

**CHARTERED INSTITUTE FOR ARCHAEOLOGISTS
FEDERATION OF ARCHAEOLOGICAL MANAGERS AND EMPLOYERS**

**SUBMISSION TO THE SCOTTISH PARLIAMENT'S
LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
INQUIRY INTO THE PLANNING (SCOTLAND) BILL**

1. Summary

1.1 The planning system in Scotland plays an integral part in the management and protection of the historic environment and any changes to that system need fully to address their impact upon the historic environment.

1.2 The provisions of the Planning (Scotland) Bill fail adequately to address these issues, most notably in the proposals for simplified development zones, with the resultant risk that the legislation will ultimately promote development but not *sustainable* development.

2. Introduction

2.1 The Federation of Archaeological Managers and Employers (FAME) is the trade association for archaeological employers and managers. FAME represents one in three archaeological practitioners, employing the majority of archaeologists across the UK. Its membership includes over 50 archaeological practices, from small consultancies to all the largest contractors, from commercial companies, universities and local authorities across England, Scotland and Wales. In addition to representing its members' interests in matters of policy, its aims are to foster an understanding of archaeology across the construction and development sector and promote best professional practice, training and development, and a safe and healthy work environment.

2.2 The Chartered Institute for Archaeologists (CIfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

2.3 CIfA has more than 3,500 members and over 80 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors. CIfA's Scottish Group has over 450 members practising in the public, private and voluntary sector in Scotland.

2.4 Furthermore, CIfA is a member of the Built Environment Forum Scotland (BEFS), a network organisation that brings together non-governmental organisations and professional bodies that work with Scotland's built environment. As such CIfA has contributed to the formulation

of the BEFS submission to this Committee and we endorse the evidence contained therein (save insofar as it might differ from the following evidence which focuses on the issues from an archaeological perspective).

3. General

3.1 Scottish Government clearly recognises the value of Scotland's historic environment:

'Our historic environment has a huge role to play in shaping a bright future for Scotland and it is up to us all to ensure that it is passed on with pride to future generations'¹

3.2 The planning system has a key role to play in managing and safeguarding that historic environment and, in particular, Scotland's archaeological resource, much of which is undesignated and some of which has yet to be discovered. This role is implicit in the concept of sustainable development which requires an even-handed balancing of economic, social and environmental considerations.

3.3 In assessing the proposals in the Planning (Scotland) Bill, we are concerned in the first instance to see that that promotion and protection is not reduced and, preferably, that it is increased.

4. Specific Questions

1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

4.1.1 No. The emphasis appears to be on delivering housing and infrastructure (for instance, through the reinvigoration of simplified planning zones as simplified development zones) with little or no attention to the environment and, in particular, the historic environment. Although much remains to be determined through secondary legislation, we are not confident that this can or will adequately safeguard the historic environment.

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

4.2.1 The proposals in the Bill *may* result in higher levels of new house building, but the question is too simplistic. Firstly, it tacitly assumes that the primary cause of constrained housing development is the planning system (see the research for the Scottish Land Commission referred to in BEFS' submission² for evidence to the contrary). Secondly, it fails

¹ Ministerial Foreword to *Our Place in Time: The Historic Environment Strategy for Scotland (2014)*

² <https://landcommission.gov.scot/wp-content/uploads/2017/12/Land-Lines-Discussion-Paper-Housing-Land-Market-Dec-2017.pdf>

to acknowledge the need for *sustainable* housebuilding, i.e. the right houses in the right places.

4.2.2 Without a stronger accent on sustainability in the Bill and elsewhere, the historic environment (including its archaeological component) will be at significant risk.

3. Do the proposals in the Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?

4.3.1 When asked in the previous consultation on *Places, People and Planning* whether ‘strategic development plans should be replaced by improved regional partnership working?’ ClfA and FAME’s response was:

‘Only if mechanisms can be introduced which facilitate and ensure effective partnership working and take sufficient account at an appropriate level of the need to manage and protect the historic environment.’

4.3.2 We are not convinced that such mechanisms have been identified and fear that partnership working will gravitate towards the lowest common denominator, with agreement reached on relatively uncontroversial issues with more sensitive matters left unresolved. Mechanisms are needed to ensure that stakeholders are required to engage meaningfully and are accountable for their failure to do so.

4.3.3 Moreover, we have some concerns about the proposal in clause 8 of the Bill to include the National Planning Framework (NPF) as part of the statutory ‘development plan’ and the intention to incorporate Scottish Planning Policy (SPP) into the NPF (see paragraph 28 of the Policy Memorandum). This would have the advantage of embedding SPP historic environment provisions, in particular relating to non-designated historic assets (including historic assets with archaeological interest: see paragraphs 150 and 151 of SPP), in the development plan. However, we remain of the view that development plans should reflect local circumstances and are concerned to see that this proposed change does not undermine the ability of local development plans fully to reflect those local circumstances.

