Planning Controls, Pay Day Lending and Betting Offices

Consultation Paper on Changes to Planning Legislation

August 2014
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CONSULTATION ON PLANNING CONTROLS, PAY DAY LENDING AND BETTING OFFICES

Responding to this consultation paper

We are inviting written responses to this consultation paper by 14 November 2014. Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

PlanningPDLbetting@scotland.gsi.gov.uk

or

Alan Cameron
Planning & Architecture Division
Scottish Government
Area 2-H
Victoria Quay
EDINBURGH
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If you have any queries contact Alan Cameron on 0131 244 7065.

We would be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at http://www.scotland.gov.uk/consultations.

The Scottish Government has an email alert system for consultations, http://register.scotland.gov.uk. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.
All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the attached Respondent Information Form). These will be made available to the public in the Scottish Government Library and on the Scottish Government consultation web pages by the end of 2014. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on planning controls and pay day lending and betting offices. We aim to issue a report on this consultation process and lay legislation in Parliament by the end of 2014.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact details above.
Introduction

1. Concerns have been expressed in recent years about the levels of problem gambling and personal indebtedness and the prevalence of betting shops and premises selling high interest short term loans – often referred to as pay day lending (PDL).

2. The regulation of gambling and financial services is currently a reserved matter for the UK Government and Parliament. The Scottish Government and Parliament cannot at present legislate to regulate these matters directly to restrict the numbers of betting shops or premises selling payday loans, or regulate how these activities are conducted to address concerns about, for example, gambling addiction or excessive indebtedness. However, as described in its Action Plan of 8 August 2014 (link below), following the earlier Summit on Gambling and Pay Day Lending in Scotland’s Town Centres and Neighbourhoods, the Scottish Government is taking steps within its current devolved powers to address concerns about these matters where it can.

http://www.scotland.gov.uk/Topics/Built-Environment/regeneration/town-centres/PayDayLendingActionPlan

3. This consultation implements the Scottish Government’s commitment in the Action Plan to consult on changes to planning legislation. The planning issue relates to concerns about the negative impact of over-provision or clustering of betting shops and pay day lenders on the character and amenity of town centres and shopping areas and the wellbeing of communities. The revised Scottish Planning Policy (SPP), published in June, recognised these concerns and the role of planning in addressing them.

4. There are two strands to the planning element: i) requirements for applications for planning permission; and ii) the policy and evidence base for supporting decisions on such applications. This paper is concerned with the former issue. The new SPP, paragraphs 67 and 70 in particular, set out the national planning policy context as regards ii) above, but will be reliant on local planning policy and evidence to support decisions.

http://www.scotland.gov.uk/Topics/Built-Environment/planning/Policy

5. Partial Business and Regulatory and Equalities Impact Assessments are included in Annexes A and B respectively.
Planning Mechanisms

6. This section explains some of the technical aspects of the planning system and how these relate to the issues of concern with Betting Shops and PDL.

7. In order to increase the potential for planning control on premises changing use to betting shops or PDL, legislative change would be required.

8. It should be noted that existing betting shops and PDL premises would not require planning permission for their activities as a result of the changes discussed below. Only the change of use of premises to such activities made after a legislative change would be affected.

“Development” requiring planning permission

9. The relevant trigger for requiring planning permission in this context is where there is a material change in the use of land or buildings. This comes from the definition of “development” in Section 26 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act). The 1997 Act specifies that “development” requires planning permission.

10. While the planning system will seek to control material changes in the use of premises from a shop to an office offering services to the public, it does not generally seek to control the range of goods and services being sold from a shop or from an office. That is part of the reason why certain goods and services have separate controls where there are concerns about their presence or sale, for example, licensing of gambling, alcohol sales, selling knives, the presence of hazardous substances, emissions controls and so on.

The Use Classes Order (the UCO)

11. The 1997 Act enables an order to be made specifying classes of use of land and premises and that changes between uses in the same class are not “development” and do not, therefore, require planning permission. This order is currently the Town and Country Planning (Use Classes) (Scotland) Order 1997 (UCO). The aim of the UCO is to group uses with similar planning implications together so as to remove unnecessary planning applications. Where a change of use is not covered by the UCO, then planning permission would be required for a material change of use.


The General Permitted Development Order (the GPDO)
12. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO), grants a general planning permission across Scotland for a range of “development”. This removes the need to apply to the planning authority for planning permission. These “permitted development rights” include planning permission for certain changes of use.

**The current position with betting shops and PDL and the UCO and GPDO**

13. The UCO, Class 2 covers “use for the provision of:

   (a) financial services;
   (b) professional services; or
   (c) any other services (including use as a betting office)

which it is appropriate to provide in a shopping area and where the services are provided principally to visiting members of the public.”

