

Agenda Item	10
Report No	ECI/31/20

THE HIGHLAND COUNCIL

Committee: Economy and Infrastructure

Date: 4 November 2020

Report Title: Proposed Changes to Pre-Application Consultation Requirements in Planning – Consultation Response

Report By: Executive Chief Officer Infrastructure and Environment

1. Purpose/Executive Summary

- 1.1 The Proposed changes to pre-application consultation requirements were published for consultation on 13 August 2020 with the consultation period ending on 06 November 2020. This report seeks Committee approval to homologate the response that was submitted to Transport Scotland. The submitted response is attached at **Appendix 1**.

2. Recommendations

- 2.1 Members are asked to:
- i. note the key proposals set out in the Proposed Changes to Pre-Application Consultation Requirements in Planning consultation document; and
 - ii. homologate the submitted response, at **Appendix 1**.

3. Implications

- 3.1 Resource : Officers from the Infrastructure and Environment Service have been involved in the preparation of the response.
- 3.2 Legal : Any changes taken forward by the Scottish Government will become requirements for all new major developments brought forward.
- 3.3 Community (Equality, Poverty, Rural and Island) : Proposed policies are aimed at dealing with issues faced by people and communities engaging with the planning system prior to applications being lodged. The consultation was open to any person or organisation.
- 3.4 Climate Change / Carbon Clever: The proposed use of electronic events may reduce the need to travel for members of the public, developers as well as officers and Elected Members who attend and facilitate such events.
- 3.5 Risk : No implications at this stage

3.6 Gaelic : No implication.

4. Background

4.1 Since 2009, developers of any development which is of a scale considered to be Major or National under the Town and Country Planning (Hierarchy of Developments) Regulations 2009 has been required to submit a Proposal of Application Notice notifying the Planning Authority, the relevant Community Council and Local Members of the intention to submit a planning application

4.2 In relation to Major development, this includes:

- Housing developments of more than 50 new homes
- Office and industrial developments where the gross floor area is 10,000sqm or more;
- Electricity generation stations with a capacity of 20mw or more;
- Transport projects of more than 8km in length;
- Mineral extraction of 2ha or more; and
- Any development which has a developed site area of 2ha or more.

4.3 National developments are defined as projects identified in the National Planning Framework. In Highland, that includes:

- High Voltage Electricity Transmission Network;
- Pumped Storage Hydroelectric Schemes; and
- National Digital Fibre Network.

4.4 The aim of pre-application consultation is that local communities are made aware of proposals at an early stage and have the opportunity to comment to the prospective applicant before the proposal is finalised and an application for planning permission is made. As members will be aware, the local community then have further opportunity to make comments on a planning application following the submission of the application.

4.5 The minimum Pre-Application Consultation (PAC) requirements are currently that the prospective applicant must:

- serve a Proposal of Application Notice (PAN) on the planning authority describing the proposal and location and indicating what consultation they intend carrying out as part of PAC;
- consult the community councils in whose area the proposal site is located or whose area adjoins the proposal site;
- hold a public event
- publish a notice in a local newspaper indicating: where information on the proposal can be obtained; how to make views known to the prospective applicant; and the details of the public event (the notice must be published at least 7 days prior to the public event); and
- carry out any further PAC measures required by the planning authority (the authority has 21 days from the receipt of the PAN to make such requirements).

4.6 Following submission of the PAN the application to which the PAC relates cannot be submitted until at least 12 weeks after the submission of the PAN.

5. Key Proposals and Proposed Response

- 5.1 The amendments proposed, seek to improve the PAN process, make it clearer, provide more information about proposals and increasing opportunities for feedback. The consultation has sought to balance the need to increase community engagement while not making the requirements unduly onerous for the development industry.
- 5.2 The specific proposed changes to secondary legislation (i.e. regulations) on PAC are:
- to require information about the proposal to be available both in hard copy and electronic (online) versions;
 - an additional public event (i.e. a required minimum of two public events);
 - requirements on the content of PAC reports; and
 - exemption from PAC for applications in certain circumstances.
- 5.3 The consultation is accompanied by draft secondary legislation which would allow implementation of the proposed changes.
- 5.4 The response to the matters raised in the consultation are set out in **Appendix 1**. In summary, while the proposals are welcomed, it is considered that further refinement is required to ensure that the proposed amendments meet with the objectives set out in the consultation document.
- 5.5 The consultation document is attached at **Appendix 2**.

6. Next Steps

- 6.1 The consultation indicates that following the consultation, it intends to bring the development forward secondary legislation in 2021. This will be accompanied by guidance on each of the matters set out Secondary legislation.

Designation: Executive Chief Officer Infrastructure and Environment

Date: 12 October 2020

Author: Simon Hindson, Strategic Projects Team Leader

Background Papers: Scottish Government website:

[Proposed Changes to Pre-Application Consultation Requirements](#)

Appendix 1 – Response to the Questions Presented in the Scottish Government Consultation on Proposed Changes to Pre-Application Consultation Requirements in Planning

Q1. Do you agree with the proposal to require the PAC information, which is to be made available to the public, to be available both by electronic means and in 'hard copy' format?

Yes, the information should be made available widely and a significant proportion of people now seek to access information electronically. Further, it may provide an opportunity to engage with hard to reach groups.

However, in areas where broadband speed is low, it is considered that the applicant should seek to engage in a wider range of ways, potentially including letter drops or newsletters, to ensure the community is aware of forthcoming proposals and have an opportunity to contribute.

Q2. Please give us details of your experience using online alternatives to public events during the COVID-19 emergency.

While we do not have direct experience of attending or hosting such events, anecdotal evidence garnered through discussions with the development industry has indicated that the use of online alternatives has increased participation at the pre-application stage.

Q.3 Do you agree with the proposal to make a second physical public event a minimum requirement of PAC?

For a number of years, The Highland Council, through its pre-application advice service has advocated this approach. This is now seen as good practice within a broad range of industries and the proposal to formalise this approach is welcomed. We would however, encourage the regulations to specifically set out that online events (such as interactive displays with question and answer sessions) are also required to be undertaken in addition to a second physical event. If such events are well publicised and accessible, this may facilitate a wider range of views to be gathered and encourage increased community engagement with emerging development proposals.

Q4. Do you agree that a second physical public event required as part of PAC must include feedback to the public on their earlier engagement in PAC?

Yes, The Highland Council have encouraged developers to do this for a number of years to ensure that feedback on proposals can be considered and feedback to the community at the earliest possible opportunity. We have found that when developers have taken this approach, that the feedback from members of the public in relation to the PAC has generally been positive.

Q5. Do you agree with the proposed minimum time period between the required public events in PAC?

While we agree that there should be a minimum period of time between public events, we do not consider that 7 days is a sufficient period of time. This is considered to be the case as those who engage may need time to reflect following the event prior to providing feedback. Further, it is considered important that there is sufficient time for the developer to respond to matters raised during the first PAC event. It is therefore considered that the events should be held a minimum of 14 days apart.

Q6. Do you agree with the proposed requirement for an additional newspaper notice for the second required public event?

We agree that there should be an additional notice published in a newspaper circulating in the local area for any second event.

Q7. Do you agree with the proposed list of required content for PAC reports?

We feel the required information would provide sufficient information. It may however be beneficial if guidance provide further information and links to good practice in relation to each of the prescribed matters.

Q8. Do you agree with the PAC exemption being limited to the same applicant who made the earlier application?

Yes, it is considered to be reasonable and ensures that modifications to schemes proposed by differing applicants are brought to the attention of the community.

Q9. Do you agree with the circumstances regarding an earlier application (withdrawn, refused etc.) in which a second application would be able to get exemption from PAC?

Yes, it is considered to be a proportionate response.

Q10. Do you agree with the approach to linking the description of the proposal in the earlier application and that in the second application for the purposes of a PAC exemption?

Yes – using the same established provisions set out in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 is considered appropriate.

Q11. Do you agree that the exemption from PAC should be linked to the content of the PAN served in relation to PAC for the earlier application?

We agree with the exemption, however there is some concern that this may lead to very broad descriptions of development within Proposal of Application Notices and a lack of detail being presented at PAC events as developers may take a precautionary approach to ensure they have flexibility going forward. This is not however considered something that could be addressed by regulation but could be addressed through guidance.

Q12. Do you agree with the proposed time limit on exemptions from PAC?

Yes, we consider 18 months from the period of validation of the first application to be a reasonable timescale.

Q13. Do you agree with the proposed transitional arrangements for bringing into force the new PAC requirements, including the time limit for making applications to which PAC requirements apply?

Yes, the proposed transitional arrangements are considered to be proportionate.

Q14. Please give us your views on the proposed approach to pre-application engagement with disabled people.

We would commend the proposal to more formally involve Access Panels at the pre-application stage. In The Highland Council area we already encourage developers to discuss their proposals with Access Panels at the earliest possible opportunity. It is recognised that some Access Panels are more active than others, therefore if a developer has not been able to engage, evidence of how they have sought to engage could be provided to the Planning Authority through the PAC Report.

Q15. Please tell us what issues you think should be covered in guidance for PAC.

Clear guidance on each aspect of the regulations would be welcomed to ensure a consistent approach across Scotland.

Further, it is considered it may be beneficial for the guidance to be based online and share good practice on consultation methods.

Q20. Please give us any general comments on the PAC proposals or related issues.

As set out in the response to Question 5 above, we welcome a minimum time between the first and second PAC events. However, in order to ensure that the community has adequate time to consider the proposal and developers have time to consider any responses received, it is also considered that there should be a minimum period between the second event and submission of the application. It is proposed that the period between the second PAC event and the submission of the application should be a minimum of 14 days.

The 12 week period continues to be an appropriate length of time between the submission of the PAN and the submission of any subsequent application. Some developments however work to longer submission timescales following submission of the PAN. In such instances we have experienced developers submitting the PAN and then not undertaking the PAC event till after the 12 week period. We recommend that provision is made through the regulations to ensure that the first and second event are held within the 12 week PAN period. In doing so this would deliver greater certainty to the community.

The Highland Council do not intend to provide a response to Q16-19 related to the impact assessments related to the Consultation on Proposed Changes to Pre-Application Consultation Requirements in Planning

Consultation on Proposed Changes to Pre-Application Consultation Requirements in Planning

August 2020



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Introduction

1. This consultation paper relates to proposed changes to the existing requirements for pre-application consultation (PAC) with local communities on applications for planning permission for national and major developments. These requirements were introduced in 2009, as part of the implementation of the Planning etc. (Scotland) Act 2006.
2. The proposed changes to PAC are the first part of a wider package of measures on improving community engagement in planning matters and building public trust. The proposals for changes to PAC come from, in part, the report by the independent panel assigned to review the Scottish Planning system: '[Empowering Planning to Deliver Great Places](#)'¹ (May 2016). The report referred to concerns that PAC can be a 'tick box' exercise and that there was a lack of feedback to communities on their views in the pre-application phase – i.e. prior to the finalised application being made. The report recommended an additional public event to allow for greater discussion of proposals. Subsequent consultation indicated a need for clarity and transparency around the process.
3. In addition, since the inception of PAC, there have been concerns about PAC requiring to be repeated in situations where a PAC has been conducted previously and an application made, and then the developer seeks to make a subsequent application for the same, basic development. [The Planning \(Scotland\) Act 2019](#)², which was developed as part of the response to the review mentioned above, includes new powers to specify exemptions from PAC requirements.

Background

4. PAC is a statutory requirement in relation to applications for planning permission for national and major developments – i.e. large scale development as opposed to local developments (the third level of [the planning hierarchy](#)³). The aim is that local communities are made aware of proposals at an early stage, and have the opportunity to comment to the prospective applicant before the proposal is finalised and an application for planning permission is made.
5. PAC can increase the likelihood of a local community's views being taken on-board, as the ability to amend proposals to accommodate concerns is more limited once in the application process. With increased guidance and awareness of the importance of engaging communities effectively in decisions about land, it may be possible to take a more cooperative approach to proposals. It is, however, up to the applicant to decide, having considered the outcome of PAC, what their detailed proposal for application should be.

¹ <https://www.gov.scot/publications/empowering-planning-to-deliver-great-places/>

² <https://www.legislation.gov.uk/asp/2019/13/contents>

³ <https://www.gov.scot/publications/hierarchy-developments-planning-circular-5-2009/>

6. Once the application is made to the planning authority, the various planning application consultation and publicity requirements will apply⁴, and anyone can make comment to the planning authority on the proposal, whether positive or negative. Indeed, it is important that they do so at this stage, as the proposal may have altered as a result of PAC and other pre-application discussions, and the planning authority will be considering the finalised proposal in the application, and comments submitted to them on that. The planning authority is required to give due consideration to any relevant planning issues (material considerations) when deciding whether to grant planning permission or not.

Current PAC Requirements

7. The requirement for PAC to be undertaken is contained in sections [35A, 35B and 35C of the Town and Country Planning \(Scotland\) Act 1997](#)⁵, as amended. The detailed requirements are set out in [the Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2013](#)⁶ (the DM Regulations).
8. The basic PAC requirements are currently that the prospective applicant must:
 - Serve a proposal of application notice (PAN) on the planning authority describing the proposal and location and indicating what consultation they intend carrying out as part of PAC.
 - Consult the community councils in whose area the proposal site is located or whose area adjoins the proposal site;
 - Hold a public event⁷.
 - Publish a notice in a local newspaper indicating: where information on the proposal can be obtained; how to make views known to the prospective applicant; and the details of the public event (the notice must be published at least 7 days prior to the public event).
 - Carry out any further PAC measures required by the planning authority (the authority has 21 days from the receipt of the PAN to make such requirements).
9. The planning application to which PAC relates cannot be submitted until at least 12 weeks have passed since the PAN was served on the planning authority. When an application is submitted, it must be accompanied by a report on the PAC. Currently the content of such reports is the subject of guidance rather than statutory requirement.

