjacent trunk roads;
- effects on hydrology, the water environment and flood risk;
- the need for conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration;

- opportunities for energy storage; and
- the need for a robust planning obligation to ensure that operators achieve site restoration.

170. Areas identified for wind farms should be suitable for use in perpetuity. Consents may be time-limited but wind farms should nevertheless be sited and designed to ensure impacts are minimised and to protect an acceptable level of amenity for adjacent communities.

171. Proposals for energy generation from non-renewable sources may be acceptable where carbon capture and storage or other emissions reduction infrastructure is either already in place or committed within the development's lifetime and proposals must ensure protection of good environmental standards.

172. Where new energy generation or storage proposals are being considered, the potential to connect those projects to off-grid areas should be considered.

Community Benefit

173. Where a proposal is acceptable in land use terms, and consent is being granted, local authorities may wish to engage in negotiations to secure community benefit in line with the [Scottish Government Good Practice Principles for Community Benefits from Onshore Renewable Energy Developments](#)⁶⁹.

Existing Wind Farm Sites

174. Proposals to repower existing wind farms which are already in suitable sites where environmental and other impacts have been shown to be capable of mitigation can help to maintain or enhance installed capacity, underpinning renewable energy generation targets. The current use of the site as a wind farm will be a material consideration in any such proposals.

Planning for Zero Waste

NPF and Wider Context

175. NPF3 recognises that waste is a resource and an opportunity, rather than a burden. Scotland has a Zero Waste Policy, which means wasting as little as possible and recognising that every item and material we use, either natural or manufactured, is a resource which has value for our economy. Planning plays a vital role in supporting the provision of facilities and infrastructure for future business development, investment and employment.

Policy Principles

176. The planning system should:

- promote developments that minimise the unnecessary use of primary materials and promote efficient use of secondary materials;
- support the emergence of a diverse range of new technologies and investment opportunities to secure economic value from secondary resources, including reuse, refurbishment, remanufacturing and reprocessing;
- support achievement of Scotland's zero waste targets: recycling 70% of household waste and sending no more than 5% of Scotland's annual waste arisings to landfill by 2025; and
- help deliver infrastructure at appropriate locations, prioritising development in line with the waste hierarchy: waste prevention, reuse, recycling, energy recovery and waste disposal.

69 www.scotland.gov.uk/Publications/2013/11/8279

Key Documents

- [EU revised Waste Framework Directive](#)⁷⁰ (2008/98/EC)
- [Waste \(Scotland\) Regulations 2012](#)⁷¹: a statutory framework to maximise the quantity and quality of materials available for recycling and minimise the need for residual waste infrastructure;
- [Zero Waste Plan](#)⁷² and accompanying regulations and supporting documents;
- Safeguarding Scotland's Resources: A blueprint for a more resource efficient and circular economy;
- [Circular 6/2013 Development Planning](#)⁷³;
- SEPA waste data sources: including [Waste Data Digests](#)⁷⁴ and [Waste Infrastructure Maps](#)⁷⁵;
- [SEPA Thermal Treatment of Waste Guidelines 2013](#)⁷⁶;
- [Waste capacity tables](#)⁷⁷ (formerly Zero Waste Plan Annex B capacity tables)

Delivery

177. Planning authorities and SEPA should work collaboratively to achieve zero waste objectives, having regard to the Zero Waste Plan, through development plans and development management. A revised version of PAN 63: Planning and Waste Management will be published in due course.

Development Planning

178. Plans should give effect to the aims of the Zero Waste Plan and promote the waste hierarchy.

179. For new developments, including industrial, commercial, and residential, plans should promote resource efficiency and the minimisation of waste during construction and operation.

180. Plans should enable investment opportunities in a range of technologies and industries to maximise the value of secondary resources and waste to the economy, including composting facilities, transfer stations, materials recycling facilities, anaerobic digestion, mechanical, biological and thermal treatment plants. In line with the waste hierarchy, particular attention should be given to encouraging opportunities for reuse, refurbishment, remanufacturing and reprocessing of high value materials and products. Industry and business should engage with planning authorities to help identify sites which would enable co-location with end users of outputs where appropriate.

181. Planning authorities should have regard to the annual update of required capacity for source segregated and unsorted waste, mindful of the need to achieve the all-Scotland operational capacity. However, this should not be regarded as a cap and planning authorities should generally facilitate growth in sustainable resource management.

70 <http://ec.europa.eu/environment/waste/framework/revision.htm>

71 www.legislation.gov.uk/sdsi/2012/9780111016657/contents

72 www.scotland.gov.uk/Topics/Environment/waste-and-pollution/Waste-1/wastestrategy

73 www.scotland.gov.uk/Publications/2013/12/9924/0

74 www.sepa.org.uk/waste/waste_data/waste_data_digest.aspx

75 www.sepa.org.uk/waste/waste_infrastructure_maps.aspx

76 www.sepa.org.uk/waste/waste_regulation/energy_from_waste.aspx

77 www.scotland.gov.uk/Topics/Environment/waste-and-pollution/Waste-1/wastestrategy/annexb

182. The planning system should support the provision of a network of infrastructure to allow Scotland's waste and secondary resources to be managed in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to protect the environment and public health. While a significant shortfall of waste management infrastructure exists, emphasis should be placed on need over proximity. The achievement of a sustainable strategy may involve waste crossing planning boundaries. However, as the national network of installations becomes more fully developed, there will be scope for giving greater weight to proximity in identifying suitable locations for new waste facilities.

183. Any sites identified specifically for energy from waste facilities should enable links to be made to potential users of renewable heat and energy. Such schemes are particularly suitable in locations where there are premises nearby with a long-term demand for heat. Paragraphs 158 to 160 set out policy on heat networks and mapping.

184. Plans should safeguard existing waste management installations and ensure that the allocation of land on adjacent sites does not compromise waste handling operations, which may operate 24 hours a day and partly outside buildings.

185. Strategic development plans and local development plans outwith city regions should set out spatial strategies which make provision for new infrastructure, indicating clearly that it can generally be accommodated on land designated for employment, industrial or storage and distribution uses.

186. Local development plans should identify appropriate locations for new infrastructure, allocating specific sites where possible, and should provide a policy framework which facilitates delivery. Suitable sites will include those which have been identified for employment, industry or storage and distribution. Updated Scottish Government planning advice on identifying sites and assessing their suitability will be provided in due course.

187. Local development plans should identify where masterplans or development briefs will be required to guide the development of waste installations for major sites.

Development Management

188. In determining applications for new installations, authorities should take full account of the policy set out at paragraph 176. Planning authorities should determine whether proposed developments would constitute appropriate uses of the land, leaving the regulation of permitted installations to SEPA.

189. SEPA's Thermal Treatment of Waste Guidelines 2013 and addendum sets out policy on thermal treatment plants.

190. All new development including residential, commercial and industrial properties should include provision for waste separation and collection to meet the requirements of the Waste (Scotland) Regulations.

191. Planning authorities should consider the need for buffer zones between dwellings or other **sensitive receptors** and some waste management facilities. As a guide, appropriate buffer distances may be:

- 100m between sensitive receptors and recycling facilities, small-scale thermal treatment or leachate treatment plant;
- 250m between sensitive receptors and operations such as outdoor composting, anaerobic digestion, mixed waste processing, thermal treatment or landfill gas plant; and
- greater between sensitive receptors and landfill sites.

192. Planning authorities should:

- consider requiring the preparation of site waste management plans for construction sites;
- secure decommissioning or restoration (including landfill) to agreed standards as a condition of planning permission for waste management facilities; and
- ensure that landfill consents are subject to an appropriate financial bond unless the operator can demonstrate that their programme of restoration, including the necessary financing, phasing and aftercare of sites, is sufficient.

A Natural, Resilient Place

Valuing the Natural Environment

NPF Context

193. The natural environment forms the foundation of the spatial strategy set out in NPF3. The environment is a valued national asset offering a wide range of opportunities for enjoyment, recreation and sustainable economic activity. Planning plays an important role in protecting, enhancing and promoting access to our key environmental resources, whilst supporting their sustainable use.

Policy Principles

194. The planning system should:

- facilitate positive change while maintaining and enhancing distinctive landscape character;
- conserve and enhance protected sites and species, taking account of the need to maintain healthy ecosystems and work with the natural processes which provide important services to communities;
- promote protection and improvement of the water environment, including rivers, lochs, estuaries, wetlands, coastal waters and groundwater, in a sustainable and co-ordinated way;
- seek to protect soils from damage such as erosion or compaction;
- protect and enhance ancient semi-natural woodland as an important and irreplaceable resource, together with other native or long-established woods, hedgerows and individual trees with high nature conservation or landscape value;
- seek benefits for **biodiversity** from new development where possible, including the restoration of degraded habitats and the avoidance of further fragmentation or isolation of habitats; and
- support opportunities for enjoying and learning about the natural environment.

Key Documents

- [Getting the Best from Our Land – A Land Use Strategy for Scotland](#)⁷⁸
- [The 2020 Challenge for Scotland's Biodiversity](#)⁷⁹
- [European Landscape Convention](#)⁸⁰
- [Nature Conservation \(Scotland\) Act 2004](#)⁸¹
- [The Conservation \(Natural Habitats etc\) Regulations](#)⁸²
- [The Wildlife and Countryside Act 1981](#)⁸³

78 www.scotland.gov.uk/Topics/Environment/Countryside/Landusestrategy

79 www.scotland.gov.uk/Publications/2013/06/5538

80 www.coe.int/t/dg4/cultureheritage/heritage/landscape/default_en.asp

81 www.legislation.gov.uk/asp/2004/6/contents

82 www.legislation.gov.uk/uksi/1994/2716/contents/made

83 www.legislation.gov.uk/ukpga/1981/69

- [EU Birds Directive – 2009/147/EC](#)⁸⁴
- [EU Habitats Directive – 92/43/EEC](#)⁸⁵
- [Ramsar Convention on Wetlands of International Importance](#)⁸⁶
- [National Parks \(Scotland\) Act 2000](#)⁸⁷
- [River Basin Management Plans](#)⁸⁸

Delivery

195. Planning authorities, and all public bodies, have a duty under the Nature Conservation (Scotland) Act 2004 to further the conservation of **biodiversity**. This duty must be reflected in development plans and development management decisions. They also have a duty under the Water Environment and Water Services (Scotland) Act 2003 to protect and improve Scotland's water environment. The Scottish Government expects public bodies to apply the Principles for Sustainable Land Use, as set out in the Land Use Strategy, when taking significant decisions affecting the use of land.

Development Plans

196. International, national and locally designated areas and sites should be identified and afforded the appropriate level of protection in development plans. Reasons for local designation should be clearly explained and their function and continuing relevance considered when preparing plans. Buffer zones should not be established around areas designated for their natural heritage importance. Plans should set out the factors which will be taken into account in development management. The level of protection given to local designations should not be as high as that given to international or national designations.

197. Planning authorities are encouraged to limit non-statutory local designations to areas designated for their local landscape or nature conservation value:

- the purpose of areas of local landscape value should be to:
 - safeguard and enhance the character and quality of a landscape which is important or particularly valued locally or regionally; or
 - promote understanding and awareness of the distinctive character and special qualities of local landscapes; or
 - safeguard and promote important local settings for outdoor recreation and tourism.
- local nature conservation sites should seek to accommodate the following factors:
 - species diversity, species or habitat rarity, naturalness and extent of habitat;
 - contribution to national and local **biodiversity** objectives;
 - potential contribution to the protection or enhancement of connectivity between habitats or the development of **green networks**; and
 - potential to facilitate enjoyment and understanding of natural heritage.

⁸⁴ ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm

⁸⁵ ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm

⁸⁶ www.ramsar.org/cda/en/ramsar-home/main/ramsar/1_4000_0

⁸⁷ www.legislation.gov.uk/asp/2000/10/contents

⁸⁸ www.sepa.org.uk/water/river_basin_planning.aspx

198. Local nature conservation sites designated for their geodiversity should be selected for their value for scientific study and education, their historical significance and cultural and aesthetic value, and for their potential to promote public awareness and enjoyment.

199. Plans should address the potential effects of development on the natural environment, including proposals for [major-accident hazard sites](#) and the cumulative effects of incremental changes. They should consider the natural and cultural components together, and promote opportunities for the enhancement of degraded landscapes, particularly where this helps to restore or strengthen the natural processes which underpin the well-being and resilience of communities.

200. Wild land character is displayed in some of Scotland's remoter upland, mountain and coastal areas, which are very sensitive to any form of intrusive human activity and have little or no capacity to accept new development. Plans should identify and safeguard the character of areas of wild land as identified on the 2014 SNH map of wild land areas.

201. Plans should identify woodlands of high nature conservation value and include policies for protecting them and enhancing their condition and resilience to climate change. Forestry Commission Scotland's [Native Woodland Survey of Scotland](#)⁸⁹ provides information and guidance. Planning authorities should consider preparing forestry and woodland strategies as supplementary guidance to inform the development of forestry and woodland in their area, including the expansion of woodland of a range of types to provide multiple benefits. Scottish Government advice on planning for forestry and woodlands is set out in [The Right Tree in the Right Place](#)⁹⁰.

Development Management

202. The siting and design of development should take account of local landscape character. Development management decisions should take account of potential effects on landscapes and the natural and water environment, including cumulative effects. Developers should seek to minimise adverse impacts through careful planning and design, considering the services that the natural environment is providing and maximising the potential for enhancement.

203. Planning permission should be refused where the nature or scale of proposed development would have an unacceptable impact on the natural environment. Direct or indirect effects on statutorily protected sites will be an important consideration, but designation does not impose an automatic prohibition on development.

204. Planning authorities should apply the precautionary principle where the impacts of a proposed development on nationally or internationally significant landscape or natural heritage resources are uncertain but there is sound evidence indicating that significant irreversible damage could occur. The precautionary principle should not be used to impede development without justification. If there is any likelihood that significant irreversible damage could occur, modifications to the proposal to eliminate the risk of such damage should be considered. If there is uncertainty, the potential for research, surveys or assessments to remove or reduce uncertainty should be considered.

205. Where peat and other carbon rich soils are present, applicants should assess the likely effects of development on carbon dioxide (CO₂) emissions. Where peatland is drained or otherwise disturbed, there is liable to be a release of CO₂ to the atmosphere. Developments should aim to minimise this release.

89 www.forestry.gov.uk/nwss

90 [www.forestry.gov.uk/pdf/fcfc129.pdf/\\$file/fcfc129.pdf](http://www.forestry.gov.uk/pdf/fcfc129.pdf/$file/fcfc129.pdf)

206. Where non-native species are present on site, or where planting is planned as part of a development, developers should take into account the provisions of the Wildlife and Countryside Act 1981 relating to non-native species.

International Designations

Natura 2000 Sites

207. Sites designated as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) make up the Natura 2000 network of protected areas. Any development plan or proposal likely to have a significant effect on these sites which is not directly connected with or necessary to their conservation management must be subject to an “appropriate assessment” of the implications for the conservation objectives. Such plans or proposals may only be approved if the competent authority has ascertained by means of an “appropriate assessment” that there will be no adverse effect on the integrity of the site.

208. A derogation is available for authorities to approve plans or projects which could adversely affect the integrity of a Natura site if:

- there are no alternative solutions;
- there are imperative reasons of overriding public interest, including those of a social or economic nature; and
- compensatory measures are provided to ensure that the overall coherence of the Natura network is protected.

209. If an authority wishes to use this derogation, Scottish Ministers must be notified. For sites hosting a priority habitat or species (as defined in Article 1 of the Habitats Directive), prior consultation with the European Commission via Scottish Ministers is required unless either the proposal is necessary for public health or safety reasons or it will have beneficial consequences of primary importance to the environment.

210. Authorities should afford the same level of protection to proposed SACs and SPAs (i.e. sites which have been approved by Scottish Ministers for formal consultation but which have not yet been designated) as they do to sites which have been designated.

Ramsar Sites

211. All [Ramsar sites](#) are also Natura 2000 sites and/or Sites of Special Scientific Interest and are protected under the relevant statutory regimes.

National Designations

212. Development that affects a National Park, [National Scenic Area](#), [Site of Special Scientific Interest](#) or a [National Nature Reserve](#) should only be permitted where:

- the objectives of designation and the overall integrity of the area will not be compromised; or
- any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

213. Planning decisions for development within National Parks must be consistent with paragraphs 84-85.

Protected Species

214. The presence (or potential presence) of a legally protected species is an important consideration in decisions on planning applications. If there is evidence to suggest that a protected species is present on site or may be affected by a proposed development, steps must be taken to establish their presence. The level of protection afforded by legislation must be factored into the planning and design of the development and any impacts must be fully considered prior to the determination of the application. Certain activities – for example those involving European Protected Species as specified in the Conservation (Natural Habitats, &c.) Regulations 1994 and wild birds, protected animals and plants under the Wildlife and Countryside Act 1981 – may only be undertaken under licence. Following the introduction of the Wildlife and Natural Environment (Scotland) Act 2011, Scottish Natural Heritage is now responsible for the majority of wildlife licensing in Scotland.

Areas of Wild Land

215. In areas of wild land (see paragraph 200), development may be appropriate in some circumstances. Further consideration will be required to demonstrate that any significant effects on the qualities of these areas can be substantially overcome by siting, design or other mitigation.

Woodland

216. Ancient semi-natural woodland is an irreplaceable resource and, along with other woodlands, hedgerows and individual trees, especially veteran trees of high nature conservation and landscape value, should be protected from adverse impacts resulting from development. [Tree Preservation Orders](#)⁹¹ can be used to protect individual trees and groups of trees considered important for amenity or their cultural or historic interest.

217. Where appropriate, planning authorities should seek opportunities to create new woodland and plant native trees in association with development. If a development would result in the severing or impairment of connectivity between important woodland habitats, workable mitigation measures should be identified and implemented, preferably linked to a wider green network (see also the section on green infrastructure).

218. The Scottish Government's [Control of Woodland Removal Policy](#)⁹² includes a presumption in favour of protecting woodland. Removal should only be permitted where it would achieve significant and clearly defined additional public benefits. Where woodland is removed in association with development, developers will generally be expected to provide compensatory planting. The criteria for determining the acceptability of woodland removal and further information on the implementation of the policy is explained in the Control of Woodland Removal Policy, and this should be taken into account when preparing development plans and determining planning applications.

91 www.scotland.gov.uk/Publications/2011/01/28152314/0

92 www.forestry.gov.uk/pdf/fcfc125.pdf/%24FILE/fcfc125.pdf

Maximising the Benefits of Green Infrastructure

NPF Context

219. NPF3 aims to significantly enhance green infrastructure networks, particularly in and around our cities and towns. [Green infrastructure](#) and improved access to [open space](#) can help to build stronger, healthier communities. It is an essential part of our long-term environmental performance and climate resilience. Improving the quality of our places and spaces through integrated green infrastructure networks can also encourage investment and development.

Policy Principles

220. Planning should protect, enhance and promote green infrastructure, including open space and green networks, as an integral component of successful placemaking.

221. The planning system should:

- consider green infrastructure as an integral element of places from the outset of the planning process;
- assess current and future needs and opportunities for green infrastructure to provide multiple benefits;
- facilitate the provision and long-term, integrated management of green infrastructure and prevent fragmentation; and
- provide for easy and safe access to and within green infrastructure, including core paths and other important routes, within the context of statutory access rights under the Land Reform (Scotland) Act 2003.

Key Documents

- [Green Infrastructure: Design and Placemaking](#)⁹³
- [Getting the Best from Our Land – A Land Use Strategy for Scotland](#)⁹⁴
- [Planning Advice Note 65: Planning and Open Space](#)⁹⁵
- [Reaching Higher – Scotland's National Strategy for Sport](#)⁹⁶
- [The Play Strategy for Scotland and Action Plan](#)⁹⁷
- [Let's Get Scotland Walking: The National Walking Strategy](#)⁹⁸

Delivery

Development Planning

222. Development plans should be based on a holistic, integrated and cross-sectoral approach to green infrastructure. They should be informed by relevant, up-to-date audits, strategies and action plans covering green infrastructure's multiple functions, for example open space, playing fields, pitches, outdoor access, core paths, active travel strategies, the historic environment, [biodiversity](#), forestry and woodland, river basins, flood management, coastal zones and the marine environment.

93 www.scotland.gov.uk/Publications/2011/11/04140525/0

94 www.scotland.gov.uk/Publications/2011/03/17091927/0

95 www.scotland.gov.uk/Publications/2008/05/30100623/0

96 www.scotland.gov.uk/Topics/ArtsCultureSport/Sport/NationalStrategies/Sport-21

97 www.scotland.gov.uk/Publications/2013/10/9424

98 www.scotland.gov.uk/Publications/2014/06/5743

Plans should promote consistency with these and reflect their priorities and spatial implications.

223. Strategic development plans should safeguard existing strategic or regionally important assets and identify strategic priorities for green infrastructure addressing cross-boundary needs and opportunities.

224. Local development plans should identify and protect open space identified in the open space audit and strategy as valued and functional or capable of being brought into use to meet local needs.

225. Local development plans should seek to enhance existing and promote the creation of new green infrastructure, which may include retrofitting. They should do this through a design-led approach, applying standards which facilitate appropriate provision, addressing deficits or surpluses within the local context. The standards delivered through a design-led approach should result in a proposal that is appropriate to place, including connections to other green infrastructure assets. Supplementary guidance or master plans may be used to achieve this.

226. Local development plans should identify sites for new indoor or outdoor sports, recreation or play facilities where a need has been identified in a local facility strategy, playing field strategy or similar document. They should provide for good quality, accessible facilities in sufficient quantity to satisfy current and likely future community demand. **Outdoor sports facilities** should be safeguarded from development except where:

- the proposed development is ancillary to the principal use of the site as an outdoor sports facility;
- the proposed development involves only a minor part of the outdoor sports facility and would not affect its use and potential for sport and training;
- the outdoor sports facility which would be lost would be replaced either by a new facility of comparable or greater benefit for sport in a location that is convenient for users, or by the upgrading of an existing outdoor sports facility to provide a facility of better quality on the same site or at another location that is convenient for users and maintains or improves the overall playing capacity in the area; or
- the relevant strategy (see paragraph 224) and consultation with **sportscotland** show that there is a clear excess of provision to meet current and anticipated demand in the area, and that the site would be developed without detriment to the overall quality of provision.

227. Local development plans should safeguard existing and potential allotment sites to ensure that local authorities meet their statutory duty to provide allotments where there is proven demand. Plans should also encourage opportunities for a range of community growing spaces.

228. Local development plans should safeguard access rights and core paths, and encourage new and enhanced opportunities for access linked to wider networks.

229. Local development plans should encourage the temporary use of unused or underused land as green infrastructure while making clear that this will not prevent any future development potential which has been identified from being realised. This type of greening may provide the advance structure planting to create the landscape framework for any future development.

Development Management

230. Development of land allocated as green infrastructure for an unrelated purpose should have a strong justification. This should be based on evidence from relevant audits and strategies that the proposal will not result in a deficit of that type of provision within the local area and that alternative sites have been considered. Poor maintenance and neglect should not be used as a justification for development for other purposes.

231. Development proposals that would result in or exacerbate a deficit of green infrastructure should include provision to remedy that deficit with accessible infrastructure of an appropriate type, quantity and quality.

232. In the design of green infrastructure, consideration should be given to the qualities of successful places. Green infrastructure should be treated as an integral element in how the proposal responds to local circumstances, including being well-integrated into the overall design layout and multi-functional. Arrangements for the long-term management and maintenance of green infrastructure, and associated water features, including common facilities, should be incorporated into any planning permission.

233. Proposals that affect regional and country parks must have regard to their statutory purpose of providing recreational access to the countryside close to centres of population, and should take account of their wider objectives as set out in their management plans and strategies.

Promoting Responsible Extraction of Resources

NPF Context

234. Minerals make an important contribution to the economy, providing materials for construction, energy supply and other uses, and supporting employment. NPF3 notes that minerals will be required as construction materials to support our ambition for diversification of the energy mix. Planning should safeguard mineral resources and facilitate their responsible use. Our spatial strategy underlines the need to address restoration of past minerals extraction sites in and around the Central Belt.

Policy Principles

235. The planning system should:

- recognise the national benefit of indigenous coal, oil and gas production in maintaining a diverse energy mix and improving energy security;
- safeguard workable resources and ensure that an adequate and steady supply is available to meet the needs of the construction, energy and other sectors;
- minimise the impacts of extraction on local communities, the environment and the built and natural heritage; and
- secure the sustainable restoration of sites to beneficial afteruse after working has ceased.

Key Documents

- [Electricity Generation Policy Statement](#)⁹⁹
- [Management of Extractive Waste \(Scotland\) Regulations 2010](#)¹⁰⁰
- [PAN 50: Controlling the Environmental Effects of Surface Mineral Workings](#)¹⁰¹
- [Planning Advice Note 64: Reclamation of Surface Mineral Workings](#)¹⁰²
- [Circular 2/2003: Safeguarding of Aerodromes, Technical Sites and Military Explosive Storage Areas](#)¹⁰³
- [Circular 34/1996: Environment Act 1995 Section 96](#)¹⁰⁴

Delivery

Development Planning

236. Strategic development plans should ensure that adequate supplies of construction aggregates can be made available from within the plan area to meet the likely development needs of the city region over the plan period.

237. Local development plans should safeguard all workable mineral resources which are of economic or conservation value and ensure that these are not sterilised by other development. Plans should set out the factors that specific proposals will need to address, including:

- disturbance, disruption and noise, blasting and vibration, and potential pollution of land, air and water;
- impacts on local communities, individual houses, [sensitive receptors](#) and economic sectors important to the local economy;
- benefits to the local and national economy;
- [cumulative impact](#) with other mineral and landfill sites in the area;
- effects on natural heritage, habitats and the historic environment;
- landscape and visual impacts, including cumulative effects;
- transport impacts; and
- restoration and aftercare (including any benefits in terms of the remediation of existing areas of dereliction or instability).

238. Plans should support the maintenance of a landbank of permitted reserves for construction aggregates of at least 10 years at all times in all market areas through the identification of areas of search. Such areas can be promoted by developers or landowners as part of the plan preparation process or by planning authorities where they wish to guide development to particular areas. As an alternative, a criteria-based approach may be taken, particularly where a sufficient landbank already exists or substantial unconstrained deposits are available.

