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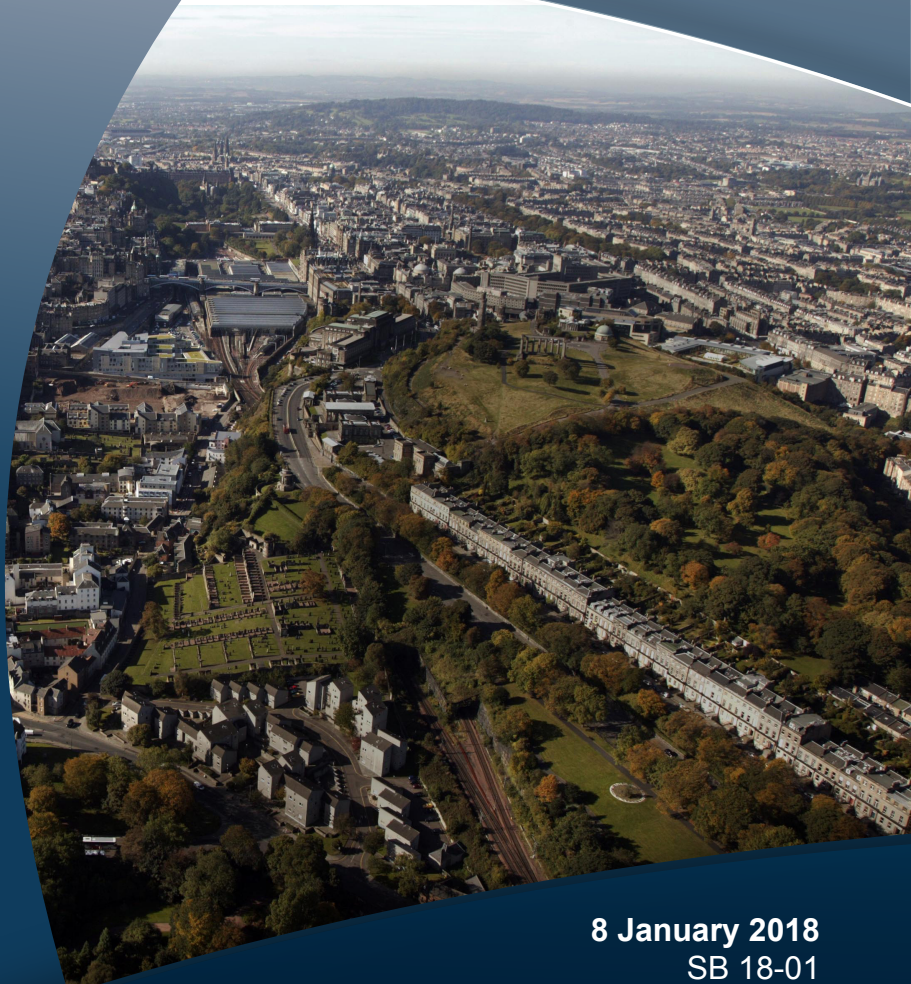
SPICe Briefing

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Planning (Scotland) Bill: How the planning system currently works

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This briefing describes key aspects of the Scottish town and country planning system as it currently operates, with an emphasis on those parts of the system that feature in the Planning (Scotland) Bill.



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Legislation

The Scottish planning system is governed by two key pieces of legislation:

- The Town and Country Planning (Scotland) Act 1997 is the basis for the planning system and sets out the roles of the Scottish Ministers and local authorities with regard to development plans, development management and enforcement. This Act was substantially amended by the Planning etc. (Scotland) Act 2006.
- The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 is mainly concerned with the designation and protection of listed buildings and conservation areas. This Act was amended by the Historic Environment (Amendment) Scotland Act 2011 and the Historic Environment (Scotland) Act 2014.