⁴ Neighbour notification, online weekly lists, newspaper notices where required, consultation with community councils and other bodies.

⁵ <https://www.legislation.gov.uk/ukpga/1997/8/contents>

⁶ <https://www.legislation.gov.uk/ssi/2013/155/contents>

⁷ At the time of publication, during COVID-19, the requirement for a public event has been temporarily suspended, and guidance indicates online alternatives that should be used.

10. There is currently no maximum time limit for the application for which PAC relates to be submitted. Provision in [the Planning \(Scotland\) Act 2019](#)⁸ introduces an 18 month time limit for making an application to which PAC applies, from when the PAN is served on the planning authority. This is intended to ensure that the views given during PAC are still relevant when the application is made. We intend to bring this time limit into force at the same time as the changes to PAC requirements proposed in this paper (with appropriate transitional arrangements, see paragraphs 48 to 50).

Objective

11. The intention is to address the concerns about a lack of feedback to local communities engaging in PAC and seek to make the process more consistent and transparent when it comes to reporting on PAC. The focus in these regards being on the public events held by the prospective applicant and content of the PAC report.
12. We are also proposing that information on the proposal should be available in hard copy and by electronic means (online). Such electronic availability of information was introduced as an option as part of the COVID-19 emergency arrangements. In considering the Equality and Child Rights and Wellbeing Impact Assessment, the information on internet use suggested it would be appropriate to have more information provided in that way. See paragraphs 21 to 23 below regarding online public events.
13. We are also proposing potential exemptions from PAC requirements in certain cases. Since the inception of PAC, there have been some concerns about situations where a PAC has been conducted and an application made, and the developer seeks to make a subsequent application for essentially the same development. It has been suggested that it can be excessive for PAC to be required again for such an application, when the changes or options for change being considered may be very limited.
14. There is a cost to applicants in terms of time and resources, in going through PAC again, which would be increased with some of the other proposals in this package.
15. PAC in such cases may also unduly raise expectations in communities as to what the prospective applicant is willing to consider by way of changes to a proposal. This in turn might lead to a degree of consultation fatigue or frustration: consultation at PAC; then on the earlier application; then on another PAC (where the changes, if any, for discussion may be limited); and then consultation on the second application.
16. The objective is therefore to improve the PAC process, make it clearer and provide more information on and opportunities for feedback, whilst ensuring that the PAC requirements are proportionate. This is part of the overall

⁸ <https://www.legislation.gov.uk/asp/2019/13/contents>

package of measures on community engagement, which will include guidance as well as other legislative changes.

The Proposals

17. The specific proposed changes to secondary legislation (i.e. regulations) on PAC are:

- To require information about the proposal to be available both in hard copy and electronic (online) versions;
- An additional public event (i.e. a required minimum of two public events);
- Requirements on the content of PAC reports; and
- Exemption from PAC for applications in certain circumstances.

18. A draft of the regulations making these amendments is at Annex A.

Provision of Information

19. Under the DM regulations, the PAC newspaper notice is required to include “details as to where further information may be obtained concerning the proposed development”. This is understood to mean a physical location and format. As part of the [miscellaneous temporary provisions brought in during the COVID-19 emergency](#)⁹, the option to provide this information by electronic means was introduced. These provisions will expire when Part 1 of [the Coronavirus \(Scotland\) Act 2020](#)¹⁰ expires; the Act can if necessary be extended up to 30 September 2021, but must be reviewed every 2 months.

20. The proposal is that the DM regulations should be amended to make this provision of information to be by electronic means and in hard copy, i.e. members of the public would have the choice how they wish to access it. Draft regulation 6(b) makes the necessary amendment. Draft regulation 7 relates to accommodating any COVID-19 related arrangement in this regard.

Q1. Do you agree with the proposal to require the PAC information, which is to be made available to the public, to be available both by electronic means and in ‘hard copy’ format?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

⁹ <https://www.legislation.gov.uk/ssi/2020/124/contents/made>

¹⁰ <https://www.legislation.gov.uk/asp/2020/7/contents>

Additional Public Event

Digital Options

21. During the COVID-19 emergency the requirement for a public event has been suspended temporarily. Guidance indicated that digital / online alternatives should be used instead. We have not as yet had an opportunity to evaluate how well such alternatives have operated during the COVID-19 emergency.
22. At this stage, therefore, we are considering a second public event as a physical event. We will consider including in guidance suggestions as to using online approaches to engagement and live events as a complement to the new statutory requirements.
23. It would be useful therefore to have any feedback from the public, prospective applicants and consultants and any other stakeholders who have been involved in online public events for PAC. An indication of levels of engagement and of the experience of engaging online would be helpful, as well as an indication of approaches that worked particularly well, and those that did not.

Q2. Please give us details of your experience using online alternatives to public events during the COVID-19 emergency.

Comments

24. Draft Regulation 6(a) contains the requirement for two public event as a minimum statutory requirement for PAC. As in the pre-COVID-19 circumstances, this would be a **physical event**. The intention is that this second (or final) event is to occur later in the PAC process and to provide feedback to the public on the views received during the earlier stages of PAC – draft regulation 6(f).
25. Any further views raised at that second (or final) event would be responded to through the finalised application and related PAC report.
26. Draft regulation 6(f) specifies a minimum of seven days between the first public event and the final one (at which feedback is required to be given). This is not to suggest a 'norm', but to avoid the first and final public events on, for example, consecutive days, merely to 'tick the box'. Draft Regulation 6(a) also means a further newspaper notice must be issued for the second, statutory public event. That second notice is also to include similar details to the first notice regarding the proposal and PAC - draft regulation 6(f).
27. Any further considerations around holding public events or additional publicity in addition to the existing and proposed legal requirements would be a matter for guidance – see the later question on guidance.

Q.3 Do you agree with the proposal to make a second physical public event a minimum requirement of PAC?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q4. Do you agree that a second physical public event required as part of PAC must include feedback to the public on their earlier engagement in PAC?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q5. Do you agree with the proposed minimum time period between the required public events in PAC?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q6. Do you agree with the proposed requirement for an additional newspaper notice for the second required public event?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

The Prescribed Content of Pre-application Consultation Reports

28. Currently the content of PAC reports is covered by guidance ([Circular 3/2013 Development Management Procedures](#)¹¹, paragraphs 2.6 to 2.41). In order to improve consistency and transparency of such reports, the intention is to specify requirements on content in the regulations. Section 35C(1) already requires the report to say what has been done to comply with PAC requirements.
29. The proposed additional requirements (specific wording in draft regulation 8 – introducing a new regulation 7B) are:
- (a) the dates on which and places where public events were held,
 - (b) a description of any additional steps taken by the prospective applicant to consult with members of the public as regards the proposed development,
 - (c) a list of bodies, groups and organisations who were consulted by the prospective applicant,
 - (d) evidence of the prospective applicant carrying out the activities described under sub-paragraphs (a), (b) and (c),
 - (e) copies of—
 - (i) any materials sent to consultees,
 - (ii) any materials provided to those attending a public event, and
 - (iii) any visual presentation shown or displayed at a public event,
 - (f) photographs of any display boards or models at public events,
 - (g) confirmation as to whether consultees and attendees at public events were informed that pre-application consultation does not remove the right or the potential need to comment on the final application once it is made to the planning authority,
 - (i) a summary of—
 - (i) the written responses to consultations, and
 - (ii) views raised at public events,
 - (j) an explanation of how the prospective applicant took account of views raised during the pre-application consultation process, and
 - (k) an explanation of how members of the public were given feedback on the prospective applicant's consideration of the views raised during the pre-application consultation process.

¹¹ <https://www.gov.scot/publications/planning-series-circular-3-2013-development-management-procedures-2/>

30. Guidance could elaborate on some of these requirements, for example, some of the considerations that should be covered when explaining their response to the points raised, such as practical, commercial or design considerations. See the general question below on the content of guidance.

Q7. Do you agree with the proposed list of required content for PAC reports?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Exemptions from Pre-application Consultation Requirements

31. As indicated above, there may be reasons why an applicant will wish to make a second application for the same or an amended version of the same basic proposal that was the subject of PAC and an application. This, for example, may be: to address grounds for refusal, or potential refusal where an earlier application is withdrawn; where permission is granted, but for practical reasons permission for an amended proposal is needed; or where an applicant may want to make two applications with different versions of the same basic proposal (note that different planning permissions can be in effect at the same time for the same land, and the landowner can choose which one to implement).
32. In such cases it is likely a prospective applicant would be considering only a limited range of changes to the previously finalised proposal, if indeed any changes are proposed. It would seem excessive therefore to require a second application in certain situations to be the subject of the PAC process again before it can be made. The current powers (in section 39 of [The Town and Country Planning \(Scotland\) Act 1997](#)¹²), for planning authorities to decline to determine repeat applications will continue to apply.
33. In terms of defining the cases where a PAC exemption would apply, the proposals cover five elements:
- Who is making the application;
 - The circumstances in which a second application is being made;
 - The relationship between the development in the earlier application and that in the second application;
 - The relationship between the development in the second application and the proposal described in the proposal of application notice submitted for the earlier application; and
 - A time limit on the period within which an exemption would apply.

¹² Section 39 of the Town and Country Planning (Scotland) Act 1997: <https://www.legislation.gov.uk/ukpga/1997/8/contents>

34. Draft regulation 4, introducing new regulation 4A, specifies the various criteria, which are discussed in the following paragraphs. All of the criteria in these five elements would need to be met to qualify for exemption from PAC.

35. Section 35A of the Town and Country Planning (Scotland) Act 1997 contains a screening process whereby a prospective applicant can obtain the planning authority's view prior to making an application on whether PAC requirements apply. With the addition of circumstances in which exemptions apply, additional information will need to be submitted when applying for such a view with reference to whether an exemption applies. See draft regulation 5.

Who is making the application for which PAC exemption is sought?

36. The current requirement is that the party who makes an application to which PAC applies must be the same party who carried out the related PAC. The intention is that PAC exemption for a second application would apply only to the applicant who made the earlier application (and so also conducted the PAC).

Q8. Do you agree with the PAC exemption being limited to the same applicant who made the earlier application?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

The circumstances in which a second application is being made

37. New regulation 4A only rules out an exemption where the planning authority has refused to deal with (declined to determine) the earlier application under [section 39 of the Town and Country Planning \(Scotland\) Act 1997](#)¹³. The planning authority is required to decline to determine an application where there is a failure to comply with PAC requirements. Section 39 also provides powers for planning authorities, in certain circumstances, to decline to determine a similar application to one previously refused permission, where there has been no significant change in the basis for making a decision on the proposal.

38. This means that the earlier application could have been withdrawn, granted or refused permission, appealed, called-in by Scottish Ministers for determination, or still be before the planning authority, and a second application could qualify for exemption from PAC.

¹³ <https://www.legislation.gov.uk/ukpga/1997/8/contents>

Q9. Do you agree with the circumstances regarding an earlier application (withdrawn, refused etc.) in which a second application would be able to get exemption from PAC?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

The relationship between the development in the earlier application and that in the second application

39. Clearly there has to be some link between the proposal in the earlier application and that in the second application in order to justify an exemption from PAC. However, the idea of defining specific aspects of a development and the extent to which they can change across the full range of development types is not practical.
40. We have therefore considered existing definitions in planning legislation that try to capture the situation where proposals are basically the same but could differ in some of the detail.
41. Linking it to the description in the proposal of application notice for the PAC on the earlier application may be too vague on its own. In order to accommodate changes to proposals arising from the PAC itself, the description in the PAN may be quite broad.
42. The proposal is therefore to use the concept in the [Town and Country Planning \(Fees for Applications and Deemed Applications\) \(Scotland\) Regulations 2004](#)¹⁴ (Regulations 7(a) and 8(c)), which relates to where a second application is exempt from a fee).
43. The proposal in the second application must be for 'development of the same character or description as development to which an earlier application relates and to no other development' **and** where 'the application relates to the same site as that to which the earlier application related, or to part of that site, and to no other land except land included solely for the purpose of providing a different means of access to the site' (that is both criteria need to be met).
44. This description of the proposal is to allow for some changes to be made but that the development proposal is basically the same.

¹⁴ <https://www.legislation.gov.uk/ssi/2004/219/contents/made>

Q10. Do you agree with the approach to linking the description of the proposal in the earlier application and that in the second application for the purposes of a PAC exemption?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

The relationship to the proposal of application notice (PAN)

45. We also consider it appropriate that both applications should fall within the scope of what was considered at PAC. So, the proposals in both applications must also be within the scope of the description of development contained in the PAN for the PAC for the earlier application.

Q11. Do you agree that the exemption from PAC should be linked to the content of the PAN served in relation to PAC for the earlier application?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

A time limit on the period within which an exemption would apply

46. Given we are introducing a time limit on making an application to which PAC requirements apply (see paragraphs 48 to 49 below), we propose that any exemption from PAC for a second application be time limited – that is, it cannot be divorced in time too much from the PAC on the earlier application).

47. Such a time limit would need to allow for processing of the earlier application. Linking it to, for example, the decision or date of withdrawal leaves it very open. We propose allowing an exemption from PAC for a second application up to 18 months from the date the earlier application was made to the planning authority, i.e. from the validation date (regulation 14 of [the DM Regulations](#)¹⁵). See draft regulation 4, introducing new regulation 4A(1)(e).