⁹⁹ www.scotland.gov.uk/Publications/2013/06/5757

¹⁰⁰ www.legislation.gov.uk/ssi/2010/60/contents/made

¹⁰¹ www.scotland.gov.uk/Publications/1996/10/17729/23424

¹⁰² www.scotland.gov.uk/Publications/2003/01/16122/16256

¹⁰³ www.scotland.gov.uk/Publications/2003/01/16204/17030

¹⁰⁴ www.scotland.gov.uk/Publications/1996/11/circular-34-1996-root/circular-34-1996-guidance

239. Local development plans should identify areas of search where surface coal extraction is most likely to be acceptable during the plan period and set out the preferred programme for the development of other safeguarded areas beyond the plan period, with particular emphasis on protecting local communities from significant cumulative impacts. Where possible, plans should secure extraction prior to permanent development above workable coal reserves.

240. For areas covered by a Petroleum Exploration and Development Licence (PEDL), local development plans should also:

- identify licence areas;
- encourage operators to be as clear as possible about the minimum and maximum extent of operations (e.g. number of wells and duration) at the exploration phase whilst recognising that the factors to be addressed by applications should be relevant and proportionate to the appropriate exploration, appraisal and production phases of operations;
- confirm that applicants should engage with local communities, residents and other stakeholders at each stage of operations, beginning in advance of any application for planning permission and in advance of any operations;
- ensure that when developing proposals, applicants should consider, where possible, transport of the end product by pipeline, rail or water rather than road; and
- provide a consistent approach to extraction where licences extend across local authority boundaries.

241. Policies should protect areas of peatland and only permit commercial extraction in areas suffering historic, significant damage through human activity and where the conservation value is low and restoration is impossible.

Development Management

242. Operators should provide sufficient information to enable a full assessment to be made of the likely effects of development together with appropriate control, mitigation and monitoring measures. This should include the provision of an adequate buffer zone between sites and settlements, taking account of the specific circumstances of individual proposals, including size, duration, location, method of working, topography, the characteristics of the various environmental effects likely to arise and the mitigation that can be provided.

243. Borrow pits should only be permitted if there are significant environmental or economic benefits compared to obtaining material from local quarries; they are time-limited; tied to a particular project and appropriate reclamation measures are in place.

244. Consent should only be granted for surface coal extraction proposals which are either environmentally acceptable (or can be made so by planning conditions) or provide local or community benefits which clearly outweigh the likely impacts of extraction. Site boundaries within 500 metres of the edge of settlements will only be environmentally acceptable where local circumstances, such as the removal of dereliction, small-scale prior extraction or the stabilisation of mining legacy, justify a lesser distance. Non-engineering works and mitigation measures within 500 metres may be acceptable.

245. To assist planning authorities with their consideration of impacts on local communities, neighbouring uses and the environment, applicants should undertake a risk assessment for all proposals for shale gas and coal bed methane extraction. The assessment can, where appropriate, be undertaken as part of any environmental impact assessment and should also be developed in consultation with statutory consultees and local communities so that it informs the design of the proposal. The assessment should clearly identify those onsite activities (i.e. emission of pollutants, the creation and disposal of waste) that pose a potential risk using a source–pathway–receptor model and explain how measures, including those under environmental and other legislation, will be used to monitor, manage and mitigate any identified risks to health, amenity and the environment. The evidence from, and outcome of, the assessment should lead to buffer zones being proposed in the application which will protect all **sensitive receptors** from unacceptable risks. When considering applications, planning authorities and statutory consultees must assess the distances proposed by the applicant. Where proposed distances are considered inadequate the Scottish Government expects planning permission to be refused.

246. Conditions should be drafted in a way which ensures that hydraulic fracturing does not take place where permission for such operations is not sought and that any subsequent application to do so is subject to appropriate consultation. If such operations are subsequently proposed, they should, as a matter of planning policy, be regarded as a substantial change in the description of the development for which planning permission is sought or a material variation to the existing planning permission. Where PEDL and Underground Coal licences are granted for the same or overlapping areas, consideration should be given to the most efficient sequencing of extraction.

247. The Scottish Government is currently exploring a range of options relating to the effective regulation of surface coal mining. This is likely to result in further guidance on effective restoration measures in due course. In the meantime, planning authorities should, through planning conditions and legal agreements, continue to ensure that a high standard of restoration and aftercare is managed effectively and that such work is undertaken at the earliest opportunity. A range of financial guarantee options is currently available and planning authorities should consider the most effective solution on a site-by-site basis. All solutions should provide assurance and clarity over the amount and period of the guarantee and in particular, where it is a bond, the risks covered (including operator failure) and the triggers for calling in a bond, including payment terms. In the aggregates sector, an operator may be able to demonstrate adequate provision under an industry-funded guarantee scheme.

248. Planning authorities should ensure that rigorous procedures are in place to monitor consents, including restoration arrangements, at appropriate intervals, and ensure that appropriate action is taken when necessary. The review of mineral permissions every 15 years should be used to apply up-to-date operating and environmental standards although requests from operators to postpone reviews should be considered favourably if existing conditions are already achieving acceptable standards. Conditions should not impose undue restrictions on consents at quarries for building or roofing stone to reflect the likely intermittent or low rate of working at such sites.

Supporting Aquaculture

NPF Context

249. Aquaculture makes a significant contribution to the Scottish economy, particularly for coastal and island communities. Planning can help facilitate sustainable aquaculture whilst protecting and maintaining the ecosystem upon which it depends. Planning can play a role in supporting the sectoral growth targets to grow marine finfish (including farmed Atlantic salmon) production sustainably to 210,000 tonnes; and shellfish, particularly mussels, sustainably to 13,000 tonnes with due regard to the marine environment by 2020.

Policy Principles

250. The planning system should:

- play a supporting role in the sustainable growth of the finfish and shellfish sectors to ensure that the aquaculture industry is diverse, competitive and economically viable;
- guide development to coastal locations that best suit industry needs with due regard to the marine environment;
- maintain a presumption against further marine finfish farm developments on the north and east coasts to safeguard migratory fish species.

Key Documents

- National Marine Plan

Delivery

Development Planning

251. Local development plans should make positive provision for aquaculture developments. Plans, or supplementary guidance, should take account of Marine Scotland's locational policies when identifying areas potentially suitable for new development and sensitive areas which are unlikely to be appropriate for such development. They should also set out the issues that will be considered when assessing specific proposals, which could include:

- impacts on, and benefits for, local communities;
- economic benefits of the sustainable development of the aquaculture industry;
- landscape, seascape and visual impact;
- biological carrying capacity;
- effects on coastal and marine species (including wild salmonids) and habitats;
- impacts on the historic environment and the sea or loch bed;
- interaction with other users of the marine environment (including commercial fisheries, Ministry of Defence, navigational routes, ports and harbours, anchorages, tourism, recreational and leisure activities); and
- cumulative effects on all of the above factors.

Development Management

252. Applications should be supported, where necessary, by sufficient information to demonstrate:

- operational arrangements (including noise, light, access, waste and odour) are satisfactory and sufficient mitigation plans are in place; and
- the siting and design of cages, lines and associated facilities are appropriate for the location. This should be done through the provision of information on the extent of the site; the type, number and physical scale of structures; the distribution of the structures across the planning area; on-shore facilities; and ancillary equipment.

253. Any land-based facilities required for the proposal should, where possible, be considered at the same time. The planning system should not duplicate other control regimes such as controlled activities regulation licences from SEPA or fish health, sea lice and containment regulation by Marine Scotland.

Managing Flood Risk and Drainage

NPF Context

254. NPF3 supports a catchment-scale approach to sustainable flood risk management. The spatial strategy aims to build the resilience of our cities and towns, encourage sustainable land management in our rural areas, and to address the long-term vulnerability of parts of our coasts and islands. Flooding can impact on people and businesses. Climate change will increase the risk of flooding in some parts of the country. Planning can play an important part in reducing the vulnerability of existing and future development to flooding.

Policy Principles

255. The planning system should promote:

- a precautionary approach to **flood risk** from all sources, including coastal, water course (fluvial), surface water (**pluvial**), groundwater, reservoirs and drainage systems (sewers and culverts), taking account of the predicted effects of climate change;
- **flood** avoidance: by safeguarding flood storage and conveying capacity, and locating development away from **functional flood plains** and medium to high risk areas;
- flood reduction: assessing flood risk and, where appropriate, undertaking natural and structural flood management measures, including flood protection, restoring natural features and characteristics, enhancing flood storage capacity, avoiding the construction of new culverts and opening existing culverts where possible; and
- avoidance of increased surface water flooding through requirements for Sustainable Drainage Systems (SuDS) and minimising the area of impermeable surface.

256. To achieve this the planning system should prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere. Piecemeal reduction of the functional floodplain should be avoided given the cumulative effects of reducing storage capacity.

257. Alterations and small-scale extensions to existing buildings are outwith the scope of this policy, provided that they would not have a significant effect on the storage capacity of the functional floodplain or local flooding problems.

Key Documents

- [Flood Risk Management \(Scotland\) Act 2009](#)¹⁰⁵
- Updated Planning Advice Note on Flooding
- [Delivering Sustainable Flood Risk Management](#)¹⁰⁶ (Scottish Government, 2011).
- [Surface Water Management Planning Guidance](#)¹⁰⁷ (Scottish Government, 2013).

Delivery

258. Planning authorities should have regard to the probability of flooding from all sources and take flood risk into account when preparing development plans and determining planning applications. The calculated probability of flooding should be regarded as a best estimate and not a precise forecast. Authorities should avoid giving any indication that a grant of planning permission implies the absence of flood risk.

259. Developers should take into account flood risk and the ability of future occupiers to insure development before committing themselves to a site or project, as applicants and occupiers have ultimate responsibility for safeguarding their property.

Development Planning

260. Plans should use [strategic flood risk assessment](#) (SFRA) to inform choices about the location of development and policies for flood risk management. They should have regard to the flood maps prepared by Scottish Environment Protection Agency (SEPA), and take account of finalised and approved Flood Risk Management Strategies and Plans and River Basin Management Plans.

261. Strategic and local development plans should address any significant cross boundary flooding issues. This may include identifying major areas of the [flood plain](#) and storage capacity which should be protected from inappropriate development, major flood protection scheme requirements or proposals, and relevant drainage capacity issues.

262. Local development plans should protect land with the potential to contribute to managing flood risk, for instance through natural flood management, managed coastal realignment, [washland](#) or green infrastructure creation, or as part of a scheme to manage flood risk.

263. Local development plans should use the following flood risk framework to guide development. This sets out three categories of coastal and watercourse flood risk, together with guidance on surface water flooding, and the appropriate planning approach for each (the annual probabilities referred to in the framework relate to the land at the time a plan is being prepared or a planning application is made):

- **Little or No Risk** – annual probability of coastal or [watercourse](#) flooding is less than 0.1% (1:1000 years)
 - No constraints due to coastal or watercourse flooding.

¹⁰⁵ www.legislation.gov.uk/asp/2009/6/contents

¹⁰⁶ www.scotland.gov.uk/Publications/2011/06/15150211/0

¹⁰⁷ <http://www.scotland.gov.uk/Publications/2013/02/7909/0>

- **Low to Medium Risk** – annual probability of coastal or watercourse flooding is between 0.1% and 0.5% (1:1000 to 1:200 years)
 - Suitable for most development. A flood risk assessment may be required at the upper end of the probability range (i.e. close to 0.5%), and for **essential infrastructure** and the **most vulnerable uses**. Water resistant materials and construction may be required.
 - Generally not suitable for **civil infrastructure**. Where civil infrastructure must be located in these areas or is being substantially extended, it should be designed to be capable of remaining operational and accessible during extreme flood events.
- **Medium to High Risk** – annual probability of coastal or watercourse flooding is greater than 0.5% (1:200 years)
 - May be suitable for:
 - residential, institutional, commercial and industrial development within built-up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood risk management plan;
 - essential infrastructure within built-up areas, designed and constructed to remain operational during floods and not impede water flow;
 - some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place; and
 - job-related accommodation, e.g. for caretakers or operational staff.
 - Generally not suitable for:
 - civil infrastructure and the most vulnerable uses;
 - additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons, e.g. for navigation and water-based recreation, agriculture, transport or utilities infrastructure (which should be designed and constructed to be operational during floods and not impede water flow), and an alternative, lower risk location is not available; and
 - new caravan and camping sites.
 - Where built development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome.
 - Water-resistant materials and construction should be used where appropriate. Elevated buildings on structures such as stilts are unlikely to be acceptable.

Surface Water Flooding

- Infrastructure and buildings should generally be designed to be free from surface water flooding in rainfall events where the annual probability of occurrence is greater than 0.5% (1:200 years).
- Surface water drainage measures should have a neutral or better effect on the risk of flooding both on and off the site, taking account of rain falling on the site and run-off from adjacent areas.

Development Management

264. It is not possible to plan for development solely according to the calculated probability of flooding. In applying the risk framework to proposed development, the following should therefore be taken into account:

- the characteristics of the site;
- the design and use of the proposed development;
- the size of the area likely to flood;
- depth of flood water, likely flow rate and path, and rate of rise and duration;
- the vulnerability and risk of wave action for coastal sites;
- committed and existing flood protection methods: extent, standard and maintenance regime;
- the effects of climate change, including an allowance for freeboard;
- surface water run-off from adjoining land;
- culverted watercourses, drains and field drainage;
- cumulative effects, especially the loss of storage capacity;
- cross-boundary effects and the need for consultation with adjacent authorities;
- effects of flood on access including by emergency services; and
- effects of flood on proposed open spaces including gardens.

265. Land raising should only be considered in exceptional circumstances, where it is shown to have a neutral or better impact on flood risk outside the raised area. Compensatory storage may be required.

266. The flood risk framework set out above should be applied to development management decisions. Flood Risk Assessments (FRA) should be required for development in the medium to high category of flood risk, and may be required in the low to medium category in the circumstances described in the framework above, or where other factors indicate heightened risk. FRA will generally be required for applications within areas identified at high or medium likelihood of flooding/flood risk in SEPA's flood maps.

267. Drainage Assessments, proportionate to the development proposal and covering both surface and foul water, will be required for areas where drainage is already constrained or otherwise problematic, or if there would be off-site effects.

268. Proposed arrangements for SuDS should be adequate for the development and appropriate long-term maintenance arrangements should be put in place.

A Connected Place

Promoting Sustainable Transport and Active Travel

NPF Context

269. The spatial strategy set out in NPF3 is complemented by an ongoing programme of investment in transport infrastructure. The economy relies on efficient transport connections, within Scotland and to international markets. Planning can play an important role in improving connectivity and promoting more sustainable patterns of transport and travel as part of the transition to a low carbon economy.

Policy Principles

270. The planning system should support patterns of development which:

- optimise the use of existing infrastructure;
- reduce the need to travel;
- provide safe and convenient opportunities for walking and cycling for both active travel and recreation, and facilitate travel by public transport;
- enable the integration of transport modes; and
- facilitate freight movement by rail or water.

271. Development plans and development management decisions should take account of the implications of development proposals on traffic, patterns of travel and road safety.

Key Documents

- [National Transport Strategy](#)¹⁰⁸
- [Climate Change \(Scotland\) Act 2009](#)¹⁰⁹
- [Low Carbon Scotland: Meeting the Emissions Reduction Targets 2013-2027](#)¹¹⁰
- [Infrastructure Investment Plan](#)¹¹¹
- [Strategic Transport Projects Review](#)¹¹²
- [Transport Assessment Guidance](#)¹¹³
- [Development Planning and Management Transport Appraisal Guidance \(DPMTAG\)](#)¹¹⁴
- [PAN 66: Best Practice in Handling Applications Affecting Trunk Roads](#)¹¹⁵

108 www.scotland.gov.uk/Publications/2006/12/04104414/0

109 www.legislation.gov.uk/asp/2009/12/contents

110 www.scotland.gov.uk/Topics/Environment/climatechange/scotlands-action/lowcarbon/meetingthetargets

111 www.scotland.gov.uk/Publications/2011/12/05141922/0

112 www.transportscotland.gov.uk/strategic-transport-projects-review

113 www.transportscotland.gov.uk/system/files/documents/tsc-basic-pages/Planning_Reform_-_DPMTAG_-_Development_Management_DPMTAG_Ref_17_-_Transport_Assessment_Guidance_FINAL_-_June_2012.pdf

114 www.transportscotland.gov.uk/development-planning-and-management-transport-appraisal-guidance-dpmtag

115 www.scotland.gov.uk/Resource/Doc/47021/0026434.pdf

- [Design Manual for Roads and Bridges](#)¹¹⁶
- [Designing Streets](#)¹¹⁷
- [Roads for All](#)¹¹⁸
- [Cycling Action Plan in Scotland](#)¹¹⁹ (CAPS)
- [Let's Get Scotland Walking: The National Walking Strategy](#)¹²⁰
- [A More Active Scotland – Building a Legacy from the Commonwealth Games](#)¹²¹
- [Switched On Scotland: A Roadmap to Widespread Adoption of Plug-in Vehicles](#)¹²²
- [Tourism Development Framework for Scotland](#)¹²³

Delivery

Development Planning

272. Development plans should take account of the relationship between land use and transport and particularly the capacity of the existing transport network, environmental and operational constraints, and proposed or committed transport projects.

273. The spatial strategies set out in plans should support development in locations that allow walkable access to local amenities and are also accessible by cycling and public transport. Plans should identify active travel networks and promote opportunities for travel by more sustainable modes in the following order of priority: walking, cycling, public transport, cars. The aim is to promote development which maximises the extent to which its travel demands are met first through walking, then cycling, then public transport and finally through use of private cars. Plans should facilitate integration between transport modes.

274. In preparing development plans, planning authorities are expected to appraise the impact of the spatial strategy and its reasonable alternatives on the transport network, in line with Transport Scotland's DPMTAG guidance. This should include consideration of previously allocated sites, transport opportunities and constraints, current capacity and committed improvements to the transport network. Planning authorities should ensure that a transport appraisal is undertaken at a scale and level of detail proportionate to the nature of the issues and proposals being considered, including funding requirements. Appraisals should be carried out in time to inform the spatial strategy and the strategic environmental assessment. Where there are potential issues for the [strategic transport network](#), the appraisal should be discussed with Transport Scotland at the earliest opportunity.

116 www.dft.gov.uk/ha/standards/dmr/index.htm

117 www.scotland.gov.uk/Publications/2010/03/22120652/0

118 <http://www.transportscotland.gov.uk/guides/j256264-00.htm>

116 www.transportscotland.gov.uk/strategy-and-research/publications-and-consultations/cycling-action-plan-2013

120 www.scotland.gov.uk/Publications/2014/06/5743

121 www.scotland.gov.uk/Publications/2014/02/8239/0

122 www.transportscotland.gov.uk/report/j272736-00.htm

123 www.visitscotland.org/pdf/Tourism%20Development%20Framework%20-%20FINAL.pdf

275. Development plans should identify any required new transport infrastructure or public transport services, including cycle and pedestrian routes, trunk road and rail infrastructure. The deliverability of this infrastructure, and by whom it will be delivered, should be key considerations in identifying the preferred and alternative land use strategies. Plans and associated documents, such as supplementary guidance and the action programme, should indicate how new infrastructure or services are to be delivered and phased, and how and by whom any developer contributions will be made. These should be prepared in consultation with all of the parties responsible for approving and delivering the infrastructure. Development plans should support the provision of infrastructure necessary to support positive changes in transport technologies, such as charging points for electric vehicles.

276. Where public transport services required to serve a new development cannot be provided commercially, a contribution from the developer towards an agreed level of service may be appropriate. The development plan action programme should set out how this will be delivered, and the planning authority should coordinate discussions with the public transport provider, developer, Transport Scotland where appropriate, and relevant regional transport partnerships at an early stage in the process. In rural areas the plan should be realistic about the likely viability of public transport services and innovative solutions such as demand-responsive public transport and small-scale park and ride facilities at nodes on rural bus corridors should be considered.

277. Disused railway lines with a reasonable prospect of being reused as rail, tram, bus rapid transit or active travel routes should be safeguarded in development plans. The strategic case for a new station should emerge from a complete and robust multimodal transport appraisal in line with Scottish Transport Appraisal Guidance. Any appraisal should include consideration of making best use of current rail services; and should demonstrate that the needs of local communities, workers or visitors are sufficient to generate a high level of demand, and that there would be no adverse impact on the operation of the rail service franchise. Funding partners must be identified. Agreement should be reached with Transport Scotland and Network Rail before rail proposals are included in a development plan or planning application and it should be noted that further technical assessment and design work will be required before any proposed new station can be confirmed as viable.

278. While new junctions on trunk roads are not normally acceptable, the case for a new junction will be considered where the planning authority considers that significant economic growth or regeneration benefits can be demonstrated. New junctions will only be considered if they are designed in accordance with DMRB and where there would be no adverse impact on road safety or operational performance.

279. Significant travel-generating uses should be sited at locations which are well served by public transport, subject to parking restraint policies, and supported by measures to promote the availability of high-quality public transport services. New development areas should be served by public transport providing access to a range of destinations. Development plans should indicate when a travel plan will be required to accompany a proposal for a development which will generate significant travel.

280. Along with sound choices on the location of new development, appropriate street layout and design are key to achieving the policy principles at paragraph 270. The design of all new development should follow the placemaking approach set out in this SPP and the principles of Designing Streets, to ensure the creation of places which are distinctive, welcoming, adaptable, resource efficient, safe and pleasant and easy to move around and beyond.

281. National maximum parking standards for certain types and scales of development have been set to promote consistency (see [Annex B: Parking Policies and Standards](#)). Where an area is well served by sustainable transport modes, planning authorities may set more restrictive standards, and where public transport provision is limited, planning authorities may set less restrictive standards. Local authorities should also take account of relevant town centre strategies when considering appropriate parking provision (see paragraphs 64-65 and [Annex A: Town Centre Health Checks and Strategies](#)).

282. When preparing development plans, planning authorities should consider the need for improved and additional freight transfer facilities. Strategic freight sites should be safeguarded in development plans. Existing roadside facilities and provision for lorry parking should be safeguarded and, where required, development plans should make additional provision for the overnight parking of lorries at appropriate locations on routes with a high volume of lorry traffic. Where appropriate, development plans should also identify suitable locations for new or expanded rail freight interchanges to support increased movement of freight by rail. Facilities allowing the transfer of freight from road to rail or water should also be considered.

283. Planning authorities and port operators should work together to address the planning and transport needs of ports and opportunities for rail access should be safeguarded in development plans. Planning authorities should ensure that there is appropriate road access to ferry terminals for cars and freight, and support the provision of bus and train interchange facilities.

284. Planning authorities, airport operators and other stakeholders should work together to prepare airport masterplans and address other planning and transport issues relating to airports. Relevant issues include public safety zone safeguarding, surface transport access for supplies, air freight, staff and passengers, related on- and off-site development such as transport interchanges, offices, hotels, car parks, warehousing and distribution services, and other development benefiting from good access to the airport.

285. Canals, which are scheduled monuments, should be safeguarded as assets which can contribute to sustainable economic growth through sensitive development and regeneration. Consideration should be given to planning for new uses for canals, where appropriate.

Development Management

286. Where a new development or a change of use is likely to generate a significant increase in the number of trips, a transport assessment should be carried out. This should identify any potential [cumulative effects](#) which need to be addressed.

287. Planning permission should not be granted for significant travel-generating uses at locations which would increase reliance on the car and where:

- direct links to local facilities via walking and cycling networks are not available or cannot be made available;
- access to local facilities via public transport networks would involve walking more than 400m; or
- the transport assessment does not identify satisfactory ways of meeting sustainable transport requirements.

Guidance is available in [Transport Assessment and Implementation: A Guide](#)¹²⁴

¹²⁴ www.scotland.gov.uk/Publications/2005/08/1792325/23264

288. Buildings and facilities should be accessible by foot and bicycle and have appropriate operational and servicing access for large vehicles. Cycle routes, cycle parking and storage should be safeguarded and enhanced wherever possible.

289. Consideration should be given to how proposed development will contribute to fulfilling the objectives of Switched On Scotland – A Roadmap to Widespread Adoption of Plug-in Vehicles. Electric vehicle charge points should always be considered as part of any new development and provided where appropriate.

290. Development proposals that have the potential to affect the performance or safety of the strategic transport network need to be fully assessed to determine their impact. Where existing infrastructure has the capacity to accommodate a development without adverse impacts on safety or unacceptable impacts on operational performance, further investment in the network is not likely to be required. Where such investment is required, the cost of the mitigation measures required to ensure the continued safe and effective operation of the network will have to be met by the developer.

291. Consideration should be given to appropriate planning restrictions on construction and operation related transport modes when granting planning permission, especially where bulk material movements are expected, for example freight from extraction operations.

Supporting Digital Connectivity

NPF Context

292. NPF3 highlights the importance of our digital infrastructure, across towns and cities, and in particular our more remote rural and island areas. Our economy and social networks depend heavily on high-quality digital infrastructure. To facilitate investment across Scotland, planning has an important role to play in strengthening digital communications capacity and coverage across Scotland.

Policy Principles

293. The planning system should support:

- development which helps deliver the Scottish Government's commitment to world-class digital connectivity;
- the need for networks to evolve and respond to technology improvements and new services;
- inclusion of digital infrastructure in new homes and business premises; and
- infrastructure provision which is sited and designed to keep environmental impacts to a minimum.

Key Documents

- [Scotland's Digital Future](#)¹²⁵ and associated [Infrastructure Action Plan](#)¹²⁶
- [Scotland's Cities: Delivering for Scotland](#)¹²⁷
- [A National Telehealth and Telecare Delivery Plan for Scotland to 2015](#)¹²⁸

¹²⁵ www.scotland.gov.uk/Resource/Doc/981/0114237.pdf

¹²⁶ www.scotland.gov.uk/Publications/2012/01/1487

¹²⁷ www.scotland.gov.uk/Publications/2012/01/05104741/0

¹²⁸ www.scotland.gov.uk/Resource/0041/00411586.pdf

- [Planning Advice Note 62, Radio Telecommunications provides advice on siting and design](#)¹²⁹
- [Circular 2/2003: Safeguarding of Aerodromes, Technical Sites and Military Explosives Storage Areas](#)¹³⁰

Delivery

Development Planning

294. Local development plans should reflect the infrastructure roll-out plans of digital communications operators, community groups and others, such as the Scottish Government, the UK Government and local authorities.