Scottish Government Planning Policies and the National Planning Framework

The Scottish Government sets out its key planning policies in four documents:

1. The ¹ National Planning Framework for Scotland 3 (NPF3): sets out the Scottish Government's strategy for Scotland's spatial development for a period of 20 to 30 years. It also designates 14 national developments. Planning authorities are required to take account of NPF3 policies when drafting development plans and making development management decisions. NPF3 is accompanied by a regularly updated action programme and the Scottish Government provides updates on the implementation of NPF3. The National Planning Framework must be revised at least once every five years, although Scottish Ministers have the option of not revising it and issuing a written explanation as to why they have chosen not to do so.
2. The ² Scottish Planning Policy sets out national planning policies which reflect Scottish Ministers' priorities for the operation of the planning system and the development and use of land.
3. ³ Designing Streets sets out national planning, architecture and transport policies as they relate to street design.
4. ⁴ Creating Places sets out national policies on architecture and place making.

Additional planning advice and guidance is set out in the following Scottish Government publications:

Circulars: Scottish Government planning circulars contain Scottish Government policy on the implementation of legislation or procedures, aimed at local authority planners and other development professionals. Statements of Scottish Government policy in Circulars may be material considerations to be taken into account in development plans and development management decisions.

Planning Advice Notes: The Scottish Government produces a series of Planning Advice Notes (PANs) which provide advice and information on technical planning matters, again principally aimed at local authority planners.

Development Planning

The Scottish planning system is considered to be 'plan-led'. National and local land use policies and proposals are set out in the statutory development plan and planning authorities are required to make decisions on applications for planning permission in accordance with the development plan, unless there are compelling reasons, known as material considerations, which indicate that the decision should be otherwise.

The development plan is made up of three key documents, which are described in the following sections.

Local Development Plans

Local Development Plans (LDPs) cover the whole of Scotland and identify sites for new developments and set out policies that guide decision making on planning applications. Each Planning Authority (i.e. local authority and National Park Authority) is required to publish and then update Local Development Plan(s) covering their area at least once every five years.

In addition planning authorities must publish, and update, a development plan scheme which outlines its programme for preparing and reviewing LDPs. The scheme must also contain a participation statement setting out the ways in which local people and other stakeholders will be involved in the preparation of the plan.

Prior to producing a LDP, a Planning Authority must first produce a main issues report (MIR), which sets out the authority's general proposals for development of its area and particular proposals as to where development should and should not occur. A main issues report must also contain one or more reasonable alternative sets of proposals. Finally, it must draw attention to the ways in which the favoured and alternative proposals differ from the spatial strategy of the existing adopted LDP (if any). The main issues report is then subject to a period of public consultation.

Having had regard to the representations received to the main issues report, a Planning Authority must publish a proposed plan, which is subject to a minimum of six weeks public consultation. Following the close of public consultation, the Planning Authority may modify the plan in response to representations received, which then requires further public consultation. The plan will then be submitted to Scottish Ministers, along with the proposed action programme. If there are any unresolved representations then Scottish Ministers will appoint a Reporter to independently examine the proposed plan. The reporter will conduct an examination and produce a report with recommendations for the Planning Authority. A Reporter's recommendations are generally binding on the Planning Authority. The authority must then modify and publicise its intention to adopt the plan and submit it to Scottish Ministers. The Planning Authority can adopt the plan after 28 days, unless directed not to by Scottish Ministers.

Each LDP must be accompanied by an action programme that must be updated at least once every two years.

Strategic Development Plans

Strategic Development Plans (SDPs) set out a vision for the long term development of Scotland's four main city regions (these are regions centred on Aberdeen, Dundee, Edinburgh and Glasgow), focusing on issues such as land for housing, major business and retail developments, infrastructure provision and green belts/networks.

SDPs are drafted by Strategic Development Planning Authorities (SDPAs), the membership of which is defined in statutory designation orders. Where there is a current SDP, a proposed SDP must be submitted to Scottish Ministers for examination within 4 years of the current SDP being approved. SDPAs are required to publish and update a development plan scheme which outlines their programme for preparing and reviewing the SDP. The scheme must also contain a participation statement setting out the ways in which local people and other stakeholders will be involved in the preparation of the plan. Each SDP must be accompanied by an action programme, which must be updated at least once every two years.

The process for developing and examining a SDP is very similar to that explained in section on Local Development Plans. The key difference is that Scottish Ministers have the final say on modification, adoption or rejection of an SDP.