¹⁵ <https://www.legislation.gov.uk/ssi/2013/155/contents>

Q12. Do you agree with the proposed time limit on exemptions from PAC?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Timing and Transitional Arrangements

48. As noted in paragraph 10, there is currently no time limit to submit an application following a PAC. Developers may therefore have planned long lead-in times, or may be waiting for other issues to fall into place before making an application.

49. We propose to bring into force the requirement for an application to be made within 18 months of the PAN at the same time as the other changes set out in this paper. In order not to disadvantage parties who have started PAC prior to the proposed changes being introduced, the intention is that where a prospective applicant served a PAN before the time limit comes into force, they will have 18 months from the coming into force date to make an application.

50. The other changes to the PAC requirements will apply to any application for which the PAN was served after the coming into force date of the regulations. Exemptions would apply to qualifying cases from the coming into force date.

Q13. Do you agree with the proposed transitional arrangements for bringing into force the new PAC requirements, including the time limit for making applications to which PAC requirements apply?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Pre-application Consultation with Disabled People

51. During the passage of the Bill which became the Planning (Scotland) Act 2019, the issue of statutory consultee status for Access Panels was discussed. Whilst the Scottish Government could not support the amendment in this regard, Kevin Stewart MSP, Minister for Local Government, Housing and Planning indicated that involvement at the pre-application stage represented the best opportunity for these parties to influence proposals, and that the Scottish Government would consider this further.

52. We therefore propose guidance on highlighting the importance of pre-application consultation with these parties and will consider what we can say about how best this might be achieved. The general requirements in the PAC report should then indicate what was done and how any issues raised were considered in finalising the proposal.

Q14. Please give us your views on the proposed approach to pre-application engagement with disabled people.

Comments

Guidance

53. As indicated above, the intention is to produce guidance supporting the revised PAC arrangements. In addition to engagement with Access Panels, this would include matters such as: the issues to be considered when holding and scheduling public events; consideration of the nature of local communities and approaches to engagement; and the use of information technology in supporting statutory requirements. Reference would be made to existing good practice guidance on effective engagement with communities.

Q15. Please tell us what issues you think should be covered in guidance for PAC.

Comments

Impact Assessments

54. Included with this consultation paper are partial versions of the following assessments:

- Business and Regulatory Impact Assessment (BRIA)
- Combined Equality and Child Rights and Wellbeing Impact Assessment (EQIA/ CRWIA)

Q16. Please give us any views you have on the content of these partial BRIA and EQIA/CRWIA.

Comments

Q17. Do you have or can you direct us to any information that would assist in finalising the BRIA and EQIA/ CRWIA?

Comments

55. There is also a screening paper on Island Communities Impact Assessment. Based on the information we have identified, we do not consider there to be a significant impact on island communities in particular arising from the proposed changes.

Q18. Please give us your views on the Island Communities Impact Assessment screening paper and our conclusion that a full assessment is not required.

Comments

Q19. If you consider that a full Island Communities Impact Assessment is required, please suggest any information sources that could help inform that assessment.

Comments

General Comments

Q20. Please give us any general comments on the PAC proposals or related issues not covered by earlier questions.

Comments

Responding to this Consultation

We are inviting responses to this consultation by 6 November 2020.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/planning-architecture/pre-application-consultation-requirements/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 6 November 2020.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form and, with your response, send to:

Planning and Architecture Division
Scottish Government
Area 2F
Victoria Quay
EDINBURGH EH6 6QQ

Pre-ApplicationConsultationChanges@gov.scot

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. 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 is 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.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

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 at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at:

Pre-ApplicationConsultationChanges@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. 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

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.



PROPOSED CHANGES TO PAC REQUIREMENTS IN PLANNING

RESPONDENT INFORMATION FORM (AND CONSULTATION QUESTIONS)

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

Individual Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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?

Yes No

Questions

Q1. Do you agree with the proposal to require the PAC information, which is to be made available to the public, to be available both by electronic means and in 'hard copy' format?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q2. Please give us details of your experience using online alternatives to public events during the COVID-19 emergency.

Comments

Q3. Do you agree with the proposal to make a second physical public event a minimum requirement of PAC?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q4. Do you agree that a second physical public event required as part of PAC must include feedback to the public on their earlier engagement in PAC?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q5. Do you agree with the proposed minimum time period between the required public events in PAC?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q6. Do you agree with the proposed requirement for an additional newspaper notice for the second required public event?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q7. Do you agree with the proposed list of required content for PAC reports?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q8. Do you agree with the PAC exemption being limited to the same applicant who made the earlier application?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q9. Do you agree with the circumstances regarding an earlier application (withdrawn, refused etc.) in which a second application would be able to get exemption from PAC?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q10. Do you agree with the approach to linking the description of the proposal in the earlier application and that in the second application for the purposes of a PAC exemption?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q11. Do you agree that the exemption from PAC should be linked to the content of the PAN served in relation to PAC for the earlier application?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q12. Do you agree with the proposed time limit on exemptions from PAC?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q13. Do you agree with the proposed transitional arrangements for bringing into force the new PAC requirements, including the time limit for making applications to which PAC requirements apply?

Yes No No view

Please comment on your answer (particularly if you do not agree).

Comments

Q14. Please give us your views on the proposed approach to pre-application engagement with disabled people.

Comments

Q15. Please tell us what issues you think should be covered in guidance for PAC.

Comments

Q16. Please give us any views you have on the content of these partial BRIA and EQIA/CRWIA.

Comments

Q17. Do you have or can you direct us to any information that would assist in finalising the BRIA and EQIA/ CRWIA?

Comments

Q18. Please give us your views on the Island Communities Impact Assessment screening paper and our conclusion that a full assessment is not required.

Comments

Q19. If you consider that a full Island Communities Impact Assessment is required, please suggest any information sources that could help inform that assessment?

Comments

Q20. Please give us any general comments on the PAC proposals or related issues not covered by earlier questions.

Comments

ANNEX A – PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – DRAFT REGULATIONS

SCOTTISH STATUTORY INSTRUMENTS

2021 No.

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021

<i>Made</i>	- - - -	***
<i>Laid before the Scottish Parliament</i>		***
<i>Coming into force</i>	- -	***

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 35A, 35B, 35C and 275 of the Town and Country Planning (Scotland) Act 1997⁽¹⁶⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021 and come into force on [].

Interpretation

2. In these Regulations—

“the Act” means the Town and Country Planning (Scotland) Act 1997, and

“the 2013 Regulations” means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013⁽¹⁷⁾.

Amendment of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

3. The 2013 Regulations are amended in accordance with regulations 4 to 8.

Pre-application consultation – exemptions

4. After regulation 4 insert—

⁽¹⁶⁾ c.8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 198 (c.46). Sections 35A, 35B and 35C were inserted by section 11 of the Planning etc. (Scotland) Act 2006 (asp 17) and were relevantly amended by section 18 of the Planning (Scotland) Act 2019 (asp 13). Sections 18(1), 18(2) and 18(4) were commenced by The Planning (Scotland) Act 2019 (Commencement No.3) Regulations 2021 S.S.I. 2019/385.

⁽¹⁷⁾ S.S.I. 2013/155.

ANNEX A – PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – DRAFT REGULATIONS

“Pre-application consultation – exemptions

4A.—(1) The circumstances specified for the purposes of section 35A(1A)(b) of the Act (pre-application consultation: preliminary) in which section 35A(1) of the Act does not apply to an application for planning permission are set out in paragraph (2)

(2) The circumstances are where all of paragraphs (a) to (f) apply—

- (a) the application for planning permission relates to proposed development—
 - (i) of the same character or description as development in respect of which an earlier application for planning permission was made (“the earlier application”),
 - (ii) which falls within the description of the development contained in the proposal of application notice given to the planning authority under section 35B(2) of the Act in respect of the earlier application, and
 - (iii) to be situated on the same site as the development to which the earlier application related, or to part of that site, and to no other land except land included solely for the purpose of providing a different means of access to the site,
- (b) there has been compliance with the requirements of section 35B in respect of the earlier application,
- (c) the planning authority have not exercised their power under section 39 to decline to determine the earlier application,
- (d) the application and the earlier application are made by, or on behalf of, the same person,
- (e) the application for planning permission is made no later than eighteen months after the validation date of the earlier application, and
- (f) the applicant has not, since the date on which the earlier application was made, made any other application for planning permission for proposed development as described in paragraph (a) without having complied with section 35B.

(3) Where the applicant believes that section 35A(1) of the Act does not apply to an application for planning permission by virtue of section 35A(1A)(b) a statement to that effect must accompany the application for planning permission and that statement must identify the earlier application.”

Content of pre-application screening notice

5. In regulation 5 (content of pre-application screening notice) —

(a) after paragraph (1) insert—

“(1A) If the notice under section 35A(3) of the Act relates to a prospective application for planning permission for development of the same character or description as development in respect of which an earlier application for planning permission was made, the notice must contain—

- (a) sufficient information to enable the earlier application to be identified by the planning authority,
 - (b) the information contained in the proposal of application notice given to the planning authority under section 35B(2) of the Act in respect of the earlier application, and
 - (c) a statement (for the purposes of assessment of the need to comply with section 35B), confirming the date, or latest date, on which the prospective applicant intends to make that application for planning permission, and
- (b) at the end of paragraph (2) insert “ and “earlier application” has the same meaning as in regulation 4A(2)(a)(i)”.

Pre-application consultation

6. In regulation 7 (pre-application consultation)—

(a) in paragraph (2)(a)—

ANNEX A – PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – DRAFT REGULATIONS

- (i) for “one public event” substitute “two public events”, and
- (ii) at the end omit “and”,
- (b) for paragraph (2)(b)(ii) substitute —
“(ii) details as to how further information concerning the proposed development may be obtained by electronic means and where such information can be inspected,”
- (c) in paragraph (2)(b)(iii)—
 - (i) before “public event” insert “first”, and
 - (ii) at the end insert “and may contain the date and place of the second or subsequent public event;”,
- (d) in paragraph (2)(b)(v), at the end insert “, and”,
- (e) in paragraph (3) for “paragraph (2)(b)(iii) substitute—
“ paragraph (2) and the final public event must be held at least 7 days after the first public event.”,
and
- (f) after paragraph (3) insert—
 - “(4) Where notice of the date and place of a second or subsequent public event is given it must also include the information set out in paragraph (2)(b).
 - (5) The prospective applicant must at the final public event provide feedback to members of the public in respect of comments received by the prospective applicant as regards the proposed development.”.

Temporary relaxation of pre-application consultation requirements during Coronavirus emergency period

7. In regulation 7A(2)(b) (temporary relaxation of pre-application consultation requirements during Coronavirus emergency period) for “for “where” there were substituted “how” (including by what electronic means)” substitute ““and where such information can be inspected” were omitted”.

Form and content of pre-application consultation report

8. After regulation 7A insert—

“Form and content of pre-application consultation report

7B. A pre-application consultation report must contain—

- (a) the dates on which, and places where, public events were held as required in accordance with regulation 7(2),
- (b) a description of any additional steps taken by the prospective applicant to consult with members of the public as regards the proposed development,
- (c) a list of bodies, groups and organisations who were consulted by the prospective applicant,
- (d) evidence as to how the prospective applicant carried out the activities described under subparagraphs (a), (b) and (c),
- (e) copies of—
 - (i) any materials sent to consultees,
 - (ii) any materials provided to those attending a public event, and
 - (iii) any visual presentation shown or displayed at a public event,
- (f) photographs of any display boards or models at public events,
- (g) confirmation as to whether consultees and attendees at public events were informed that pre-application consultation does not remove the right or the potential need to comment on the final application once it is made to the planning authority,

ANNEX A – PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – DRAFT REGULATIONS

- (i) a summary of—
 - (i) the written responses to consultations, and
 - (ii) views raised at public events,
- (j) an explanation of how the prospective applicant took account of views raised during the pre-application consultation process, and
- (k) an explanation of how members of the public were given feedback on the prospective applicant’s consideration of the views raised during the pre-application consultation process.

Transitional Provisions

9. In relation to an application for planning permission where the prospective applicant has before [the date on which these Regulations come into force] given a proposal of application notice to the planning authority in respect of that application—

- (a) regulation 7 of the 2013 Regulations continues to apply as it did immediately before that date in respect of compliance by a prospective applicant with section 35B of the Act, and
- (b) regulation 7B of the 2013 Regulations (introduced by regulation 8 above) does not apply in respect of a pre-application consultation report to be submitted in relation that application for planning permission.