14. Betting shops, or betting offices as they are referred to here, are specifically mentioned, though not defined precisely. Like most of the uses mentioned in the UCO there is no further definition of the terms. People generally recognise what a betting shop, a public house or a travel agency is when they see it.

15. Selling pay day loans is not specifically mentioned in the UCO. The term PDL refers to offering loans on particular terms rather than something that would necessarily be recognised as a “use” in planning terms.

16. It seems likely that in practice, premises engaged in PDL would currently fall within Use Class 2, assuming they are specialising in such lending or are PDL alongside other lending, financial and professional services.

17. The GPDO grants planning permission for changes between certain use classes in the UCO, in particular: from Class 2 (Financial, professional and other services), which are appropriate to provide in shopping areas and to visiting members of the public, to Class 1 (Shops); from Class 3 (Food and Drink) to Class 2; and from hot food takeaways to Class 2.

**Proposed Changes**

*Betong Offices*

18. The proposal is to remove reference to “betting offices” from Class 2 and add “betting offices” to the list of uses in article 3(5) of the UCO. Article 3(5) provides that a use listed there does not fall within any of
the classes to the UCO. Other uses listed in article 3(5) include: amusement arcades; public houses; theatres and hot food takeaways.

19. In addition, the GPDO would be amended so that, while changes of use to betting offices may require planning permission, as far as possible the current freedoms from planning control to change from use as a betting office to other uses would remain.

20. We also propose specifying that the definition of “betting offices” should follow section 150(e) of the Gambling Act 2005, namely premises licensed under that Act for “the provision of facilities for betting, whether by making or accepting bets, by acting as a betting intermediary or by providing other facilities for the making or accepting of bets”.

21. We understand that fixed odds betting terminals (FOBT) are classed as B2 gaming machines in Gambling legislation, and that these would only be available in betting offices and casinos. We do not anticipate therefore that increasing planning controls on betting offices would displace activity, such as FOBT, to other premises which might then start to cluster.

Q1. Do you agree with this approach to dealing with betting offices? If not, please specify why not.

Q2. Do you consider there to be a more effective approach to changes around betting offices? If so, please describe the approach.

Pay Day Lending

22. As indicated in paragraph 16 above, premises offering PDL services are likely to be covered by the financial services element of Class 2 (Financial, professional and other services). Despite the wide use of the terms pay loan, pay day lender and PDL, there is not a widely agreed single definition as to whom or what the terms refer.

23. The Financial Conduct Authority’s definition states a pay day lender offers high cost short term credit where:

- APR is equal to or higher than 100%
- Credit is provided for any period up to 12 months
- Credit is not secured by a mortgage, charge or pledge

24. PDL can be offered from a variety of premises, ones which might specialise in such lending or others which offer it as part of a range of products or services, such as pawn broking, cheque cashing, money transfers, foreign exchange and/or other financial services or a combination of these.
25. In many cases, therefore, PDL may form only a limited aspect of the range of financial services offered from the premises and may be a part, perhaps only a very small part, of the overall use of the premises.

26. Another challenge in applying planning controls to premises engaging in PDL is that, despite definitions provided by the likes of the FCA, it is not straightforward to identify a suitable definition of PDL for the purposes of the UCO. Any definition would require to be sufficiently broad to catch the wide range of potential activities that should be included, otherwise slight changes in loan terms might avoid controls. At the same time, it should not be so broad as to capture a much wider range of activities unnecessarily.

Q3. Do you believe that a specific definition of PDL, similar to the FCA's definition in paragraph 23 above, should form part at least of the exclusion of uses from the UCO? If so what should the definition be?

27. In order to achieve any additional planning control over changes of use within the financial services sector, a wider range of activities would be likely to have to be removed from Class 2 of the UCO. Two Options are considered below. Essentially these are:

   i) continue to include financial services within Class 2 but subject to certain exclusions; or

   ii) replace the general reference to financial services with references to specific financial activities.

28. The first approach in Option 1 seeks to identify and exclude from Class 2 the sorts of businesses likely to offer PDL and which are likely to cluster in shopping areas, undermining the character or amenity of the area or the wellbeing of communities. The second approach in Option 2 seeks to identify and include the sorts of financial services business less likely to either engage in PDL or to cluster in shopping areas, and which are, therefore, less likely to be associated with the negative impacts mentioned above.

29. We do not propose to amend Class 1 (Shops), on the basis that, as their main characteristic is that of shops selling goods to the public, the fact they may be offering pay day loans as a side line would be less likely to materially affect the character or amenity of shopping areas or the wellbeing of communities. As with other mixed uses, it would be for the planning authority to judge whether the activities at a particular shop meant it had gone beyond a Class 1: Shops use and required planning permission for other uses, such as financial services.