Supplementary Guidance

Councils can prepare supplementary guidance in connection with strategic or local development plans. Supplementary guidance has the same weight as the development plan in decisions on applications or planning permission. The plan must mention the supplementary guidance, which may only deal with the provision of further information or detail on the policies or proposals in that plan. Supplementary guidance generally includes the following:

- **Development briefs or master plans:** which provide a detailed explanation of how the council would like to see particular sites or small areas develop.
- **Strategies or frameworks on specific issues:** for example, guidance on the location of large wind farms.
- **Detailed policies:** for example on the design of new development.

Supplementary guidance must be the subject of public consultation and notified to Scottish Ministers before adoption - primarily to ensure that the principles of good public involvement and a proper connection with the strategic or local development plan have been achieved consistently, as opposed to detailed policy content.

Neighbourhood and community plans

Neighbourhood and community led plans are not currently a statutory feature of the Scottish planning system. However a ⁵[Community Planning](#) system is in place, with the aim of bringing together public bodies and local communities to improve service delivery.

Development Management

Development management describes the process used by planning authorities to reach a decision on the granting or refusal of an application for planning permission.

The Scottish Government sets out its policy on development management in ⁶ [Circular 3/2013: Development Management Procedures](#).

The Scottish Government defines the key principles of development management process in the ² [Scottish Planning Policy \(SPP\)](#), principally that.

- Development management should support the Scottish Government's central purpose of increasing sustainable economic growth
- Development management processes should be responsive, reliable, transparent and efficient

The following sections explore some key aspects of the development management system.

The Development Management Process

The following is a very brief overview of the development management process. Full details of the process are set out in ⁷ [Circular 3/2013: Development Management Procedures \(Updated\)](#).

Types of planning permission: A developer can apply for two different types of planning permission:

- **Planning Permission in Principle** - This is an application for the principle of development only. While the intention is that less detail is required for such applications, more information can be or may have to be requested by the planning authority before making a decision, e.g. where environmental impact assessment is required. Even if permission in principle is granted, development cannot start until a further application(s) for Approval of Matters Specified in Conditions, giving the full details of the development, is applied for and granted.
- **Detailed Planning Permission** – This is an application for full planning permission and must contain full details of the proposed development e.g. detailed plans, drawings and relevant assessments.

Pre-application consultation: Prior to submitting an application for a national or major development, the applicant must carry out a community consultation exercise for certain types of development before submitting a formal planning application.

Submitting an application: A planning application can be submitted via the Scottish Government's ⁸ [e-planning portal](#), or on a paper form available from the relevant local authority.

Receipt and processing of the application: On receipt of the application, the planning authority will:

- validate the planning application, i.e. check that the required information has been submitted
- publicise the application as required
- consult as required with statutory consultees, e.g. Historic Scotland, other council departments and interested organisations for their views
- the planning officer will usually visit the site and consider the application against the development plan, responses from statutory consultees, relevant Scottish Government policy and advice and representations from the public.

Making a decision: In determining an application a planning authority can:

- Grant permission unconditionally.
- Grant permission subject to conditions.
- Refuse permission

Decisions on national and major developments will normally be made by Councillors of the relevant planning authority while local developments are likely to be decided by planning officers, under a scheme of delegation which devolves decision making powers over smaller scale developments from councillors to planning officers.

For national or major developments considered significantly contrary to the Development Plan, a Pre-Determination Hearing will be held. This must take place before a committee of the council and means that those who made representations are offered the opportunity to speak. The application is then determined at a full council meeting.

Where an authority decides to grant permission subject to conditions or refuses permission, the applicant has a right of appeal. If the initial decision was taken by Councillors the appeal is to Scottish Ministers. If the initial decision related to a local development and was taken by a planning officer under a scheme of delegation the appeal is to the council's Local Review Body.

Role of Scottish Ministers: Scottish Ministers have a general power to intervene in any planning application, prior to a decision being issued. However, they normally only use this power, often referred to as calling-in an application, where it raises an issue of national importance.

