

**THE HIGHLAND COUNCIL**

**PLANNING, DEVELOPMENT AND INFRASTRUCTURE  
COMMITTEE**

Agenda Item	7
Report No	PDI 41-14

**5 NOVEMBER 2014**

**PLANNING CONTROLS, PAY DAY LENDING AND BETTING OFFICES  
CONSULTATION PAPER ON CHANGES TO PLANNING LEGISLATION**

**Report by Director of Development & Infrastructure Service**

**Summary**

The Scottish Government is consulting on possible changes to the planning legislation to address 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.

This report sets out the proposed response to the consultation and seeks Member approval to submit the response to Scottish Government prior to the close of the consultation on 14 November 2014.

**1. Background**

- 1.1 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).
- 1.2 The Scottish Government is consulting on possible changes to the planning legislation to address 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. The possible legislative changes relate to the requirement for applications for planning permission for change of use to betting shops or pay day lenders. Any legislative change would not apply retrospectively so existing pay day lender or betting shop premises would not be affected.
- 1.3 This report sets out the proposed response to the consultation and seeks Member approval to submit the response to Scottish Government prior to the close of the consultation on 14 November 2014. The consultation document is available at the following link:  
<http://www.scotland.gov.uk/Publications/2014/08/6425>

**2. Proposed Changes**

- 2.1 The planning system generally seeks to control material changes in use,

however, the Town and Country Planning (Use Classes) (Scotland) Order 1997 (UCO) groups similar uses together into use classes. This removes the need to make planning applications for a range of uses which have broadly similar planning implications. Further flexibility is provided by the Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (GPDO) which grants a general planning permission for a range of development. These permitted development rights include planning permission for certain changes of use (between use classes).

- 2.3 Currently betting shops and PDL premises are within use class 2, financial, professional or other services (including use as a betting office) which are appropriate in a shopping area, and where services are provided principally to visiting members of the public. Premises selling pay day loans are not specifically mentioned in the UCO, but are clearly providing financial services. The GPDO grants planning permission for changes of use from Class 3 (Food and Drink) and hot food takeaways to Class 2 (Financial, Professional, and other services), and from Class 2 to Class 1 (Shops). These changes are one way i.e. it is not possible to change from Class 1 to Class 2 or then Class 3 without a formal planning application being made.
- 2.4 The consultation document proposes to remove reference to betting shops in Class 2 and add them to the list of uses which do not fall within any of the use classes. Currently, amusement arcades, public houses, theatres and hot food takeaways, are included within this list of *sui generis* uses. The GDPO would then be amended so that change from use as a betting office to other uses (e.g. Class 1 or 2) would remain permitted development. This amendment would act like a one way street, in that changes from a betting shop to a Class 2 office use or to a Class 1 retail shop would not require a formal application for planning permission to be made, but any movement the other way would. Use of premises as a betting shop is a clearly distinguishable use, and had in previous use class orders been identified as a *sui generis* use. They may be distinguished from other Class 2 uses in that they may be open outwith normal business hours, and also typically can have customers spending longer periods of time in them watching sporting events and placing bets on them. They therefore provide a type of entertainment or leisure function which has greater similarities to other *sui generis* uses such as public houses or amusement arcades, than to other Class 2 uses where financial, professional or other services are provided to visiting members of the public.
- 2.5 The position with pay day lending is somewhat more complicated in that this is not specifically referred to in the UCO, and there is no single agreed definition. PDL can be offered from a variety of premises, including ones which might specialize in such lending, or others which offer it as part of a range of products or services like pawn broking, cheque cashing, money transfers and other financial services or a combination of these.

PDL may therefore only form a limited part of a range of financial services and may only form a very small part of the overall use of the premises. However, it clearly falls within the remit of use class 2 (Financial, Professional and other services) at present.

- 2.6 The Financial Conduct Authority's definition of a PDL relates to high cost short term credit where: APR is equal to or higher than 100%; credit is provided for any period up to 12 months; and it is not secured by a mortgage, charge or pledge. While this definition is useful, this may not help in extending planning controls to PDL, as slight changes to loan terms might avoid controls. In order to achieve additional planning controls over changes of use within the financial services sector, a wider range of services would have to be removed from Class 2 of the UCO. Two options are proposed: The first would seek 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 would be to replace the general reference to financial services with references to specific financial activities, and thereby include: "Accountancy services", "Insurance Services", and "Deposit takers" including banks, building societies, credit unions, and friendly societies.
- 2.7 The consultation document recognises that PDL can be offered from a variety of premises, and by businesses which may offer it as part of a range of products or services like pawn broking, cheque cashing, and money transfers. There is some difficulty in making a distinction between the activities of a PDL and other financial lending institutions, where in practical terms the only distinction may be the period of the loan and the rate of interest or charges which such a facility might incur.