4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

4.4.1 Some proposed changes (such as the ‘gatecheck’ provisions) have the potential to contribute to these aims but the devil will be very much in the detail. Such detail will need to include early and meaningful consideration of the historic environment and to address

resource issues facing hard-pressed local authorities (including their archaeological and historic environment services) in any attempt to front-load the system.

4.4.2 Other proposed changes (such as the removal of the requirement in local development plans for a vision statement which is to be effectively provided by local outcomes improvement plans) pre-suppose effective and comprehensive community input which is by no means guaranteed (see below).

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

4.5.1 No. This is a major concern for ClfA and FAME. It is not clear how appropriate archaeological assessment and evaluation could be secured in respect of all potential sites in such zones and by whom it would be carried out. Without substantial additional resources it is unreasonable and unrealistic to expect local authorities to undertake or commission all such work.

4.5.2 Not all nationally-important historic assets are designated and, in the absence of appropriate safeguards, these changes may well lead to the loss or damage of such assets. Although in other cases development on a specific site might be acceptable in principle in archaeological terms, without the ability to impose conditions or obligations tailored for that site, significant harm to historic assets and their significance is likely to ensue. The difficulties are compounded when dealing with buried remains where the nature and extent of the archaeological interest is at the outset often unknown.

4.5.3 Against this background, the potential availability of SDZs in conservation areas and the ability to by-pass listed building and conservation area consents is also of concern.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area?

Will the proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans?

If not, what more needs to be done?

4.6.1 Local place plans are not proposed to be part of the statutory development plan – a stance which we support – and consequently a better way to facilitate more effective community engagement in planning decisions affecting their area might be through enhanced engagement in the development plan process.

4.6.2 Given that they are not part of the statutory development plan, the effectiveness of local place plans in practice must be in doubt and we are not convinced that there will be sufficient funding to ensure that all communities will benefit from these provisions. In the absence of such funding these provisions may help the 'well-heeled and sharp-elbowed' but not all communities across the board.

4.6.3 If local place plans are to be introduced we repeat the view (expressed in response to earlier consultation) that there need to be clear provisions to ensure that

- those plans are in general conformity with local and national policies
- there are appropriate mechanisms to ensure that the impact of policies and proposals in such plans upon the historic environment are adequately addressed
- communities are given access to appropriate planning and related expertise (including expertise in relation to archaeology and the historic environment generally) to assist in the preparation of such plans
- communities receive other support training and guidance.

7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?

4.7.1 Yes. Enforcement is a key area both generally and in relation to the protection of the historic environment. Increased fines and the ability to recover expenses are welcomed, but the efficacy of such measures will be undermined if local authorities and other agencies involved in enforcement are not adequately resourced properly to pursue these issues wherever necessary.

8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development?

Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development?

Are there lessons that can be learned from the Infrastructure Levy as it operates in England?

4.8.1 There is a lack of clarity as regards the detailed scheme envisaged by Scottish Government. There are lessons to be learned from the operation of the Infrastructure Levy in England (where problems have been encountered as highlighted in the BEFS submission) and it would have been helpful to consider the detail and the principle together (along with wider consideration of land value capture).

4.8.2 Nonetheless, if an Infrastructure Levy scheme is to be introduced in Scotland we would welcome a framework which allows some of that levy to be used to support the historic environment.

9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?

4.9.1 Yes. Such training should not be a 'tick-box' exercise and should include training in relation to archaeology and the historic environment.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

4.10.1 They will only do so if the detailed monitoring and improvement measures are aimed at quality and not purely quantity. What needs to be encouraged is sustainable development, not any development.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high –performing planning system the Scottish Government wants?

If not, what needs to change?

4.11.1 This will help, but only if those fees (or at least part of them) are used to support planning and related services (including archaeology and historic environment services).

12. Are there any other comments you would like to make about the Bill?

4.12.1 There has been great concern in the sector about the loss of supplementary planning guidance which has been a useful tool for the historic environment. It is appreciated that the Bill refers to *statutory* supplementary guidance, but it would be helpful to clarify the precise nature of this proposed change.

4.12.2 More fundamentally, the Bill misses the opportunity clearly to identify the purpose of planning - the achievement of sustainable development and the notion of public benefit should be central to that purpose. Furthermore, at a time when environmental principles such as polluter pays and the precautionary principle are seen by some in the UK as vulnerable in the wake of the United Kingdom's exit from the European Union, it would be timely firmly to embed such principles in Scottish Law.

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