Hierarchy of Developments

All proposed developments in Scotland fall within one of the three categories of a statutory hierarchy of developments, which can be described as follows:

1. National developments: Developments designated as of national significance in the National Planning Framework for Scotland
2. Major developments: Nine classes of large scale development are defined as major developments in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 .

3. Local Developments: Any development which is not a national or major development is automatically categorised as a local development.

National developments are designated in the ¹ National Planning Framework for Scotland 3, which was considered by the Scottish Parliament to establish the necessity of these developments. Whilst national development status establishes the need for a project, it does not grant development consent. Planning permission and any other necessary assessments and consents will still be required at the consenting stage. In recent years, around 95% of applications have been delegated to officers for decision.

Where an application sits within the hierarchy will influence how it is handled. For example, national and major developments are subject to a statutory requirement for pre-application consultation by the prospective developer. Decisions on major developments will normally be made by Councillors of the relevant planning authority while local developments are likely to be decided by planning officers, under a scheme of delegation which devolves decision making powers over smaller scale developments from Councillors to planning officers.

Permitted Development Rights

Section 26 of the Town and Country Planning (Scotland) Act 1997 defines development as:

“ ...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land, or the operation of a marine fish farm in the circumstances specified in section 26AA”

Technically, anything falling within this definition requires planning permission - although there are some exceptions set out in Section 26. However, certain forms of development benefit from a general planning permission known as ‘permitted development’. Typically this is because the scale and nature of the development is considered to be of a minor and non-contentious nature, or essential for the functioning of key infrastructure.

The types of development defined as permitted development in Scotland, and the qualifying criteria, are set out in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, usually referred to as the ‘GPDO’. Where a development qualifies as permitted development, there is no need for the developer to apply for planning permission or undertake any public consultation prior to beginning work. Certain types of permitted development require the developer to notify the planning authority of their intentions before beginning work (known as "prior notification") and may require the planning authority's prior approval of some aspect(s) of the development.

In some circumstances planning authorities can suspend permitted development rights in their area by issuing an Article 4 Direction. Article 4 Directions are subject to approval by Scottish Ministers, except in certain limited circumstances.

Use Classes

The Town and Country Planning (Use Classes) (Scotland) Order 1997 puts uses of land and buildings into 11 categories known as “Use Classes”, e.g. shops, food and drink and business. Generally, any building or land that is being used for a purpose that falls within a use class can be used for any other purpose within that class without the need for planning permission, e.g. under the use class “shops” a travel agent can be turned into a hairdresser without the need for planning permission. It is worth noting that planning permission could still be required if physical alterations to the building carried out to facilitate the change of use meet the definition of “development”. The GPDO grants permitted development rights for certain changes of use, including from one use class to another (i.e. one way).

Planning Conditions

Planning Authorities in Scotland can impose conditions when granting planning permission to enable development to proceed where it may otherwise have been necessary to refuse permission. Circular 4/1998 states that conditions should only be imposed where they are:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects

An addendum to this circular suggests a number of model planning conditions and lists satisfactory and unsatisfactory reasons for imposing conditions on an award of planning permission.

Applicants can seek an appeal, or review, of a decision to impose conditions on the grant of planning permission.

Planning Authorities can enforce conditions, either by issuing an enforcement notice, or a breach of condition notice. There is a right of appeal to the Scottish Ministers against an enforcement notice but not against a breach of condition notice. Enforcement notices carry higher penalties for non-compliance.

Planning Obligations

Planning obligations, which are sometimes referred to as “section 75 agreements”, can be used to overcome obstacles to the granting of planning permission. The use of a planning obligation is considered by each planning authority on a case by case basis.

The Scottish Government sets out its policy on the use of planning obligations in ⁹ [Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements](#), which states:

“12. Planning authorities must consider each planning application on its merits and reach a decision in accordance with the terms of the development plan, unless material considerations indicate otherwise. Planning obligations have a limited, but useful, role to play in the development management process where they can be used to overcome obstacles to the grant of planning permission. In this way development can be permitted or enhanced and potentially negative impacts on land use, the environment and infrastructure can be reduced, eliminated or compensated for. Planning obligations should be agreed between the parties involved; developers should not be required to enter into a planning obligation. Where known in advance, the need for a planning obligation can usefully be set out in the development plan or as part of pre-application discussions.”