295. Local development plans should provide a consistent basis for decision-making by setting out the criteria which will be applied when determining planning applications for communications equipment. They should ensure that the following options are considered when selecting sites and designing base stations:

- mast or site sharing;
- installation on buildings or other existing structures;
- installing the smallest suitable equipment, commensurate with technological requirements;
- concealing or disguising masts, antennas, equipment housing and cable runs using design and camouflage techniques where appropriate; and
- installation of ground-based masts.

296. Local development plans should set out the matters to be addressed in planning applications for specific developments, including:

- an explanation of how the proposed equipment fits into the wider network;
- a description of the siting options (primarily for new sites) and design options which satisfy operational requirements, alternatives considered, and the reasons for the chosen solution;
- details of the design, including height, materials and all components of the proposal;
- details of any proposed landscaping and screen planting, where appropriate;
- an assessment of the cumulative effects of the proposed development in combination with existing equipment in the area;
- a declaration that the equipment and installation is designed to be in full compliance with the appropriate ICNIRP guidelines for public exposure to radiofrequency radiation¹³¹; and
- an assessment of visual impact, if relevant.

297. Policies should encourage developers to explore opportunities for the provision of digital infrastructure to new homes and business premises as an integral part of development. This should be done in consultation with service providers so that appropriate, universal and future-proofed infrastructure is installed and utilised.

¹²⁹ www.scotland.gov.uk/Publications/2001/09/pan62/pan62-

¹³⁰ www.scotland.gov.uk/Publications/2003/01/16204/17030

¹³¹ The radiofrequency public exposure guidelines of the International Commission on Non-Ionising Radiation Protection, as expressed in EU Council recommendation 1999/519/ EC on the limitation of exposure of the general public to electromagnetic fields.

Development Management

298. Consideration should be given to how proposals for infrastructure to deliver new services or infrastructure to improve existing services will contribute to fulfilling the objectives for digital connectivity set out in the Scottish Government's World Class 2020 document. For developments that will deliver entirely new connectivity – for example, mobile connectivity in a “not spot” – consideration should be given to the benefits of this connectivity for communities and the local economy.

299. All components of equipment should be considered together and designed and positioned as sensitively as possible, though technical requirements and constraints may limit the possibilities. Developments should not physically obstruct aerodrome operations, technical sites or existing transmitter/receiver facilities. The cumulative visual effects of equipment should be taken into account.

300. Planning authorities should not question the need for the service to be provided nor seek to prevent competition between operators. The planning system should not be used to secure objectives that are more properly achieved under other legislation. Emissions of radiofrequency radiation are controlled and regulated under other legislation and it is therefore not necessary for planning authorities to treat radiofrequency radiation as a material consideration.

Annex A – Town Centre Health Checks and Strategies

Town centre health checks should cover a range of indicators, such as:

Activities

- retailer representation and intentions (multiples and independents);
- employment;
- cultural and social activity;
- community activity;
- leisure and tourism facilities;
- resident population; and
- evening/night-time economy.

Physical environment

- space in use for the range of town centre functions and how it has changed;
- physical structure of the centre, condition and appearance including constraints and opportunities and assets;
- historic environment; and
- public realm and green infrastructure.

Property

- vacancy rates, particularly at street level in prime retail areas;
- vacant sites;
- committed developments;
- commercial yield; and
- prime rental values.

Accessibility

- pedestrian footfall;
- accessibility;
- cycling facilities and ease of movement;
- public transport infrastructure and facilities;
- parking offer; and
- signage and ease of navigation.

Community

- attitudes, perceptions and aspirations.

Town centre strategies should:

- be prepared collaboratively with community planning partners, businesses and the local community;
- recognise the changing roles of town centres and networks, and the effect of trends in consumer activity;
- establish an agreed long-term vision for the town centre;
- seek to maintain and improve accessibility to and within the town centre;
- seek to reduce the centre's environmental footprint, through, for example, the development or extension of sustainable urban drainage or district heating networks;
- identify how green infrastructure can enhance air quality, open space, landscape/settings, reduce urban heat island effects, increase capacity of drainage systems, and attenuate noise;
- indicate the potential for change through redevelopment, renewal, alternative uses and diversification based on an analysis of the role and function of the centre;
- promote opportunities for new development, using master planning and design, while seeking to safeguard and enhance built and natural heritage;
- consider constraints such as fragmented site ownership, unit size and funding availability, and recognise the rapidly changing nature of retail formats;
- identify actions, tools and delivery mechanisms to overcome these constraints, for example improved management, Town Teams, Business Improvement Districts or the use of [compulsory purchase powers](#)¹³²; and
- include monitoring against the baseline provided by the health check to assess the extent to which it has delivered improvements.

More detailed advice on town centre health checks and strategies can be found in the Town Centre Masterplanning Toolkit.

¹³² www.scotland.gov.uk/Topics/archive/National-Planning-Policy/themes/ComPur

Annex B – Parking Policies and Standards

Parking Restraint Policy – National Maximum Parking Standards for New Development

In order to achieve consistency in the levels of parking provision for specific types and scales of development, the following national standards have been set:

- retail (food) (Use Class 1) 1000m² and above – up to 1 space per 14m²;
- retail (non-food) (Use Class 1) 1000m² and above – up to 1 space per 20m²;
- business (Use Class 4) 2500m² and above – up to 1 space per 30m²;
- cinemas (Use Class 11a) 1000m² and above – up to 1 space per 5 seats;
- conference facilities 1000m² and above – up to 1 space per 5 seats;
- stadia 1500 seats and above – up to 1 space per 15 seats;
- leisure (other than cinemas and stadia) 1000m² and above – up to 1 space per 22m²; and
- higher and further education (non-residential elements) 2500m² and above – up to 1 space per 2 staff plus 1 space per 15 students.

Local standards should support the viability of town centres. Developers of individual sites within town centres may be required to contribute to the overall parking requirement for the centre in lieu of individual parking provision.

Parking for Disabled People – Minimum Provision Standards for New Development

Specific provision should be made for parking for disabled people in addition to general provision. In retail, recreation and leisure developments, the minimum number of car parking spaces for disabled people should be:

- 3 spaces or 6% (whichever is greater) in car parks with up to 200 spaces; or
- 4 spaces plus 4% in car parks with more than 200 spaces.

Employers have a duty under employment law to consider the disabilities of their employees and visitors to their premises. The minimum number of car parking spaces for disabled people at places of employment should be:

- 1 space per disabled employee plus 2 spaces or 5% (whichever is greater) in car parks with up to 200 spaces; or
- 6 spaces plus 2% in car parks with more than 200 spaces.

Glossary

Affordable housing	Housing of a reasonable quality that is affordable to people on modest incomes.
Anchor development (in the context of heat demand)	A large scale development which has a constant high demand for heat.
Article 4 Direction	Article 4 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 gives the Scottish Government and planning authorities the power to remove permitted development rights by issuing a direction.
Biodiversity	The variability in living organisms and the ecological complexes of which they are part. This includes diversity within species, between species and of ecosystems (UN Convention on Biological Diversity, 1992).
Brownfield land	Land which has previously been developed. The term may cover vacant or derelict land, land occupied by redundant or unused building and developed land within the settlement boundary where further intensification of use is considered acceptable.
Civil infrastructure (in the context of flood risk)	Hospitals, fire stations, emergency depots, schools, care homes, ground-based electrical and telecommunications equipment.
Climate change adaptation	The adjustment in economic, social or natural systems in response to actual or expected climatic change, to limit harmful consequences and exploit beneficial opportunities.
Climate change mitigation	Reducing the amount of greenhouse gases in the atmosphere and reducing activities which emit greenhouse gases to help slow down or make less severe the impacts of future climate change.
Community	A body of people. A community can be based on location (for example people who live or work in or use an area) or common interest (for example the business community, sports or heritage groups).
Cumulative impact	Impact in combination with other development. That includes existing developments of the kind proposed, those which have permission, and valid applications which have not been determined. The weight attached to undetermined applications should reflect their position in the application process.
Cumulative effects (in the context of the strategic transport network)	The effect on the operational performance of transport networks of a number of developments in combination, recognising that the effects of a group of sites, or development over an area may need different mitigation when considered together than when considered individually.

Ecosystems services	The benefits people obtain from ecosystems; these include provisioning services such as food, water, timber and fibre; regulating services that affect climate, floods, disease, waste and water quality; cultural services with recreational, aesthetic, and spiritual benefits; and supporting services such as soil formation, photosynthesis and nutrient cycling.
Effective housing land supply	The part of the established housing land supply which is free or expected to be free of development constraints in the period under consideration and will therefore be available for the construction of housing.
Energy Centre	A stand alone building or part of an existing or proposed building where heat or combined heat and electricity generating plant can be installed to service a district network.
Essential infrastructure (in a flood risk area for operational reasons)	Defined in SEPA guidance on vulnerability as 'essential transport infrastructure and essential utility infrastructure which may have to be located in a flood risk area for operational reasons. This includes electricity generating stations, power stations and grid and primary sub stations, water treatments works and sewage treatment works and wind turbines'.
Flood	The temporary covering by water from any source of land not normally covered by water, but not including the overflow of a sewage system.
Flood plain	The generally flat areas adjacent to a watercourse or the sea where water flows in time of flood or would flow but for the presence of flood prevention measures. The limits of a flood plain are defined by the peak water level of an appropriate return period event. See also 'Functional flood plain'.
Flood risk	The combination of the probability of a flood and the potential adverse consequences associated with a flood, for human health, the environment, cultural heritage and economic activity.
Freeboard allowance	A height added to the predicted level of a flood to take account of the height of waves or turbulence and uncertainty in estimating the probability of the flooding.
Functional flood plain	The areas of land where water flows in times of flood which should be safeguarded from further development because of their function as flood water storage areas. For planning purposes the functional floodplain will generally have a greater than 0.5% (1:200) probability of flooding in any year. See also 'Washland'.
Green infrastructure	Includes the 'green' and 'blue' (water environment) features of the natural and built environments that can provide benefits without being connected. Green features include parks, woodlands, trees, play spaces, allotments, community growing spaces, outdoor sports facilities, churchyards and cemeteries, swales, hedges, verges and gardens. Blue features include rivers, lochs, wetlands, canals, other water courses, ponds, coastal and marine areas including beaches, porous paving and sustainable urban drainage systems.

Green networks	Connected areas of green infrastructure and open space that together form an integrated and multi-functional network.
Hazardous substances	Substances and quantities as currently specified in and requiring consent under the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 as amended (due to be replaced in 2015 as part of the implementation of Directive 2012/18/EU).
Historic environment	Scotland's historic environment is the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand.
Historic Marine Protected Areas	Areas designated in Scottish territorial waters (0-12 miles) under the Marine (Scotland) Act 2010 for the purpose of preserving marine historic assets of national importance.
Housing supply target	The total number of homes that will be delivered.
Hut	A simple building used intermittently as recreational accommodation (ie. not a principal residence); having an internal floor area of no more than 30m ² ; constructed from low impact materials; generally not connected to mains water, electricity or sewerage; and built in such a way that it is removable with little or no trace at the end of its life. Huts may be built singly or in groups.
Major-accident hazard site	Site with or requiring hazardous substances consent.
Most vulnerable uses (in the context of flood risk and drainage)	Basement dwellings, isolated dwellings in sparsely populated areas, dwelling houses behind informal embankments, residential institutions such as residential care homes/prisons, nurseries, children's homes and educational establishments, caravans, mobile homes and park homes intended for permanent residential use, sites used for holiday or short-let caravans and camping, installations requiring hazardous substance consent.
National Nature Reserve (NNR)	An area considered to be of national importance for its nature conservation interests.
National Scenic Area (NSA)	An area which is nationally important for its scenic quality.
Open space	Space within and on the edge of settlements comprising green infrastructure and/or civic areas such as squares, market places and other paved or hard landscaped areas with a civic function. Detailed typologies of open space are included in PAN65.

Outdoor sports facilities	<p>Uses where sportscotland is a statutory consultee under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, which establishes 'outdoor sports facilities' as land used as:</p> <p>(a) an outdoor playing field extending to not less than 0.2ha used for any sport played on a pitch;</p> <p>(b) an outdoor athletics track;</p> <p>(c) a golf course;</p> <p>(d) an outdoor tennis court, other than those within a private dwelling, hotel or other tourist accommodation; and</p> <p>(e) an outdoor bowling green.</p>
Outstanding Universal Value (OUV)	The Operational Guidelines for the Implementation of the World Heritage Convention, provided by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) states that OUV means cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. The Statement of OUV is the key reference for the future effective protection and management of the World Heritage Site.
PADHI	Planning Advice for Development near Hazardous Installations, issued by the Health and Safety Executive.
Prime agricultural land	Agricultural land identified as being Class 1, 2 or 3.1 in the land capability classification for agriculture developed by Macaulay Land Use Research Institute (now the James Hutton Institute).
Place	The environment in which we live; the people that inhabit these spaces; and the quality of life that comes from the interaction of people and their surroundings. Architecture, public space and landscape are central to this.
Pluvial flooding	Flooding as a result of rainfall runoff flowing or ponding over the ground before it enters a natural (e.g. watercourse) or artificial (e.g. sewer) drainage system or when it cannot enter a drainage system (e.g. because the system is already full to capacity or the drainage inlets have a limited capacity).
Ramsar sites	Wetlands designated under the Ramsar Convention on Wetlands of International Importance.
Scheduled monument	Archaeological sites, buildings or structures of national or international importance. The purpose of scheduling is to secure the long-term legal protection of the monument in the national interest, in situ and as far as possible in its existing state and within an appropriate setting.
Sensitive receptor	<p>Aspect of the environment likely to be significantly affected by a development, which may include for example, population, fauna, flora, soil, water, air, climatic factors, material assets, landscape and the inter-relationship between these factors.</p> <p>In the context of planning for Zero Waste, sensitive receptors may include aerodromes and military air weapon ranges.</p>

Setting	Is more than the immediate surroundings of a site or building, and may be related to the function or use of a place, or how it was intended to fit into the landscape of townscape, the view from it or how it is seen from areas round about, or areas that are important to the protection of the place, site or building.
Site of Special Scientific Interest (SSSI)	An area which is designated for the special interest of its flora, fauna, geology or geomorphological features.
Strategic Flood Risk Assessment	Provides an overview of flood risk in the area proposed for development. An assessment involves the collection, analysis and presentation of all existing available and readily derivable information on flood risk from all sources. SFRA applies a risk-based approach to identifying land for development and can help inform development plan flood risk policy and supplementary guidance.
Strategic Transport Network	Includes the trunk road and rail networks. Its primary purpose is to provide the safe and efficient movement of strategic long-distance traffic between major centres, although in rural areas it also performs important local functions.
Sustainable Development	Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The Brundtland Definition. Our Common Future, The World Commission on Environment and Development, 1987.
Sustainable Economic Growth	Building a dynamic and growing economy that will provide prosperity and opportunities for all, while ensuring that future generations can enjoy a better quality of life too.
Washland	An alternative term for the functional flood plain which carries the connotation that it floods very frequently.
Watercourse	All means of conveying water except a water main or sewer.
Windfall Sites	Sites which become available for development unexpectedly during the life of the development plan and so are not identified individually in the plan.



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The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

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Planning Advice Note 1/2020

ASSESSING THE EXTENT OF THE 5 YEAR SUPPLY OF EFFECTIVE HOUSING LAND

To calculate the 5 year supply of effective housing land required, the housing land requirement set out in the adopted development plan should be divided by the plan projection period (i.e. the plan period) (years), in order to identify an annual figure.

This annual figure should then be multiplied by 5.

5 year supply of effective land requirement =

(development plan housing land requirement / plan period) x 5

This figure should then be compared with the 5 year supply of effective housing land, based on information collected as part of the housing land audit process, to establish whether or not there is a shortfall or surplus.

APPENDIX 4



HOUSING LAND SUPPLY

Position Paper

January 2021

Calculation of a five-year effective housing land supply

1.0 Introduction

1.1 There is a requirement to maintain a five-year effective housing land supply at all times. This is set out in Scottish Planning Policy, SDP policy 7 and LDP policy HOU 2.

1.2 Scottish Planning Policy (SPP) explains that a housing land audit is a key tool in assessing effective housing land supply.

1.3 The 2020 Housing Land Audit is the most up-to-date housing land audit. The audit shows a five-year effective housing land supply figure of **8,363** units. Three sites have been disputed by Homes for Scotland amounting to 206 units. There is therefore an agreed figure of **8,157** units.

1.4 SPP with Finalised amendments was published in December 2020. PAN 1/2020 – assessing the extent of the 5-year supply of effective housing land was published on the same date. PAN 1/2020 sets out the methodology for calculating the 5-year housing land supply. SPP and PAN 1/2020 are important material considerations in the determination of planning applications.

1.5 The PAN states *‘to calculate the 5 year supply of effective housing land required, the housing land requirement set out in the adopted development plan should be divided by the plan projection period (i.e. the plan period) (years), in order to identify an annual figure.*

This annual figure should then be multiplied by 5.

**5 year supply of effective land requirement =
(development plan housing land requirement / plan period) x 5**

This figure should then be compared with the 5 year supply of effective housing land, based on information collected as part of the housing land audit process, to establish whether or not there is a shortfall or surplus’.

Data Label: Public

1.6 The relevant variables for West Lothian are as follows:

Table 1: – Housing supply calculation based on 2009 – 2024 plan period

(adopted development plan Strategic Development Plan 1 and West Lothian Local Development Plan)

A	Development Plan Requirement 2009 – 2024	19,811
B	Annual Requirement (19,811/ 15)	1,321
C	Identified Five Year Supply Audit 2020 (Disputed + Undisputed):	8,363
D	No. of Years Supply	6.33 years

1.7 When tested against the requirements of PAN 1/2020 the existence of an effective five year land supply is indisputable.

1.8 In carrying out the calculation in paragraph 1.6 the council has used the land supply position in the most recent Housing Land Audit (2020). The Audit contains 206 units which are disputed. It is the council's position that these should be included in the identified Five Year Supply. There is nothing in SPP or PAN 1/2020 that requires the council not to include these units. The calculations at paragraph 1.6 represent the council's preferred method of calculation.

1.9 If the 206 units are not included in the relevant calculation then a Five Year Effective Land Supply is still demonstrated. It is the council's position that the disputed units should be included and the below calculation is provided only to demonstrate that an effective five year supply continues to be demonstrated. The calculation is as follows:

Table 2: – Housing supply calculation based on 2009 – 2024 plan period (undisputed Housing Land Audit)

A	Development Plan Requirement 2009 – 2024	19,811
B	Annual Requirement (19,811/ 15)	1,321
C	Identified Five Year Supply Audit 2020 (Undisputed):	8,157
D	No. of Years Supply	6.17 years

1.10 The longer term housing land supply situation in West Lothian is healthy. In reality, there is nothing to stop these houses being delivered in early course. It is principally the marketing aspirations of developers and indeed the market for the houses to be delivered which is the constraining factor. By way of an example, with the delivery of the new school infrastructure in Winchburgh there is no constraint on the delivery of the remaining 2,987 houses which have planning consent in the Core Development Area. If the market existed and there was capacity in the construction sector to deliver this number houses there is no reason why these houses could not being delivered. However, only 1,304 of these 2,987 houses are included in the Effective 5 Year Land Supply set out in Audit 2020. The same is true for a number of other sites in West Lothian including the Core Development Area at Calderwood.

Data Label: Public

1.11 In practice, therefore, the Five Effective Year Land Supply could be significantly higher than that set out in the Audit. However, for the present, it is sufficient to limit the 5 Year Effective Supply to the supply in Audit 2020.

1.12 The current 5 year period extends beyond the Strategic Development Plan period, which only goes to 2024. PAN 1/2020 makes no acknowledgement of circumstances like this and requires simply that the land requirement in the development plan is divided to give an annual requirement irrespective of whether the five year period extends beyond the plan period. This is the approach which the council has used.

1.13 However, there is an argument that in the period beyond the plan period the most up to date assessment of housing demand should be used. In the West Lothian case this would be Housing Needs and Demand Assessment 2 (HoNDA2) which was progressed to inform the second strategic development plan. HoNDA2 was confirmed as Robust and Credible by the Scottish Government in March 2015. The annual housing requirement for West Lothian in HoNDA2, as supported by the Reporter conducting the Strategic Development Plan 2 Examination, was 523 Units. It will be noted that the Reporter considered that the housing requirements set out in SDP1 were a significant over estimate of actual demand over the first part of the plan period.

1.14 If the annual requirement for the final year of the five year period was reduced to 523 units (or 575 if a 10% generosity allowance is added) from the annual requirement of 1,321 set out in the calculations above the number of years of effective land supply would be further increased.

1.15 The SDP1 Plan Period is further sub-divided into two time periods:

The Base Date (2009) to 2019; and 2019 to 2024

1.16 It is the council's position that these periods are subdivisions of the Plan Period and do not, in their own right, constitute plan periods for the purposes of the calculation set out in PAN 1/2020. However, the following calculations set out the position for the current period from 2019-2024 (with and without disputed sites in the Audit):

Table 3: Strategic Development Plan 1 Housing Land Requirement 2019-24

A	SDP Requirement 2019 – 2024	7,249
B	Annual Requirement	1,450
C	Identified Five Year Supply Audit 2020 (Undisputed):	8,157
D	No. of Years Supply	5.63 years

Data Label: Public

Table 4: Strategic Development Plan 1 Housing Land Requirement 2019-24 (disputed and undisputed housing land Audit)

A	SDP Requirement 2019 – 2024	7,249
B	Annual Requirement	1,450
C	Identified Five Year Supply Audit 2020 (Disputed and Undisputed):	8,363
D	No. of Years Supply	5.77 years

1.17 It is the council's position that this is not the correct calculation. It is provided only to demonstrate that should a Reporter be persuaded that this should be the calculation, an effective five year supply continues to be demonstrated. The factors set out in 1.8 and 1.13 should also be considered if the calculation set out above is to be preferred.

1.18 The revisions to SPP reaffirm the primacy of the development plan. Paragraphs 33 and 125 of the newly updated SPP state that "proposals that do not accord with the development plan should not be considered acceptable unless material considerations indicate otherwise". It remains the council position that there are no material considerations which merit setting aside the development plan and this position is now further strengthened by changes to SPP and the publication of PAN 1/2020.

1.19 The presumption in favour of sustainable development is no longer a significant material consideration as a result of the changes to SPP.

1.20 While PAN 1/2020 provides decision makers with increased clarity, there does remain a degree of uncertainty when calculating a 5-year effective housing land supply using Housing Land Audit 2020. This is because the LDP outlines the housing land requirement until 2024. A housing land target would have been outlined in SDP2 if it had been adopted.

1.21 Without a housing land requirement figure for year five (2024/25) stipulated in the LDP, an assessment has been made using the most up to date reliable and credible evidence available. HNDA2 was certified 'robust and credible' by the Scottish Government in March 2015. HNDA2 sets out three alternative futures. The Reporter for SDP2 used the 'wealth distribution' scenario (page 237 SDP2 Report of Examination recommendations). The estimate used for calculating the year 5 (2024/25) housing land requirement has therefore been derived from the 'wealth distribution' figure from HNDA2.

1.22 Paragraph 116 of SPP outlines that the housing land target should be increased by a margin 22of 10% - 20% generosity allowance to establish the housing land requirement. A figure of 10% has been applied. This is the same allowance that was applied to the housing land target for LDP1.

1.23 Tables 5, 6 and 7 are calculations based on rolling forward the average annual requirement for three different plan periods associated with SDP1 for Year 5 (2024/25). In all seven calculations the council can demonstrate that a five year effective land supply exists.

Data Label: Public

Table 5: – Housing supply calculation based on 2009 – 2024 plan period, rolling forward annual requirement for year 5 (2024/25)

A	Development Plan Requirement 2009 – 2024	19,811*
	Estimated Housing Land Requirement for Year 2025 (Housing Supply Target 2025 from SDP2 Report of Examination recommendations + 10% generosity allowance)	575
	Requirement over 2010 - 2025	19,055
B	Annual Requirement	1,270
C	Identified supply (HLA 2020 Disputed and Undisputed)	8,363
D	No. of years supply	6.58 years

*Figure 4 West Lothian LDP

Table 6: – Housing supply calculation based on 2014 – 2024 plan period, rolling forward annual requirement for year 5 (2024/25)

A	Development Plan Requirement 2014 – 2024	13,529*
	Estimated Housing Land Requirement for Year 2025 (Housing Supply Target 2025 from SDP2 Report of Examination recommendations + 10% generosity allowance)	575
	Requirement over 2015 - 2025	12,751
B	Annual Requirement	1,275
C	Identified supply (HLA 2020 (Disputed and Undisputed)	8,363
D	No. of years supply	6.55 years

*2009-19 requirement 12,562/10 = 1,256 x 5 + 7249

Table 7: – Housing supply calculation based on 2019 – 2024 plan period, rolling forward annual requirement for year 5 (2024/25)

A	Development Plan Requirement 2019 – 2024	7,249
	Estimated Housing Land Requirement for Year 2025 (Housing Supply Target 2025 from SDP2 Report of Examination recommendations + 10% generosity allowance)	575
	Requirement 2020-2025	6,375
B	Annual Requirement 2020-2025	1,275
C	Identified supply (HLA 2020 Disputed and Undisputed)	8,363
D	No. of years supply	6.55 years

2.0 Conclusion

2.1 The introduction of a definitive methodology for the calculation of a 5-year effective housing land supply has been long-awaited and should hopefully remove the lengthy and time-consuming debates over which methodology is the most appropriate.

Data Label: Public

2.2 Using the methodology set out in PAN1/2020, over each of the plan periods set out in Tables 1 - 7 above the council can demonstrate that a five year effective housing land supply exists therefore satisfying the requirements of SPP, SDP Policy 7 and LDP Policy HOU2.

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

RISK BASED VERIFICATION

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A PURPOSE OF REPORT

The purpose of the report is to inform Council Executive of the intention to remove the Risk Based Verification Policy in relation to Housing Benefit and to seek approval on the proposed Housing Benefit and Council Tax Reduction Verification Policy.

B. RECOMMENDATION

It is recommended that Council Executive approves the proposed Housing Benefit and Council Tax Reduction Verification Policy which will replace the current Risk Based Verification Policy to commence on 1 April 2021.