St Andrew’s House,
Edinburgh

2021

Authorised to sign by the Scottish Ministers

ANNEX B - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – BUSINESS AND REGULATORY IMPACT ASSESSMENT (PARTIAL)

PARTIAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

Purpose and intended Effect

Background

1. This consultation paper relates to proposed changes to the existing requirements for pre-application consultation (PAC) with local communities on applications for planning permission for national and major developments. These requirements were introduced in 2009, as part of the implementation of the Planning etc. (Scotland) Act 2006.
2. The proposed changes to PAC are the first part of a wider package of measures on improving community engagement in planning matters and building public trust. The proposals for changes to PAC come from, in part, the report by the independent panel assigned to review the Scottish Planning system: 'Empowering Planning to Deliver Great Places'¹⁸ (May 2016). The report referred to concerns that PAC can be a 'tick box' exercise and that there was a lack of feedback to communities on their views in the pre-application phase – i.e. prior to the finalised application being made. The report recommended an additional public event to allow for greater discussion of proposals. Subsequent consultation indicated a need for clarity and transparency around the process.
3. In addition, since the inception of PAC, there have been concerns about PAC requiring to be repeated in situations where a PAC has been conducted previously and an application made, and then the developer seeks to make a subsequent application for the same, basic development (see paragraphs 34 to 39 below). The Planning (Scotland) Act 2019, which was developed as part of the response to the review mentioned above, includes new powers to specify exemptions from PAC requirements.
4. PAC is a statutory requirement in relation to applications for planning permission for national and major developments – i.e. large scale development as opposed to local developments (the third level of the planning hierarchy¹⁹). The aim is that local communities are made aware of proposals at an early stage, and have the opportunity to comment to the prospective applicant before the proposal is finalised and an application for planning permission is made.
5. PAC can increase the likelihood of a local community's views being taken on-board, as the ability to amend proposals to accommodate concerns is more limited once in the application process. With increased guidance and awareness of the importance of engaging communities effectively in decisions about land, it may be possible to take a more cooperative approach to

¹⁸ <https://www.gov.scot/publications/empowering-planning-to-deliver-great-places/>

¹⁹ <https://www.gov.scot/publications/hierarchy-developments-planning-circular-5-2009/>

ANNEX B - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – BUSINESS AND REGULATORY IMPACT ASSESSMENT (PARTIAL)

proposals. It is, however, up to the applicant to decide, having considered the outcome of PAC, what their detailed proposal for application should be.

6. Once the application is made to the planning authority, the various planning application consultation and publicity requirements will apply²⁰, and anyone can make comment to the planning authority on the proposal, whether positive or negative. Indeed, it is important that they do so at this stage, as the proposal may have altered as a result of PAC and other pre-application discussions, and the planning authority will be considering the finalised proposal in the application, and comments submitted to them on that. The planning authority is required to give due consideration to any relevant planning issues (material considerations) raised at the application stage when deciding whether to grant planning permission or not.

Current PAC Requirements

7. The requirement for PAC to be undertaken is contained in sections 35A, 35B and 35C of the Town and Country Planning (Scotland) Act 1997²¹, as amended. The detailed requirements are set out in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013²² (“the DM Regulations”).
8. The basic PAC requirements are currently that the prospective applicant must:
 - Serve a proposal of application notice (PAN) on the planning authority describing the proposal and location and indicating what consultation they intend carrying out as part of PAC.
 - Consult the community councils in whose area the proposal site is located or whose area adjoins the proposal site;
 - Hold a public event²³.
 - Publish a notice in a local newspaper indicating: where information on the proposal can be obtained; how to make views known to the prospective applicant; and the details of the public event (the notice must be published at least 7 days prior to the public event).
 - Carry out any further PAC measures required by the planning authority (the authority has 21 days from the receipt of the PAN to make such requirements).

²⁰ Neighbour notification, online weekly lists, newspaper notices where required, consultation with community councils and other bodies.

²¹ <https://www.legislation.gov.uk/ukpga/1997/8/contents>

²² <https://www.legislation.gov.uk/ssi/2013/155/contents>

²³ At the time of publication, during COVID-19, the requirement for a public event has been temporarily suspended, and guidance indicates online alternatives that should be used.

ANNEX B - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – BUSINESS AND REGULATORY IMPACT ASSESSMENT (PARTIAL)

9. The planning application to which PAC relates cannot be submitted until at least 12 weeks have passed since the PAN was served on the planning authority. When an application is submitted, it must be accompanied by a report on the PAC. Currently the content of such reports is the subject of guidance rather than statutory requirement.
10. There is currently no maximum time limit for the application for which PAC relates to be submitted. Provision in the Planning (Scotland) Act 2019²⁴ introduces an 18 month time limit for making an application to which PAC applies, from when the PAN is served on the planning authority. This is intended to ensure that the views given during PAC are still relevant when the application is made. We intend to bring this time limit into force at the same time as the changes to PAC requirements proposed in this paper.

Objective

11. See paragraphs 2 and 3 above on the source of the proposed changes. The objective is therefore to improve the PAC process, make it clearer and provide more information on and opportunities for feedback, whilst ensuring that the PAC requirements are proportionate. This is part of the overall package of measures on community engagement, which will include guidance as well as legislative changes.
12. The specific proposed changes to secondary legislation (i.e. regulations) on PAC are:
 - To make the requirement to provide details on the proposal (see 4th bullet in paragraph 8 above) be both hard copy and in electronic formats (online).
 - An additional public event (i.e. a required minimum of two public events);
 - Requirements on the content of PAC reports; and
 - Exemption from PAC for applications in certain circumstances.
13. There is an additional related legislative change which is included in the Planning (Scotland) Act 2019, and the intention is to commence it alongside the above changes:
 - An 18 month time limit on making an application once PAC has started (i.e. from when the proposal of application notice is served on the planning authority).

Rationale for Government Intervention

14. It was clear from the responses to the review of planning and to subsequent consultations on the Scottish Government's responses to the review that change is required. There were concerns that PAC can be treated as a tick box exercise and that prospective applicants had to demonstrate a more

²⁴ <https://www.legislation.gov.uk/asp/2019/13/contents>

ANNEX B - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – BUSINESS AND REGULATORY IMPACT ASSESSMENT (PARTIAL)

responsive engagement with communities. At the same time, there were concerns about the costs of PAC to applicants.

15. The Scottish Government recognises the concerns and that experiences of PAC can vary considerably and that a balance has to be struck when looking at improvements.

16. National Performance Framework - These measures contribute to the following performance indicators:

- We live in communities that are inclusive, empowered, resilient, and safe.
- We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
- We value enjoy and protect and enhance our environment.

Consultation

- **Within Government**

17. These are procedural matters and responsibility for these issues lies mainly with Planning and Architecture Division.

- **Public Consultation**

18. The issue of PAC was part of the wider review of the Scottish Planning System by an independent panel. This involved evidence gathering sessions and a general call for information. Since the panel reported in 2016, there have been two public consultations on the way ahead, before a Bill was introduced to Parliament in 2017 which became the Planning (Scotland) Act 2019.

19. There will be a further public consultation between August and October 2020 on the secondary legislation required for detailed changes to PAC.

- **Business**

20. A variety of businesses responded to the independent panel reviewing planning and to the subsequent public consultations following on from the panel's report. With regard to these specific proposals, a number of businesses were approached for figures regarding the current costs of holding a public event, newspaper notices and the overall costs of complying with PAC requirements.

21. Further discussions with a number of specific companies will be conducted during the public consultation to get a firmer idea of the impacts on business of the changes.

Options

22. This section looks at each of the four measures and the options for each.

ANNEX B - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – BUSINESS AND REGULATORY IMPACT ASSESSMENT (PARTIAL)

Providing Information on the Proposal - Format Requirements

Do nothing

23. Prior to the temporary changes to PAC for the COVID-19 emergency, there was no specification as to how details on proposals were to be provided, but the presumption would be that meant as hard copy. Those temporary changes included the ability to obtain such information by electronic means. That temporary change will fall away after the COVID-19 emergency, and the provision will revert to their original requirements.

Require details to be available in hard copy and electronic format

24. Although we have yet to evaluate the experience of the wider move to using online engagement for PAC, the availability of details in hard copy and electronic formats would seem a basic step towards acknowledging the increasing use of information technology in the planning system. As indicated by the Equality and Child's Rights and Welfare Impact Assessment, this should improve the likelihood and ability for the public to engage in PAC, and may reflect a trend amongst prospective applicants, at least those who embrace PAC and already go beyond the basic statutory requirements.

An Additional Public Event

Do nothing

25. To do nothing will simply mean the concerns about PAC and the lack of opportunity to obtain feedback on earlier comments will persist and may further undermine stakeholders trust and confidence in the system.

Require alternative measures for providing feedback

26. At present, the PAC report and the finalised application in effect provide feedback, but not before the proposal is finalised and application is made to the planning authority.

27. Other forms of feedback could be provided by online means. However, at this juncture, although various online approaches are being tried during the COVID-19 emergency, we have no systematic analysis of how well that has worked as an alternative or complement to physical, public events. Concerns have been expressed at the onset of the COVID-19 emergency about those who may lose out as so much public engagement activity moves online.

Require an additional public event

28. This would involve the holding of a physical public event in the vicinity of the proposal site. It would also involve an additional newspaper notice.

ANNEX B - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – BUSINESS AND REGULATORY IMPACT ASSESSMENT (PARTIAL)

Requirements on the content of PAC reports

Do nothing

29. At present the content of PAC reports is the subject of guidance. To a large extent this change is about the clarity and consistency of the process and the outputs of PAC. Again, doing nothing simply does not address the concerns about lack of feedback, consistency, transparency and treating PAC as a tick box exercise.

Options - Specifying the content of PAC Reports in legislation

30. There are no options other than using existing powers to specify the content of PAC reports in legislation. As indicated the current guidance approach is considered unacceptable in promoting consistency and transparency. There is no question of removing the requirement for a PAC report, as that would simply exacerbate the current concerns.

Exemption from PAC for applications in certain circumstances

Do nothing

31. The concern is that requiring PAC in certain circumstances is largely redundant. The purpose of PAC is to provide early engagement with the local community before the proposals are finalised for the purposes of making an application – i.e. while the prospective applicant's options may still allow for various changes. Once an application is made to the planning authority, the extent to which proposal can be varied, for example due to public concern, is restricted²⁵.

32. In cases where PAC has been carried out, the proposal has been finalised and an application made, there may be situations where a fresh application for basically the same development, with some changes is needed. In such cases the options available may be quite limited and PAC largely redundant as a result. Local communities would still have the opportunity to comment on the fresh application, and the planning authority is obliged to give due consideration to representations before a decision on the application is made.

33. Doing nothing would mean PAC being undertaken in cases where it serves little effective purpose beyond the opportunities to comment on the application itself – with the related costs on applicants in terms of resources and time, and indeed for the public. The public may engage in a second PAC in such cases with unduly high expectations regarding the options to be considered. There is the risk of consultation fatigue, where the public is asked to engage in PAC, then on consultation on the earlier application, then PAC again on a similar proposal, and then on consultation on the second application.

²⁵ The planning authority cannot agree to changes to the description of development in an application if it considers those changes to be substantial – section 32A of the Town and Country Planning (Scotland) Act 1997.

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Option - Exemption from PAC for proposals previously subject to PAC and a second application by the same applicant.

34. This is the only option we have considered. We are not contemplating that certain development types or proposals in the major development and national development categories should be entirely exempt from PAC requirements.
35. As indicated, the basis for considering exemptions from PAC requirement is where these are likely to be redundant. Exemption would not apply where the planning authority had declined to determine (i.e. refused to deal with) the earlier application. That means it could apply where the earlier application is:
- withdrawn;
 - refused;
 - permission is granted;
 - subject to an appeal;
 - subject to call-in for determination by Scottish Ministers; or
 - a second application is made whilst the earlier application is still before the planning authority.
36. The intention is that further criteria apply to the developments in the applications. Firstly that the second application is made by the same applicant as the earlier application. Then that both applications must be within the scope of what was considered at PAC, i.e. that they fall within the description contained in the proposal of application notice.
37. In addition, the proposal in the second application must be for ‘development of the same character or description as development to which an earlier application relates and to no other development’ and where ‘the application relates to the same site as that to which the earlier application related, or to part of that site, and to no other land except land included solely for the purpose of providing a different means of access to the site’. This description of development is to allow for some changes to be made but that the development proposal is basically the same. It is taken from the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004²⁶ (Regulations 7(a) and 8(c)).
38. In settling on this description of how the development in the subsequent application relates to that in the earlier application, we wanted to use a concept for relating applications that was already established in planning, rather than inventing a new concept for the same thing.
39. We also propose the use of a time limit on the exemption – this would be 18 months from the date the earlier application was made to the planning authority. This would potentially allow an application to be made and determined, and a proposal revised, without leaving exemptions open ended

²⁶ <https://www.legislation.gov.uk/ssi/2004/219/contents/made>

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(given we are introducing a new time limit on making an initial application to which PAC requirements apply).

Sectors and groups affected

40. The changes will apply to applicants for planning permission for national and major developments. As prospective applicants they will be required to carry out any additional public event, draft their PAC report in accordance with any new statutory requirements, but may be exempt from PAC altogether when making such an application in certain specified circumstances.
41. Local communities will have the opportunity to: access details of proposals more easily; attend any additional PAC public event and make their views known to the prospective applicant, and should receive more feedback; and will benefit from the transparency and consistency as regards the content of PAC reports when an application is made. On the other hand they may feel aggrieved at the exemptions from PAC, although the intention is that these would only apply to proposals where a previous application had been made for the same or amended version of the same basic development, which had been subject to PAC.
42. Planning authorities should, as a result of statutory specification of PAC reports, have more information on which to decide whether PAC requirements have been complied with, though they may face more requests for screening as to whether PAC is required, as a result of any new provisions on PAC exemptions.

Benefits

Format requirements when providing information on the proposal – Do nothing

43. No benefits

Format requirements when providing details on the proposal – require hard copy and electronic formats

44. Widen access to information and increase the ability of the public to engage and amount of people engaging in PAC, potentially improving proposals and outcomes.

Public events - Do nothing

45. No benefits.

Public events – An additional public event

46. Having a minimum of two public events should allow for the public to receive feedback on their input to the PAC process before the proposal is finalised and an application is made to the planning authority. This should help to address concerns that PAC is treated as a tick box and one way exercise – the public feed in comments, but get nothing back until a PAC report and application appear.