Q4. Do you agree that Class 1 (Shops) should be excluded from any changes regarding PDL? If not, why not?
30. As described above there are broadly two approaches to removing uses from Class 2 that might engage in PDL. With both options, as with betting offices, we propose to use the GPDO to retain, as far as possible, the existing freedoms from planning control for changes from uses associated with PDL to other uses.

Option 1

31. Remove from Class 2 specific activities which are likely to offer PDL, perhaps alongside other products and services, and to cluster or be prevalent in shopping areas to the extent that they would undermine the character and amenity of the area or the wellbeing of communities, and exclude them from the UCO.

32. The candidates for activities to be removed from Class 2 and added to the list in article 3(5) of the UCO would appear to be uses involving:

   “Money Service Business” – as defined in Regulation 2 of the Money Laundering Regulations 2007, i.e. an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers.

   “Pawn broking”

   “Premises for buying goods from visiting members of the public”

   “Financial lending other than by deposit takers”

   “Deposit takers” – means an entity with permission under Part 4A (permission to carry on regulated activities) of the Financial Services and Markets Act 2000(1) that includes accepting deposits, including—

   (i) a bank;
   (ii) a building society within the meaning of section 119(1) (interpretation) of the Building Societies Act 1986(2);
   (iii) a credit union within the meaning of section 31(1) (interpretation) of the Credit Unions Act 1979; or
   (iv) a friendly society within the meaning of section 116 (friendly societies etc.) of the Friendly Societies Act 1992(4).

33. This approach may not sufficiently cover all premises which might engage in PDL as a secondary or ancillary activity and such premises might cluster.

Q5. Do you think this would represent an effective and proportionate approach to addressing the concerns about clustering and over provision of pay day lenders? If not, why not?
Q6. What other activities which might be involved in PDL should be added to the exclusions? Please explain why and provide any examples.

Q7. What other exceptions to the exclusion of financial lending should be included (i.e. alongside “deposit takers”)? Please explain why and provide examples.

**Option 2**

34. Limit the “financial services” to be included in Class 2 of the UCO to a number of more specific uses.

35. These limited uses to be included should relate to financial services unlikely to raise the sorts of planning concerns with PDL, even if some, like the “deposit takers” below, may have products which would be regarded as within some definition of a pay day loan.

36. The proposed limited list of “financial services” to be included in Class 2 (i.e. financial service uses remaining in Class 2 along with professional and other services) is:

“Accountancy services”

“Insurance Services”

“Deposit takers” – i.e. an entity with permission under Part 4A (permission to carry on regulated activities) of the Financial Services and Markets Act 2000(1) that includes accepting deposits, including—

(i) a bank;
(ii) a building society within the meaning of section 119(1) (interpretation) of the Building Societies Act 1986(2);
(iii) a credit union within the meaning of section 31(1) (interpretation) of the Credit Unions Act 1979; or
(iv) a friendly society within the meaning of section 116 (friendly societies etc.) of the Friendly Societies Act 1992(4).

37. This approach would not include explicit exemptions for “professional services” or “other services” who may be engaged in some “financial services” as part of an overall package of services, e.g. estate agents’ or solicitors’ offices. As with other mixed uses, it would be for the planning authority in individual cases to consider whether the extent of any financial services provided by such premises was material change of use requiring planning permission.

38. While this has the advantage of applying control to a wider range of uses of premises that might also offer PDL services, it is likely to mean
that more financial services activities that are not of concern would in
future require planning permission.

Q8. Do you think this would represent an effective and
proportionate approach to addressing the concerns about
clustering and over provision of PDL? If not, why not?

Q9. Should the exclusions from the UCO be extended beyond
those described in this option? If so please explain and provide
eamples.

Q10. What other exceptions to the exclusion of financial services
should be included (i.e. alongside “deposit takers” etc.)? Please
explain and provide examples.

Q11. Which approach would you prefer, Option 1 or Option 2?
Please explain your answer.

Q12. Do you have any other comments or suggestions? Please
elaborate.

Q13. BRIA – Can you identify likely costs and benefits associated
with the potential changes discussed in this paper which should
be covered in the BRIA?

Q14. EqIA – Please provide details of any specific issues for any
of the equality groups (including race, disability, age, sexual
orientation, gender or religion and belief) which you think may
arise in relation to the potential changes discussed in this paper.
Partial Business and Regulatory Impact Assessment

Title of Proposal: Town and Country Planning (Use Classes) Amendments (Scotland) Order 2014

Purpose and intended effect

Background

1. Concerns have been expressed in recent years about the levels of problem gambling and personal indebtedness and the prevalence of betting shops and premises selling high interest short term loans – often referred to as payday lending.

