

## RESPONSE FORM

### PREPARATION OF THE TENTH PROGRAMME OF LAW REFORM

We hope that by using this form it will be easier for you to respond to the questions set out in the consultation paper. Respondents who wish to address only some of the questions may do so. The form reproduces the questions as set out in the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

Please note that information about this consultation paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act.

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are commenting on only one or two of the questions, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

Please save the completed response form to your own system as a Word document and send it as an email attachment to [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk). Comments not on the response form may be submitted via said email address or by using the [general comments form](#) on our website. If you prefer you can send comments by post to the Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR.

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# Questions

1. Do you have any suitable law reform projects to suggest?

## Comments on Question 1

Amend relevant legislation so that a portion of the land value uplift associated with the public allocation of land for development can be captured for use in the provision of the necessary associated infrastructure.

2. Do you have any project to suggest that would be suitable for the Commission Bill process in the Scottish Parliament; or, in relation to reserved matters, for the House of Lords procedure for Commission Bills?

## Comments on Question 2

No comment.

3. If suggesting a new project:-

- (a) Please provide us with information about the issues with the law that you have identified:

It is clear that the current Section 75 arrangements are not sufficient to provide the local and strategic infrastructure needed nationally. As part of the review of the planning system the Scottish Government is exploring options for introducing a new infrastructure charging mechanism. Research commissioned by the Scottish Government to explore this possibility concedes that while the contribution of such a levy is likely to be minor, it could help to deliver strategic infrastructure that is needed to support development across a wider area and could help to build a more confident, infrastructure first approach to planning and development. However, RTPI Scotland believes that there is also a case for exploring other complementary legislative approaches that will allow for some land value uplift from existing use to consented use value to be diverted from landowner profit to the public benefit.

The interdependency of land value uplift with infrastructure to serve that land justifies a contribution of some of that uplift to the costs of the additional infrastructure to serve the growth in uses, and growth in people accommodated, by a change of use that adds value.

The provision of new and upgraded infrastructure will be an essential part of realising the Scottish Government's ambition to make Scotland a more successful country. A structural change to the land market, where land owners can be certain that the value they receive for their land takes account of the public investment needed to make development on it viable in both financial and practical terms, could help accelerate the delivery of the needed development outlined in Local Development Plans.

(b) Please provide us with information about the impact this is having in practice:

It is the experience of RTPI Scotland members that development viability can often be a barrier to the delivery of Local Development Plans and planning consents. This can manifest in terms of it simply not being profitable to develop certain sites, because of the returns that can be expected. Alternatively, development is often practically unviable because there is no funding available for the provision of the infrastructure necessary to support it. The experience of other development systems internationally, for example in Germany and the Netherlands, is that this does not have to be the case.

The limited supply of land in optimal locations close to major employment clusters and transport infrastructure, amplified by the financial system and demand side policies, means that the value of land suitable for development tends to rise at a considerable rate over time. The gain in value that public investment in infrastructure delivers in particular is generally very high, and can further encourage strategic land trading rather than development. This financialisation of the land market can prevent land from coming forward for development, or even when land does come forward, the high value attached to it can greatly reduce the amount of money available to install the infrastructure essential for supporting residential or commercial development.

This market creates an environment in which some landowners may have unrealistic expectations over the value of their land, inhibiting otherwise viable development coming forward, especially when reinforced by conventional valuation practices. Paradoxically, economic upturns can exacerbate this, by encouraging an even greater sense of unreality among owners and developers about what returns are achievable.

Development viability is a major challenge to the delivery of development plans in Scotland, and for a long term solution to be reached, RTPI Scotland believes that the expectations of some landowners regarding the receipts for land sold for development may need to be adjusted.

(c) Please provide us with information about the potential benefits of law reform:

The independent panel appointed in 2015 by the Scottish Government to conduct a 'root and branch review' of the planning system concluded in its May 2016 Report *Empowering planners to deliver great places* that 'linking infrastructure with planning development is the most significant challenge for the Scottish planning system at this time.' Scotland faces a major infrastructure shortfall, in projects of local and strategic significance, and across sectors, from transport and education, to health and green space. Implementing a long term and strategic response to this could unlock significant potential for inclusive growth across the country.

#### **General Comments**

The Commission will be aware that the planning system in Scotland is currently under

review. Following several periods of consultation, evidence gathering and discussion we anticipate that a Planning Bill will be included in September's Programme for Government and laid in the Scottish Parliament before the end of 2017. The Scottish Government's *Places, People and Planning Position Statement* of 29 June 2017 offers some indication of how we can expect this legislation to respond to the findings of the independent panel. Details are still emerging, however it is very likely that the legislation will focus on procedural change to the planning system, with no immediate plans from the Scottish Government to attempt to reform the context within which the planning system operates. RTPi Scotland is concerned that without changes to this context – and particularly the operation of the land market – the aspirations that the Scottish Government has for the improved operation of the planning system, and especially strong performance on the delivery of plans, will not come to fruition.

Thank you for taking the time to respond to this consultation paper. Your suggestions and comments are appreciated and will be taken into consideration when preparing our Tenth Programme of Law Reform.