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Content of PAC reports - Do nothing

47. No benefits. PAC reports are already a requirement, though the issue of content is currently subject to guidance. Arguably, applicants may lose the flexibility to choose what to cover and what not to cover in such reports. The purpose of such reports is to demonstrate that PAC requirements have been complied with, and to encourage higher quality PAC. Consistency and transparency, rather than flexibility for applicants, are what such reports should be providing.

Content of PAC reports – Prescribe content

48. Applicants, planning authorities and the local communities are clear on what the content of PAC reports should be and that this will be required to give an accurate reflection of the PAC that was undertaken. Planning authorities should be able to see that statutory PAC requirements have been complied with, and local communities should see the process they experienced accurately reflected in the report. Being required to provide certain information may also mean some applicants improve the quality of their PAC engagement.

Exemptions from PAC – do nothing

49. Possibly, limited benefits in some cases, in that despite having previously finalised proposals, there may in some cases be wider options as regards amendment of proposals that were not considered in detail in the previous PAC or application process. However, requiring PAC in all cases where an application for basically the same proposal is brought forward again seems excessive for any potential benefit in some cases. Local communities will still have the opportunity to comment on the revised proposal as part of the application process itself.

Exemptions from PAC – exempt applications where proposals have previously been subject to PAC for another application for basically the same development.

50. This will remove the costs for applicants of compliance with PAC requirements in terms of the costs of holding a public event or events, consultation with community councils, placing newspaper notices, preparing PAC reports and complying with any additional PAC steps that might be required by the planning authority. Some prospective applicants also volunteer additional measures, such as leafleting, multiple adverts, and spend varying amounts on presentations, travel and subsistence and staff or consultancy costs in attending depending on the nature and scale of the development and the location.

51. The Scottish Government requested information on costs from a number of developers and representative bodies. Based on the admittedly small number of responses, the range in expenditure for compliance with the statutory requirements was very wide: £5K up to £70K. We do not have sufficient figures to suggest that PAC costs are evenly distributed across this range – i.e. to represent possible savings as a range from where all the major

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developments involved costs at the lower to the higher end of this range, could be misleading.

52. The Scottish Land Commission has published a research report²⁷ on early engagement in planning, which indicated that respondents did not separately identify the costs of PAC sufficiently to do a cost benefit analysis. Fifteen respondents did make estimates, and indicated a range of £20K to £50K, with most being at the lower end of that range. The report did not indicate if this was purely for meeting the statutory requirements or included additional, voluntary consultation measures.

53. For the purposes of this assessment we will take a figure of £35K.

54. We do not know how many applications for national and major developments per year are applications which would fall into those categories identified for exemption. We will seek information on this in the public consultation.

55. If we assume the figure is 5%. The average number of applications for major development²⁸ between 2016/17 to 2018/19 is 332 applications. That suggests a saving of:

$$£35,000 \times (5\% \text{ of } 332) = £581,000$$

56. If we add to that the costs of any additional public event as proposed (see below paragraphs 64 to 67) and of making information available in electronic formats as well as hard copy (paragraphs 60 to 62):

$$\text{No. of additional public events} = 5\% \text{ of } 332 = 17$$

$$\text{No. of additional newspaper notices} = 17$$

$$(17 \times £7K) + (17 \times £1500) + (£4500 \times 17) = £221K$$

57. That suggests a total annual saving for prospective applicants of £802K arising from PAC exemptions.

58. The public will no longer be faced with PAC processes which unduly raise expectations about what is up for discussion in terms of options, when the prospective applicant is considering only adjustments to the previously finalised proposal, rather than a wider set of development options. Some may be concerned about any reduction in such consultation requirements.

²⁷ “The Value of Early Engagement in Planning” (June 2020) - <https://landcommission.gov.scot/our-work/housing-development/early-engagement-in-planning>

²⁸ Planning applications for national development are small in number and not separately identified in our statistics. Many such developments are subject to alternative consent procedures rather than the planning application process.

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Costs

Format requirements when providing details on the proposal – Do nothing

59. No additional costs.

Format requirements when providing details on the proposal – require hard copy and electronic formats

60. One of the submissions providing costs of current PAC requirements indicated that the cost of setting up information online e.g. website set up/Facebook page, online questionnaire, participation, and comments pages were on average £500 to £1,000. Monitoring and assessment costs of digital participation are on top of this around £3,000 to £5,000.

61. If we take a total figure of say £4500, and given the average annual number of applications for major development determined between 2016/17 to 2018/19 is 332 applications, that suggests an additional annual cost of: £1.5M.

62. Looking at the costs of this additional requirement minus future exempted cases (see section below), then the suggested annual increase in costs is:

$$£1.5M - (17 \times £4500) = £1.424M$$

Public events - Do nothing

63. Costs would be continued: concerns amongst some local communities that there are no opportunities to consider feedback on the views they have submitted during PAC, and that PAC is a tick box exercise.

Public events – An additional public event

64. The costs of holding an additional event would likely include the cost of holding the event and a further newspaper notice to publicise it. From the submissions mentioned above, the costs of a public event itself can vary widely for the reasons mentioned: £5K - £10K.

65. Similarly the costs of newspaper notices can vary widely depending on the newspaper and the size of notice preferred by the prospective applicant. From the figures submitted a range of £200 - £5K.

66. If we take an approximation of £7K for an event and £1500 for public notices, , using the figure for a three year average of applications for major development of 332, suggests costs of:

No. of applications with an additional public event and additional newspaper notice= 332

$$(£7K \times 332) + (£1500 \times 332) = £2.82 \text{ million}$$

67. If we apply our assumption that 5% of applications will be exempt under the new proposals:

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No. of applications with an additional public event and newspaper notice =
332 – 17 = 315

(£7K x 315) + (£1500 x 315) = £2.68 million

Content of PAC reports - Do nothing

68. The cost of doing nothing as regards prescribing the content of PAC reports would be continued concerns about a lack of consistency and transparency and about feedback on the public's input to the PAC process, so undermining confidence in the process.

Content of PAC reports – Prescribe content

69. Applicants to which PAC requirements apply are already required to produce PAC reports, though their content is the subject of guidance. A more detailed specification in legislation may mean more information than has been supplied by some applicants in the past will be required. These new requirements do not involve more consultation or analysis, but potentially more of a record of what occurred and supplying copies of information. Any increase in cost should therefore be minimal for those who would have approached PAC in a rigorous way in any event.

Exemptions from PAC – do nothing

70. The costs of not exempting certain applications from PAC requirements is that the applicants involved continue to incur the costs of doing PAC. See paragraphs 50 to 58 on the benefits of exemptions. The figures suggest a saving of £581K per year, or £802K with the proposed additional PAC requirements taken into account.

Exemptions from PAC – exempt applications where proposals have previously been subject to PAC for another application for basically the same development.

71. The costs here may be that more screening as regards the need for PAC is required. There is currently a screening process that allows prospective applicants for planning permission to ask the planning authority whether their proposal is one to which PAC requirements apply. At present, given the requirements apply to national and major developments, which are fairly well defined, prospective applicants are unlikely to be in any doubt as to whether PAC is required.

72. The proposed exemption involves an element of judgement by planning authorities as to whether any changes to the proposal in the new application mean the proposal has changed so much from the previous application it is no longer the same basic proposal. It seems likely therefore that prospective applicants will wish to use the screening process to check with the planning authority that their proposal is not one to which PAC applies due to the news.

73. There will therefore be some cost to the prospective applicant in applying for screening and for the planning authority in processing such screening. That

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said, from the planning authority perspective, in some, or perhaps many cases, revised applications will be seeking a fee exemption, and the criteria as regards whether the proposal has changed so much it is not eligible for a fee exemption are the same for the PAC exemption. For prospective applicants, the costs of screening will be significantly less than those for conducting PAC.

74. Another cost may be that some members of the public are aggrieved that there is a PAC exemption at all, and that this undermines their confidence in the planning process.

Scottish Firms Impact Test

75. These changes affect the costs of obtaining planning permission, and apply to national and major developments, but not to local development, i.e. they apply to the larger developments in the planning hierarchy.
76. These changes will not affect the number of projects subject to PAC procedures, but will likely add to the costs of those firms who do seek planning permission for national and major developments. The costs are not insignificant (The Scottish Land Commission Report indicates current pre-application engagement costs are about 5-10% of application costs); however, it seems unlikely that the scale of costs involved in PAC requirements, as amended, compared to the overall costs of pursuing a national or major development will be a deciding factor in whether to pursue that project.

Competition Assessment

77. There are no obvious impacts on competition of these procedural amendments as regards obtaining planning permission. The changes will apply to any business that is pursuing national or major developments. The changes would not favour one such business over another per se. Whether a business benefits from the proposed PAC exemptions depends on the planning circumstances of the case.
78. Requirements for an additional public event and prescribed content of PAC reports are unlikely to involve significant expenditures in the context of the wider costs of pursuing a national or major developments.
79. In some sectors businesses which pursue major developments may be competing with those who are operating at a smaller scale, i.e. local development, which do not require PAC at all. As indicated, however, the added costs from an additional PAC event or from prescribed content of PAC reports are unlikely to make a significant difference to competitiveness in the overall cost context of national and major developments.
- Will the measure directly or indirectly limit the number or range of suppliers?

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80.No. This relates to the process for obtaining planning permission, and does not involve significant additional costs in the overall context of the scale of projects involved.

- Will the measure limit the ability of suppliers to compete?

81.No. As above.

- Will the measure limit suppliers' incentives to compete vigorously?

82.No. As above

- Will the measure limit the choices and information available to consumers?

83.No. The changes to PAC requirements are about public engagement in the planning process, not developers' consumers at market.

Consumer Assessment

84. These changes relate to the costs of obtaining planning permission for national and major developments, and the costs involved seem unlikely to affect the purchasers of goods and services - be that purchasers of houses, people buying from new premises or services provided by infrastructure or supported by administrative offices which may constitute national or major development.

85. To the extent that the public are consumers of planning services in relation to another party's development, then the proposed changes should improve that engagement, or avoid disproportionate engagement which might be frustrating rather than productive (see below).

- Does the policy affect the quality, availability or price of any goods or services in a market?

86.No. This relates to the process for obtaining planning permission, and does not involve significant additional costs in the overall context of the scale of projects involved.

- Does the policy affect the essential services market, such as energy or water?

87. Not significantly. Developers in such sectors when pursuing national or major developments will be affected as regards the PAC procedures as will any other applicant for planning permission for such development. The changes do not involve significant additional costs in the overall context of the scale of projects involved.

- Does the policy involve storage or increased use of consumer data?

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88.No.

- Does the policy increase opportunities for unscrupulous suppliers to target consumers?

89.No.

- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

90. In so far as the Planning system is a service and the public are its consumers, yes. Whilst PAC exemptions will reduce public engagement in some cases, we believe this is proportionate given the intended objectives of that engagement and the possibilities for consultation fatigue or raised expectations regarding what options are available for discussion. Additional public events and prescribed content of PAC reports should improve public information on proposals.

- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

91.No.

Test run of business forms

92.No new forms.

Digital Impact Test

93. The PAC requirements are intended as a statutory minimum. The nature of public events is that they are physical events. It is open to prospective applicants to use online engagement to complement such public events. Other aspects of PAC requirements and the submission of planning applications and PAC reports, screening for PAC can be conducted by electronic communications.

- Does the measure take account of changing digital technologies and markets?

94. Yes

- Will the measure be applicable in a digital/online context?

95. Yes – the requirement for a public event is for a physical event, but prospective applicants can complement this with online engagement as they wish.

- Is there a possibility the measures could be circumvented by digital / online

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transactions?

96.No

- Alternatively will the measure **only** be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

97.No.

- If the measure can be applied in an offline **and** online environment will this in itself have any adverse impact on incumbent operators?

98.No.

Legal Aid Impact Test

99. These changes relate to processing requirements for national and major developments and would seem unlikely to affect claims for legal aid.

Enforcement, sanctions and monitoring

100. The proposed changes involve amendments to the existing PAC procedural requirements. Failure to comply with the requirements for an additional public event or newspaper notices will mean that the planning authority is required to decline to determine the application – i.e. refuse to deal with it.
101. If PAC reports do not comply with statutory requirements on content, then the planning authority should not accept the application. If such non-compliance regarding PAC report content reflects a failure to comply with requirements for consultation steps, then, as indicated, the planning authority is required to decline to determine the application.
102. If an applicant makes an application for a national or major development without having carried out PAC and does not qualify for an exemption, again the planning authority would be required to decline to determine the application.
103. The Scottish Government has regular engagement with planning authorities through Heads of Planning Scotland regarding development management issues like PAC. It also has established contacts with representatives of the development industry. Through these links views on the implementation of measures can be obtained, pending a more in depth review – see below.

Implementation and delivery plan

104. The intention is that the legislative changes will come into force on 1 February 2021. Stakeholders will receive notice of the laying of the legislation in Parliament, which is intended to be in December 2020. The legislative changes will be conveyed to planning authorities and the wider

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public sphere through planning guidance in e-mail alerts to planning authorities and stakeholders and the Scottish Government's web site. Guidance on the new procedures will also be published.

Post-implementation review

105. The Scottish Government will conduct a review of the first 12 months of the operation of amended PAC requirements. As well as approaching planning authorities and the development industry, a survey of public views will also be carried out.

Summary and recommendation

106. The proposed changes to public events and PAC reports emerged from an extensive review of the planning system and subsequent consultation on the recommendations arising from that and consultation on the Scottish Government's response. The electronic availability of information on proposals, alongside requirements to make it available in hard copy, reflect the general trend in the use of information technology and some of the recent temporary changes in light of the COVID-19 emergency.