C. SUMMARY OF IMPLICATIONS

I Council Values	Focusing on our customers' needs; being honest, open and accountable; making best use of our resources.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	The Social Security Administration Act 1992, Housing Benefit and Council Tax Reduction legislation outline the evidence and information a claimant is expected to provide in support of an application. The revised Housing Benefit and Council Tax Reduction Verification Policy will provide this framework.
III Implications for Scheme of Delegations to Officers	None.
IV Impact on performance and performance Indicators	The replacement policy will reflect the changing caseload profile as a result of the introduction of Universal Credit. Improved data sharing between the Department of Work and Pensions and local authorities will ensure performance is maintained.
V Relevance to Single Outcome Agreement	We live longer healthier lives. We have tackled significant inequalities in West Lothian society. We take a pride in a strong, fair and inclusive society.
VI Resources - (Financial, Staffing and Property)	None.

VII Consideration at PDSP

The policy was considered by the Partnership and Resources PDSP at its meeting on 5 February 2021.

VIII Other consultations

Audit, Risk and Counter Fraud Service

D. TERMS OF REPORT

D.1 Background

West Lothian Council has operated a Risk Based Verification (RBV) approach in the verification of evidence for new Housing Benefit (HB) claims and Council Tax Reduction (CTR) applications since 2015. The policy document was considered by the Partnership and Resources PDSP on 5 December 2015 and approved by Council Executive on 22 December 2015.

There is no legal requirement for local authorities to adopt RBV as the approach to administration of new claims, and authorities are free to continue with traditional methods of verification. The adoption of RBV allowed resources to be targeted towards those cases with greater risk of fraud and error.

The RBV approach involves all new claims being risk scored at the point of submission, allowing officers to ensure the appropriate level of resource is invested in verifying evidence from those claims presenting the highest risk. Each new claim for HB and CTR is placed in one of three risk bands; high, medium or low risk.

Dependant on the risk band, the level of verification required will be varied. Low risk claims need minimal verification, medium risk continue to be verified and high risk cases are subject to a more robust checking regime which involves additional checks being carried out.

The DWP indicated in its circular S11/2011 that it would expect a risk profile in the region of 55% low risk, 25% medium risk and 20% high risk.

D.2 RBV Performance

The introduction of UC full service in West Lothian from 16 May 2018 has produced a growing deviation from the profile distribution of risk categories expected by the DWP. As at November 2020, 87% of claims were classified as low risk, 9% at medium risk and 4% at high risk.

Analysis has identified that the changing profile of benefit claimants as a result of the continued roll out of UC has reduced the effectiveness of RBV. With fewer new HB claims being received, and fewer being classified as 'medium' or "high" risk means the performance of RBV is now contrary to the original policy intention set out by the DWP within circular S11/2011.

D.3 Issues

It has been confirmed that Transunion, the company which provides the RBV software, will cease delivering the service from September 2021. Therefore, there would not be any updates, support or advice should there be any issues with the system. Any changes to the verification policy will need to be introduced at the start of the financial year as changing verification standards in-year would cause complications for the HB subsidy audit process.

D.4 Revised Verification Policy

Local Authorities must take into consideration the Social Security Administration Act 1992, Housing Benefit and Council Tax Reduction legislation when considering what verification is required for applications. Housing Benefit Regulation 86 states:

“a person who makes a claim, or a person to whom housing benefit has been awarded, shall furnish such certificates, documents, information and evidence in connection with the claim or the award, or any question arising out of the claim or the award, as may reasonably be required by the relevant authority in order to determine that person’s entitlement to, or continuing entitlement to housing benefit and shall do so within one month of being required to do so or such longer period as the relevant authority may consider reasonable.”

Council Tax Reduction legislation also frames this in a very similar way. The Council Tax Reduction (Scotland) Regulations and The Council Tax Reduction (State Pension Credit) (Scotland) Regulations also state:

“...an applicant must furnish any certificates, documents, information and evidence in connection with an application for council tax reduction or existing entitlement to council tax reduction as may reasonably be required by the relevant authority in order to determine that person’s entitlement to, or continuing entitlement to, council tax reduction...”

The proposed Housing Benefit and Council Tax Verification Policy (appendix A) strikes a balance between a robust approach for evidence and verification, helping to protect public funds from fraud and error and ensuring a streamlined and convenient process for claimants. The Partnership and Resources PDSP considered the policy at its meeting on 5 February 2021 and noted the intention to seek Council Executive approval.

E. CONCLUSION

The revised Housing Benefit and Council Tax Reduction Verification Policy recognises the impact of Universal Credit and provides standard and consistent evidence and verification process for all new claims for Housing Benefit and for Council Tax Reduction.

F. BACKGROUND REFERENCES

Social Security Administration Act 1992

The Housing Benefit Regulations 2006

The Housing and Council Tax Benefit (Decision and Appeals) Regulations 2001

The Council Tax Reduction (Scotland) Regulations 2011

Subsidy circular HB/CTB S11/2011

Appendices/Attachments:

Appendix A – Housing Benefit and Council Tax Reduction Verification Policy

Contact Person: Elaine Nisbet, Anti-Poverty Manager
Tel: 01506 282921 Email: Elaine.nisbet@westlothian.gov.uk

Donald Forrest
Head of Finance and Property Services
5 February 2021

Appendix A



Housing Benefit and Council Tax Reduction Verification Policy

Housing Benefit and Council Tax Reduction Verification Policy

1. Introduction

The council is committed to reducing fraud and error within the Housing benefit and Council Tax Reduction system. Efficient and effective verification of all details supplied by claimants will minimise the risk of fraud and error entering the system.

Verifying information supplied by claimants enables the council to determine entitlement to Housing Benefit and/or Council Tax Reduction.

The Housing Benefit Regulations 2006 86(1) and the HB (Persons who have attained the qualifying age for state pension credit) Regulations 2006 67(1) state:

“...a person that makes a claim shall furnish such certificates, documents, information and evidence in connection with a claim...as may be reasonably required by the appropriate authority to determine that person’s entitlement to housing benefit.’

The Council Tax Reduction (Scotland) Regulations and The Council Tax Reduction (State Pension Credit) (Scotland) Regulations also state:

“...an applicant must furnish any certificates, documents, information and evidence in connection with an application for council tax reduction or existing entitlement to council tax reduction as may reasonably be required by the relevant authority in order to determine that person’s entitlement to, or continuing entitlement to, council tax reduction...”

The Regulations do not impose a requirement on authorities in relation to what specific information and evidence they should obtain from a claimant. However, it does require an authority to have information which allows an accurate assessment of a claimant’s entitlement, both when a claim is first made and when the claim is reviewed. A test of reasonableness is to be applied.

2. Policy Aims and Objectives

Verification ensures that:

- Claims for Housing Benefit and Council Tax Reduction are fully supported and documented by all necessary evidence required to determine a claimant’s entitlement
- The risk of fraud and error entering the benefit system is minimised
- Where fraud and error are identified, it is corrected
- Discrepancies identified through the verification of claims are resolved.

3. Verifying identity and National Insurance Numbers (NINO)

A National Insurance number and identity confirmation must be made for the claimant and where applicable the partner in all cases. Identity and NINO can be verified through THE Department of Work and Pensions Searchlight System, Automated Transfer of Local Authority document (ATLAS) or Universal Credit Data Share document where verification has already been undertaken by DWP.

Identity and NINO can also be established with reference evidence provided on a previous claim in order to support a current claim.

Where neither of these options are possible, a claimant must verify their identity through the provision of original documents as outlined in Appendix A.

In some circumstances a claimant or partner either does not know or has not been issued with a NINO. If eligibility to Housing Benefit and/or Council Tax Reduction has been established the Benefit and Financial Assessment Officer will apply for a NINO on the claimant's behalf.

There is no requirement for a claimant to provide evidence of a NINO:

- where the claimant is liable to make payments in respect of a dwelling that is a hostel, or
- for any child or young person included in the Housing Benefit claim, or
- for a partner who does not have leave to enter or remain in the UK and who has not previously been allocated a NINO.

4. Verification of income

Where possible claimant and partner income will be verified by utilising DWP and HMRC data accessible via Searchlight, ATLAS, Universal Credit Data Share and the Verify Earnings and Pensions service.

Where income cannot be verified through this means the claimant will be requested to provide evidence as outlined in Appendix A.

Where a claimant and/or partner is in self-employment, the officer will look at each case on an individual basis and set an appropriate income "assessment period". Verification will be dependent on the assessment period set but may include latest trading accounts or an estimate of earnings.

Where an estimate of earnings has been used in an assessment this will be reviewed after the assessment period ends.

5. Verification of Capital

Verification of capital will only be requested where the level of capital declared by claimant and/or partner is above the following thresholds:

- £6,000 for claimants of working age
- £10,000 for claimants of pension age

Where declared capital exceeds these thresholds or the claimant and/or partner has declared an interest in property or land, which would not fall to be disregarded, verification of capital will be requested as outlined in Appendix A.

6. Verification of rent

Verification of rent for council tenants will be automatic through the council's Open Housing system.

Where a claimant rent from a Housing Association or other Registered Social Landlord (RSL), where the claimant has given consent, confirmation of rental liability will be verified directly with the appropriate landlord.

For claimants who rent privately or have not given consent for the service to contact their landlord verification of rent will be required as outlined in Appendix A.

7. Submission of evidence

A range of options are available to support applicants submit relevant evidence and documentation.

Evidence can be submitted electronically using the evidence upload facility on the council's website or by e-mail.

Alternatively, original documentation can be submitted at any designated council office, original documents will be verified by an officer who has received the appropriate verification training and returned to the applicant.

8. Full Compliance

It is also important to recognise that full compliance is not always possible. This may be where documentation is unavailable to an applicant due to a disaster or for those fleeing domestic violence.

In some cases where it is clear from the customer's application form that, given their declared circumstances, they would fail to qualify for Housing Benefit or Council Tax Reduction, for example where capital is declared in excess of upper capital limits, claims will be processed without requesting full verification.

Where any such cases are identified, the officer must record the action taken and why.

9. Policy Review

The Council's policy will be reviewed annually or sooner if appropriate, by the Head of Finance and Property Services. The Head of Finance and Property Services is authorised to make minor or administrative changes to the policy. Any proposed significant changes will be reported to the Partnership and Resources PDSP and then Council Executive for approval.

Donald Forrest
Head of Finance and Property Services
25 January 2021

Appendix A

1. Verification of Identity and National Insurance Number (NINO)

If evidence of NINO and/or identity cannot be obtained through The Department of Work and Pensions Searchlight System, Automated Transfer of Local Authority document (ATLAS) or Universal Credit Data Share documentation the claimant must provide one form of identification and one form of evidence of NINO, only original documents are acceptable.

The following may be used to provide evidence of identity:

- Birth, marriage or civil partnership certificate; or divorce, annulment, separation or ending of a civil partnership papers in your current name. If your name has changed because of marriage or civil partnership, provide your marriage or civil partnership certificate as well.
- Passport (current and valid) or Biometric Residence Permit.
- Medical card or television licence in your name.
- Gas, electricity, water or telephone bill (but not a mobile phone bill), in your name, received within the last three months.
- Current full or provisional driving licence (photocard or paper).
- Bank or building society statement or passbook.
- Certificate of employment in HM Forces or Merchant Navy.
- Letter from the Home Office about immigration status.
- Residence permit, Police Registration Certificate, Immigration and Nationality Directorate travel document, standard acknowledgement letter (SAL1 or 2) or Application Registration Card (ARC).
- Home detention curfew licence.

The following may be used to provide evidence of NINO:

- P45 or P60.
- Letter from HM Revenue and Customs about tax or tax credit.
- Bank statements showing the claimants/partners benefit payments which shows the NINO on the statement.
- Payslips, salary statement or works pension statement which shows claimant/partners name and NINO.
- Letter that the Pension Service or Jobcentre Plus
- NINO card

2. Verification of income and capital

Original, copied and digital evidence is acceptable to verify income and capital as outlined below.

Earned Income

Where a claimant and/or partner are in employment they should provide:

- last five weeks if you are paid weekly, or
- the last two months if you are paid monthly, or
- the latest three fortnightly payslips

Average weekly earnings are to be calculated over the period received to date where the claimant has been:

- employed for less than five weeks or two months, and
- earnings already received is likely to represent average earnings

Where earnings have not yet been received an estimate of likely weekly earnings from the employer should be established.

Where the claimants and/or partner claimant has had a recent change in circumstances which has resulted in a change to their earnings, the officer shall use whichever period is deemed reasonable to establish an average of the claimants and/or partners earnings.

Where a claimant and/or partner is in self-employment, the officer will look at each case on an individual basis and set an appropriate income "assessment period". Verification will be dependent on the assessment period set but may include latest trading accounts or an estimate of earnings.

Unearned Income

Where a claimant and/or partner have unearned income, they should provide:

- Benefit award letter from the Jobcentre Plus or The Pension Service, or
- Private pension payment letter or recent bank statement confirming payment.

Capital

Where a claimant and/or partner have capital, they should provide:

- The latest two months bank statements for all accounts held by claimant and/or partner. Internet banking statements are permitted if they include the website address, name of the account holder, account number and sort code.
- Share certificates or dividend statements for stocks, shares or bonds.
- Where an interest in a property or land, which would not otherwise fall to be disregarded, is declared valuation of capital value will be determined using current processes.
- Evidence of any other capital or asset required under housing Benefit and/or Council Tax Reduction legislation.

3. Verification of Rent

Original, copied and digital evidence is acceptable to rent as outlined below.

Evidence of rent can be any of the following:

- Tenancy agreement
- Rent book
- Letter from landlord/agent

The evidence of rent must include the following information:

- The name and address of the owner of the property or managing agent.
- The date the agreement started
- The amount of rent charged
- Details of what is included in the rent, for example, heating, lighting, cleaning, meals.
- The rent payment frequency.

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

CONSULTATION RESPONSE: ADULT DISABILITY PAYMENT (ADP) REGULATIONS

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

The purpose of the report is to inform Council Executive of the Scottish Government consultation on the draft Adult Disability Payment Regulations (ADP) which commenced on 21 December and to agree a response to be returned by 15 March 2021.

B. RECOMMENDATION

It is recommended that the Council Executive approves the proposed consultation response, as set out in Appendix 2, to be submitted on behalf of West Lothian Council.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Focusing on our customers' needs; being honest, open and accountable; providing equality of opportunities; making best use of our resources; working in partnership
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Reducing inequalities and poverty are key priorities set out in both the Corporate Plan 2018/19 – 2022/23 and in the Community Planning Partnership Local Outcome Improvement Plan 2013 – 2023.
III	Implications for Scheme of Delegations to Officers	None.
IV	Impact on performance and performance Indicators	None.
V	Relevance to Single Outcome Agreement	We live longer, healthier lives; We have tackled significant inequalities in West Lothian society; We have improved the life chances for people at risk; We take pride in a strong, fair and inclusive society
VI	Resources - (Financial, Staffing and Property)	None.
VII	Consideration at PDSP	Due to timescales, it was not possible to

consider the report at PDSP. The draft paper was circulated to Partnership and Resources PDSP members for comment by 15 February. No comments were received.

VIII Other consultations

Consultation circulated to key stakeholders through the council's Anti-Poverty Service, the Anti-Poverty Practitioner's Network.

D. TERMS OF REPORT

D1 Background

The Social Security (Scotland) Act 2018 conferred upon the Scottish Government the powers to provide non-means tested disability benefits equivalent to Personal Independence Payment (PIP) and Disability Living Allowance (DLA), which are currently administered by Department of Work and Pensions on behalf of the UK government.

As a consequence of this, in March 2019, the Scottish Government undertook a two-month consultation (The Disability Assistance in Scotland Consultation) on their proposals for a new Disability Assistance benefit which was to replace PIP and DLA for people of working age in Scotland. The outcome of this was published in October 2019 and since then the Scottish Government has been involved in a period of development of the benefit and policy surrounding it.

This consultation is concerned with whether the draft regulations meet these policy aims and invites comment on each section of the legislation.

In the main, the draft regulations for Adult Disability Payment in Scotland are broadly the same eligibility criteria provided by the Personal Independence Payment framework. There are, however, some significant differences including:

1. The removal of set award end dates, instead focusing on rolling award periods and the introduction of 'light touch' reviews for those claimants whose condition is unlikely to improve.
2. Introduction of Short-Term Assistance to protect income for claimants pending appeal where an award is reduced or stopped following a re-determination.
3. Extension of the time limit to request a re-determination to 42 calendar days in order to allow claimants to access appropriate support with this process
4. Changes to special rules for terminally ill claimants, removing the requirement that death must be reasonably expected within six months and instead using the clinical judgement of the claimant's health professionals to enable a determination on whether they are terminally ill.
5. Activities are largely the same as the PIP criteria, however some descriptors have been re-worded to take account of case law and guidance.

D2 Consultation

The consultation opened on 21 December 2020 and closes on 15 March 2021. The consultation questions have been circulated to the council's Anti-Poverty Service, the Anti-Poverty Practitioners' Network and Advice Shop Welfare Rights Officers. A response to the consultation has been drafted taking account of this feedback and

this has been circulated to Partnership and Resources PDSP members for comment. No comments were received.

In undertaking this consultation, the Scottish Government hopes to gather views on whether the draft regulations will achieve the aims of Adult Disability Payment, and is also seeking feedback on certain policy approaches to ensure they have identified the best solutions and that they are in line with the Scottish Social Security principles of dignity, fairness and respect.

Overall, the draft regulations in respect of Adult Disability Payment (ADP) do meet the policy aims of Social Security Scotland, with one exception relating to the proposed wording in relation to the Mobility Activities contained within Schedule 1 of the draft regulations (See Appendix 1).

The removal of compulsory face-to-face assessments to determine a claimant's entitlement to benefit is widely regarded as a positive step and marks a significant departure from the current system used to administer Personal Independence Payment (PIP) which this benefit will replace. The same is also true with regards to the changes to the "special rules criteria" for terminally ill claimants where the requirement that death may be reasonably expected within six months has also been removed.

Where concern was expressed, however, is in relation to the descriptors relating to Mobility Activity 1, contained in Schedule 1 of the draft regulations. Here, the regulations do not reflect the policy intent as they contain references to Department of Work and Pensions legislation which was deemed unlawful by the High Court. The words, "*For reasons other than Psychological distress*" included in Descriptors c, d and f of the Activity were found to be discriminatory against claimants with mental health problems. The views of stakeholders were that these should be removed from the regulations as they neither reflect policy nor the Scottish Social Security principles. This point is covered in question 31 in the proposed response.

E. CONCLUSION

Responses have been collated from anti-poverty practitioners in West Lothian and experienced staff within the Anti-Poverty Service. These key stakeholders have provided valuable feedback taking account of how the legislation proposed impacts on some of the most vulnerable members of our communities.

The Council Executive is asked to agree the submission to the consultation as set out in Appendix 2.

F. BACKGROUND REFERENCES

<https://www.gov.scot/publications/consultation-adult-disability-payment/>

Appendices/Attachments: Appendix 1 Draft Regulations for Adult Disability Payment

Appendix 2: Response to the Social Security Consultation

Contact Person: Elaine Nisbet, Anti-Poverty Manager, elaine.nisbet@westlothian.gov.uk
01506 282921

Donald Forrest
Head of Finance and Property Services
23 February 2021

Appendix 2: West Lothian draft response to consultation on Adult Disability Payment

Part 1: Introductory and Interpretation (regulations 1 and 2)

Q 1: Do you agree the regulations reflect this policy intent? **Yes**

Q 2: If you have any further comments please provide them here.
none

Part 2: Disability Assistance for Working Age People Overview (regulation 3)

Q 3: Do you agree the regulations reflect this policy intent? **Yes**

Q 4: If you have any further comments please provide them here.
none

Daily Living Component and Mobility Component (regulations 4 and 5)

Q 5: Do you agree the regulations reflect this policy intent? **Yes**

Q 6: If you have any further comments please provide them here.
none

Determination of ability to carry out activities (regulation 6)

Scoring for daily living and mobility activities (regulations 7 and 8)

Scoring: further provision (regulation 9)

Q 7: Do you agree the regulations reflect this policy intent? **Yes**

Q 8: If you have any further comments please provide them here.
none

The required period condition: daily living component and mobility component (regulation 10 and 11)

The relevant date (regulation 12)

The relevant date: after an interval (regulation 13)

Q 9: Do you agree the regulations reflect this policy intent? **Yes**

Q 10: If you have any further comments please provide them here.
None

Residence and presence conditions (regulation 14)

Absence from the United Kingdom (regulation 15)

Absence from the United Kingdom including medical treatment (regulations 16)

Absence from the United Kingdom in special cases (regulation 17)

Serving members of Her Majesty's forces and their family members – further provision (regulation 18)

Persons habitually resident in the United Kingdom (regulation 19)

Persons habitually resident in outside of the UK (regulation 20)

Refugees (regulation 21)

Q 11: Do you agree the regulations reflect this policy intent? **Yes**

Q 12: If you have any further comments please provide them here.
None

Age Criteria (regulation 22) Persons of pensionable age: exceptions (regulation 23)

Adult disability payment after an interval and after reaching the relevant age (regulation 24)

Determination of an award after the person has reached the relevant age (regulation 25)

Q 13: Do you agree the regulations reflect this policy intent? **Yes**

Q 14: If you have any further comments please provide them here.
none

Terminal Illness (regulation 26)

Q 15: Do you agree the regulations reflect this policy intent? **Yes**

Q 16: If you have any further comments please provide them here.
none

Care home residents (regulation 27)

Hospital in-patients (regulation 28)

Exceptions: care homes and hospitals (regulation 29)

Legal Detention (regulation 30)

Periods of residence (regulation 31)

Payment of Adult Disability Payment between two periods of residence (regulation 32)

Q 17: Do you agree the regulations reflect this policy intent? **Yes**

Q 18: If you have any further comments please provide them here.
none

Rate of Adult Disability Payment and Making Payments (regulation 33)

Making Payments (regulation 34)

When an application is treated as made and beginning of entitlement to assistance (regulation 35)

Time of Payment (regulation 36)

Continuing Eligibility (regulation 37)

Q 19: Do you agree the regulations reflect this policy intent? **Yes**

Q 20: If you have any further comments please provide them here.
none

Part 11: Qualifications and Experience Necessary to Carry out Assessments (regulation 38)

Q 21: Do you agree the regulations reflect this policy intent? **Yes**

Q 22: If you have any further comments please provide them here.
None

Consideration of entitlement after specified period (regulation 39)

Other situations requiring a determination without an application (regulation 40)

Determination following official error – underpayments (regulation 41)

Determination following error – overpayments (regulation 42)

When changes in entitlement take effect (regulation 43)

Q 23: Do you agree the regulations reflect this policy intent? **Yes**

Q 24: If you have any further comments please provide them here.
none

Periods in respect of a re-determination request (regulation 44)

Q 25: Do you agree the regulations reflect this policy intent? **Yes**

Q 26: If you have any further comments please provide them here.
None

Part 14: Provision of vehicles (regulation 45)

Q 27: Do you agree the regulations reflect this policy intent? **Yes**

Q 28: If you have any further comments please provide them here.
none

Liability for assistance given in error (regulation 46)

Determination to effect a deduction decision (regulation 47)

Q 29: Do you agree the regulations reflect this policy intent? **Yes**

Q 30: If you have any further comments please provide them here.

None

Schedule 1 – Adult Disability Assistance Determination

Q 31: If you have any comments Schedule 1 please provide them here.

The wording of the regulations in Schedule 1 in respect of Mobility Activity 1, do not reflect the policy intent. In the outline to the Regulations in Annex B, it is stated at Para 2 that *“Specific terms defined through case law have been added here to ensure that existing Personal Independence Payment case law is reflected in the interpretation of these regulations”*. However, this is not the case as the as Mobility Activity 1, Descriptors c, d and f reflect an incorrect position.

The wording of these Descriptors (“For reasons other than Psychological distress”) was deemed unlawful by the High Court in case [2017] EWHC 3375 (Admin), with the Judge referring to them as being ***“blatantly discriminatory against those with mental health impairments”***.

Additionally, the proposed wording of mobility descriptor 1(b) *‘Needs **the presence or prompting of another person** to be able to undertake any journey to avoid overwhelming psychological distress to the individual’* represents a departure from the established scope of this activity under the PIP regulations that may in fact disadvantage the claimant. Under the PIP regulations, a claimant would be awarded 4 points if they require prompting to undertake any journey to avoid overwhelming distress. If the claimant required the presence of another person, even a passive presence, this would attract 10 or 12 points under descriptors 1(d) or 1(f) respectively. This position is confirmed in [2018] UKUT 339 (AAC) in which Judge Hemingway concludes that the [passive presence of another person to enable claimant to follow a journey can be sufficient to satisfy mobility descriptors 1d or 1f.](#)

In the introduction to the consultation it is stated *“[W]e has consistently communicated that when Adult Disability Payment is first delivered, it will be with largely the same eligibility criteria as provided by the current Personal Independence Payment framework and this is reflected in these draft regulations. At the same time, this has not limited our aspirations and Adult Disability Payment will be delivered in-keeping with our values of dignity, fairness and respect”*.

Implementing the regulations in their current format in relation to Mobility Activity 1 of Schedule 1 does not reflect either the current Personal Independence framework, or the values as they have been found discriminatory against a group of disabled claimants.

Schedule 2 – Members of Her Majesty's Forces: Excluded Persons

Q 32: If you have any comments on Schedule 2 please provide them here.

none

Q 33: If you have any comments about the proposed review of Adult Disability Payment please provide them here.

none

Q 34: If you have any comments about the impact assessments please provide them here.

none

Q 35: If there is anything else you would like to tell us about the regulations, impact assessments or Adult Disability Payment in general, please do so here

none

Consultation on Adult Disability Payment

Annex C: Draft Disability Assistance for Working Age People regulations

DRAFT REGULATIONS FOR CONSULTATION

The Disability Assistance for Working Age People (Scotland) Regulations

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SCHEDULE 1

PART 1 — INTERPRETATION

PART 2 — DAILY LIVING ACTIVITIES

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SCHEDULE 2 — MEMBERS OF HER MAJESTY’S FORCES: EXCLUDED PERSONS

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 13(3), 31(2), 36(2), 41(4)(a), 43(5), 51, 52 and 95 of the Social Security (Scotland) Act 2018 (1), and all other powers enabling them to do so.