Planning obligations are legal agreements secured through Section 75 of the Town and Country Planning (Scotland) Act 1997. In essence, a planning obligation is a contract between the planning authority and the landowner (and possibly future landowners, depending on the terms of the agreement) which restricts or regulates the use of land for example through requiring developers to mitigate against any potential negative impacts of the development through means set out in the agreement. This can include making a payment to the planning authority towards the development of associated infrastructure, e.g. expanding a school or improving a road. The issues covered by a planning obligation are such that they could not normally be enforced through a condition attached to planning permission.

Circular 3/2012 stipulates that planning obligations should not be used to require payments to resolve issues that could be resolved in another way, for example planning conditions or alternative legal agreements. Developer contributions can also be secured through; the Local Government (Scotland) Act 1973, which gives local authorities the power to enter into agreements for a purpose related to the discharge of any of its functions; the Roads (Scotland) Act 1984, which allows the roads authority to enter into an agreement with any person willing to contribute to the construction or improvement of a road; and less commonly, the Countryside (Scotland) Act 1967 and the Sewerage (Scotland) Act 1968.

Local residents and community organisations do not normally have any involvement in discussions around a planning obligation, which normally only involve the developer and planning authority.

The Scottish Government's ⁹ [Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements](#) sets out the circumstances in which planning obligations can be used. Circular 3/2012 sets out five tests that a planning authority should use in deciding whether to propose a planning obligation, these are:

- the obligation is necessary to make the proposed development acceptable in planning terms
- the obligation serves a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans

- the obligation should relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area
- the obligation should fairly and reasonably relate in scale and kind to the proposed development
- the obligation should be reasonable in all other respects

Appeals

There are two planning appeal/review systems in operation in Scotland, these are:

1. **Local Review Body:** Every Planning Authority is required to produce a “scheme of delegation” which sets out a list of those applications for local development that can be determined by an appointed person, normally a planning officer, rather than Councillors at a committee. If a planning decision was taken by a planning officer under a scheme of delegation then any appeal will be made to the Council’s Local Review Body and not Scottish Ministers. A local review body is made up of at least three elected members who were not involved in the original decision.
2. **Scottish Ministers:** Planning appeals made to Scottish Ministers are considered by a Reporter appointed by the Planning and Environmental Appeals Division (known by the acronym of its previous incarnation - DPEA). In most instances the appeal decision is made by the Reporter on behalf of the Scottish Ministers. However, in a small number of cases the Reporter does not issue the decision, but submits a report with a recommendation to the Scottish Ministers, who make the final decision.

The Scottish Government provides more information on the operation of the appeals process in ¹⁰ [Circular 4/2013: Planning Appeals](#) and on the local review system in ¹¹ [Circular 5/2013: Schemes of Delegation and Local Reviews](#). The DPEA has also published ¹² [A Guide to Planning Appeals in Scotland](#), principally aimed at those involved in a planning appeal to Scottish Ministers, which provides a clear overview of how the process operates in practice.

Simplified Planning Zones

A simplified planning zone (SPZ) is an area where the need to apply for planning permission is removed for certain types of development. A SPZ requires the the planning authority to prepare a SPZ Scheme, which details the types of development and nature of uses that are permitted together with any limitations, conditions and guidelines that a development proposal must comply with. Should a development proposal comply with the SPZ Scheme applications for planning permission will not be required.

A SPZ only removes the need to apply for planning permission for certain types of development, other consents including Roads Construction Consent, Listed Building Consent, Building Warrant and any licenses (where applicable) must be obtained through the usual processes.

Until recently there had been little take up in the production and use of SPZs, with only two SPZs currently operational in Scotland - Hillingdon Park SPZ and Renfrew Town Centre SPZ. The Scottish Government is currently working with planning authorities on a series of [SPZ housing pilots](#).

The Scottish Government provides advice to planning authorities considering the creations of an SPZ, including the steps for consultation and engagement, in ¹³ [Circular 18/1995: Simplified Planning Zones](#).