107. The proposals on exemptions reflect concerns since the introduction of PAC that in some circumstances it could be excessive, and aim to take a more proportionate approach. This may be seen as primarily for the benefit of prospective applicants, but also recognises that unduly raising expectations about what is open for discussion and repeated consultation on basically the same proposal can have negative effects on public perceptions of the planning process.

108. Doing nothing is simply not a realistic option.

Summary costs and benefits table

Summary and recommendation

The Scottish Government proposes to amend the requirements for PAC for national and major developments, to help improve engagement for the public, which will mean increased costs for prospective applicants, but also allowing for exemptions in certain cases where requiring a new, and enhanced PAC process, would likely be excessive.

Based on the figures received thus far on the costs of various measures and using approximations based on those submissions, and assuming a particular level of applications qualifying for PAC exemption, the suggested overall annual net cost of the changes is £3.2 million.

Doing nothing in the face of the concerns which emerged through the planning review is not considered tenable. Subject to the views received in the forthcoming

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public consultation, the proposals, as a package, would appear to represent a proportionate response to the concerns.

13.1 Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1. Do nothing	No benefit	£802K in the absence of exemptions from PAC in certain circumstances.
2. Require detail of proposals to be available in hard copy and electronic format.	Improved accessibility of information and widen the engagement in PAC with potential benefits for proposals and outcomes.	Increased costs across all applications subject to PAC: £1.5 million
3. Require an additional public event.	Improved engagement and feedback for the public	Increased costs across all applications subject to PAC: £2.5 million.
4. Prescribe content of PAC Report.	Improved consistency of reporting and transparency of process. Possibly improved quality of PAC.	Not significant (PAC Reports should be providing most of this information already)
5. Exemptions from PAC in certain circumstances	A more proportionate approach to PAC. Saving costs to applicants (£581K), and potential costs of consultation fatigue etc.	Concern in some quarters about any reduction in PAC.
6. Implementation of package.	As for 2. To 5 combined, but with increased financial savings associated with exemptions (£789K)	A total of 2. To 5., but with reduced costs with exemptions. Net cost £3.2 million

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Declaration and publication

I have read the business and regulatory impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been/will be assessed with the support of businesses in Scotland.

Signed: Kevin Stewart

Date: 6 August 2020

Kevin Stewart, Minister for Local Government, Housing and Planning

Scottish Government Contact point: Alan Cameron

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ANNEX C - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – EQUALITY AND CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENT (PARTIAL)

Partial Equality and Child Rights and Wellbeing Impact Assessment

Background

The public sector equality duty requires the Scottish Government to assess the impact of applying a proposed new or revised policy or practice. Equality legislation covers the characteristics of: age, disability, gender reassignment, sex including pregnancy and maternity, race, religion and belief, and sexual orientation.

An equality impact assessment (EQIA) aims to consider how a policy (a policy can cover: activities, functions, strategies, programmes, and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.

In addition, the Scottish Government has undertaken an initial impact assessment considering issues relating to Child Rights and Wellbeing. The Child Rights and Wellbeing Impact Assessment (CRWIA) is used to identify, research, analyse and record the impact of a proposed law or policy on children's human rights and wellbeing. It should be used on **all** new legislation and policy which impacts children, not just children's services.

Pre-application Consultation (PAC) Proposals

These proposed legislative changes are part of a wider programme of improving community engagement in planning, deriving largely from provisions contained within the Planning (Scotland) Act 2019²⁹. They include the National Planning Framework, amended development planning procedures, the introduction of Local Place Plans plus guidance on both effective community engagement in local development plans and mediation.

The aim of this particular strand is to improve the statutory requirements for pre-application consultation (PAC) with local communities. This is in light of the findings of the independent Review Panel charged to review the planning system, in their report 'Empowering Planning to Deliver Great Places' and subsequent public consultations in 2017³⁰.

Further details are available in the consultation paper to which this assessment is attached.

Who will it affect?

We envisage that these changes will affect all those potentially involved at the PAC stage of the Scottish planning system, including the prospective applicant and their agents and those who seek to become engaged with the development proposals.

²⁹ <https://www.legislation.gov.uk/asp/2019/13/contents>

³⁰ <https://www.transformingplanning.scot/planning-reform/how-we-got-here/>

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We recognise that whilst new requirements on the format of information, for an additional public event and on the content of PAC reports should improve engagement and hopefully local communities' experience of PAC, the impacts may fall differently on different groups in society. Our initial evidence would suggest that people with disabilities, children, women and ethnic minority groups for example, experience a variety of challenges in engaging with planning, such as in relation to physical mobility and access, the impact of additional caring responsibilities or language and communication issues.

In mitigation, guidance is intended to help address the different needs and abilities or modes of engagement across various groups in society. For example, regarding issues around physical access to venues, timing of events, use of online approaches to engagement that can complement the required steps, and engagement tools that reflect the communities with whom prospective applicants are engaging.

This consultation also seeks views on online forms of engagement, which might address some concern about engagement during PAC. Whilst during the COVID-19 emergency, such engagement has been used in relation to PAC, we have yet to assess how well that may have worked, with a view to adding specific legislative requirements at this time, beyond simply making information available electronically. It seems unlikely that a move to online engagement will in itself be a panacea for issues around engagement in planning.

Whilst the cases to which PAC exemptions apply are likely to be few in number and will apply to cases where the same basic proposal has been through PAC and finalised for a previous application, there may nevertheless be concerns about disempowerment that in some groups in society exacerbate pre-existing concerns in this regard.

What might prevent the desired outcomes being achieved?

We have not identified any factors which might prevent the desired outcomes.

Framing

Results of EQIA framing exercise

It is clear from the engagement during and since the Independent Panel's review that there is a need to improve public engagement measures, such as PAC. It is also clear from that work that different groups in society have different levels of engagement with the planning system.

From the evidence gathered so far, these amendments are likely to enhance the opportunities for engagement in shaping the places that people work and stay. However, whilst we believe they will generally have a positive effect, we see value in gathering further evidence.

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Extent/Level of EQIA required

The potential impact on each of the protected groups of the changes to land use planning legislation has been considered using information in the Scottish Government's Evidence Finder³¹ plus additional information below.

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 further development of the policy, including associated guidance.

Results of CRWIA framing exercise

The Articles of the United Nations Convention on the Rights of the Child (UNCRC) and the child wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

Our work on this to date indicates that a CRWIA is required to support the development of this policy. We note that guidance suggests that a CRWIA should be undertaken where the policy will be subject to extensive consultation, including with the Scottish Parliament.

The Articles of the UNCRC and the child wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

The policy will specifically support Article 12 of the UNCRC. This relates to every child having a right to express their views and have them given due weight in accordance with their age and maturity. Children should be provided with the opportunity to be heard, either directly or through a representative or appropriate body. This links to the Respected and Responsible welfare indicators.

Other Articles of the UNCRC may indirectly be relevant such as: Article 3 - Every decision and action taken relating to a child must be in their best interests; Article 15 – a right to gather and use public space, providing no laws are broken; and Article 31 – a right to play, rest, leisure and access cultural life appropriate to their age.

We envisage that the policy will potentially impact upon the opportunity of all children and young people to become more actively engaged in the planning system. However, there is the potential for intersectional issues to effect the perception of certain groups of children and young people of engagement. Research relating to out of school groups and activities suggests this may particularly be an issue for both disabled children and older children.

We would want to gather evidence on the potential impacts on how the policy affects or could affect children and young people in practice.

³¹ <http://www.equalityevidence.scot/>

ANNEX C - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – EQUALITY AND CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENT (PARTIAL)

Stage 2: Data and evidence gathering, involvement and consultation

Characteristic ³²	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	<p>In 2018, just under one in five people (19%) in Scotland were aged 65 and over, compared with 16% in mid-2007. People aged under 16 made up 17% of the population in 2017 and 64% of people were aged 16 to 64.</p> <p>Older people were less likely to have travelled the previous day. Only 51 per cent of those aged 80 and over had travelled the previous day and 65 per cent of those aged 70 to 79.</p> <p>Almost nine in 10 adults (87 per cent) aged 75 and above said they felt a very strong or fairly strong sense of belonging to their community, compared to just over seven in ten (73 per cent) of those aged between 16 and 24</p> <p>There is a clear relationship between age and use of internet, with lower rates of internet use among older adults. In 2018, 100 per cent of adults aged 16 to 24 reported using the internet compared to 38 per cent of those aged 75 and over. This gap is narrowing.</p>	<p>Mid-2018 Population Estimates Scotland (2019)³³</p> <p>Travel and Transport in Scotland 2018 (2019)³⁴</p> <p>Scottish Household Survey: Annual Report 2018 (2019)³⁵</p> <p>(as above)</p>	<p>Evidence would suggest that people wish to engage in planning though they are not always able to do so.</p> <p>As part of the consultation on the Scottish Government’s proposals, we will be proactive in engaging with societal groups on the practical elements of supporting engagement.</p>

³² Refer to Definitions of Protected Characteristics document for information on the characteristics

³³ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019#:~:text=Scotland%E2%80%99s%20population%20is%20at%20a%20record%20high%20at,which%20is%20higher%20than%20the%20previous%20two%20years.>

³⁴ <https://www.transport.gov.scot/publication/transport-and-travel-in-scotland-2018-pdf-version/>

³⁵ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/>

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	<p>The majority of young people feel they should be involved in planning in their local area and that their local councils should look at ways to support children and young people to do this.</p> <p>2019 saw an increase in the proportion of 12-15's who use social media to support causes and organisations by sharing or commenting on posts (18% in 2019 vs. 12% in 2018)</p> <p>Around six in ten of young people surveyed (58 per cent) agreed that adults were good at taking their views into account when making decisions that affect them. This was an increase from 2017, when 53 per cent agreed.</p> <ul style="list-style-type: none"> • Boys were more positive on both questions. • Older children were more negative. • Respondents with a mental or physical health condition were less positive. <p>Democracy Matters to Children (2020) noted that 'children's paths to meaningful involvement in decision-making are currently limited and many children have limited or no experience of participation in democratic processes'. A number of local issues were identified as ones which children wanted to have a say in – this included planning and the built environment.</p>	<p>YoungScot survey (2017)³⁶</p> <p>Children and parents: media use and attitudes report (2019)³⁷</p> <p>Young people's participation in decision making: attitudes and perceptions (2020)³⁸</p> <p>Democracy Matters to Children (2020)³⁹</p>	
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³⁶ <https://www.gov.scot/publications/planning-revew-young-scot-survey-results-june-2017/>

³⁷ <https://www.ofcom.org.uk/research-and-data/media-literacy-research/childrens/children-and-parents-media-use-and-attitudes-report-2019>

³⁸ <https://www.gov.scot/publications/young-peoples-participation-decision-making-scotland-attitudes-perceptions-2/>

³⁹ <https://www.childrensparliament.org.uk/our-work/democracy-matters-consultation/>

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<p>DISABILITY</p>	<p>In 2011, the proportion of people in Scotland with a long-term activity-limiting health problem or disability was 20%, the same as reported in the 2001 Census.</p> <p>Contains a range of recommendations (primarily aimed at England) including: - preparation of guidance on how and when to engage disabled people; - dedicated section in policy on access and inclusive design - plans not to be considered as ‘sound’ without evidence address disabled access; - permission granted only where sufficient provision for accessibility and inclusion -remove any requirement to prove immediate need for accessible housing.</p> <p>97% of disabled people or those with a long-term illness considered that people should be involved in making decisions about how local public services are planned.</p> <p>Access issues should be a compulsory module on all Scottish architecture courses The inclusion of local access panels as statutory consultees on planning applications.</p> <p>Twenty-seven per cent of adults who have some form of long-standing physical or mental health condition or illness reported not using the</p>	<p>Scotland's 2011 Census (Release 2A, Table 8)</p> <p>Building for Equality: Disability and the Built Environment⁴⁰</p> <p>Scottish Social Attitudes Survey 2015: Table A16⁴¹</p> <p>Inclusion Scotland: A Vision for an Inclusive Scotland (2014)⁴²</p>	<p>Evidence would suggest that people wish to engage in planning though they are not always able to do so.</p> <p>As part of the consultation on the Scottish Government’s proposals, we will be proactive in engaging with societal groups on the practical elements of supporting engagement.</p>
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<https://publications.parliament.uk/pa/cm201617/cmselect/cmwomeq/631/631.pdf#:~:text=Building%20for%20Equality%3A%20Disability%20and%20the%20Built%20Environment,use%20of%20public%20money%2015%20Fiscal%20incentives%2017>

41 <https://www.gov.scot/publications/scottish-social-attitudes-survey-2015-attitudes-social-networks-civic-participation/>

42 <https://inclusionscotland.org/a-vision-for-an-inclusive-scotland/#:~:text=A%20Vision%20for%20an%20Inclusive%20Scotland.%20Our%202014,election%20in%202015%2C%20and%20beyond%20to%20the%20>

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	<p>internet, compared with eight per cent of those who do not have any such condition. This divide in internet use is more marked among the older age groups, but is prevalent across all age bands to some extent with the exception of 16-24 year olds.</p>	<p>Scottish Household Survey: Annual Report 2018 (2019)</p>	
SEX	<p>Scotland had a relatively even split between genders in 2018, with 51% females and 49% males, although this varied amongst age groups.</p> <p>Women are slightly more likely than men to become involved in the planning process. This was focussed on development management.</p> <p>Language barriers, lack of confidence and dominant characters can discriminate against some people during community engagement specifically women, minority ethnic groups, young and old people and people with disabilities.</p> <p>Overall there was no significant difference in use of internet between genders</p>	<p>Mid-2018 Population Estimates Scotland (2019)</p> <p>Planning and Community Involvement in Scotland (2004)⁴³</p> <p>Hard to reach, easy to ignore (2017)⁴⁴</p> <p>Scotland's People Annual Report: Results from 2015 Scottish Household Survey (2016) (section 8.2.2)⁴⁵</p>	<p>Evidence would suggest that people wish to engage in planning though they are not always able to do so.</p> <p>As part of the consultation on the Scottish Government's proposals, we will be proactive in engaging with societal groups on the practical elements of supporting engagement.</p>