(1) 2018 asp 9 (“the 2018 Act”). Schedules 5 and 10 of the 2018 Act, respectively make provision about the exercise of power under sections 31 and 36. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security (“the Commission”) of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

They have laid a response to the Commission’s report on the proposals for the regulations before the Scottish Parliament in accordance with section 97(9)(a) of that Act.

In accordance with section 96(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

PART 1

Introductory and Interpretation

Citation and Commencement

1.—(1) These regulations may be cited as the Disability Assistance for Working Age People (Scotland) Regulations .

(2) These regulations come into force for the purposes of Part X (pilot scheme) and Part X of schedule X on [date] and for all other purposes on [date].

Interpretation

2.In these Regulations—

“the 2018 Act” means the Social Security (Scotland) Act 2018;

“aid or appliance” —

(a) means —

(i) any object or device which a client needs to perform a function; or

(ii) any object or device which improves, provides or replaces the individual’s impaired physical or mental function, and

(b) can include an object or device which a person without a disability might choose to use for the same function;

(c) in relation to managing toilet need includes, but is not limited to, the use of incontinence pads; and

(d) includes a prosthesis;

“Armed Forces Independence Payment” means the disability benefit paid in accordance with article 24A of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;

“assessment” means an assessment in terms of section 54 of the 2018 Act;

“Child Disability Payment” means Child Disability Payment in terms of the Disability Assistance for Children and Young People (Scotland) Regulations 2021;

“component” means the daily living component or mobility component of Adult Disability Payment;

“descriptor” means a descriptor in column 2 of the tables in Parts 2 and 3 of Schedule 1;

“determination” or “determination of entitlement” means a determination of an individual’s entitlement to assistance under section 37 or 49 of the 2018 Act,

“Disability Living Allowance” means disability living allowance under section 71 of the Social Security Contributions and Benefits Act 1992(2);

“legal detention” means detention in legal custody within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995(3) but does not include detention under—

(2)

(3) 1995 c.46. Section 295 was amended by section 24(2) of the Criminal Justice (Scotland) Act 2003 (2003 asp 7).

(e) section 59A of that Act, or

(b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁴⁾;

“needs” where used in relation to an item or function, means that it is reasonably required, though it may not have been available or provided;

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen) and references to a person receiving or submitting to medical treatment are to be construed accordingly;

“Personal Independence Payment” means the disability benefit paid in accordance with section 77 of the Welfare Reform Act 2012;

“relevant date” means the date under regulations 12 and 13;

“previous award” means an award of either or both components to which an individual has ceased to be entitled;

“recipient” means the individual to whom Adult Disability Payment is paid,

“re-determined” means re-determined under section 43 of the 2018 Act, and “re-determination” is to be construed accordingly;

“Title III of Part 2 of the withdrawal agreement (coordination of social security systems)” means Title III of Part 2 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community⁽⁵⁾.

PART 2

Disability Assistance for Working Age People

Overview

3.—(1) An individual is entitled to Adult Disability Payment in accordance with these Regulations if they meet the eligibility rules which comprise—

- (a) the daily living component criteria in regulation 4;
- (b) the mobility component criteria in regulation 5;
- (c) the required period condition in regulations 10 and 11;
- (d) the residence and presence conditions in regulation 14, and
- (e) the age criteria in regulation 22.

(2) Paragraph (1) is subject to the special rules relating to age found in Part 6 and the special rules relating to terminal illness found in Part 7 of these Regulations.

(3) Adult Disability Payment is to consist of a daily living component and a mobility component.

(4) An individual’s entitlement to Adult Disability Payment may be an entitlement to either component or both of them.

(5) An individual must make an application for Adult Disability Payment other than in circumstances where a determination without application is to be made.

(6) An individual is not entitled to Adult Disability Payment whilst being entitled to Child Disability Payment, Disability Living Allowance, Personal Independence Payment or Armed Forces Independence Payment.

(7) An individual to whom regulation 20 applies is not entitled to the daily living component for a period, unless during that period—

⁽⁴⁾ 2003 asp 13.
⁽⁵⁾ 2019/C 384 I/01.

- (a) the United Kingdom is competent for payment of sickness benefits in cash to that individual for the purposes of Chapter 1 of Title 3 of one of relevant EU regulations as defined in regulation 20, or
- (b) in terms of regulation 20(3)(a)(ii), the United Kingdom is competent for payment of long term care benefits to the individual.

PART 3

Eligibility: Daily Living Component and Mobility Component

Daily Living Component

- 4.**—(1) An individual is entitled to the daily living component at the standard rate if—
- (a) the individual’s ability to carry out daily living activities is limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (2) An individual is entitled to the daily living component at the enhanced rate if—
- (a) the individual’s ability to carry out daily living activities is severely limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (3) For the purpose of these regulations—
- “daily living activities” are the activities set out in column 1 of the table in Part 2 of Schedule 1;
- “the standard rate” means the weekly rate prescribed in regulation 33(1)(a);
- “the enhanced rate” means the weekly rate prescribed in regulation 33(1)(b).
- (4) Whether a person has limited or severely limited ability to carry out daily living activities is to be determined in accordance with regulation 7.

Mobility Component

- 5.**—(1) An individual is entitled to the mobility component at the standard rate if—
- (a) the individual’s ability to carry out mobility activities is limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (2) A individual is entitled to the mobility component at the enhanced rate if—
- (a) the individual’s ability to carry out mobility activities is severely limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (3) For the purpose of these regulations—
- “mobility activities” are the activities set out in column 1 of the table in Part 3 of Schedule 1;
- “the standard rate” means the weekly rate prescribed in regulation 33(2)(a);
- “the enhanced rate” means the weekly rate prescribed in regulation 33(2)(b).
- (4) Whether a person has limited or severely limited ability to carry out mobility activities is to be determined in accordance with regulation 8.

Determination of ability to carry out activities

- 6.**—(1) An individual’s ability to carry out an activity is to be determined—
- (a) on the basis of the individual’s ability whilst wearing or using any aid or appliance which the individual normally wears or uses; or
 - (b) as if the individual were wearing or using any aid or appliance which the individual could reasonably be expected to wear or use.
- (2) Where an individual’s ability to carry out an activity is to be determined, they are to be determined to satisfy a descriptor on the basis of whether they can do so—
- (a) safely;
 - (b) to an acceptable standard;
 - (c) repeatedly; and
 - (d) within a reasonable time period.
- (3) Where an individual has been determined as having severely limited ability to carry out activities, they are not to be treated as also having limited ability in relation to the same activities.
- (4) In this regulation —
- (a) “safely” means in a manner unlikely to cause harm to the individual or to another person, either during or after completion of the activity, with consideration given to—
 - (i) the likelihood of harm; and
 - (ii) the severity of the consequences of that harm;
 - (b) “to an acceptable standard” means to a standard that is reasonably expected for the activity, taking account of the impact on the individual of carrying out the activity to that standard;
 - (c) “repeatedly” means as often as the activity being considered is reasonably required to be completed; and
 - (d) “reasonable time period” means no more than twice as long as the maximum period that an individual without a physical or mental health condition or conditions which limits that individual’s ability to carry out the activity in question would normally take to complete that activity.

Scoring for daily living activities

- 7.**—(1) The score an individual obtains in relation to daily living activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 2 of Schedule 1 (“the daily living activities table”).
- (2) For the purpose of paragraph (1), the number of points awarded to an individual for each activity listed in column 1 of the daily living activities table is the number shown in column 3 of the table against whichever of the descriptors set out in column 2 of the table for the activity applies to the individual under regulation 9.
- (3) For the purposes of regulation 4, an individual has —
- (a) limited ability to carry out daily living activities where they obtain a score of at least 8 points and no more than 11 points in relation to daily living activities; and
 - (b) severely limited ability to carry out daily living activities where they obtain a score of at least 12 points in relation to disability living activities.

Scoring for mobility activities

- 8.**—(1) The score an individual obtains in relation to mobility activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 3 of Schedule 1 (“the mobility activities table”).
- (2) For the purpose of paragraph (1), the number of points awarded to an individual for each activity listed in column 1 of the mobility activities table is the number shown in column 3 of the table against whichever

of the descriptors set out in column 2 of the table for the activity applies to the individual under regulation 9.

- (3) For the purposes of regulation 5, an individual has —
- (a) limited ability to carry out mobility activities where they obtain a score of at least 8 points and no more than 11 points in relation to mobility activities; and
 - (b) severely limited ability to carry out mobility activities where they obtain a score of at least 12 points in relation to mobility activities.

Scoring: further provision

9.—(1) The descriptor which applies to an individual in relation to each activity in the tables referred to in regulations 7(2) and 8(2) is—

- (a) where one descriptor is satisfied on over 50% of the days of the required period, that descriptor;
- (b) where two or more descriptors are each satisfied on over 50% of the days of the required period, the descriptor which scores the higher or highest number of points; and
- (c) where no descriptor is satisfied on over 50% of the days of the required period but two or more descriptors (other than a descriptor which scores 0 points) are satisfied for periods which, when added together, amount to over 50% of the days of the required period—
 - (i) the descriptor which is satisfied for the greater or greatest proportion of days of the required period; or,
 - (ii) where both or all descriptors are satisfied for the same proportion, the descriptor which scores the higher or highest number of points.

(2) For the purposes of paragraph (1), a descriptor is satisfied on a day in the required period if—

- (a) the descriptor has been satisfied for any part of the day which is not minimal or fleeting; and
- (b) it is likely that, if the individual had been subject to a determination on that day, they would have satisfied that descriptor.

(3) In paragraphs (1) and (2), “required period” means—

- (a) in the case where entitlement to adult disability payment falls to be determined, the period of 13 weeks ending with the relevant date together with—
 - (i) in relation to an application after an interval for the purpose of regulation 13 the period of 39 weeks beginning with the date on which that application is made;
 - (ii) in relation to any other application, the period of 39 weeks beginning with the day after the relevant date.
- (b) in the case where adult disability payment has been awarded to an individual—
 - (i) during the period of 13 weeks following a determination of entitlement under an application for the purpose of regulation 13, the period of 13 weeks ending with the relevant date together with, for each day of the award, the period of 39 weeks beginning with the day after that date;
 - (ii) in any other case, for each day of the award, the period of 13 weeks ending with that date together with the period of 39 weeks beginning with the day after that date.

PART 4

Required Period Condition

Required Period Condition: daily living component

10.—(1) An individual meets the required period condition for the purposes of regulation 4(1) (daily living component at the standard rate) where—

- (a) if the individual had been subject to a determination at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had limited ability to carry out daily living activities; and
 - (b) if the individual were to be subject to a determination at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had limited ability to carry out daily living activities.
- (2) An individual meets the required period condition for the purposes of regulation 4(2) (daily living component at the enhanced rate) where—
- (a) if the individual had been subject to a determination at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had severely limited ability to carry out daily living activities; and
 - (b) if the individual were to be subject to a determination at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had severely limited ability to carry out daily living activities.

Required Period Condition: mobility component

- 11.—**(1) An individual meets the required period condition for the purpose of regulation 5(1) (mobility component at the standard rate) where—
- (a) if the individual had been assessed at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had limited ability to carry out mobility activities; and
 - (b) if the individual were to be assessed at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had limited ability to carry out mobility activities.
- (2) An individual meets the required period condition for the purposes of regulation 5(2) (mobility component at the enhanced rate) where—
- (a) if the individual had been assessed at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had severely limited ability to carry out mobility activities; and
 - (b) if the individual were to be assessed at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had severely limited ability to carry out mobility activities.

The relevant date

- 12.**Except where paragraph (2) or (3) of regulation 13 applies, the relevant date is—
- (a) where the individual has made an application for adult disability payment which has not been determined, the date of that application or, if later, the earliest date in relation to which, if the individual had been assessed in relation to their ability to carry out daily living activities or, as the case may be, mobility activities, at every time in the previous 13 weeks, it is likely that the Scottish Ministers would have determined at that time that the individual has limited ability or, as the case may be, severely limited ability to carry out those activities; and
 - (b) where the individual has an award of either or both components, each day of that award.

The relevant date: Adult disability payment after an interval

- 13.—**(1) Paragraphs (2) and (3) apply where—
- (a) an individual makes an application for adult disability payment (“the new application”);
 - (b) that individual had a previous award of—
 - (i) Adult Disability Payment, or
 - (ii) Personal Independence Payment

- which ended not more than 2 years before the date on which the new application is made;
- (c) the previous award referred to in sub-paragraph (b) consisted of the same component as the one to which the individual is entitled (or would be entitled if they met the required period condition) under the new application; and
 - (d) the Scottish Ministers determine that the entitlement under the new application results from—
 - (i) substantially the same physical or mental health condition or conditions for which the previous award was made; or
 - (ii) a new physical or mental health condition or conditions which developed as a result of a condition for which the previous award was made.
- (2) In relation to determination of entitlement under the new application—
- (a) the relevant date for the purposes of regulations 10(1)(a) and (2)(a) and 11(1)(a) and (2)(a) is the date on which the previous award ended; and
 - (b) regulations 10(1)(b) and (2)(b) and 11(1)(b) and (2)(b) have effect in relation to the new application as if, for the words ‘the relevant date’ there were substituted ‘the date on which the new application for adult disability payment is made’.
- (3) Where an individual is awarded either or both components under the new application, in relation to continued entitlement to that component or, as the case may be, those components, for the period of 13 weeks following the date of the new application—
- (a) the relevant date for the purposes of regulations 10(1)(a) and (2)(a) and 11(1)(a) and (2)(a) is the date on which the previous award ended; and
 - (b) regulations 10(1)(b) and (2)(b) and 11(1)(b) and (2)(b) have effect in relation to that award as if, for the words ‘the relevant date’ there were substituted ‘each day of the award’.
- (4) For the purposes of this regulation—
- (a) an award of Personal Independence Payment under paragraph (1)(b)(ii) is to be treated as though it were an award of Adult Disability Payment, and
 - (b) that award may have been made whilst the person was ordinarily resident in—
 - (i) Scotland, or
 - (ii) any other part of the United Kingdom.
- (5) This regulation is subject to regulation 24.

PART 5

Residence and Presence Conditions

Residence and presence conditions

- 14.** An individual satisfies the residence and presence conditions if on any day that individual—
- (a) is ordinarily resident in Scotland,
 - (b) is habitually resident in the Common Travel Area,
 - (c) is not a person to whom section 115(9) of the Immigration and Asylum Act 1999⁽⁶⁾ applies, within the meaning of section 115(3) of that Act for the purposes of entitlement to Adult Disability Payment, and
 - (d) has been present in the United Kingdom for a period of, or periods amounting in aggregate to, not less than 104 weeks out of the 156 weeks immediately preceding that day.

⁽⁶⁾ 1999 c.33

Absence from United Kingdom

15.—(1) Where an individual is temporarily absent from the United Kingdom, they are treated as present in the United Kingdom for the purposes of regulation 14(d) for the first 13 weeks of absence.

(2) The individual is temporarily absent if, at the beginning of the period of absence, their absence is unlikely to exceed 52 weeks.

(3) Where an individual—

- (a) does not meet the presence condition set out in paragraph (1)(d) on the date the application is received by the Scottish Ministers,
- (b) will meet that condition, unless there is a change of circumstances, on a date (“the later date”) not later than 13 weeks after the application was received, and
- (c) does meet that condition on the later date,

the Scottish Ministers may make a determination that the individual is entitled to Adult Disability Payment from the later date .

Absence from United Kingdom to receive medical treatment

16.—(1) Where the individual is temporarily absent from the United Kingdom, they are treated as present in United Kingdom for the purposes of regulation 14(d) for the first 26 weeks of that absence, where—

- (a) their absence is solely in connection with arrangements made for their medical treatment for a disease or physical or mental health condition before the individual left the United Kingdom; and
- (b) the arrangements referred to in paragraph (1)(a) relate to medical treatment—
 - (i) outside the United Kingdom;
 - (ii) during the period whilst the individual is temporarily absent from the United Kingdom, and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) In this regulation, “temporarily absent” has the same meaning as in regulation 15(2).

Absence from United Kingdom in special cases

17.—(1) Where an individual is absent from the United Kingdom, they are treated as present in the United Kingdom for the purposes of regulation 14(d)) where—

- (a) they are abroad in the capacity of—
 - (i) a member of Her Majesty’s forces;
 - (ii) an aircraft worker; or
 - (iii) a mariner; or
- (b) they are in employment prescribed or the purposes of section 120 (employment at sea (continental shelf operations)) of the Social Security Contributions and Benefits Act 1992(7) in connection with continental shelf operations; or
- (c) they are living with a person mentioned in paragraph (1)(a)(i) and are the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step mother of that person,

and they can demonstrate a genuine and sufficient link to Scotland.

(2) In this regulation and in regulation 18, “a member of Her Majesty’s forces” means a member of “the regular forces” or “the reserve forces” as defined in section 374 of the Armed Forces Act 2006(8), other than a person who is specified in Schedule 2, who is—

- (a) over the age of 16; and
- (b) not absent on desertion.

(7)
(8)

(3) In this regulation—

“aircraft worker” means a person who is employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board an aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

but does not include a person who is in employment as a member of Her Majesty’s forces;

“mariner” means a person who is in employment under a contract of service either as a master or member of the crew of any ship or vessel or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or the crew or any passengers or cargo or mail carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on voyage,

but does not include a person who is in employment as a member of Her Majesty’s forces.

Serving members of Her Majesty’s forces and their family members – further provision

18.—(1) An individual is treated as meeting the residence and presence conditions set out in regulations 14(a), (b) and (d) for any period where that individual—

- (a) is outside of Scotland or the Common Travel Area, or both, in their capacity as a—
 - (i) serving member of her Majesty’s forces, or
 - (ii) civil servant, or
- (b) is living with a person mentioned in paragraph (a) of this regulation and are the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person,

and they can demonstrate a genuine and sufficient link to Scotland.

(2) In this regulation, “civil servant” means a person employed in the civil service of the state.

Persons habitually resident in the United Kingdom

19.The residence and presence conditions set out in regulation 14 do not apply where on any day—

- (a) the individual is—
 - (i) habitually resident in the United Kingdom, and
 - (ii) ordinarily resident in Scotland,
- (b) Title III of Part 2 of the withdrawal agreement (coordination of social security systems) applies to the individual, and
- (c) the individual can demonstrate a genuine and sufficient link to Scotland.

Persons habitually resident outside the United Kingdom

20.—(1) The residence and presence conditions set out in regulation 14 do not apply in relation to the daily living component where an individual—

- (a) satisfies the conditions in paragraph (2) on the day the application is made, if the individual has rights arising from a relevant EU regulation, or
- (b) satisfies the conditions in paragraph (3) on the day the application is made, if the individual has rights arising from the UK-Ireland convention mentioned in that paragraph.

(2) The conditions referred to in paragraph (1)(a) are that the applicant must—

- (a) be an individual—

- (i) to whom the rules set out in a relevant EU regulation apply by virtue of—
 - (aa) Title III of Part 2 of the EU withdrawal agreement,
 - (bb) Part 3 or Article 23(4) of the Swiss citizens’ rights agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020⁽⁹⁾), or
 - (cc) Title III of the EEA EFTA separation agreement (as defined in that section), or
 - (dd) the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974⁽¹⁰⁾, and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits in cash,
- (b) be resident in—
- (i) Switzerland,
 - (ii) an EEA state, or
 - (iii) Gibraltar,
- (c) have a genuine and sufficient link to Scotland, and
- (d) meet the other conditions prescribed in these Regulations.
- (3) The conditions referred to in paragraph (1)(b) are that the applicant must—
- (a) be an individual—
- (i) to whom the convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019⁽¹¹⁾ as modified from time to time in accordance with any provision of it, applies, and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of long term care benefits,
- (b) be resident in Ireland,
- (c) have a genuine and sufficient link to Scotland, and
- (d) meet the other conditions prescribed in these Regulations.
- (4) The reference in paragraph (2)(c) to an individual’s link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to Adult Disability Payment, paragraph (2) would be incompatible with the applicable agreement mentioned in that paragraph.
- (5) The reference in paragraph (3)(c) to an individual’s link to Scotland being sufficient is to its being sufficiently close that if the individual were not entitled to Adult Disability Payment, paragraph (3) would be incompatible with the convention mentioned in that paragraph.
- (6) In this regulation—
- “EEA State” means—
- (a) any member state of the European Union or
 - (b) any other state that is party to the agreement on the European Economic Area signed at Oporto on 2 May 1992⁽¹²⁾, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993⁽¹³⁾, as modified or supplemented from time to time,
- “EU law” has the meaning given by subsection (9) of section 126 of the Scotland Act 1998⁽¹⁴⁾ or, if that subsection has been repealed, the meaning given by that subsection immediately before its repeal⁽¹⁵⁾,
- “relevant EU Regulation” means one of the following Regulations—

⁽⁹⁾
⁽¹⁰⁾
⁽¹¹⁾
⁽¹²⁾
⁽¹³⁾
⁽¹⁴⁾
⁽¹⁵⁾

- (a) Council Regulation (EC) No 1408/71 of 14 June 1971⁽¹⁶⁾ on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community,
- (b) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004⁽¹⁷⁾ on the coordination of social security systems.

Refugees

21.—(1) Regulation 14(d) does not apply in relation to a determination for Adult Disability Payment where an individual has—

- (a) been granted refugee status or humanitarian protection under the immigration rules; or
- (b) leave to enter or remain in the United Kingdom as the dependant of a person granted refugee status or humanitarian protection under the immigration rules.

(2) For the purposes of this regulation, “immigration rules” means the rules laid before Parliament under section 3(2) of the Immigration Act 1971⁽¹⁸⁾.

PART 6

Entitlement under special rules relating to age

Age Criteria

22.—(1) An individual is eligible to receive Adult Disability Payment if they are at least 16 years of age.

(2) An individual is not entitled to either the daily living component or the mobility component of Adult Disability Payment for any period after the person reaches the relevant age.

(3) In paragraph (1), “the relevant age” means pensionable age (within the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995).

(4) Where an individual was born on 29 February, their birthday is to be taken to fall on 28 February in a year which is not a leap year.

(5) Paragraph (2) is subject to the exceptions provided in regulation 23.

Persons of pensionable age: exceptions

23. Regulation 22(2) does not apply where the individual has reached the relevant age if they—

- (a) were entitled to an award of either or both components of either Adult Disability Payment or Personal Independence Payment on the day preceding the day on which they reached the relevant age; or
- (b) made a application for Adult Disability Payment or Personal Independence Payment before reaching the relevant age and that application was not determined before they reached that age, but an award of either or both components would be made in respect of the individual but for regulation 22(2).

Adult disability payment after an interval and after reaching the relevant age

24.—(1) Where an individual has reached the relevant age and makes a new application in the circumstances set out in regulation 13 the following exceptions apply.

(2) The exceptions referred to in paragraph (1) are—

- (a) regulation 22(2) does not apply;

⁽¹⁶⁾
⁽¹⁷⁾
⁽¹⁸⁾

- (b) the reference to ‘2 years’ in regulation 13(1)(b) is to be read as ‘1 year’;
- (c) where the individual is assessed as having severely limited ability to carry out mobility activities for the purposes of the new application—
 - (i) the individual is entitled to the enhanced rate of the mobility component only if they were entitled to that rate of that component under the previous award; and
 - (ii) where the individual is not entitled to the enhanced rate of that component because of paragraph (2)(c)(i), they are entitled to the standard rate of that component provided that they were entitled to that rate of that component under the previous award; and
- (d) where the individual is assessed as having limited ability to carry out mobility activities for the purposes of the new application, they are entitled to the standard rate of the mobility component only if they were entitled to that component, at either rate, under the previous award.

Determination of an award after the person has reached the relevant age

- 25.**—(1) Subject to paragraph (2), regulation 22(2) does not apply where—
- (a) the individual has ongoing entitlement to an award (“the original award”) of either or both components of Adult Disability Payment or Personal Independence Payment pursuant to an exception in regulation 23 or 24; and
 - (b) the Scottish Ministers are making a subsequent determination of their entitlement by way of a determination without an application.
- (2) Where the original award includes an award of the mobility component and the determination without application is being made where—
- (a) it appears to the Scottish Ministers that the individual’s circumstances have changed, or
 - (b) the Scottish Ministers have new information available to them about the individual’s physical or mental health condition or conditions ,
- the restrictions in paragraph (3) apply in relation to the determination.
- (3) The restrictions referred to in paragraph (2) are—
- (a) where the original mobility component award is for the standard rate then, regardless of whether the award would otherwise have been for the enhanced rate, the Scottish Ministers—
 - (i) may only make an award for the standard rate of that component; and
 - (ii) may only make such an award where entitlement results from substantially the same condition or conditions for which the mobility component in the original award was made.
 - (b) where the original mobility component award is for the enhanced rate, the Secretary of State may only award that rate of that component where entitlement results from substantially the same condition or conditions for which the mobility award was made.
- (4) Where the original award does not include an award of the mobility component but the individual had a previous award of that component, for the purpose of this regulation entitlement under that previous award is to be treated as if it were under the original award provided that the entitlement under the previous award ceased no more than 1 year prior to the date on which the determination takes or would take effect.

PART 7

Entitlement under special rules relating to terminal illness

Terminal Illness

- 26.**—(1) This regulation applies to a person —
- (a) who is terminally ill; and
 - (b) whose entitlement to adult disability payment is to be determined.

(2) A person to whom this regulation applies is entitled to both the daily living component and the mobility component at the enhanced rate.

(3) Paragraph (2) applies—

- (a) regardless of the period of time for which the individual has had the terminal illness,
- (b) regardless of any period of time spent by the individual in a hospital or hospice while in receipt of the assistance, and
- (c) to an individual who—
 - (i) makes a new application under section 38 of the 2018 Act, or
 - (ii) notifies a change of circumstances under section 56 of the 2018 Act with the effect that this regulation applies to that individual.

(4) Regulations 4, 5 and 14(d) do not apply to a person to whom this regulation applies.

(5) Subject to paragraph (6) or (7), the entitlement referred to in paragraph (2) begins either on the day the application is made, the day of notification of the change in circumstances or on the date of the clinical judgement made in accordance with paragraphs (8) and (9) (“the judgement”), whichever is the earlier.

(6) Where a judgement mentioned in paragraph (5)—

- (a) is dated not more than 26 weeks earlier than the date of receipt of the application or notification of the change of circumstances, an individual’s entitlement can only begin—
- (b) up to a maximum of 26 weeks prior to the date of receipt of the application, and
- (c) on or after the day these Regulations come into force.