2. The regulation of gambling and financial services is currently a reserved matter for the UK Government and Parliament. The Scottish Government and Parliament cannot at present legislate to regulate these matters directly to restrict the numbers of betting shops or premises selling payday loans, or regulate how these activities are conducted to address concerns about, for example, gambling addiction or excessive indebtedness. However, as described in its Action Plan of 8 August 2014, following the earlier Summit on Gambling and Pay Day Lending in Scotland’s Town Centres and Neighbourhoods, the Scottish Government is taking steps within its devolved powers to address concerns about these matters where it can.

4. This consultation implements the Government’s commitment in the Action Plan to consult on changes to planning legislation. The Planning issue relates to concerns about the negative impact of over-provision or clustering of betting shops and payday lenders on the character and amenity of town centres and shopping areas and the wellbeing of communities. The revised Scottish Planning Policy (SPP), published in June, recognises these concerns and the role of Planning in addressing them.

5. There are two strands to the planning element: i) requirements for applications for planning permission; and ii) the policy and evidence base for supporting decisions on such applications. This consultation paper and BRIA is concerned with the former issue and changes to, primarily, the Town and Country Planning (Use Classes) (Scotland) Order 1997 (the UCO).

6. The new SPP, paragraphs 67 and 70 in particular, set out the national planning policy context as regards ii) above, but will be reliant on local planning policy and evidence to support decisions.

http://www.scotland.gov.uk/Publications/2014/06/5823

Objective
7. To help avoid over provision and clustering of betting shops and payday lending in shopping areas to an extent which may undermine the character and amenity of such areas or the wellbeing of communities. Implementing the policy in the SPP and development plan policies means removing exemptions from planning control in the Use Classes Order which relate to such activities, so that the relevant changes of use are subject to planning application procedures.

Rationale for Government intervention

8. The Scottish Government believes planning authorities in supporting their town centres should have the powers necessary to promote an appropriate mix of uses in shopping areas. This is in line with the Scottish Government’s strategic objectives of a Scotland that is Wealthier & Fairer and Safer & Stronger and the national outcome that “We live in well-designed, sustainable places where we are able to access the amenities and services we need”.

Consultation

Within Government

9. We have consulted within the Scottish Government with officials responsible for licensing, financial services and indebtedness and bankruptcy.

10. We also liaised with the Gambling Commission as regards the current trends in betting office provision and the definition of activities associated with betting offices.

Public Consultation

11. On 23 June 2014 the Scottish Government held a summit on Gambling and Pay Day Lending in Scotland's Town Centres and Neighbourhoods. This involved a number of stakeholders from the payday lending and gambling industries, regulatory bodies and bodies dealing with problems of debt and gambling. This was an opportunity for these stakeholders and the Scottish Government to discuss the issues and possible approaches to addressing concerns, including those about over provision and clustering of these activities in town centres and shopping areas.

Business

12. We will identify 6 businesses engaged in providing high street betting offices. We will use contacts as necessary in organisations such as the Gambling Commission and the Association of British Bookmakers to identify businesses of different sizes in this regard.
13. We will similarly identify 6 business engaged in providing pay day lending activities from high street premises. This will cover the range of different businesses who offer such services, as pay day lending is generally provided alongside other financial services. Again, contacts in organisations, such as the Financial Conduct Authority will be used to ensure an appropriate spread of business organisations.

Options

14. The Town and Country Planning (Use Classes) (Scotland) Order 1997 (the UCO) groups certain uses of land and premises into classes. Changes between uses which are in the same class do not require planning permission. Changes between uses which are not in the same class require planning permission where the change is material in the circumstances of the case.

15. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO) includes permitted development rights which grant a general planning permission across Scotland for various developments, removing the need to apply to the planning authority for planning permission. This includes permitted development rights for various changes of use, including to and from the activities of concern.

16. While the proposed changes to the UCO would mean the permitted development rights in the GPDO will no longer apply to betting offices and pay day lending, the intention is to amend the GPDO so that the permitted development rights to change the use of premises from these activities will still have permitted development rights.

A – Betting offices

17. Betting offices are specifically referred to in Class 2 (Financial, professional and other services).

Option A1 – Keep the current position

18. If betting offices remain in Class 2, any change to a betting office from another use in the same class, or granted by permitted development rights for changes to Class 2 use, would be exempt from the need for an application for planning permission. There would be no opportunity for planning authorities to bring to bear on such changes of use any development plan policies and other material considerations relating to concerns about negative impacts associated with the over provision and clustering of such uses in shopping areas, as described in the SPP.