⁴³ <https://www.webarchive.org.uk/wayback/archive/20180515204336/http://www.gov.scot/Publications/2004/07/19657/40295>

⁴⁴ <http://whatworksscotland.ac.uk/publications/hard-to-reach-or-easy-to-ignore-promoting-equality-in-community-engagement-evidence-review/>

⁴⁵ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2016-scottish-household-survey/pages/8/>

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	<p>The majority of all adults said that they felt a very strong or fairly strong sense of belonging, with the gender of the respondent having no bearing on their strength of belonging.</p> <p>Do you feel able to influence planning decisions which affect your local area and how it is being developed? Findings on no influence / some influence were similar for male (61%, 35%) and female (59%, 36%)</p> <p>Four key facts, which link specifically with arrangements around the participation of women in engagement on the built environment: • Women can find it more difficult to engage in planning processes since they are more likely to provide unpaid care and the timing and places of consultation may not recognise caring responsibilities. • Women from some minority ethnic groups may not wish to attend mixed gender consultation meetings. • Studies by the Women’s Design Service show an under-representation of disabled women in consultation processes. • Women are less likely than men to access ICT and an over-emphasis on the internet could exclude women.</p> <p>While this may have been true in 2007, more recent information (2016) from the Scottish Household</p>	<p>Scottish household survey 2018: annual report (2019)</p> <p>The National Trust for Scotland Heritage Observatory briefing note (2017)⁴⁶</p> <p>Royal Town Planning Institute, Good Practice Note 7: Gender and Spatial Planning (2007)⁴⁷</p>	
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⁴⁶ https://www.nts.org.uk/Downloads/Site/NTS_briefing_note_-_planning_in_Scotland_-_November_2017.pdf

⁴⁷ <https://policy-practice.oxfam.org.uk/publications/gender-and-spatial-planning-rtpi-good-practice-note-7-112350>

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	Survey would suggest that there was no significant difference in internet use between genders.		
PREGNANCY AND MATERNITY	We have not been able to gather any information regarding this characteristic		
GENDER REASSIGNMENT	We have not been able to gather any information regarding this characteristic		
SEXUAL ORIENTATION	As a whole, this group had no special needs or requirements when it came to planning. Their views were representative of the general population.	Consultation on the Modernisation of the Planning System with 'seldom heard' Groups (2009) ⁴⁸	
RACE	<p>Language barriers, lack of confidence and dominant characters can discriminate against some people during community engagement specifically women, minority ethnic groups, young and old people and people with disabilities.</p> <p>Some people from specific communities of interest and identity described finding it difficult to get involved in decisions, or having no experience of involvement at all. For example, some asylum seekers, EU citizens, foreign language groups, and some people from different ethnic minority groups described experiences of being detached from the wider community and formal decision-making organisations and forums. They did not know about local groups or understand whether and how they could get involved.</p>	<p>Hard to Reach, Easy to Ignore (2017)</p> <p>Local Governance Review: analysis of responses to Democracy Matters (2019)⁴⁹</p>	<p>Evidence would suggest that people wish to engage in planning though they are not always able to do so.</p> <p>As part of the consultation on the Scottish Government's proposals, we will be proactive in engaging with societal groups on the practical elements of supporting engagement.</p>

⁴⁸ <https://www.webarchive.org.uk/wayback/archive/20180516025616/http://www.gov.scot/Publications/2009/02/09150350/0>

⁴⁹ <https://www.gov.scot/publications/local-governance-review-analysis-responses-democracy-matters/>

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	<p>Seventy-eight per cent of those whose ethnicity was recorded as White expressed a very or fairly strong feeling of belonging compared to 71 per cent of those whose ethnicity was recorded as minority ethnic.</p> <p>In 2011 Gypsy/Travellers in Scotland, compared to the population as a whole, were more likely to report a long-term health problem or disability and were more likely to report bad or very bad general health.</p>	<p>Scottish Household Survey: Annual Report (2019)</p> <p>Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census⁵⁰ (2015)</p>	
RELIGION OR BELIEF	<p>Some people from specific communities of interest and identity described finding it difficult to get involved in decisions, or having no experience of involvement at all. For example, some asylum seekers, EU citizens, foreign language groups, and some people from different ethnic minority groups described experiences of being detached from the wider community and formal decision-making organisations and forums. They did not know about local groups or understand whether and how they could get involved</p>	<p>Local Governance Review: analysis of responses to Democracy Matters (2019)</p>	<p>Evidence would suggest that people wish to engage in planning though they are not always able to do so.</p> <p>As part of the consultation on the Scottish Government’s proposals, we will be proactive in engaging with societal groups on the practical elements of supporting engagement.</p>
MARRIAGE AND CIVIL PARTNERSHIP	<p>Not applicable</p>		

⁵⁰ <https://www.gov.scot/publications/gypsy-travellers-scotland-comprehensive-analysis-2011-census/>

ANNEX C - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – EQUALITY AND CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENT (PARTIAL)

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			The aim is to have increased engagement for all sectors of society during PAC, with consistent and transparent reporting of the PAC process (including the issues raised and what was done to address them or why they could not be addressed). There is scope for guidance will also cover approaches to compliance with the new requirements and related considerations.
Advancing equality of opportunity	X			As above. The additional public event will be a physical event, rather than online, acknowledging older people, amongst others, are slightly less likely to use online technologies. Guidance will cover complementary approaches to engagement which can involve online engagement, recognising that approach works better with younger people.
Promoting good relations among and between different age groups	X			The public event offers opportunity to hear views for across communities and PAC reporting requirements should ensure the issues raised and the response to them is publicly available.

ANNEX C - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – EQUALITY AND CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENT (PARTIAL)

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			This is not the main thrust of the policy. The aim is to have increased engagement for all sectors of society during PAC, with consistent and transparent reporting of the PAC process (including the issues raised and what was done to address them or why they could not be addressed). Guidance will also cover approaches to compliance with the new requirements and related considerations.
Advancing equality of opportunity	X			As above
Promoting good relations among and between disabled and non-disabled people	X			The public event offers opportunity to hear views for across communities and PAC reporting requirements should ensure the issues raised and the response to them is publicly available.

ANNEX C - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – EQUALITY AND CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENT (PARTIAL)

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			Data indicates women can find engagement with Planning more challenging. The aim is to have increased engagement for all sectors of society during PAC, with consistent and transparent reporting of the PAC process (including the issues raised and what was done to address them or why they could not be addressed). Guidance will also cover approaches to compliance with the new requirements and related considerations.
Advancing equality of opportunity	X			As above.
Promoting good relations between men and women			X	No information available

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No information available
Advancing equality of opportunity	X			The aim is to have increased engagement for all sectors of society during PAC, with consistent and transparent reporting of the PAC process (including the issues raised and what was done to address them or why they could not be addressed). Guidance will also cover approaches to compliance with the new requirements and related considerations.
Promoting good relations			X	No information available

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Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No information available
Advancing equality of opportunity	X			The aim is to have increased engagement for all sectors of society during PAC, with consistent and transparent reporting of the PAC process (including the issues raised and what was done to address them or why they could not be addressed). Guidance will also cover approaches to compliance with the new requirements and related considerations.
Promoting good relations			X	No information available

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No information available
Advancing equality of opportunity	X			The aim is to have increased engagement for all sectors of society during PAC, with consistent and transparent reporting of the PAC process (including the issues raised and what was done to address them or why they could not be addressed). Guidance will also cover approaches to compliance with the new requirements and related considerations.
Promoting good relations			X	No information available

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Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			The aim is to have increased engagement for all sectors of society during PAC, with consistent and transparent reporting of the PAC process (including the issues raised and what was done to address them or why they could not be addressed). Guidance will also cover approaches to compliance with the new requirements and related considerations.
Advancing equality of opportunity	X			As above.
Promoting good race relations	X			This is not the main thrust of the policy. As above.

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Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			The aim is to have increased engagement for all sectors of society during PAC, with consistent and transparent reporting of the PAC process (including the issues raised and what was done to address them or why they could not be addressed). Guidance will also cover approaches to compliance with the new requirements and related considerations.
Advancing equality of opportunity	X			As above.
Promoting good relations	X			As above.

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership⁵¹	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination				Not assessed

⁵¹ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

ANNEX C - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – EQUALITIES AND CHILDREN’S WELFARE AND RIGHTS IMPACT ASSESSMENT (PARTIAL)

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

<p>Have positive or negative impacts been identified for any of the equality groups?</p>	<p>This package generally adds to the public engagement requirements where PAC is applied. Whilst exemptions from PAC are proposed, these will be in relation to applications for planning permission where the basic proposal will have been through the PAC process previously.</p> <p>Having more public events and more consistent and transparent reporting of PAC may not address the challenges that face some sectors in society in engaging with this aspect of planning, guidance may be able to direct prospective applicants to a more considered and inclusive approach when meeting the procedural requirements.</p>
<p>Is the policy directly or indirectly discriminatory under the Equality Act 2010⁵²?</p>	<p>Potentially indirectly discriminatory in terms of those groups who would find it easier or who would be more likely to engage online than at physical events, for example younger age groups. There is evidence that other groups use online tools less often than others, e.g. older age groups and disabled people.</p>
<p>If the policy is indirectly discriminatory, how is it justified under the relevant legislation?</p>	<p>There is scope for the policy implementation to be indirectly discriminatory should the method of engagement used provide a barrier to any person with a particular protected characteristic.</p>
<p>If not justified, what mitigating action will be undertaken?</p>	<p>We will ask in the consultation about views on using online tools and on including that in statutory requirements. Also guidance can at least include the issue of online engagement complementing public events.</p>

⁵² See EQIA – Setting the Scene for further information on the legislation.

ANNEX C - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – EQUALITIES AND CHILDREN’S WELFARE AND RIGHTS IMPACT ASSESSMENT (PARTIAL)

Describing how Equality Impact analysis has shaped the policy making process

The EqIA/ CRWIA has helped highlight the potential issues which may disproportionately impact on those with particular protected characteristics. We have included requirements for the information to be made available to the public during PAC to be available in both hard copy and electronic formats, in light of the different ways in which, for example, different age groups engage on issues.

Whilst the intention is not to legislate the detailed requirements for holding public events, we will seek views in the forthcoming consultation process on the use of online engagement, with a view to considering whether in future that should part of statutory requirements and/or as complementary measures in guidance. We will also ask how guidance may assist in addressing the challenges people have in engaging in public events and with PAC requirements generally.

Monitoring and Review

Further work is required on the measures to monitor and review the wider community engagement package, of which this forms a part. Officials are in regular contact with developer and planning authority interests, and will obtain feedback from them as the new requirements are implemented.

We will also review the first 12 months of their operation, including a request for public views on their operation.

Planning and Architecture Division
Scottish Government
August 2020

ANNEX D - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – ISLAND COMMUNITIES IMPACT ASSESSMENT - SCREENING

ISLAND COMMUNITIES IMPACT ASSESSMENT – SCREENING

Introduction

1. This screening assessment relates to proposed changes to the existing requirements for pre-application consultation (PAC) with local communities on applications for planning permission for national and major developments. These requirements were introduced in 2009 (part of the implementation of the Planning etc. (Scotland) Act 2006).
2. The back ground to the existing requirements, the proposed changes and what has led to those proposals is set out in the accompanying consultation paper.
3. The specific proposed changes to secondary legislation (i.e. regulations) on PAC are:
 - To make the requirement to provide information on proposals be both in hard copy and electronic (e.g. online) formats.
 - An additional public event (i.e. a required minimum of two public events);
 - Requirements on the content of PAC reports;
 - Exemption from PAC for applications in certain circumstances.
4. There is an additional related legislative change which is included in the Planning (Scotland) Act 2019, and the intention is to commence it alongside the above changes:
 - An 18 month time limit on making an application once PAC has started (i.e. from when the proposal of application notice is served on the planning authority).
5. This change is not included in this assessment, having been considered as part of the Bill process.

Implications of Proposed Changes for Island Communities

6. This section considers the potential for differential impacts on island communities of each of the changes. Appendix A indicates the location of applications for major development in the different planning authority areas of Scotland. It indicates that the three island authorities are amongst those with the lowest number of such applications. Information for Highland Council, Argyll and Bute Council and North Ayrshire Council is not broken down to allow their island areas to be considered separately.

ANNEX D - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – ISLAND COMMUNITIES IMPACT ASSESSMENT - SCREENING

7. It is noted that even though the numbers of applications to which PAC applies is relatively low in the islands, the significance of individual cases may as a result be greater.

Provision of Information

8. Prior to the COVID-19 emergency, the PAC newspaper notice was required to say where “details as to where further information may be obtained concerning the proposed development”. As part of the miscellaneous temporary provisions brought in during the COVID-19 emergency, the option to provide this information by electronic means was introduced.
9. The proposal is that the current provision should be amended to make this provision of information to be by electronic means and in hard copy.
10. Figures indicate that island communities have older populations and that internet use is less in older age groups than younger (see paragraphs 33 to 37 below), and that there is a gap between premises in the islands able to access superfast and fibre broadband when compared to premises in other parts of rural Scotland – See Appendix B. Given, however, this change would extend the availability of information to both hard copy and electronic means, it is hard to see how overall this would put island communities at a disadvantage compared to the rest of Scotland.