In land use planning terms pay day lenders provide a function which is indistinguishable from many other services which are considered suitable in town centre locations in terms of transport and parking provision, hours of operation and frequency and duration of customer visit. The land use planning system should not be used to regulate activities which are more appropriately controlled by the Financial Conduct Authority or other regulatory bodies. **Under both Options 1 and 2 (Question 11), the UCO and GPDO would become more complex, with lengthy definitions of what is or is not within Class 2 and what changes of use could occur as permitted development, but with little tangible benefit. In planning terms, it is not possible to distinguish between PDL and other financial services activities.**

### 3. Proposed Response

- 3.1 The consultation document poses 14 questions. Appendix 1 shows the proposed response to these detailed questions. The consultation response recognises the limitations of the planning system in addressing the problem of pay day lending and the proliferation of such businesses in town centres.

### 4. Implications

- 4.1 There are no legal, equality, climate change, risk, Gaelic, or rural implications arising as a direct result of this report.

**Recommendation**

That Committee agree the response to Scottish Government as set out in Appendix 1.

Designation: Director of Development and Infrastructure

Date: 28 October 2014.

Author: Malcolm Macleod

## APPENDIX 1

The consultation document seeks the answer to the following questions:

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

*Yes. Use of premises as a betting shop is a clearly distinguishable use, and had in previous use class orders been identified as a sui generis use. They may be distinguished from other Class 2 uses, in that they may be open outwith normal business hours, and also typically can have customers spending longer periods of time in them watching sporting events and placing bets on them. They therefore provide a type of entertainment or leisure function which has greater similarities to other sui generis uses such as public houses or amusement arcades, than to other Class 2 uses where financial, professional or other services are provided to visiting members of the public.*

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

*The regulation of gambling and financial services is currently a reserved matter for the UK Government and Parliament. Other than dealing with the controls over particular betting methods, such as fixed odds betting machines, the suggested approach to betting shops is the only realistic effective planning response to the issue. It is important that Development Plans do prepare town centre health checks to identify where clustering may be becoming an issue, although it is important to note that the land use implications of these uses are unlikely to be reasons in themselves for refusal.*

**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?**

*If PDL are to be excluded from Class 2 then it should be on the basis of their definition by FCA only. Planning Authorities do not have the knowledge or expertise to analyse the different types of financial services offered by proposed new premises, and we need to have a consistent basis for decision making. However it is considered that, in land use planning terms, pay day lenders provide a function which is indistinguishable from many other services which are considered suitable in town centre locations in terms of transport and parking provision, hours of operation and frequency and duration of customer visit. As a result, the land use planning system should not be used to regulate activities which are more appropriately controlled by the Financial Conduct Authority or other regulatory bodies.*

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

Yes

**Q5. Do you think this (option 1) would represent an effective and proportionate approach to addressing the concerns about clustering and over provision of pay day lenders? If not, why not?**

*This approach is dependent on a satisfactory definition of a PDL, and there may be too much scope for PDL to alter their business practice slightly to fall out of such a definition. It is suggested that identifying prime retail frontages through the Development Plan, where changes of use from Class 1 (shops) to other uses would be restricted to avoid clustering or over-provision, backed up with town centre health checks and effective monitoring arrangements, and as allowed for in Scottish Planning Policy, may be a more effective way of controlling these issues, albeit they do not appear to be a significant problem in Highland Council area.*

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

*No response – the consultation paper appears to adequately cover the activities.*

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

*Pay Day Loan shops and other financial services such as banks provide very similar functions in planning terms, the only difference being the terms and conditions attached to loans. These and other Class 2 activities are all appropriate town centre functions and can make a contribution to the overall vitality and viability of town centres. Class 2 financial services should therefore remain unaltered, and some other (non planning) mechanism such as licensing or regulation by Financial Conduct Authority employed to regulate PDL.*

*It would also be important to clarify whether other uses which effectively buy goods from the public (for example, second hand book shops, record shops etc) could be caught in any proposed changes to planning legislation.*

**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?**

*In many instances PDL may only be one part of a business mode. Determining whether a change of use occurs would be hard to ascertain from observation/visiting premises.*

*It is considered that Development Plans, backed up with town centre health checks and effective monitoring arrangements, may be a more useful and defensible approach to dealing with concerns over pay day lending (see also response to Q5 above).*

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

*No*

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

*None are proposed as it is considered that the existing definitions of use class 2 (with the exception of betting shops) are appropriate, and PDL should be controlled by the financial regulation authorities rather than planning authorities, as in land use terms this activity is indistinguishable from other financial services.*

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

*While neither option is preferred for the reasons outlined above, option 1 would be more preferable than option 2, in that the only implications would be the removal of PDL (subject to a satisfactory definition of what constitutes a PDL being established), rather than complete redefinition of various types of financial services being attempted.*

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

*None*

**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?**

*None*

**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.**

*None*