Option A2 – Amend the UCO
19. The proposal is to remove reference to betting office from Class 2 and list it in article 3 of the UCO, which lists a number of uses which are not included in any of the classes in the UCO.

20. In addition, the GPDO would be amended so that the changes of use from betting offices to other uses currently covered by Class 2 or granted by the GPDO remain, as far as possible, exempt from the need for an application for planning permission.

**B – Pay Day Lending**

21. Premises do not necessarily specialise in pay day lending and such lending can be one of a number of financial services offered from premises. It seems likely that, in terms of premises on the high street, most pay day lending would be offered from premises in Class 2 (Financial, professional and other services).

22. As pay day lending may only be a part, even a small part of the overall use of premises, it seems likely we would need to remove a wider range of financial services which may be involved in offering such lending from the UCO in order to bring planning controls to bear on this activity.

**Option B1 – Keep the current position**

23. As with betting offices, if there is no change in the UCO, changing premises to a use associated with pay day lending from another Class 2 use or where permitted development rights apply, will continue to be exempt from the need for an application for planning permission. There would be no opportunity for the planning authority to bring to bear on such a change any development plan policies or other material considerations relating to concerns about negative impacts associated with the over provision and clustering of such uses in shopping areas, as described in the SPP.

**Option B2 – Amend the UCO**

24. Given the wide range of activities that may engage in part in pay day lending, the consultation paper sets out two approaches: i) remove certain financial services activities from Class 2 (and include them in article 3 of the UCO); or ii) only allow certain financial services in Class 2 that would be less likely to offer pay day lending and/or less likely to create negative impacts through over provision or clustering of premises.
Sectors and groups affected

25. The changes would not affect existing premises engaged in these activities, only future changes of use of premises made after the proposed changes.

26. Firms providing betting office premises in town centres and shopping areas etc.

27. Financial services which are associated with offering high interest short term unsecured credit, as at least part of their offer, from premises in town centres and shopping areas etc.

28. Operators in these areas will face an increase in the circumstances in which changing premises to their activities require planning permission. In some cases, primarily where there are development plan policies and other material considerations relating to the negative impacts of over provision or clustering of such activities, planning permission may be refused. This does not mean alternative premises cannot be pursued.

Benefits

Options A1 and B1 – Do nothing

29. The benefits here are essentially in terms of not incurring the costs associated with Options A2 and B2

Options A2 and B2 – Amend the UCO

30. Planning authorities would have the opportunity to bring development plan policies and other material considerations regarding protecting the amenity and character of town centres and shopping areas and the wellbeing of communities from the negative impacts associated with over provision and clustering of these activities.

Costs

Options A2 and B2 – Amend the UCO

31. The main cost associated with an increase in planning control is likely to be regarding the uncertainty of the outcome of the process and the refusal of planning permission for premises in some cases. The need for planning permission does not equate to an ability to refuse planning permission. Decisions on planning applications must be made in line with the development plan unless other material considerations indicate otherwise.
32. It is not necessarily the case that every planning authority would develop policies to support refusal of such permission due to the effects of clustering or over provision in all parts of its area.

33. To some extent the costs of uncertainty and refusal can be mitigated by identifying premises which would not contravene development plan policies on over provision and clustering. This is not cost free.

34. There are other costs, relatively more easily quantifiable, associated with the costs of making an application for planning permission.

**Betting Offices**

**Option A1 – Do nothing**

35. The costs of the negative impacts on amenity and character of an area or the wellbeing of communities in the absence of increased planning controls on over provision and clustering of betting offices.

**Option A2 – Amend the UCO**

36. The cost of an application for planning permission for change of use is £401. According to Gambling Commission figures for 2012, there were 1180 betting offices in Scotland. The general trend is that the numbers of such offices is about constant in recent years, though premises may be closing in some areas and opening in others.

37. The provision of betting offices is dominated by four major operators (William Hill, Ladbrokes, Gala Coral Group and Betfred), whose premises account for 87% of betting offices in the UK.

38. If we assume 10% of premises are closing and 10% opening in new locations each year, that suggests a cost in planning fee terms: 118 x £401 = £47,318 per annum.

39. A number of these applications would arise regardless of the proposed changes of the legislation.

40. The other supporting information that might accompany an application, in terms of jobs, business rate income, increased footfall is likely to have been generated in any event as part of a company’s own business case for opening new premises.
Pay day lending

Option B1 – Do nothing

41. The costs of the negative impacts on amenity and character of an area or the wellbeing of communities in the absence of increased planning controls on over provision and clustering of pay day lending outlets.