Requirements on the content of PAC reports

11. Currently the content of PAC reports is covered by guidance. In order to improve consistency and transparency of such reports, the intention is to specify requirements on content in legislation. Section 35C(1) of the Town and Country Planning (Scotland) Act 1997 already requires the report to say what has been done to comply with PAC requirements.
12. The proposed additional requirements (specific wording in Annex A, draft regulation 6 – introducing a new regulation 7B) are:
 - (a) the dates on which and places where public events were held,
 - (b) a description of any additional steps taken by the prospective applicant to consult with members of the public as regards the proposed development,
 - (c) a list of bodies, groups and organisations who were consulted by the prospective applicant,
 - (d) evidence of the prospective applicant carrying out the activities described under sub-paragraphs (a), (b) and (c),
 - (e) copies of—
 - (i) any materials sent to consultees,
 - (ii) any materials provided to those attending a public event, and

ANNEX D - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – ISLAND COMMUNITIES IMPACT ASSESSMENT - SCREENING

- (iii) any visual presentation shown or displayed at a public event,
 - (f) photographs of any display boards or models at public events,
 - (g) confirmation as to whether consultees and attendees at public events were informed that pre-application consultation does not remove the right or the potential need to comment on the final application once it is made to the planning authority,
 - (i) a summary of—
 - (i) the written responses to consultations, and
 - (ii) views raised at public events,
 - (j) an explanation of how the prospective applicant took account of views raised during the pre-application consultation process, and
 - (k) an explanation of how members of the public were given feedback on the prospective applicant's consideration of the views raised during the pre-application consultation process.
13. Guidance could elaborate on some of these requirements, for example, some of the considerations that should be covered when explaining their response to the points raised, such as practical, commercial or design considerations. See the general question below on the content of guidance.
14. Guidance could elaborate on some of these requirements, for example, some of the considerations that should be covered when explaining their response to the points raised, such as practical, commercial or design considerations. See the general question below on the content of guidance.
15. The actual content of a report will therefore be dependent on the proposal, its location, the PAC discussions, views expressed and information made available. Where proposals are to be located in the islands, then, for example, to the extent local communities raise island related issues during PAC, these should be reflected in the PAC report, along with the response to them.
16. There would not appear to be any reason why this sort of approach to prescribed content should have any different impact in relation to development proposals on the islands.

Exemption from PAC for Applications in Certain Circumstances

17. The intention with regard to exemptions from PAC is that where a second application is made by the same applicant for the same basic development (albeit possibly with some changes), then that application is exempt from PAC. That development would also have to be within the scope of the proposal described in the proposal of application notice (PAN) served on the planning authority in relation to the PAC for the previous application.

ANNEX D - PROPOSED CHANGES TO PRE-APPLICATION CONSULTATION REQUIREMENTS IN PLANNING – ISLAND COMMUNITIES IMPACT ASSESSMENT - SCREENING

18. This could apply where an earlier application was withdrawn, granted (and a revised permission needed for example), or refused. Also where the earlier application was appealed, called in by Scottish Ministers for a decision, or still before the planning authority (it would not apply where the planning authority declined to determine the earlier application). It is also intended to have a time limit on when such exemption will apply.
19. As indicated, the aim is to avoid excessive requirements for PAC in cases where the same basic proposal has been through PAC already.
20. We are not aware of reasons why such exemption from procedural requirements might be regarded as having more or less of an impact on island communities than other communities in remoter parts of Scotland. Major developments tend to be concentrated in local authority areas with more densely populated areas, but we do not have information indicating, for example, that individual communities within those areas would necessarily experience more consultation fatigue arising from repeated PAC on the same basic proposal than island communities.

An Additional Public Event

21. The intention is that this second public event be used to feedback to the public on the prospective applicants consideration of the views expressed during PAC and before the proposal is finalised for application.
22. The original requirement for a public event was, and this additional one is, envisaged as a live face to face event in a physical location.
23. One can anticipate that in locations with more scattered and / or older communities, where convenient locations for such events may be limited, or transport connections are more limited, there may be difficulties in interested members of the public attending such public events.
24. National Records of Scotland (NRS) - Population Estimates for Settlements and Localities in Scotland, Mid-2016 (2018)⁵³ states that:

“The council areas with the lowest proportion of people living in a settlement^{t54} are Na h-Eileanan Siar (30%) and Shetland Islands (38%). Many communities in these islands are sparser than those in the rest of Scotland, due to crofting and other factors, and so do not fulfil the density requirements needed to be counted as a settlement.”
25. The Orkney Islands has the next lowest proportion of people living in a settlement.

⁵³ <https://www.nrscotland.gov.uk/files//statistics/settlements-localities/set-loc-16/set-loc-2016-publication-updated.pdf>

⁵⁴ A settlement is defined to be a group of high density postcodes whose combined population rounds to 500 people or more. They are separated by low density postcodes

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26. NRS Scotland Mid-Year Population Estimates Scotland, Mid-2019 (2020)⁵⁵ indicate that Na h-Eileanan Siar and the Orkney Islands are among the local authority areas with an older population in Scotland, with Shetland closer to the overall figures for Scotland. The Transport and Travel in Scotland Results from the Scottish Household Survey 2018 (2019)⁵⁶ indicates in turn that older people were less likely to have travelled the previous day. Only 51 per cent of those aged 80 and over had travelled the previous day and 65 per cent of those aged 70 to 79.
27. That survey also identified a variation in mode of travel by age. The older age group were more likely to catch a bus than younger children (33% compared to 9%), which may indicate older populations are more reliant on public transport.
28. The Transport and Travel in Scotland also includes the results of experimental analysis on the accessibility of bus services in Scotland, carried out by the GI-SAT team in Scottish Government. Those results in Annex B of that document indicate that a higher proportion of ‘small accessible towns’, ‘small remote towns’, ‘accessible rural’ and ‘remote rural’ areas score towards the ‘least accessible’ end of the spectrum, compared to ‘large urban areas’ and ‘other urban areas’
29. The Scottish Government’s National Islands Plan refers to the costs and availability of transport in the islands and the difficulties in travelling between islands, when overnight stays may be required, adding to costs.
30. There is evidence therefore that given a more scattered and older population and the availability of, and reliance upon, public transport, may mean island populations may be less able to attend public events, or that it is more difficult and costly to do so. However, it is hard to make any conclusion as to the significance of any such challenges compared to other more remote parts of mainland Scotland, where populations may also be more scattered, older and where access to public transport at least may be more difficult compared to say larger urban areas.
31. Further evidence is required to draw any conclusions in this regard.

Mitigation

32. If there is some significant difference in the ability of island communities to attend public events, how might that be addressed?
33. PAC requirements already include requirements on prospective applicants to make information available to the public and allow comments on the

⁵⁵ <https://www.nrscotland.gov.uk/files/statistics/population-estimates/mid-19/mid-year-pop-est-19-report.pdf> - Figure 13, page 26

⁵⁶ <https://www.transport.gov.scot/publication/transport-and-travel-in-scotland-results-from-the-scottish-household-survey-1/>

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proposals to be submitted to them. At present, such availability of information is online, due to the COVID-19 emergency.

34. Also, during the COVID-19 emergency, the requirement for a physical public event as part of PAC has been suspended. Guidance indicates online measures for engagement which should be used instead.
35. An evaluation of such measures has yet to be undertaken. Availability of information online is included as part of the proposed legislative changes. As to whether one or more of the public events should be or could be held online, we would need to await the aforementioned evaluation. In the meantime, guidance could suggest such online events as an addition to the required physical public events, particularly in areas with more scattered populations.
36. This would not necessarily be a total solution for island communities. Whilst setting out the way to try to close the gap in digital connectivity, The National Plan for Scotland's Islands (2019)⁵⁷, does indicate a gap between premises in the islands able to access superfast and fibre broadband when compared to premises in other parts of rural Scotland – See Annex B. Also, in their response to the 'Call for Ideas' on the Scottish Government's National Planning Framework (NPF) 4, Orkney Islands Council indicated "the islands still experience some of the poorest broadband and mobile phone connectivity speeds in the UK. Improved digital connectivity and investment in digital infrastructure to ensure equal coverage across Scotland should remain as a key objective in NPF4"⁵⁸.
37. In addition, above we indicated that Na h-Eileanan Siar and the Orkney Islands have a higher proportion of older people in their population, and that older people are less likely or able to travel. The Scottish Household Survey 2018 refers to a clear relationship between age and use of internet, with lower rates of internet use among older adults. In 2018, 100 per cent of adults aged 16 to 24 reported using the internet compared to 38 per cent of those aged 75 and over. This gap is, however, narrowing.
38. As regards any other particular challenges there may be for island communities to engage in public events, this seems likely to be a matter for guidance, rather than trying to anticipate specific issues and solutions in legislation.
39. Planning authorities have the power to require additional consultation steps as part of PAC upon receipt of the prospective applications PAN. As a result, where there are clear difficulties for certain communities, planning authorities can seek measures to address these in PAC, and this could be informed by guidance.

⁵⁷ <https://www.gov.scot/publications/national-plan-scotlands-islands/>

⁵⁸ <https://www.transformingplanning.scot/media/1692/305-orkney-islands-council.pdf> - paragraph 1.20

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Conclusion

40. It is worth noting that in relation to the Planning (Scotland) Bill – now the Planning (Scotland) Act 2019 – a joint statement was made by the Scottish Government and members of the Strategic Islands Group (Updated – June 2019) on the Island Communities Impact Assessment⁵⁹.
41. On ‘Proposal 8 Improving public trust’, the statement refers to there being agreement that greater structure for pre-application consultations would be helpful, to allow for feedback. This could benefit from stronger guidance, although it was also acknowledged that this is not an island-specific issue. No island-specific recommendations were made in this regard.
42. It seems likely therefore that Island communities would welcome the opportunities provided by the requirement for a second public event. There may be some issues around ability to attend such physical events, given the specific nature of island communities, such as the potential need to travel between islands. With the information we have identified at this stage, the significance of these issues, as distinct from those in other remote parts of mainland Scotland, is hard to gauge.
43. Nevertheless, in looking at mitigation of such differential impacts, whilst digital/online alternatives may go some way to addressing these, guidance may need to look at other solutions for particular issues that may arise where more scattered or older populations are involved or in areas where there are specific issues relating to transport infrastructure. Such guidance can be backed up with existing planning authority powers to require additional consultation steps as part of PAC in individual cases.
44. As regards the proposals for statutory requirements on the content of PAC reports and exemptions for PAC in the circumstances indicated, with the information identified at this stage, there do not appear to be specific significant issues for Island Communities beyond those for some other parts of Scotland.
45. Our conclusion at this stage is that, given the mitigation that could be covered in guidance, and perhaps later in legislation, there do not seem to be significant implications from the proposed changes for Island Communities specifically. Numbers of major developments may be relatively low in number in the islands, but the significance of a single development of this nature may be greater as a result.
46. The consultation paper seeks views on this screening assessment and conclusions and for any additional data or information.

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Scottish Government August 2020

⁵⁹ <https://www.gov.scot/publications/planning-bill---post-stage-2-island-communities-impact-assessment/>

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APPENDIX A – NUMBERS OF APPLICATIONS FOR MAJOR DEVELOPMENT DETERMINED BY YEAR AND BY PLANNING AUTHORITY AREA

	2018/19	2017/18	2016/17
Aberdeen City	16	14	19
Aberdeenshire	18	15	22
Angus	3	4	8
Argyll and Bute	7	5	10
Cairngorms National Park	0	0	3
Clackmannanshire	1	1	0
Dumfries and Galloway	15	11	7
Dundee City	4	7	10
East Ayrshire	6	8	6
East Dunbartonshire	2	4	3
East Lothian	12	13	9
East Renfrewshire	1	7	3
City of Edinburgh	26	26	34
Falkirk	10	6	7
Fife	15	26	20
Glasgow City	39	53	37
Highland	27	17	26
Inverclyde	3	2	1
Loch Lomond and The Trossachs National Park	1	0	1
Midlothian	6	7	6
Moray	9	8	4
Na h-Eileanan Siar	1	1	1
North Ayrshire	6	7	7
North Lanarkshire	16	20	22
Orkney Islands	2	0	0
Perth and Kinross	15	10	14
Renfrewshire	8	3	12
Scottish Borders	6	10	7
Shetland Islands	1	1	1
South Ayrshire	11	12	3
South Lanarkshire	20	15	18
Stirling	5	9	6
West Dunbartonshire	4	4	6
West Lothian	9	5	8
SCOTLAND	325	331	341

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APPENDIX B - THE NATIONAL PLAN FOR SCOTLAND'S ISLANDS (2019) - DIGITAL CONNECTIVITY

Percentage of premises with access to broadband

Local Authority	Percentage of premises with access to superfast broadband (2014)	Percentage of premises with access to superfast broadband (2019)	Percentage of premises with access to fibre broadband (2014)	Percentage of premises with access to fibre broadband (2019)
Orkney¹	11.1	65.7	12.0	82.5
Shetland²	28.9	74.2	35.1	86.3
Comhairle nan Eilean Siar	1.3	76.5	1.6	89.8
Argyll & Bute	0.9	83.3	0.9	92.5
Highland	20.3	80.1	21.8	93.6
North Ayrshire	40.9	96.3	43.3	99.3

1. Data only available from December 2014.
2. Data only available from September 2014.



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