(7) Where a judgement mentioned in paragraph (5)—

- (a) is dated more than 26 weeks earlier than the date of receipt of the application or notification of the change in circumstances, and
- (b) an appropriate healthcare professional confirms that the judgement is still accurate by making a judgement in accordance with paragraphs (8) and (9),
an individual’s entitlement can only begin—
- (c) up to a maximum of 26 weeks prior to the date of receipt of the application or notification of the change in circumstances, and
- (d) on or after the day these Regulations come into force.

(8) For the purposes of this regulation a person is to be regarded as having a terminal illness for the purpose of determining entitlement to Adult Disability Payment if it is the clinical judgement of an appropriate healthcare professional that the individual has a progressive disease that can reasonably be expected to cause an individual’s death.

(9) Subject to paragraph (10), an appropriate healthcare professional exercising the judgement described in paragraph (8) must take account of the guidance prepared and made publically available by the Chief Medical Officer of the Scottish Administration in accordance with paragraph 1(3) of schedule 5 of the 2018 Act.

(10) Where regulation 20 applies to the individual, an appropriate healthcare professional mentioned in paragraph 11(b) need not take account of the guidance mentioned in paragraph (8) where it is not reasonable to do so.

(11) In this regulation, “an appropriate healthcare professional” means—

- (a) a registered medical practitioner or a registered nurse who is—
 - (i) involved in the diagnosis or care of the patient, and
 - (ii) acting in their professional capacity, or
- (b) where regulation 20 applies to the individual, a person who—
 - (i) has equivalent qualifications to a registered medical practitioner or a registered nurse in the place in which the individual is resident,
 - (ii) is a member of the professional body equivalent to the General Medical Council or Nursing and Midwifery Council in that place, and

(iii) meets the requirements of sub-paragraph (a)(i) and (ii).

(12) If a person who is terminally ill in terms of regulation 9 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021⁽¹⁹⁾ is to be transferred from Child Disability Payment onto Adult Disability Payment, then—

- (a) regulation X will apply,
- (b) the judgement they have previously received under regulation 9 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 will apply, and
- (c) no further judgement will be required in terms of paragraphs (8) and (9) of this regulation.

(13) In paragraph (2), “the enhanced rate” for the daily living component and mobility component are the rates prescribed in regulation 33.

(14) Where an individual has received Adult Disability Payment for a period and a determination is subsequently made that the individual is entitled to Adult Disability Payment at a higher rate for that period under this regulation, any payment of Adult Disability Payment to be made for that period will be reduced by any Adult Disability Payment already paid to that individual for that period.

PART 8

Payability when a person is residing in certain accommodation or is detained in custody

Care home residents

27.—(1) Subject to paragraph (3) and regulation 29, the value of the daily living component of adult disability payment that is to be given to the individual is to be £0 on and after the day on which—

- (a) they become resident of a care home, and
- (b) the circumstances of their residence are such that any of the costs of any qualifying services provided for the individual are borne out of public or local funds by virtue of any of the enactments specified in paragraph (2).

(2) For the purpose of paragraph (1)(b), the specified enactments are—

- (a) Part 3 of the National Assistance Act 1948⁽²⁰⁾ (Local Authority Services);
- (b) sections 59 and 59A of the Social Work (Scotland) Act 1968⁽²¹⁾ (provision of residential and other establishments by local authorities and maximum period for repayment of sums borrowed for such provision and grants in respect of secure accommodation for children respectively);
- (c) the Mental Health Act 1983⁽²²⁾;
- (d) the Community Care and Health (Scotland) Act 2002⁽²³⁾;
- (e) the Mental Health (Care and Treatment) (Scotland) Act 2003⁽²⁴⁾;
- (f) Part 1 of the Care Act 2014⁽²⁵⁾ (care and support);
- (g) any other enactment relating to persons under a disability or to young persons or to education or training except—
 - (i) section 49 of the Education (Scotland) Act 1980⁽²⁶⁾ (power of education authorities to assist persons to take advantage of educational facilities) or section 73 of that Act (power of Scottish Ministers to make grants to education authorities and others);

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- (ii) section 65 of the Further and Higher Education (Scotland) Act 1992⁽²⁷⁾ (administration of funds by HEFCW);
- (iii) section 4 of the Further and Higher Education (Scotland) Act 2005⁽²⁸⁾ (general duty of Scottish Ministers to provide support for funding of higher education) or section 11 of that Act (administration of funds);

(3) Subject to paragraph (4), paragraph (1) does not apply in the case of an individual—

- (a) who has not reached the age of 18 and to whom—
 - (i) section 93(4)(a)(ii) of the Children (Scotland) Act 1995 (interpretation: children in need of care and attention due to impaired health and development) applies because the individual's health is likely to be significantly impaired, or further impaired, without provision of services for them; or
 - (ii) section 93(4)(a)(iii) of the Children (Scotland) Act 1995 (interpretation: children in need of care and attention due to disability) applies; or
- (b) who is accommodated outside the United Kingdom if the costs of any qualifying services are borne wholly or partly by a local authority pursuant to their powers under section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004 (attendance at establishments outwith the United Kingdom).

(4) Paragraph (3)(a) only applies during any period in which the local authority looking after the individual places them in a private dwelling with a family, or with a relative of the individual, or with some other suitable person.

(5) In this regulation, “care home” means an establishment that provides accommodation together with nursing or personal care.

(6) The following are “qualifying services” for the purposes of paragraph (1)(b)—

- (a) accommodation;
- (b) board;
- (c) personal care;
- (d) such other services as may be prescribed.

Hospital in-patients

28.—(1) Subject to paragraph (3) and regulation 29, the value of either component of adult disability payment that is to be given to an individual is to be £0 on or after the day on which—

- (a) they begin undergoing medical or other treatment as an in-patient at a hospital or similar institution, and
- (b) the circumstances are such that any of the costs of the treatment, accommodation and any related services provided for them are borne out of public funds in terms of paragraph (2).

(2) For the purposes of paragraph (1), the costs of treatment, accommodation or any related services are borne out of public funds if the individual is undergoing medical or other treatment as an inpatient in—

- (a) a hospital or similar institution under—
 - (i) the National Health Service Act 2006;
 - (ii) the National Health Service (Wales) Act 2006; or
 - (iii) the National Health Service (Scotland) Act 1978; or
- (b) a hospital or similar institution maintained or administered by the Defence Council.

(3) This regulation does not apply if the individual was under the age of 18 on the day on which they entered the hospital or similar institution referred to in this regulation to begin their current period as an inpatient.

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Exceptions: care homes and hospitals

29.—(1) Subject to the following paragraphs, regulation 27(1) or 28(1) do not apply to an individual in respect of the first 28 days of any period during which the individual is someone to whom that regulation applies.

(2) Where, on the day on which the individual's entitlement to adult disability payment commences, they meet the conditions set out in regulation 27(1)(b) or regulation 28(1)(b), paragraph (1) does not apply to the individual in respect of any period of consecutive days, beginning with that day, on which the individual continues to satisfy that condition.

(3) Regulation 27 or 28 does not apply where the individual is residing in a hospice and is terminally ill, and the Scottish Ministers have been informed that they are terminally ill—

(a) on an application for adult disability payment, or

(b) in writing in connection with an award of, or an application for, or an application for a re-determination or a supersession of an award of, adult disability payment.

(4) In paragraph (3), “hospice” means a hospital or other institution whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages, other than—

(a) a health service hospital in England (within the meaning of section 275 of the National Health Service Act 2006⁽²⁹⁾);

(b) a hospital in Wales vested in—

(i) an NHS trust;

(ii) a Local Health Board; or

(iii) the Welsh Ministers,

for the purpose of functions under the National Health Service (Wales) Act 2006⁽³⁰⁾;

(c) a national health service hospital in Scotland (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978⁽³¹⁾);

(d) a hospital maintained by the Defence Council; or

(e) an institution similar to a hospital mentioned in any of the preceding sub-paragraphs of this paragraph.

(5) Regulation 27(1) does not apply to a case where, during any period the total cost of the qualifying services are met—

(a) out of the resources of the person for whom the qualifying services are provided, or partly out of that person's own resources and partly with assistance from another person or charity; or

(b) on that person's behalf by another person or a charity.

(6) In this regulation—

“NHS trust” means a body established under section 18 of the National Health Service (Wales) Act 2006⁽³²⁾;

“Local Health Board” means a body established under section 11 of that Act⁽³³⁾; and

“charity” is to be construed as if these Regulations were an enactment to which section 7 of the Charities Act 2011⁽³⁴⁾ (application in relation to Scotland) applied.

Legal Detention

30.—(1) Where an individual is undergoing legal detention within the United Kingdom—

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- (a) where the individual is aged 18 or over, the value of either component that is to be given to the individual is to be £0,
 - (b) where the individual is aged 16 or 17, the value of the daily living component that is to be given to the individual is to be £0.
- (2) Subject to paragraph (3), paragraph (1) does not apply on respect of the first 28 days of any period during which the individual is a person to whom that paragraph would otherwise apply.
- (3) Where, on the day on which the individual's entitlement to adult disability payment commences, they are a person to whom paragraph (1) applies, paragraph (2) does not apply to the individual in respect of any period of consecutive days, beginning with that day, on which the individual continues to be a person to whom that paragraph applies.
- (4) Paragraph (1) does not apply to the individual in respect of any period after the conclusion of criminal proceedings as a result of which the individual is detained in a hospital or similar institution in the United Kingdom as a person suffering from mental disorder unless the individual satisfies either of the conditions set out in paragraph (5).
- (5) The conditions referred to in paragraph (4) are—
- (a) the individual is—
 - (i) detained under section 45A of the Mental Health Act 1983⁽³⁵⁾ (power of higher courts to direct hospital admission) or section 47 of that Act⁽³⁶⁾(removal to hospital of persons serving sentences of imprisonment, etc) and
 - (ii) being detained on or before the day which the Secretary of State has certified to be the individual's release date within the meaning of section 50(3) of that Act⁽³⁷⁾; or
 - (b) the individual is being detained under—
 - (i) section 59A of the Criminal Procedure (Scotland) Act 1995⁽³⁸⁾ (hospital direction); or
 - (ii) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽³⁹⁾ (transfer of prisoners for treatment of mental disorder).
- (6) For the purposes of this regulation—
- (a) "hospital or similar institution" means any place (not being a prison, a detention centre a young offenders institution or remand centre and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
 - (b) criminal proceedings against any person are deemed to be concluded upon that person being found in terms of section 53F of the Criminal Procedure (Scotland) Act 1995 to be unfit for trial.
- (7) Paragraph (1) of this regulation does not apply to an individual where—
- (a) the individual is undergoing legal detention outside United Kingdom; and
 - (b) in similar circumstances in United Kingdom, the individual would have been excepted from the application of that paragraph by virtue of the operation of any provision of this regulation.

Periods of Residence

- 31.—**(1) In this regulation, a "period of residence" is a period during which an individual—
- (a) meets the condition in regulation 27(1) (care home residents);
 - (b) meets the condition in regulation 28(1) (hospital in-patients);
 - (c) is a person who is undergoing legal detention.
- (2) Subject to paragraph (3), for the purposes of regulations 27, 28 and 30, a period of residence—

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- (a) begins on the day after the day on which the individual enters a care home, hospital or similar institution or commences a period of imprisonment or legal detention; and
 - (b) ends on the day before the day on which the individual leaves a care home, hospital or similar institution or on which a period of imprisonment or legal detention ends.
- (3) Where an individual who is resident in a care home or hospital, or is undergoing legal detention takes a period of leave from the home, the days on which the individual begins and returns from leave are not to be counted as days in the home or hospital.
- (4) Where, immediately following a period of residence for the purpose of paragraph (a), (b) or (c) of paragraph (1), the individual commences another period of residence for the purpose of any of those sub-paragraphs, the earlier period of residence is deemed to end on the day on which the individual leaves the care home, hospital or similar institution or, as the case may be, on which the period of detention ends.
- (5) Where an individual enters or returns to a care home, legal detention or hospital as a result of transfer from a hospital, hospice or another care home, the day of transfer is to be counted as day in the care home or hospital.
- (6) Subject to paragraph (7), for the purposes of regulation 29(1) and 30(2), the period of residence may comprise two or more separate periods, provided that there is no more than 28 days between each period.
- (7) Paragraph (6) is, where the periods referred to in sub-paragraph (a) of that paragraph are both or all periods to which regulation 30(2) applies, to have effect as if—
- (a) the words “subject to paragraph (7)” and “regulation 29(1)” were omitted; and
 - (b) the reference to “28 days” in that paragraph read “one year”.
- (8) Where an individual has been in receipt of £0 for either or both components of Adult Disability Payment, in terms of regulation 27(1), 28(1) or 30(1)—
- (a) the rate of payment will cease to be £0 where the period of residence ends, and
 - (b) the individual will receive a determination without an application in terms of regulation 40(1)(b)(xi).

Payment of Adult Disability Payment between two periods of residence

32.—(1) This regulation applies to an individual to whom regulation 31(3) applies, who takes leave from a care home, hospital or legal detention.

(2) Where the individual takes leave from a care home, the Scottish Ministers must make a determination without application in respect of the daily living component of Adult Disability Payment for the period of leave in respect of an individual—

- (a) to whom regulation 31(3) applies,
- (b) who takes leave from the care home or hospital, or from legal detention
- (c) who notifies the Scottish Ministers of that leave, and
- (d) who expects to return to the care home within 28 days of the date of taking leave.

(3) Where the individual takes leave from a hospital or legal detention, the Scottish Ministers must make a determination without application in respect of the both components of Adult Disability Payment for the period of leave in respect of an individual—

- (a) to whom regulation 31(3) applies,
- (b) who takes leave from the care home or hospital, or from legal detention
- (c) who notifies the Scottish Ministers of that leave, and
- (d) who expects to return to the hospital or legal detention within 28 days of the date of taking leave.

(4) Where the individual is taking leave on a date before the end of the period specified (if any) in the individual’s notice of determination under section 40 of the Social Security (Scotland) Act 2018, which was made before the individual entered the care home, hospital or legal detention, the determination in paragraph (2) or (3) must be at the same rate of the daily living component as at that earlier determination, before regulation 31(3) applied.

(5) The period of leave mentioned in paragraphs (2) or (3) begins with the day on which the person goes on leave and ends on the day after the day on which the person returns to the care home, hospital or legal detention.

(6) Where an individual leaves a care home, hospital or legal detention permanently they are no longer to be taken to be on leave within the meaning of paragraph (1) where—

- (a) they notify the Scottish Ministers of that fact, and
- (b) a determination without application has been made under regulation 40(1)(b)(x).

PART 9

Short Term Assistance

[these provisions are to be added in a later draft]

PART 10

Making of Applications and Payments

Rate of Adult Disability Payment

33.—(1) The weekly rates of the daily living component for the purposes of regulation 4 are~~(40)~~—

- (a) the standard rate, £58.70; and
- (b) the enhanced rate, £87.65.

(2) The weekly rates of the mobility component for the purposes of regulation 5 are—

- (a) the standard rate, £23.30
- (b) the enhanced rate, £62.25.

(3) For any week where an individual is entitled to—

- (a) the daily living component of Adult Disability Payment, and
- (b) payment of Constant Attendance Allowance within the meaning of section 61 of the Social Security Act 1975~~(41)~~,

the amount of Adult Disability Payment paid is reduced by the amount of Constant Attendance Allowance paid.

(4) For the purposes of calculating the reduction in paragraph (3), where the amount of Constant Attendance Allowance is equal to or greater than the amount of Adult Disability Payment, the value of the Adult Disability Payment that is to be given to the individual is to be £0.

(5) Adult Disability Payment is only to be given in the form of money, except as provided for by regulation 46.

Making Payments

34.—(1) Where Adult Disability Payment is payable in respect of an individual, the Scottish Ministers may, where they consider it appropriate, make the payment to another person to be used for the benefit of the individual.

(2) Where the Scottish Ministers consider, for any reason, that it is no longer appropriate for a particular person who falls within paragraph (1) to continue to receive the payment, they may cease making payment to that person and pay it instead to another person.

(40) The rates specified here are correct at the time of drafting for this consultation; however they are updated annually and so will be adjusted for the latest figures at the time of coming into force.

(41)

When an application is to be treated as made and beginning of entitlement to assistance

- 35.**—(1) An application for Adult Disability Payment is to be treated as made—
- (a) on the day it is received by the Scottish Ministers, or
 - (b) if applicable, on the day identified by the Scottish Ministers in accordance with paragraph (2).
- (2) If, before making a determination on the basis of an application, the Scottish Ministers consider that the individual in respect of whom the application is made—
- (a) would not satisfy the requirement in regulation 4 (daily living component), 5 (mobility component), 10 (required period condition: daily living component) or 11 (required period condition: mobility component), if the application were treated as made on the day it was received, and
 - (b) would be likely to satisfy those requirements if the application were treated as made at a later date, the Scottish Ministers may treat the application as having been made on the day on which those requirements become satisfied.
- (3) Subject to paragraph (7) where, on the basis of an application, a determination is made that an individual is entitled to Adult Disability Payment, the date of entitlement is to be identified in accordance with paragraphs (4) to (6).
- (4) Where an application is made within 8 weeks of the day on which the full name and date of birth of an individual (“the required data”) is submitted for the purpose of making an application for Adult Disability Payment by the individual to the Scottish Ministers, entitlement begins on the latter of—
- (a) the day on which the required data was submitted, or
 - (b) the day identified in accordance with paragraph (2).
- (5) Subject to paragraph (6), where an application is made outwith the 8 week period described in paragraph (4), they may treat it as having been made in accordance with paragraph (2).
- (6) Where the Scottish Ministers are satisfied that there is a good reason why an application was made outwith the 8 week period described in paragraph (4), they may treat the application as having been made within that period.
- (7) Where an individual in legal detention makes an application for Adult Disability Payment, the application is to be treated as made on the day after the day when that individual’s detention ends.
- (8) For the purposes of section 38(3) of the 2018 Act, the period covered by an application for Adult Disability Payment—
- (a) under paragraph (1)(a)—
 - (i) begins on the day on which the application is treated as having been made, and
 - (ii) ends on the day on which the determination of entitlement is made,
 - (b) under paragraph (1)(b)—
 - (i) is deemed to begin on the day before the determination is made provided that the requirements are satisfied, and
 - (ii) ends on the day on which the determination is made.

Time of Payment

- 36.** Where an award of Adult Disability Payment is made, the Scottish Ministers are to pay assistance—
- (a) 4 weekly in arrears, or
 - (b) where regulation 26 applies, weekly in advance.

Continuing Eligibility

- 37.** An individual’s entitlement to Adult Disability Payment may be made on the basis that the individual has ongoing entitlement to that assistance.

PART 11

Qualifications and Experience Necessary to Carry out Assessments

Qualifications and experience necessary to carry out Assessments

38.—(1) Where an assessment is required in order to determine whether an individual is entitled to receive Adult Disability Payment, this must be carried out by a practitioner who meets the requirements in paragraph (2).

(2) A practitioner is suitably qualified to carry out an assessment of an individual if—

- (a) they have been employed for a cumulative period of at least two years, in the direct provision to individuals of health care or social care services;
- (b) where the assessment will involve consideration of the individual's mental health condition or conditions, their employment in the provision of health care or social care services under paragraph (2)(a) was directly provided to individuals with mental health conditions; and
- (c) where the assessment will involve consideration of the individual's learning disability or disabilities their employment in the provision of health care or social care services under paragraph (2)(a) was directly provided to individuals with learning disabilities.

PART 12

Determinations of entitlement to Adult Disability Payment without application

Consideration of entitlement after specified period

39. The Scottish Ministers must make a determination of an individual's entitlement to Adult Disability Payment, without receiving an application, after the end of the period specified (if any) in the individual's notice of determination under section 40 of the Social Security (Scotland) Act 2018.

Other situations requiring a determination without an application

40.—(1) The Scottish Ministers must make a determination of an individual's entitlement to Adult Disability Payment, without receiving an application where—

- (a) the required data in order to construct a record for the individual has been received in terms of regulation 35(4), but no subsequent application has been made;
- (b) during the period specified in the individual's notice of determination under section 40 of the Social Security (Scotland) Act 2018, the Scottish Ministers become aware—
 - (i) of a change of circumstances which would possibly result in an alteration to the rate of Adult Disability Payment payable or the cessation of entitlement to Adult Disability Payment in respect of the individual;
 - (ii) that the individual has died,
- (iii) that a determination of the individual's entitlement was made—
 - (aa) in ignorance of, or
 - (bb) as a result of a mistake as to,
a material fact which existed at the time of the determination, subject to the provisions of regulations 41(1) and 42(1),
- (iv) of an alteration of the rate of award of Personal Independence Payment of which the individual was in receipt immediately before transferring to Adult Disability Payment in accordance with regulation X as a result of a decision made pursuant to—

- (aa) a revision under regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999,
- (bb) a supersession under regulation 6 of those Regulations, or
- (cc) an appeal under section 12 of the Social Security Act 1998;
- (v) that the person has been admitted to a care home or hospital, or legally detained, for more than 28 days ;
- (vi) that the individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error);
- (vii) that, as a result of the individual receiving payment of Personal Independence Payment at an incorrect rate in another part of the United Kingdom, before transferring to Scotland in accordance with regulation X, the individual is liable for overpayment of Personal Independence Payment.
- (viii) that a clinical judgement has been made in terms of regulation 26(8) and (9) that they have a terminal illness;
- (ix) that as a result of the eligibility criteria for Adult Disability Payment being altered, the individual's entitlement may have changed;
- (x) the individual has notified the Scottish Ministers that they have left a care home, hospital or legal detention, meaning that they are no longer to be taken to be on leave within the meaning of regulation 32;
- (xi) that the individual is no longer resident in a care home or in hospital or legal detention, and therefore a new determination is required in terms of regulation 31(8),
- (c) they are informed that an individual in respect of whom Adult Disability Payment is payable, has transferred—
 - (i) to Scotland from another part of the United Kingdom in terms of regulation X, or
 - (ii) from Scotland to another part of the United Kingdom in terms of regulation X;

(2) Paragraphs (1)(b) and (1)(c) apply only where the Scottish Ministers have previously made a determination of the individual's entitlement to Adult Disability Payment.

Determination following official error – underpayments

41.—(1) The Scottish Ministers are to make a determination of an individual's entitlement to Adult Disability Payment or short-term assistance, without receiving an application, where—

- (a) they have previously make a determination of the individual's entitlement to Adult Disability Payment or short-term assistance ("the original determination"), and
- (b) they establish that, due to an official error, the original determination was incorrect resulting in the individual—
 - (i) not being given an award of Adult Disability Payment or short-term assistance to which they were entitled, or
 - (ii) being given a lower award than that to which they were entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the original determination, and
- (d) the individual has not appealed to the First-tier Tribunal for Scotland against the original determination.

(2) In making a re-determination required by paragraph (1) the Scottish Ministers are to use—

- (a) the information provided in the application that led to the original determination, and
- (b) any other information they have obtained in connection with that application.

(3) In this regulation, "official error" means an error made by the Scottish Ministers or a Minister of the Crown that was not materially contributed to by anyone else.

Determination following error – overpayments

42.—(1) The Scottish Ministers are to make a determination of an individual's entitlement to Adult Disability Payment or short-term assistance, without receiving an application, where—

- (a) they have previously made a determination of the individual's entitlement to Adult Disability Payment or short-term assistance ("the original determination") , and
- (b) they establish that, due to an error, the original determination was incorrect resulting in the individual being given—
 - (i) an award of Adult Disability Payment or short-term assistance to which they were not entitled, or
 - (ii) a higher award than that to which they were entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the original determination, and
- (d) the individual has not made an appeal to the First-tier Tribunal for Scotland or Upper Tribunal against the original determination, that has not yet been determined.

(2) In making a re-determination required by paragraph (1) the Scottish Ministers are to use—

- (a) the information provided in the application that led to the original determination,
- (b) any other information they have obtained in connection with that application, and
- (c) any other information available to them that is relevant to their consideration of whether the individual is entitled to Adult Disability Payment or short-term assistance.

(3) In this regulation references to an "error" are to—

- (a) an error in the performance of a function conferred by these Regulations or the 2018 Act, including a determination being made—
 - (i) wrongly, or
 - (ii) correctly but on the basis of—
 - (aa) incorrect information, or
 - (bb) an assumption which proves to be wrong, or
- (b) a new determination not being made after an assumption on the basis of which an earlier determination was made has provide to be wrong.

When changes in entitlement take effect

43.—(1) Where, as a result of a determination without an application, the amount of Adult Disability Payment payable in respect of an individual is increased, the changed entitlement—

- (a) in the case of a determination under regulation 40(1)(b)(iv), there is an increase in the rate of Personal Independence Payment which an individual was in receipt at the time of transferring to Adult Disability Payment in accordance with regulation X, begins on the date of the first determination of entitlement to Adult Disability Payment,
- (b) in the case of a determination without an application under any other provision within regulation 40(1), begins —
 - (i) where determination was made in connection with a change in circumstances which the individual has notified to the Scottish Ministers within 4 weeks of the change occurring, on the date on which the individual first satisfied the requirements for a higher rate of the care or mobility component,
 - (ii) where the determination was made in connection with a change in circumstances which the individual has notified to the Scottish Ministers after 4 weeks but before 56 weeks of the change occurring, the date on which the individual notified the change, or
 - (iii) in any other case, on the date on which the determination was made by the Scottish Ministers.
- (c) in the case of an earlier determination which was based on official error or error within the meaning of regulation 41 or 42 or on ignorance of, or as a result of a mistake as to, facts material to the

determination, begins on the date the Scottish Ministers become aware of the official error, error or the facts material to the earlier determination.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may fix an earlier date under paragraph (1)(a), (b) or (c).

(3) Where, as a result of a determination without an application, the amount of Adult Disability Payment payable in respect of an individual is decreased, or entitlement ceases, the change in entitlement begins—

- (a) where the individual has notified the Scottish Ministers of the change of circumstances, on the date of the determination, or
- (b) in all other cases, on the date of the change in circumstances or, if that is not known, the day on which the Scottish Ministers became aware of the change in circumstances.

(4) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may fix an earlier date under paragraph (3).