Option B2 – Amend the UCO

42. The cost of an application for planning permission for change of use is £401. There are estimated to be 180 to 200 pay day lending premises in Scotland.

43. If we assume as many as twenty new premises open a year (10%), that suggests a cost in planning fee terms: 20 x £401 = £8,020 per annum.

44. A number of these applications would arise regardless of the proposed changes of the legislation.

45. The other supporting information that might accompany an application, in terms of jobs, business rate income, increased footfall who is likely have been generated in any event as part of a company’s own business case for opening new premises.

Scottish Firms Impact Test

46. To be completed post public consultation.

Competition Assessment

47. To be completed post consultation.

48. The aim of the policy in the SPP, which these amendments to the UCO are supporting, is not intended to provide for regulation of competition. The fact that the SPP is seeking to address concerns about over provision and clustering of certain activities in shopping areas to help address concerns about related negative impacts on the amenity or character of an area or wellbeing of a community, may mean there is some effect on competition, at least in terms of outlets competing in close proximity to one another.

49. A requirement to obtain planning permission that may arise from the proposals for changes to the UCO would not in itself limit range of suppliers. Whether there will be any limitations on competition will depend on the individual circumstances of a case and, in particular, the presence of any development plan policies locally on preventing over provision or clustering of the activities in question.
Will the proposal directly limit the number or range of suppliers? No
Will the proposal indirectly limit the number or range of suppliers? No
Will the proposal limit the ability of suppliers to compete? Not in itself.
Will the proposal reduce suppliers’ incentives to compete vigorously? Not in itself

Test run of business forms

50. No new business forms will be introduced as a result of the proposed changes to the UCO.

Legal Aid Impact Test

51. No impact on Legal Aid is anticipated in this regard. The changes bring certain changes of use of premises within the existing planning applications procedures, including related planning appeal procedures. Changes of use of premises to the activities in question may already require applications for planning permission where the existing exemptions do not apply: for example, where premises operating under Class 1 (Shops) changes to Class 2 (Financial, professional and other services).

Enforcement, sanctions and monitoring

52. The proposed amendments to legislation would mean certain changes in the use of premises may require planning permission in future where currently they do not. The changes operate within the existing planning framework, which includes enforcement provisions, which it is for the planning authority to implement in the first instance.

53. The numbers of applications for planning permission likely to be generated are unlikely to show up as significant changes in the overall numbers of planning applications generally. Through our regular contact with planning authorities, through the Heads of Planning Scotland network – their development management sub-committee in particular – we will monitor the impact of the changes in terms of number of planning applications and decisions. We will likewise seek feedback from the representative bodies of the sectors likely to be affected by the changes.

Implementation and delivery plan

54. The intention is that legislative changes stemming from this consultation will be laid before the Scottish Parliament by the end of
2014. Subject to Parliamentary consideration, legislation would be expected to come into effect in January 2015.

55. The laying of the legislation and coming into force date will be publicised through our Planning e-alert system.

56. The changes will apply to changes of use made on or after the coming into force date of the legislation, and an application for planning permission will be required where material changes in the use of premises are involved.

Post-implementation review

57. We will consider the impact of the changes through our regular contacts with planning authorities through Heads of Planning Scotland. We will also seek views from the sectors affected, through representative bodies initially at least.

58. Although there are no plans at present, the UCO is likely to be subject to review, in part at least, in the near future. This would provide an opportunity for further evaluation of the changes referred to in the BRIA.

Summary and recommendation

59. At this stage Options A2 and B2 i) or ii) are recommended. The policy set out in the current SPP will not operate effectively if the activities in question are to a large extent exempt from planning controls. The costs of making an application are relatively small in themselves. We appreciate, however, that there will be other costs associated with identifying sites more likely to comply with development plan policies locally, the uncertainty of outcome (compared to previously being exempt from planning requirements in many cases) and the costs of refusal.
**Summary costs and benefits table**

<table>
<thead>
<tr>
<th>Option</th>
<th>Total benefit per annum:</th>
<th>Total cost per annum:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- economic, environmental, social</td>
<td>- economic, environmental, social</td>
</tr>
<tr>
<td>Option A1</td>
<td>Avoids the costs associated with Option A2 for betting office operators.</td>
<td>Missing out on the benefits associated with Option A2.</td>
</tr>
<tr>
<td>Option A2</td>
<td>Allows authorities to avoid the negative impacts on the amenity and character of town and shopping areas and the wellbeing of communities associated with clustering and over provision of betting offices.</td>
<td>The changes to the UCO could involve planning applications costs of around £50,000 per annum. In addition costs associated with: identifying sites in line with development plan policies; uncertainty of the outcome of applications; and of refusal of permission in some cases.</td>
</tr>
<tr>
<td>Option B1</td>
<td>Avoids the costs associated with Option B2 for betting office operators.</td>
<td>Missing out on the benefits associated with Option B2.</td>
</tr>
<tr>
<td>Option B2 (i) and (ii))</td>
<td>Allows authorities to avoid the negative impacts on the amenity and character of town and shopping areas and the wellbeing of communities associated with clustering and over provision of pay day lending outlets.</td>
<td>The changes to the UCO could involve planning applications costs of around £10,000 per annum. In addition costs associated with: identifying sites in line with development plan policies; uncertainty of the outcome of applications; and of refusal of permission in some cases.</td>
</tr>
</tbody>
</table>