Advertisement Consent

The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, as amended, regulate the display of most outdoor advertisements in Scotland. These Regulations split adverts into three classes:

1. *Excepted*: adverts which are not subject to control, e.g. adverts within buildings, displayed on vehicles or balloons flown above a certain height.
2. *Deemed consent*: adverts that are automatically deemed to have consent. This class includes statutory notices, direction and warning signs, certain temporary signs, adverts on business premises. There are a number of other conditions regarding placement on a building, duration and height of display also set out in the Regulations if an advert is to qualify for deemed consent.
3. *Express consent*: Adverts that do not fall within the above classes, which require the explicit grant of consent from the Planning Authority before they can be displayed.

There are restrictions on the display of adverts in conservation areas and “areas of special control”, which are areas designated by a Planning Authority which have enhanced controls over the display of adverts. However, these restrictions do not apply to certain specified classes of advert.

Applicants have a right of appeal to Scottish Ministers against a decision to refuse permission for an advert, or where conditions have been imposed on any grant of permission. Planning Authorities have powers to enforce advertisement controls, principally the power to issue an enforcement notice where an advert has been displayed without consent or in breach of conditions attached to any consent.

Enforcement

Carrying out development without planning consent or breaching a condition of a planning consent is generally not a criminal offence. Enforcement action is carried out at the discretion of the Planning Authority. Informal resolution of breaches is encouraged where appropriate. Planning authorities have a number of formal enforcement options they can pursue, which are briefly summarised below:

- **Planning Contravention Notice:** A Planning Authority can issue a Planning Contravention Notice (to anyone with an interest in land) to obtain information on whether activities on that land constitute a breach of planning control.
- **Enforcement Notice:** A Planning Authority can issue an Enforcement Notice when it considers that a breach of planning control has occurred. Failure to comply with the remedial steps required by an enforcement notice can lead to a fine, on summary conviction, not exceeding £20,000, or on conviction on indictment to an unlimited fine. There is a right of appeal to Scottish Ministers against the issue of an enforcement notice. A planning authority may also take direct action to enter land and carry out works where an enforcement notice is not complied with. Costs of direct action are recoverable from the landowner or other responsible person.
- **Breach of Condition Notice:** This can be used as an alternative to an Enforcement Notice, and is used to enforce the conditions of a planning permission. Failure to comply with a breach of condition notice can lead to a fine of £1000 on conviction.
- **Stop Notice:** Where a Planning Authority considers that a breach of planning control must be dealt with as a matter of urgency it may issue a stop notice. A stop notice can only be issued in conjunction with an enforcement notice.
- **Temporary Stop Notice:** A temporary stop notice is similar to a stop notice but takes immediate effect.
- **Fixed Penalty Notices:** A Planning Authority also has the power to issue a Fixed Penalty Notice for a failure to comply with an Enforcement Notice or a Breach of Condition Notice.
- **Notice requiring a retrospective planning application:** where the planning authority consider the breach can be corrected by retrospective permission, including conditions if appropriate, they can issue a notice requiring an application to be submitted
- **Interdict:** Although not a specific planning power, a Planning Authority can apply to the sheriff court or Court of Session for an interdict where they consider a breach of planning control has occurred, or is about to occur.

Every Planning Authority is required to produce an enforcement charter, updated every two years, which sets out how the enforcement system works, the role of the Planning Authority in enforcement and its service standards.

More information on these enforcement options is set out in ¹⁴ Circular 10/2009: Planning Enforcement.

Planning Application Fees

The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004, as amended, require fees to be paid to a planning authority along with any application for planning permission, as set out in those Regulations.

Most householder developments, e.g. enlargements, improvements or alterations to an existing dwelling house or flat and development within the curtilage of an existing dwelling house, have a standard fee of £202. Fees for new housebuilding and industrial or commercial developments are based on the size of a development or the number of new housing units, with the absolute maximum fee capped at £125,000.

Planning Advice Services

¹⁵ PAS (formerly known as Planning Aid for Scotland), is an independent charity which provides professional planning advice, support and training to individuals and community groups across Scotland. The Scottish Government has provided grant funding to support its work for a number of years.

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