PART 13

Periods in respect of a re-determination request

Periods in respect of a re-determination request

44.—(1) The period prescribed for requesting a re-determination of an individual's entitlement to Adult Disability Assistance under section 41 of the 2018 Act is 42 days beginning with the day after the day on which the individual was informed of the determination in terms of section 40 of the 2018 Act by the Scottish Ministers.

(2) The period prescribed for making a re-determination of an individual's entitlement to Adult Disability Assistance under section 43 of the 2018 Act is 56 days beginning with the day that the request for a re-determination is received by the Scottish Ministers.

PART 14

Provision of vehicles

Payment of mobility component to authorised providers of vehicles for individuals with disabilities

45.—(1) Where—

- (a) the enhanced rate of the mobility component of Adult Disability Payment is paid in respect of an individual, and
- (b) the recipient of the component has entered into an agreement with an authorised provider of vehicles for persons with disabilities, for the hire or hire-purchase of a vehicle,

the Scottish Ministers may pay that component (in whole or in part) to the provider with the consent of the individual, to meet the individual's liability under the agreement.

(2) The Scottish Ministers must cease to make payments in accordance with paragraph (1) in the event that the agreement is brought to an end in accordance with the terms of the agreement.

(3) For the purposes of this regulation, "authorised provider of vehicles" means a supplier of vehicles for persons with disabilities approved under an accreditation scheme run by the Scottish Ministers.

PART 15

Transfer from Child Disability Payment to Adult Disability Payment

[details to be added in a later draft]

PART 16

Transfer of cases between Scotland and the rest of the United Kingdom

[details to be added in a later draft]

PART 17

Liability for overpayment

Liability for assistance given in error

46.—(1) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act, or under regulation 42, the individual's payment of Adult Disability Payment or short-term assistance, or both, may be given in whole or in part by way of deduction, at a reasonable level, from that liability either—

- (a) with the agreement of the individual, or
- (b) without the individual's agreement, where the individual has unreasonably refused to agree to the assistance being given in that form.

(2) For the purpose of sub-paragraph (1), "reasonable level" means a level that is reasonable having regard to the financial circumstances of the individual.

(3) For the avoidance of doubt, the individual's liability under sub-paragraph (1) is limited to the difference in value between—

- (a) the assistance that was given, and
- (b) the assistance, if any, that would have been given had the error not been made.

(4) If assistance was given in a form other than money, its value for the purposes of this regulation is what giving it cost the Scottish Ministers (excluding any administration costs).

(5) In this regulation, references to an error are to—

- (a) an error in the performance of a function conferred by virtue of these Regulations, including a determination made correctly but on the basis of—
 - (i) incorrect information, or
 - (ii) an assumption which proves to be wrong,
- (b) a new determination not being made after an assumption on the basis of which an earlier decision was made has proved to be wrong.

Determination to effect a deduction decision

47.—(1) The Scottish Ministers are to make a determination of an individual's entitlement to Adult Disability Payment or short-term assistance or both, without receiving an application, where the circumstances in sub-paragraphs (2) and (3) apply.

(2) This sub-paragraph applies where regulation 46—

- (a) allows Adult Disability Payment or short-term assistance to be given to the individual by way of deduction, or
- (b) previously allowed Adult Disability Payment or short-term assistance to be given to the individual by way of deduction, and the Scottish Ministers consider that may no longer be appropriate.

(3) This sub-paragraph applies where the Scottish Ministers have decided to—

- (a) vary the amount of Adult Disability Payment or short-term assistance to be given by way of deduction (including introducing a deduction, where the full amount of Adult Disability Payment or short-term assistance was previously given as money),

- (b) vary any period for which the individual's Adult Disability Payment or short-term assistance is to be given by way of deduction, that may have been specified in a previous determination of the individual's entitlement; or
- (c) cease making deductions, and instead give the individual's Adult Disability Payment or short-term assistance in the form of money.

(4) The Scottish Ministers are to make a determination, without receiving an application, where an individual who is receiving Adult Disability Payment or short-term assistance by way of deduction under a previous determination of entitlement notifies the Scottish Ministers that the individual—

- (a) withdraws their agreement to their Adult Disability Payment or short-term assistance being given by way of deduction,
- (b) wishes for the Scottish Ministers to increase the amount of their Adult Disability Payment or short-term assistance that is given by way of deduction,
- (c) wishes the Scottish Ministers to decrease the amount of their Adult Disability Payment that is given by way of deduction (including ceasing the deduction), or
- (d) wishes the Scottish Ministers to amend the length of any period referred to in sub-paragraph (3)(b).

(5) Where a determination is made in pursuance of sub-paragraph (1), references in these Regulations to the day on which the application is made are to be read as references to the day on which the determination is made.

PART 18

Pilot Scheme

[details to be added in a later draft]

PART 19

Consequential Amendments

[details to be added in a later draft]

Name

A member of the Scottish Government

St Andrew's House,
Edinburgh

Date

SCHEDULE 1

Regulation 1

ADULT DISABILITY ASSISTANCE DETERMINATION

PART 1

INTERPRETATION

48. In this schedule—

“aided” means with—

- (a) the use of an aid or appliance; or
- (b) supervision, prompting or assistance;

“assistance” means physical intervention by another person and does not include speech;

“assistance dog” means a dog trained to guide or assist a person with a sensory impairment;

“basic verbal information” means information in the individual’s native language conveyed verbally in a simple sentence and excludes information that is not communicated orally or received aurally;

“basic written information” means signs, symbols and dares written or printed standard size text in the individual’s native language;

“bathe” includes get into or out of an unadapted bath or shower;

“communication support” means support from a person trained or experienced in communicating with in general, or the individual in particular, with specific communication needs, including interpreting verbal information into a non-verbal form and vice versa;

“complex budgeting decisions” means decisions involving—

- (a) calculating household and personal budgets;
- (b) managing and paying bills; and
- (c) planning future purchases;

“complex verbal information” means information in the individual’s native language conveyed verbally in either more than one sentence or one complicated sentence and excludes information that is not communicated orally or received aurally;

“complex written information” means more than one sentence of written or printed standard size text in the individual’s native language;

“cook” means heat food at or above waist height;

“dress and undress” includes put on and take off socks and shoes;

“engage socially” means—

- (a) interact with others in a contextually and socially appropriate manner;
- (b) understand body language; and
- (c) establish relationships;

“follow the route of a journey” means for an individual to navigate and make their way along a planned route to a planned destination;

“manage incontinence” means manage involuntary evacuation of the bowel or bladder, including using a collecting device or self-catheterisation, and clean oneself afterwards;

“manage medication” means take medication which either improves the individual’s symptoms or health, or, where failure to do so is likely to result in a deterioration in the individual’s health;

“manage therapy” means undertake therapy which either improves the individual’s symptoms or health, or, where a failure to do so is likely to result in a deterioration in the individual’s health;

“medication” means medication to be taken at home which is prescribed or recommended by a registered—

- (a) doctor;
- (b) nurse;
- (c) pharmacist; or
- (d) health professional who is registered by the Health Professions Council,

“monitor a health condition” means—

(a) detect significant changes in the individual’s health condition which are likely to lead to a deterioration in the individual’s health; and

(b) take action advised by a—

(i) registered doctor;

(ii) registered nurse; or

(iii) health professional who is registered by the Health Professions Council,

without which the individual’s health is likely to deteriorate;

“orientation aid” means a specialist aid designed to assist disabled people to follow a route safely;

“prepare”, in the context of food, means make food ready for cooking or eating;

“prompting” means reminding, encouraging or explaining by another person;

“psychological distress” means distress related to an enduring mental health condition or an intellectual or cognitive impairment;

“read” includes read signs, symbols and words but does not include read Braille;

“simple budgeting decisions” means decisions involving—

(a) calculating the cost of goods; and

(b) calculating change required after a purchase;

“simple meal” means a cooked one-course meal for one using fresh ingredients;

“social support” means support from a person trained or experienced in assisting people in general, or the individual in particular, to engage in social situations;

“stand” means stand upright with at least one biological foot on the ground;

“supervision” means the continuous presence of another person for the purpose of ensuring an individual’s safety;

“take nutrition” means—

(a) cut food into pieces, convey food and drink to their mouth and chew and swallow food and drink;
or

(b) take nutrition by using a therapeutic source;

“therapeutic source” means parenteral or enteral tube feeding, using a rate-limiting device such as a delivery system or feed pump;

“therapy” means therapy to be undertaken at home which is prescribed or recommended by a—

(a) registered—

(i) doctor;

(ii) nurse; or

(iii) pharmacist; or

(b) health professional regulated by Health Professions Council;

but does not include taking or applying, or otherwise receiving or administering, medication (whether orally, topically or by any other means), or any action which, in the individual’s case, falls within the definition of “monitor a health condition”;

“toilet needs” means—

(a) getting on and off an unadapted toilet;

(b) evacuating the bladder and bowel; and

(c) cleaning oneself afterwards; and

“unaided” means without—

(a) the use or aid of an appliance; or

(b) supervision, prompting or assistance.

PART 2

DAILY LIVING ACTIVITIES

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>	<i>Column 3</i> <i>Points</i>
1. Preparing food.	a. Can prepare and cook a simple meal unaided.	0
	b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal.	2
	c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave.	2
	d. Needs prompting to be able to either prepare or cook a simple meal.	2
	e. Needs supervision or assistance to either prepare or cook a simple meal.	4
	f. Cannot prepare and cook food.	8
2. Taking nutrition.	a. Can take nutrition unaided.	0
	b. Needs— (i) to use an aid or appliance to be able to take nutrition; or (ii) supervision to be able to take nutrition; or (iii) assistance to be able to cut up food.	2
	c. Needs a therapeutic source to be able to take nutrition.	2
	d. Needs prompting to be able to take nutrition.	4
	e. Needs assistance to be able to manage a therapeutic source to take nutrition	6
	f. Cannot convey food and drink to their mouth and needs another person to do so.	10
3. Managing therapy or monitoring a health condition.	a. Either— (i) does not receive medication or therapy or need to monitor a health condition; or (ii) can manage medication or therapy or monitor a health condition unaided.	0
	b. Needs any one or more of the following— (i) to use an aid or appliance to be able to manage medication;	1

	(ii) supervision, prompting or assistance to be able to manage medication;	
	(iii) supervision, prompting or assistance to be able to monitor a health condition.	
	c. Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week.	2
	d. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 3.5 but no more than 7 hours a week.	4
	e. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 7 but no more than 14 hours a week.	6
	f. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 14 hours a week.	8
4. Washing and bathing.	a. Can wash and bathe unaided.	0
	b. Needs to use an aid or appliance to be able to wash or bathe.	2
	c. Needs supervision or prompting to be able to wash or bathe.	2
	d. Needs assistance to be able to wash either their hair or body below the waist.	2
	e. Needs assistance to be able to get in or out of an unadapted bath or shower.	3
	f. Needs assistance to be able to wash their body between the shoulders and waist.	4
	g. Cannot wash and bathe at all and needs another person to wash their entire body.	8
5. Managing toilet needs or incontinence	a. Can manage toilet needs or incontinence unaided.	0
	b. Needs to use an aid or appliance to be able to manage toilet needs or incontinence.	2
	c. Needs supervision or prompting to be able to manage toilet needs.	2
	d. Needs assistance to be able to manage toilet needs.	4

	e. Needs assistance to be able to manage incontinence of either bladder or bowel.	6
	f. Needs assistance to be able to manage incontinence of both bladder and bowel.	8
6. Dressing and undressing.	a. Can dress and undress unaided.	0
	b. Needs to use an aid or appliance to be able to dress or undress.	2
	c. Needs either—	2
	(i) prompting to be able to dress, undress or determine appropriate circumstances for remaining clothed; or	
	(ii) prompting or assistance to be able to select appropriate clothing.	
	d. Needs assistance to be able to dress or undress their lower body.	2
	e. Needs assistance to be able to dress or undress their upper body.	4
	f. Cannot dress or undress at all.	8
7. Communicating verbally.	a. Can express and understand basic and complex verbal information unaided.	0
	b. Needs to use an aid or appliance to be able to speak or hear.	2
	c. Needs communication support to be able to express or understand complex verbal information.	4
	d. Needs communication support to be able to express or understand basic verbal information.	8
	e. Cannot express or understand verbal information at all even with communication support.	12
8. Reading and understanding signs, symbols and words.	a. Can read and understand basic and complex written information either unaided or using spectacles or contact lenses.	0
	b. Needs to use an aid or appliance, other than spectacles or contact lenses, to be able to read or understand either basic or complex written information.	2

	c. Needs prompting to be able to read or understand complex written information.	2
	d. Needs prompting to be able to read or understand basic written information.	4
	e. Cannot read or understand signs, symbols or words at all.	8
9. Engaging socially with other people face to face.	a. Can engage socially with other people unaided.	0
	b. Needs prompting to be able to engage socially with other people.	2
	c. Needs social support to be able to engage socially with other people.	4
	d. Cannot engage socially with other people due to such engagement causing either— (i) overwhelming psychological distress to the individual; or (ii) the individual to exhibit behaviour which would result in substantial risk of harm to the individual or another person.	8
10. Making budgeting decisions.	a. Can manage complex budgeting decisions unaided.	0
	b. Needs prompting or assistance to be able to make complex budgeting decisions	2
	c. Needs prompting or assistance to be able to make simple budgeting decisions.	4
	d. Cannot make any budgeting decisions at all.	6

PART 4

MOBILITY ACTIVITIES

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>	<i>Column 3</i> <i>Points</i>
1. Planning and following journeys	a. Can plan and follow the route of a journey unaided.	0
	b. Needs the presence or prompting of another person to be able to undertake any journey to avoid overwhelming psychological distress to the individual.	4

	c. For reasons other than psychological distress, cannot plan the route of a journey.	8
	d. For reasons other than psychological distress, cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.	10
	e. Cannot undertake any journeys at all because it would cause overwhelming psychological distress to the individual .	10
	f. For reasons other than psychological distress, cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.	12
2. Moving around.	a. Can stand and then move more than 200 metres, either aided or unaided.	0
	b. Can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4
	c. Can stand and then move unaided more than 20 metres but no more than 50 metres either aided or unaided.	8
	d. Can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres, either aided or unaided.	10
	e. Can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12
	f. Cannot, either aided or unaided, — (i) stand; or (ii) move more than 1 metre.	12

SCHEDULE 2

Regulation 17

MEMBERS OF HER MAJESTY'S FORCES: EXCLUDED PERSONS

49. The following persons are not members of Her Majesty's forces for the purpose of these Regulations—

- (a) subject to paragraph 2, any person who is serving as a member of any naval force of Her Majesty's forces and who locally entered that force at a naval base outside the United Kingdom;
- (b) any person who is serving as a member of any military force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and the depot of whose unit is situated outside of the United Kingdom;
- (c) any person who is serving as a member of any air force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and is liable under the terms of engagement to serve only in a specified part of the world outside the United Kingdom.

50. Paragraph 1(a) does not include any person who —

- (a) has previously been an insured person under Part 1 of the National Insurance Act 1965~~(42)~~; or
- (b) is paying or has previously paid one or more of the following classes of contribution under the Social Security Act 1975~~(43)~~ or the Social Security Contributions and Benefits Act 1992~~(44)~~ —
 - (i) primary Class 1;
 - (ii) Class 2; or
 - (iii) Class 3.

~~(42)~~1965, c.38. Part 1 of this Act was repealed with savings by the Social Security Act 1973 (c. 38), section 100(1) and (2)(b) and Schedules 26 and 28 and by the Social Security (Consequential Provisions) Act 1992 (c. 6), Schedules 1 and 3.

~~(43)~~1975, c.14. Section 1(2) lists the Classes of contributions. This Act was repealed by the Social Security (Consequential Provisions) Act 1992, Schedule 1.

~~(44)~~ 1992, c.4. Section 1(2) lists the Classes of contributions.

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

INVESTING FOR JOBS: CAPITAL SPENDING REVIEW 2021/22 TO 2025/26

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

To provide Council Executive with an overview of the Investing For Jobs: Capital Spending Review for 2021/22 to 2025/26 announced on 4 February 2021, including key issues identified that could have implications for local government.

B. RECOMMENDATION

It is recommended that the Council Executive:

1. Notes the announcements contained in the Investing For Jobs: Capital Spending Review for 2021/22 to 2025/26 that could have implications for local government;
2. Agrees that officers will incorporate the impact of the spending review on the council's general capital grant assumptions for 2021/22 and 2022/23 and that a review should be undertaken by officers to determine the impact on capital resources for the next ten-year period 2023/24 to 2032/33.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Being honest, open and accountable; providing equality of opportunities; developing employees; making best use of our resources; working in partnership.
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	The council is required to approve a balanced capital budget for each financial year
III	Implications for Scheme of Delegations to Officers	No implications at this stage
IV	Impact on performance and performance Indicators	Ongoing government restraint as implications for the council's budget and performance.
V	Relevance to Single Outcome Agreement	The capital budget provides resources necessary to help deliver the Single Outcome Agreement. Effective prioritisation of resources is essential to achieving key outcomes.

VI	Resources - (Financial, Staffing and Property)	Resources Implications of the Investing for jobs: Capital spending review will be incorporated into future financial planning assumptions.
VII	Consideration at PDSP	Not applicable
VIII	Other consultations	Not applicable

D. TERMS OF REPORT

D.1 Background

On 4 February 2021 the Scottish Government published the Investing For Jobs: Capital Spending Review. A letter was also issued from the Cabinet Secretary for Finance to COSLA's President regarding the Capital Spending Review. The letter set out outline five-year indicative allocations for local government general capital grant and other specific funding streams provided through the local government finance settlement.

D.2 Summary of Proposals

The Capital Spending Review is Scotland's first multi-year capital settlement in around half a decade. The aim of the review is to set out plans for more than £33 billion of funding to enable the delivery of the National Infrastructure Mission and sets out portfolio capital allocations across the next five financial years. Around 90% of the capital budget supports infrastructure and is considered by the Scottish Government to be vital in the support for employment and economic recovery.

The Capital Spending Review and Infrastructure Investment Plan (IIP) have been developed in tandem, with the IIP setting out the strategy and the Capital Spending Review ensuring that priorities are fully funded or financed.

The Capital Spending Review sets out five-year budgets to underpin a single vision for all infrastructure investment choices and emphasises full use of available resources. The approach focuses on three strategic themes:

- Enabling the transition to net zero emissions and environmental sustainability
- Driving inclusive economic growth
- Building resilient and sustainable places and communities

As the IIP sets out, the focus will be on renewing and extending the life of existing infrastructure. In terms of commitments most relevant to local government, the review includes a variety of high-level and more detailed initiatives, some of which are outlined in sections D.2.1 to D.2.3 of this report

It is recognised that the Capital Spending Review is being delivered against two of the most significant events to have impacted the economy in recent years - Covid-19 and the UK's exit from the European Union. Budget assumptions set out in the Capital Spending review framework remain the basis for forward spending plans with the aim to secure social and economic recovery.

D.2.1 Enabling the Transition to Net Zero Emissions and Environmental Sustainability

Key areas announced were as follows:

- Interim targets are set for 2020, 2030 and 2040 for emissions reductions of 56%, 75% and 90% respectively.

- Commitment to multiyear investments in this plan encourages supply chains to invest in people and technology to deliver the transition to a net zero, sustainable economy.
- Commence a £50 million programme of investment supporting the reuse of vacant and derelict land as part of a fair, green recovery.
- Investment in natural infrastructure to improve biodiversity and reduce emissions, while also creating jobs.
- Further £2 billion investment through the Low Carbon Fund over the next five financial years.
- The level of low carbon investment is to rise to 36.9% of total capital funding in the Scottish Budget 2021/22.
- Priority given to boost funding for maintenance with the aim to double such investment over the five-year period.
- £95 million fund created to support the decarbonisation of the public sector estate.
- Invest up to £75 million to improve local authority recycling collection infrastructure, accelerate landfill gas capture and improve waste data through electronic waste tracking.

D.2.2 Capital to Drive Economic Recovery and Inclusive Growth

Key areas announced were as follows:

- A £595 million total investment by enterprise agencies, boosting innovation and employment in Scottish businesses.
- £50 million support specifically to supply chains which can service the green economy.
- A £1,582.1 million capital investment in research and knowledge exchange activity in universities, underpinned by additional capital investment in university research infrastructure.
- Early development of the digital business sector where £4 million has been allocated to implement the recommendations of the Logan Review.
- A £110 million investment in the development of transformed digital public services.
- Double investment in bridges and road maintenance, enhancing safety with a programme of approximately £1.5 billion over the five-year period, this includes proposed works at Avon Gorge. The report included the following reference to Avon Gorge "The A801 Improvement project will see the construction of a new 3.2kms of the A801 at Avon Gorge, which crosses the boundary between Falkirk and West Lothian. It is estimated that the total capital investment will be £44 million with an estimated total Scottish Government Capital investment of £22 million. The statutory processes are complete however a timescale is yet to be confirmed".

D.2.3 Capital to Support People and Places

Key areas announced were as follows:

- Invest £275 million to support community-led regeneration and town centre revitalisation as part of a new Place Based investment programme
- Provide £3.4 billion of capital for housing over five years, with majority allocated to deliver more affordable and social homes.
- Fund a £2 billion Learning Estate and Investment Programme.
- £300 million programme of investment to enable completion of a number of elective care centres, including Livingston.
- £121 million investment in national galleries, museums and other cultural institutions to help encourage tourism.
- Approximately double the investment in health maintenance, totalling almost

£1billion.

D.3 Potential Implications for West Lothian Council

This report provides an outline of the key elements contained in the Investing for Jobs: Capital Spending Review for 2021/22 to 2025/26. At present, West Lothian Council have an approved programme to 2027/28 which includes an assumed level of general capital grant.

Although the letter from the Cabinet Secretary did not provide individual allocations for councils, based on the overall quantum in the letter, and the council's current percentage share of capital, the general capital grant for the council until 2025/26 will be substantially less than the resources in the approved capital programme. Outline five-year indicative allocation for the local government general capital grant is as follows:

LOVAL GOVERNMENT	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	5 Year Total
Support for Capital	467.9	477.9	488.9	486.9	514.4	521.4	2489.5

The budget reports going to Council on 25 February 2021 contain proposals for protecting the existing capital programme for 2021/22 and 2022/23. However, in light of the substantial reduction in resource, it is proposed that officers will carry out a full-scale review of the capital programme for the next ten years 2023/24 to 2032/33. In reviewing the period beyond 2022/23 a key consideration will be to maximise resources from other areas such as capital receipts and council holdings and to consider options to reduce the requirement for asset related expenditure, for example by rationalisation or transfer of assets. There will be considerable work required to minimise the asset base on the foundation that there is a requirement to reduce capital expenditure.

The report references proposed works at Avon Gorge. Given that the council has made a commitment to fund this scheme, should it proceed, officers will consider how this will be funded.

E. CONCLUSION

This report provides Council Executive with an overview of the key points highlighted within the Investing For Jobs: Capital Spending Review 2021/22 to 2025/26. It is proposed that officers review of the next ten-year capital programme take into consideration the assumed cut in general capital grant compared to current resource assumptions. The results of the review will be reported before the ten-year capital programme is presented for approval.

F. BACKGROUND REFERENCES

General Services Capital Investment Strategy 2020/21 to 2027/28 Update – Report by Head of Finance and Property Services to Council Executive 23 June 2020

Appendices/Attachments: None

Contact Person: Tracy Tonner, Accountant
Email: tracy.tonner2@westlothian.gov.uk, Tel: 01506 281303

Donald Forrest
Head of Finance and Property Services
Date of meeting: 23 February 2021

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

LAND AT CRUSADER RISE, DEDRIDGE, LIVINGSTON
PROPOSED SALE TO ARK HOUSING ASSOCIATION LIMITED

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES.

A. PURPOSE OF REPORT

To seek Council Executive approval for the sale of 498m² of land at Crusader Rise, Dedridge, Livingston to Ark Housing Association Limited for the sum of £17,500.

B. RECOMMENDATION

It is recommended that Council Executive:

1. Approves the sale of 498m² of land at Crusader Rise, Dedridge, Livingston to Ark Housing Association Limited for the sum of £17,500 subject to the terms and conditions set out in this report;
2. Authorises the Head of Finance and Property Services to carry out any further negotiations with the purchaser in respect of the sale of the land, on the basis that any revised terms and conditions still represent the achievement of best value for the council.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; working in partnership.
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Disposal of property governed by S74 (2) of the Local Government (Scotland) Act 1973 and the Disposal of Land by Local Authorities (Scotland) Regulations 2010. Housing (Scotland) Act 2010.
III	Implications for Scheme of Delegations to Officers	None.
IV	Impact on performance and performance Indicators	The sale of this property will contribute towards the council's Housing Revenue Account income performance for 2020/21.
V	Relevance to Single Outcome Agreement	We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.

VI	Resources - (Financial, Staffing and Property)	A capital receipt of £17,500 will be received during the 2020/21 financial year.
VII	Consideration at PDSP	Not applicable.
VIII	Other consultations	<p>The local elected members for the ward have received a copy of this report for their information.</p> <p>The Tenant's Panel have been consulted and have no objections to the proposed disposal.</p>

D. TERMS OF REPORT

D1 Background

The land extends to 498m² or thereby and is situated in Crusader Rise, Dedridge, Livingston as shown cross-hatched black on the attached plan at Appendix 1. It is owned by the council and is held on Housing Revenue Account. The land comprises an undeveloped grassed area that is not currently used for operational purposes. It is situated on the boundary of an adjoining site that is owned by Ark Housing Association Limited (AHAL), a registered social landlord.

The site owned by AHAL was purchased by them from Livingston Development Corporation in 1979 and was developed to accommodate a residential care home that was operated by AHAL until it was demolished in 2013. Since that time, the site has remained vacant and undeveloped.

A planning application to build twenty new homes for social rent was submitted by AHAL in January 2020 on the site of the former care home. After submitting that planning application and carrying out the relevant land title checks, AHAL discovered that areas of land within their planning application site boundary were not in their ownership, but were instead owned by the council. AHAL subsequently submitted an offer to purchase that land from the council. AHAL propose that the land would be utilised for landscaping and garden ground purposes within their proposed new social housing development.

AHAL have been working collaboratively with officers from Housing and Social Policy to design the new homes within the proposed development to meet specialist housing provision needs. Nomination rights are to be agreed with AHAL to accommodate council tenants currently on the waiting list for housing. The proposed development would also contribute towards the council's affordable housing targets.