Scottish Government Contact point:  
Alan Cameron  
Directorate for Local Government & Communities  
Planning & Architecture Division  
0131 244 7065  
Alan.cameron@scotland.gsi.gov.uk
**EQUALITY IMPACT ASSESSMENT RECORD**

<table>
<thead>
<tr>
<th><strong>Title of policy/ practice/ strategy/ legislation etc.</strong></th>
<th>Planning Controls and Pay Day lending and Betting Offices</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minister</strong></td>
<td>Minister for Local Government &amp; Planning</td>
</tr>
<tr>
<td><strong>Lead official</strong></td>
<td>Alan Cameron: Planning &amp; Architecture Division</td>
</tr>
<tr>
<td><strong>Officials involved in the EQIA</strong></td>
<td>Planning and Architecture Division</td>
</tr>
<tr>
<td><strong>Directorate: Division: Team</strong></td>
<td>Directorate for Local Government and Communities Planning and Architecture Division</td>
</tr>
<tr>
<td><strong>Is this new policy or revision to an existing policy?</strong></td>
<td>The policy already exists – Scottish Planning Policy, paragraphs 67 and 70. This consultation relates to revisions to legislation so that the policy can be brought to bear on individual proposals. The Use Classes Order exempts various changes in the use of premises from the need for planning permission. The proposal is to remove some of the exemptions so that planning policy considerations can be brought to bear on individual proposals.</td>
</tr>
</tbody>
</table>

**Screening**

**Policy Aim**

The ultimate aim is to avoid the negative impacts on the amenity or character of town centres and shopping areas or the wellbeing of communities associated with the over provision or clustering of certain premises, namely betting offices and pay day lending outlets.

The Scottish Planning Policy, already recognises the role of planning in this regard. This consultation relates to changes to legislation so that there are more planning applications for changes of premises to these uses to which planning considerations can be brought to bear.

**Who will it affect?**

The main parties affected will be developers wishing to change premises to betting offices or premises associated with pay day lending. They will require to apply for planning permission where previously they did not. The decision on the application will be driven by any new development plan policies locally.
and evidence relating to the negative impacts mentioned above, stemming from the national policy in the SPP.

There may be an issue with competition. The changes do not amount to a ban on such activities, but are aimed at avoiding over provision and clustering. This may mean there are fewer service providers on the high street. This may affect customers who would otherwise benefit from competition between providers.

**What might prevent the desired outcomes being achieved?**

If the development plan policies and evidence bases are not established locally, decisions on applications to prevent clustering or over provision and the associated effects may not withstand challenges on appeal. That is, the proposed changes mean only that planning applications may be needed. It is the local policies and evidence – stemming from the existing SPP – that will drive the outcome.

**Stage 1: Framing**

**Results of framing exercise**

The proposed changes will result in greater transparency over the provision of pay day lending and betting offices in Scotland’s town centres and shopping areas. Where there is a change of use, such changes will require planning permission. The application for planning permission comes with a wide range of statutory requirements on the provision of public information.

**Extent/Level of EQIA required**


Further information is required on the impact of the changes on each of the protected characteristics. It is proposed to carry out consultation on the proposed legislative changes required to implement the policy intention and this will inform the extent/level of any further assessment that may be required.
### Stage 2: Data and evidence gathering, involvement and consultation

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Evidence gathered and Strength/quality of evidence</th>
<th>Source</th>
<th>Data gaps identified and action taken</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AGE</strong></td>
<td>Where participation in the National Lottery was removed from the figures, participation rates were higher among the youngest age group (64% of men and 47% of women aged 16-24) and lowest among the oldest age group (35% of men and 26% of women aged 75 and over).</td>
<td>Scottish Health Survey 2012</td>
<td>Additional comments requested in consultation</td>
</tr>
<tr>
<td><strong>DISABILITY</strong></td>
<td>No information found</td>
<td></td>
<td></td>
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<tr>
<td><strong>SEX</strong></td>
<td>In 2012, seven in ten adults (aged 16 and over) had gambled in the previous 12 months with men significantly more likely than women to have done so (74% and 67% respectively). In 2012, men bet on horse races (not online) (14%), bet on other sports events (not online) and played slot machines (both 12%). The comparative figures for women were 7%, 2% or less and 4%. The likelihood of being a problem gambler was 11.6 times higher among men than women.</td>
<td>Scottish Health Survey 2012</td>
<td>Additional comments requested in consultation</td>
</tr>
<tr>
<td><strong>PREGNANCY AND MATERNITY</strong></td>
<td>No information found</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>GENDER REASSIGNMENT</strong></td>
<td>No information found</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEXUAL ORIENTATION</td>
<td>No information found</td>
<td>Additional comments requested in consultation</td>
<td></td>
</tr>
<tr>
<td>--------------------</td>
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<td>------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>RACE</td>
<td>Participation in many of the individual activities followed the same pattern as the protected characteristic of race and religion, with prevalence being lowest among Muslims.</td>
<td>Gambling behaviour in England and Scotland</td>
<td>Additional comments requested in consultation</td>
</tr>
<tr>
<td>RELIGION OR BELIEF</td>
<td>Past year gambling participation by the religion of the individual showed that Muslims were least likely to have gambled in the past year than those from other religions, including those with no religion.</td>
<td>Gambling behaviour in England and Scotland</td>
<td>Additional comments requested in consultation</td>
</tr>
</tbody>
</table>
THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at: Scottish Government consultations (http://www.scotland.gov.uk/consultations).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals;
- be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

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1 http://www.scotland.gov.uk/consultations
PLANNING CONTROLS, PAY DAY LENDING AND BETTING OFFICES
RESPONDENT INFORMATION FORM

Please Note this form must be returned with your response to ensure that we handle your response appropriately. A Word version of this form can be found at the entry for this consultation paper on: http://www.scotland.gov.uk/Consultations/Current

1. Name/Organisation
Organisation Name

Title  Mr  □  Ms  □  Mrs  □  Miss  □  Dr  □  Please tick as appropriate

Surname

Forename

2. Postal Address

Postcode

Phone

Email

3. Permissions - I am responding as...

[ ] Individual  /  [ ] Group/Organisation  Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  [ ] Yes  [ ] No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available  □

or

Yes, make my response available, but not my name and address  □

or

Yes, make my response and name available, but not my address  □

(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your response to be made available?

Please tick as appropriate  [ ] Yes  [ ] No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate  [ ] Yes  [ ] No
**CONSULTATION QUESTIONS**

**Q1.** Do you agree with this approach to dealing with betting offices? If not, please specify why not.

<table>
<thead>
<tr>
<th>Agree</th>
<th>Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Comments**

**Q2.** Do you consider there to be a more effective approach to changes around betting offices? If so, please describe the approach.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
<td></td>
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</table>

**Comments**

**Q3.** Do you believe that a specific definition of PDL, similar to the FCA’s definition in paragraph 23 above, should form part at least of the exclusion of uses from the UCO? If so what should the definition be?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

**Comments**

**Q4.** Do you agree that Class 1: Shops should be excluded from any changes regarding PDL? If not, why not?

<table>
<thead>
<tr>
<th>Agree</th>
<th>Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Comments**

**Q5.** Do you think this would represent an effective and proportionate approach to addressing the concerns about clustering and over provision of pay day lenders? If not, why not?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Comments**

**Q6.** What other activities which might be involved in PDL should be added to the exclusions? Please explain why and provide any examples.

**Comments**

**Q7.** What other exceptions to the exclusion of financial lending should be included (i.e. alongside “deposit takers”)? Please explain why and provide examples.

**Comments**

**Q8.** Do you think this would represent an effective and proportionate approach to addressing the concerns about clustering and over provision of PDL? If not, why not?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Comments**
Q9. Should the exclusions from the UCO be extended beyond those described in this option? If so please explain and provide examples.
Yes ☐ No ☐

Comments

Q10. What other exceptions to the exclusion of financial services should be included (i.e. alongside “deposit takers” etc.)? Please explain and provide examples.

Comments

Q11. Which approach would you prefer, Option 1 or Option 2? Please explain your answer.

Option 1 ☐ Option 2 ☐

Comments

Q12. Do you have any other comments or suggestions? Please elaborate.

Yes ☐ No ☐

Comments

Q13. BRIA – Can you identify likely costs and benefits associated with the potential changes discussed in this paper which should be covered in the BRIA?

Comments

Q14. EqIA – Please provide details of any specific issues for any of the equality groups (including race, disability, age, sexual orientation, gender or religion and belief) which you think may arise in relation to the potential changes discussed in this paper.

Comments