The Head of Housing, Construction and Building Services has consulted with the Tenant's Panel and no objections have been raised to the proposed disposal. The Head of Housing, Construction and Building Services has confirmed that the proposed disposal meets the criteria for general consent and as such approval from Scottish Ministers is not required.

D2 Proposed Terms Of Sale

AHAL have approached the council with an offer to purchase the land at Crusader Rise for £17,500. This sum is representative of similar transactions for land restricted to social housing and is regarded by officers to represent full market value.

E. CONCLUSION

The sale of this land to Ark Housing Association Limited would contribute to the amenity space within a proposed new development that would provide new homes for social rent on vacant site in an area of high demand. It is considered to be in the council's best interest to dispose of this land on the terms of sale set out in this report.

F. BACKGROUND REFERENCES

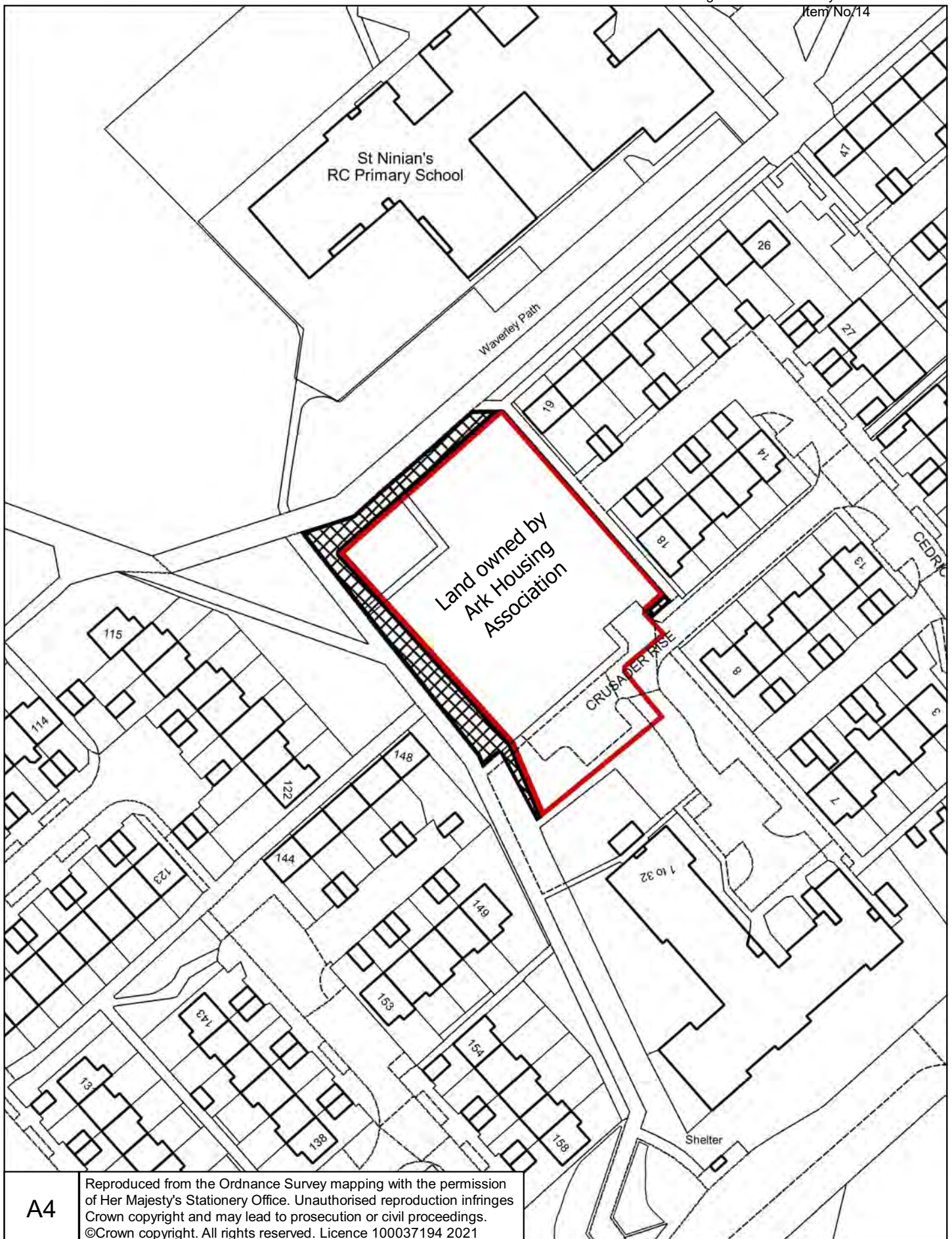
None

Appendices/Attachments: Appendix 1:Location Plan

Contact Person: David Satchell, Commercial Property Surveyor
Tel. (01506) 284036 e-mail: David.satchell@westlothian.gov.uk

Donald Forrest, Head of Finance and Property Services

Date of meeting: 23 February 2021



A4

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Appendix 1 Crusader Rise Land Owned By West Lothian Council

1:1000



Property Management and Development, West Lothian Civic Centre, Livingston, EH54 6FF

1/2/2021

DATA LABEL: PUBLIC



WEST LOTHIAN COUNCIL

POST OF DEPUTE CHIEF EXECUTIVE (HEALTH & SOCIAL CARE PARTNERSHIP)

REPORT BY CHIEF EXECUTIVE

A. PURPOSE OF REPORT

To agree joint arrangements with NHS Lothian (the health board) and West Lothian Integration Joint Board (the integration joint board) for recruitment and appointment to the post of Depute Chief Executive (Health & Social Care Partnership).

B. RECOMMENDATIONS

1. To note that the post of Depute Chief Executive (Health & Social Care Partnership) will soon become vacant upon the resignation of Allister Short
2. To note that the post combines senior management and corporate responsibilities in council and health board and the statutory position of Chief Officer of the integration joint board
3. To agree that recruitment and selection is carried out in cooperation with the health board and the integration joint board through a joint appointment panel with equal representation
4. To agree that the formal and final appointment for the council's interest will be made by the Senior Officer Appointment Committee at the end of that process
5. To appoint two members to the appointment panel to represent the council's interests

C. SUMMARY OF IMPLICATIONS

I	Council Values	Being honest, open and accountable; making best use of our resources; working in partnership
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Scheme of Delegations; Scheme of Administration; Public Bodies (Joint Working) (Scotland) Act 2014
III	Implications for Scheme of Delegations to Officers	None
IV	Impact on performance and performance	N/A

Indicators

V	Relevance to Single Outcome Agreement	N/A
VI	Resources - (Financial, Staffing and Property)	No implications
VII	Consideration at PDSP	Not required
VIII	Other consultations	NHS Lothian; West Lothian Integration Joint Board

D. TERMS OF REPORT

1 Background

- 1.1 The Depute Chief Executive (Health & Social Care Partnership) has resigned from his post and arrangements have to be made for recruitment and appointment to the post. The position carries senior management and corporate responsibilities in council and health board. It also takes in the statutory appointment of Chief Officer of the integration joint board.
- 1.2 The post-holder has to be appointed as a member of staff of either council or health board, or both, and then seconded to the integration joint board as a member of its staff. The post-holder is accountable to the Chief Executives of council and health board and answers to the integration joint board in relation to the carrying out of its functions. All three bodies therefore have an interest in the appointment process.
- 1.3 All three bodies have their own internal governance arrangements around recruitment and appointment to senior positions. The normal route in the council for senior officer appointments to posts wholly within the council is for the Senior Officer Appointment Committee to carry through the whole process and make the decision on the appointment under its delegated powers.

2 Proposed process

- 2.1 Discussions have taken place amongst senior officers on behalf of all three organisations. It is proposed that the appointment is carried out through a tripartite recruitment and appointment process. A recruitment plan has been developed. The same process was agreed and successfully implemented in 2019 when the post last fell vacant.
- 2.2 It is proposed that an appointment panel is set up to carry out the leeting and interviewing and to make an appointment recommendation to all three bodies. It would consist of six members, two from each of the three organisations. It will be advised by senior officers of council and health board and supported by senior HR advisers from both organisations.
- 2.3 At the end of the interview process it will select its preferred candidate and make a recommendation to all three bodies on the appointment. The three bodies would then follow their own governance arrangements to formally make the appointment.

- 2.4 Decision-making powers cannot be delegated by the council to such a panel. For the council, the appointment decision should be taken by the Senior Officer Appointment Committee. The appointment decision for senior officers is within its remit in the Scheme of Administration. The appointment will be notified to members and reported to the next available meeting of full council.
- 2.5 To avoid delay in appointing to the post a recruitment pack was agreed amongst officers as would be the normal practice. The post has been advertised. An indicative timeline has been prepared on the assumption that the three bodies will agree this joint process. The aim is to proceed as swiftly as possible with the interviews being carried out on 31 March or 1 April. Dates will be subject to adjustment to accommodate as far as possible the commitments of the members appointed by council, health board and integration joint board. It would be advantageous however if the members appointed by all three bodies are able to make themselves available as much as possible and be as flexible as possible on dates during the process.

3 Possible interim appointment

- 3.1 There may be a requirement to make an interim appointment depending on when the successful candidate can take up the post. The Chief Executives of council and health board hold delegated powers to allow them to do that in relation to the posts in council and health board. The Integration Scheme for the integration joint board sets out a process for an interim appointment as Chief Officer. That is carried out through the two Chief Executives with the recommended candidate formally appointed by the Board.

4 Voting procedure

- 4.1 In relation to voting to appoint members to the panel:-
- The chair has no casting vote. Tied votes are resolved by lot. The method used to make a decision by lot is determined by the Clerk (Chief Executive)
 - A mover and a seconder is required for each candidate
 - Any vote takes place amongst all candidates at the same time
 - Where one candidate has an absolute majority of the votes cast that candidate is appointed
 - If no candidate has an absolute majority the candidate with the fewest votes is eliminated and another vote is taken amongst the remaining candidates. If required, that is repeated until one candidate has an absolute majority
 - Where there is a tie between the candidates with fewest votes, there is an extra vote to decide which to eliminate. If that vote is tied then the elimination is decided by lot
 - A tie between the last two candidates remaining is decided by lot
 - A roll call vote is not automatic

E. CONCLUSION

- 1 Agreeing the proposed joint appointment process will recognise the significance of

the post in the council, health board and integration joint board and help ensure the candidate is the best appointment for all three.

F. BACKGROUND REFERENCES

- 1 West Lothian Integration Scheme -
<http://www.westlothianchcp.org.uk/media/9964/West-Lothian-Integration-Scheme/pdf/West-Lothian-Integration-Scheme.pdf>
- 2 West Lothian Council – 19 March 2019 and 24 September 2019
- 3 Senior Officer Appointment Committee – 28 June 2019

Appendices: None

Contact Persons: Lesley Henderson, HR Services Manager, lesley.henderson@westlothian.gov.uk, 01506 281408, James Millar, Governance Manager, james.millar@westlothian.gov.uk, 01506 281613

Graham Hope, Chief Executive

Date of meeting: 23 February 2021

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

SUPPORT FOR THIRD SECTOR CORE COSTS

REPORT BY HEAD OF PLANNING, ECONOMIC DEVELOPMENT & REGENERATION

A. PURPOSE OF REPORT

The purpose of this report is to seek Council Executive's agreement on the approach to disbursing the additional £285,000 which is available as part of the Scottish Government's Covid-19 Level-4 support.

B. RECOMMENDATION

It is recommended that the Council Executive:

1. notes the agreement by Council Executive on 9 February to allocate £285,000 to support the core costs of third sector organisations already funded by the council; and
2. agrees that the Head of Planning, Economic Development & Regeneration be delegated to disburse funding, following consultation and engagement with the Third Sector Working Group.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Focusing on our customers' needs; being honest, open and accountable; providing equality of opportunities; developing employees; making best use of our resources; working in partnership
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Appropriate assessments of projects will be carried out as required.
III	Implications for Scheme of Delegations to Officers	The report does not have any implications for the Scheme of Delegations. The Head of Planning, Economic Development & Regeneration has specific delegations in relation to Third Sector Community Support Fund and the Modernisation and Improvement Fund but as this is a new fund neither of these delegations apply. The report details a specific delegation to the Head of Planning, Economic Development and Regeneration in relation to this fund.

IV	Impact on performance and performance Indicators	None
V	Relevance to Single Outcome Agreement	CPP's are now required to prepare a Local Outcome Improvement Plan (LOIP) in place of Single Outcome Agreement (SOA). The proposal does not raise any matters of conflict with the SOA/LOIP
VI	Resources - (Financial, Staffing and Property)	The report sets out a proposal for disbursing £285,000 one off funding which is available this financial year.
VII	Consideration at PDSP	The matter will be discussed at the Voluntary Organisations PDSP on 18 February. Any comments from the PDSP will be reported verbally to Council Executive.
VIII	Other consultations	Third Sector Working Group, Finance, Social Policy, the Governance Manager

D. TERMS OF REPORT

D.1 Background

On 9 February 2021 Council Executive agreed the allocation of an additional £285,000 of support for the Third Sector in West Lothian. The funding is part of a larger funding agreement from the Scottish Government aimed at providing additional welfare and social support following the placing of West Lothian in Tier 4 of the Covid-19 hierarchy.

Council Executive took the decision to direct the funding towards supporting the core operating costs of Third Sector partners, recognising the on-going commitment of the Third Sector in supporting communities through the ongoing Covid-19 pandemic.

D.2 Disbursing the Available Funding

Council Executive agreed that the support should be available to third sector organisations which are funded by the Council. These organisations will be invited to ask for a share of their core funds to be met where this is not already covered by existing or already secured funding.

Core funding can be defined differently by different people but is ordinarily seen as those recurring staff and revenue costs project funders can be reluctant to support. However, to reach a workable definition for the purposes of allocating of this funding, agreement will need to be reached in discussion with the Third Sector Working Group.

It is likely that the extent of core funding requested or identified will exceed the funding available and, as a result, core costs are unlikely to met in full. Officers will, in discussion with the Third Sector Working Group, identify and agree a mechanism to allocate fairly within the available budget.

In line with the approach agreed for disbursing the Third Sector Community Support Fund and the Third Sector Modernisation and Improvement Fund it is proposed that disbursement is delegated to the Head of Planning, Economic Development and Regeneration. In discharging that delegation, the head of service will liaise with the Third Sector Working Group as per the established process for the Modernisation and Improvement Fund.

E. CONCLUSION

Additional financial support for the core costs of Third Sector organisations has been agreed. This report sets out a proposed means of disbursing the additional funding.

F. BACKGROUND REFERENCES

Council Executive 9 February 2021: General Fund Revenue Budget - 9 Month Monitoring Report

Appendices/Attachments: None

Contact Person: Alice Mitchell, Economic Development & Regeneration Manager
email alice.mitchell@westlothian.gov.uk

Craig McCorriston
Head of Planning Economic Development & Regeneration

23 February 2021

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

FREE SCHOOL MEAL PROVISION – 22 TO 26 FEBRUARY 2021

REPORT BY DEPUTE CHIEF EXECUTIVE

A. PURPOSE OF REPORT

To seek Council Executive approval for service delivery plans for the provision of free school meals to P4-S6 children eligible for the 5-day period from 22 to 26 February 2021.

B. RECOMMENDATIONS

The Council Executive is asked to approve a further £15 payment to the families of P4 – S6 children and young people eligible for free school meals for the 5-day period from 22 to 26 February 2021.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Focusing on our customers' needs; being honest, open and accountable; providing equality of opportunities; developing employees; making best use of our resources; working in partnership
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Continued provision for children entitled to free school meals. Educational Continuity Directions and related statutory guidance; non-statutory Scottish Government guidance.
III	Implications for Scheme of Delegations to Officers	None
IV	Impact on performance and performance Indicators	None
V	Relevance to Single Outcome Agreement	Our children have the best start in life and are ready to succeed.
VI	Resources - (Financial, Staffing and Property)	The Scottish Government have announced funding of £241,000 to fund this requirement. The cost of the free school meals for the period from 1 to 19 February 2021 is costed at £189,000 based on 6,300 eligible pupils, leaving a balance of £52,000 to accommodate the cost of the free school

meals for P4-S6 pupils for the 5-day period to 28 February 2021. Based on 4,500 eligible pupils (P4-S6) the total cost of this additional payment would be £67,500, resulting in a net cost to the council of £15,500.

VII	Consideration at PDSP	None
VIII	Other consultations	Head of Finance and Property Services, Financial Management Unit, Education Services; Operational Services, Anti-Poverty Service

D. TERMS OF REPORT

D.1 Background

The provision of free school meals to all eligible children and young people has been a key policy objective of the council during the period of school closures. This support has been continued during subsequent school holiday periods, in recognition of the ongoing detriment to low income families caused by the coronavirus pandemic.

D.2 Council Executive Approvals

A decision was made through Standing Order 31 on 10 September 2020, reported to Council Executive on 6 October 2020, to provide all children entitled to free school meals with a take away packed lunch or hot meal and a take away breakfast cereal bar/cereal during the remaining school holidays (excluding public holidays) within the current financial year 2020/21.

It was agreed that the free meals would be provided at seven secondary schools and 34 primary schools, with an additional five primary schools continuing to distribute packed lunches only, and that delivery arrangements continue for Additional Support Needs (ASN) for Education during the remaining school holidays (excluding public holidays).

It was also agreed to use of £254,000 of resources to fund the cost of the service during the current financial year 2020/21.

On 17 November 2020 Council Executive approved direct payments to families of P4 – S6 children and young people eligible for free school meals; and P1-P3 pupils in receipt of school clothing grant covering:

- A payment of £15 per week per eligible child (a total of £30 per eligible child) during the Christmas Holiday 2020-21;
- A payment of £10 per eligible child during the February Half Term Holiday 2021; and
- A payment of £15 per week per eligible child (a total of £30 per eligible child) during the Easter Holiday 2021.

As part of the proposed implementation of this proposal, all parents/carers have been encouraged and supported to check their eligibility and claim Free School meals and/or Clothing Grant where appropriate. The total cost in 2020/21 would be £252,000.

On 23 December 2020 a report was approved under Standing Order 31 (reported to Council Executive on 19 January 2021) to extend free school meal provision during the longer Christmas holiday period to 15 January 2021. Based on 6,300 eligible pupils the total cost of this additional payment would be £151,200.

On 8 January 2021 a report was approved under Standing Order 31 (reported to Council Executive on 19 January 2021) to extend free school meal provision from 5 January to 29 January 2021 following the Scottish Government decision to restrict school access only to in-person learning for children of key workers and vulnerable children, with remote learning for all other children and young people. Based on 6,300 eligible pupils the total cost of this additional payment would be £189,000.

On 29 January 2021 a report was approved under Standing Order 31 (reported to Council Executive on 9 February 2021) to extend free school meal provision for the 10-day period from 1 to 12 February 2021, and to increase the previously agreed holiday payment of £10 per eligible child during the February Half Term Holiday 2021 to £15 per eligible child for the period from 15 to 19 February 2021 (inclusive of the February Half Term Holiday). Based on 6,300 eligible pupils the total cost of this additional payment would be £220,500.

D.3 Scottish Government Funding

On the 11 February 2021 the Depute First Minister advised that the Scottish Government has made an additional £5.841 million of funding available to local authorities to enable:

- Provision of free school meal approaches (direct payment, voucher or food parcel) to all eligible pupils during the period of school closures up to 19 February 2021;
- Provision of free school meal approaches (direct payment, voucher, food parcels) to all eligible pupils in P4-S6 between 22 and 26 February 2021.

The letter advised that the funding is not being provided to enable universal provision of free school meals to all children in P1-P3 during 1 to 19 February 2021, however all P1-P3 children who are eligible to receive free school meals on the basis of low income should receive this support. From 22 February 2021, all P1-P3 children who attend a school should receive a universal free school meal.

The distribution of the funding is based on the numbers of pupils who are registered and eligible for free school meals from the 2019 pupil census, and the council's allocation is £241,000.

D.4 Revised Service Delivery

In order to maximise support offered to children and young people in low income families, and to avoid problems of access for children and young people over the 5-day period from 22 to 26 February 2021, a further payment to the parent or carer of each eligible P4-S6 child is proposed.

The revised proposal would be for the parent or carer of each eligible child to receive a further payment of £15 per child to cover the 5-day period. For pupils in P1 to P3, there will be no payment as their children will be attending school and will receive a meal at school.

The cost of the free school meals for the period from 1 to 19 February 2021 is costed at £189,000 based on 6,300 eligible pupils, leaving a balance of £52,000 to accommodate the cost of the free school meals for P4-S6 pupils for the 5-day period to 28 February 2021. Based on 4,500 eligible pupils (P4-S6) the total cost of this additional payment would be £67,500, resulting in a net cost to the council of £15,500.

E. CONCLUSION

The provision of free school meals to all eligible children and young people has been a key policy objective of the council during the period of school closures, and subsequent holiday periods. The revised proposal will further extend the support offered to children and young people in low income families, and avoid problems of access for children and young people.

F. BACKGROUND REFERENCES

- Council Executive – Free School Meals Holiday Provision - 6 October 2020.
- Council Executive – Free School Meal Provision – School Holidays (2020/21 Academic Year) – 17 November 2020
- Guidance: school re-opening arrangements for January 2021 - <https://www.gov.scot/publication/school-re-opening-arrangements-for-january-2021/>
- Council Executive - Free School Meal Provision – 5 to 15 January 2021 (by SO31 on 23 December 2020)
- Council Executive - Free School Meal Provision – 18 to 29 January 2021 (by SO31 on 8 January 2021)
- Council Executive - Free School Meal Provision – 1 to 12 February 2021 (by SO31 on 29 January 2021)

Appendices – None

Contact: graeme.struthers@westlothian.gov.uk

Graeme Struthers
Depute Chief Executive
16 February January 2021

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

SUSPENSION OF CONTRIBUTIONS - ADULT AND OLDER PEOPLE DAY SERVICES

REPORT BY HEAD OF SOCIAL POLICY

A. PURPOSE OF REPORT

To seek agreement from the Council Executive to suspend contribution payments for service users who have chosen not to attend adult or older people day services during the current Tier 4 period.

B. RECOMMENDATION

It is recommended the Council Executive:

1. Notes that attendance at day centre is permitted under the current Covid-19 restrictions and that centres in West Lothian remain open for individuals who wish to attend;
2. Approves the temporary suspension of contribution payments from the day of last attendance to the date of return for the individuals who are electing not to attend due to Covid-19 concerns.

C. SUMMARY OF IMPLICATIONS

I Council Values	Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; working in partnership.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	<p>Relevant legislation includes:</p> <ul style="list-style-type: none">• Social Work (Scotland) Act 1968• Community Care and Health (Scotland) Act 2002• Mental Health (Care and Treatment) (Scotland) Act 2003• Social Care (Self-directed Support) (Scotland) Act 2013• The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2018• COSLA National Strategy and Guidance – Charges applying to Non-residential Social Care Services 2019/20
III Implications for Scheme of Delegations to Officers	None.

IV	Impact on performance and performance Indicators	None
V	Relevance to Single Outcome Agreement	Effective prioritisation of resources is essential to the targets contained in the Local Outcomes Improvement Plan.
VI	Resources - (Financial, Staffing and Property)	Impact on income due to reduced contribution level. This impact is included in the mobilisation plan to Scottish Government.
VII	Consideration at PDSP	None
VIII	Other consultations	None

D.1 TERMS OF REPORT

Background

Day services are provided for adults and older people in a range of settings across West Lothian. These are a mix of both Council and commissioned services.

The council, at its meeting on 19th February 2019 agreed the budget for the four year period 2019/20 to 2022/23. The revenue budget report noted that the council faced a budget gap of £51.1 million for the five year period, and as part of the budget reduction measures additional net income of £981,000 was agreed from the contributions policy for adult non-residential social care services.

Day care is a chargeable service within the Contributions Policy for adult non- residential social care, with any contribution based on an individual's ability to pay.

Mainland Scotland entered Tier 4 lockdown at midnight on 4 January 2021 with a legal requirement forbidding anyone from leaving their home except for essential purposes. Examples of reasonable excuses to go out were provided in Scottish Government guidance and included accessing day centre provision.

This position was confirmed in correspondence from Cabinet Secretary for Health and Sport on 15 January 2021 noting that day centres can continue to operate where they are essential for people's wellbeing i.e. where participants or carers health (including their mental health) and wellbeing would be significantly impacted by non-attendance.

In line with the national guidance West Lothian day centres have remained open during this period however an increasing number of individuals are electing not to attend. This is currently approximately 25% of attendees. There are a range of associated reasons related to concerns about exposure to Covid-19.

Day centres have a range of measures in place to ensure services can be delivered in a safe manner, fully compliant with current guidance. This has been discussed with service users and their families enabling arrangements to be progressed as people wish to attend. Day centre provision is recognised as an important source of support to both service users and their families, impacting upon social isolation and carer stress.

However, it is clear that some people do not wish to access available services due to the unique circumstances of the pandemic.

The individuals who have elected not to attend are contacted on a regular basis by the day services to ensure they are managing appropriately. This includes discussions with their families, carers or guardians.

To date limited issues have arisen due to the majority of people living at home with family. Where support has been offered this usually takes the form of telephone support or a home visit where necessary. The level of support offered is not considered to be a direct comparator to allocated day centre provision and it is therefore not proposed that service users would be charged for this keeping in touch service.

It is recommended that service users are asked to contribute to their care costs in line with their financial assessment up to last day of their centre attendance, and contributions are then suspended until they resume attendance.

The costs related to loss of contributions income are included in the mobilisation plan return to the Scottish Government. The extension of reduced contributions for day care to March (or into the start of 2021/22) will not cause a budget pressure due to the additional funding received.

E. CONCLUSION

As a result of current tier 4 requirements, the Council Executive is asked to agree the recommendation that contribution payments are suspended for individuals who have decided not to attend day centres from last day attendance, until they resume attendance.

F. BACKGROUND REFERENCES

- Coronavirus (COVID-19): stay at home guidance – 19th January 2021
- Coronavirus (COVID-19): day services for adults - letter from the Cabinet Secretary for Health and Sport - 15 January 2021

Appendices None

Contact Person: Robin Allen, Senior Manager, Adult Services
01506 281851

JO MACPHERSON
HEAD OF SOCIAL POLICY/ CHIEF SOCIAL WORK OFFICER
23 February 2021