

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT (BRIA)

Title of Proposal

AMENDMENTS TO THE MODERNISED PLANNING SYSTEM

Purpose and Intended Effect

Objectives

1. The objective of these amendments is to ensure that statutory planning procedures are proportionate, efficient and effective. In particular those relating to the development management procedures and planning appeals introduced in August 2009.

Background

2. The consolidated regulations listed below include all the amendments to the procedures in question made since 2008. This BRIA relates to further amendments we are making at this time and included in the consolidations. The new regulations are:
 - The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (“the DMR 2013”);
 - The Town and Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013 (“the Local Review Regulations 2013”); and
 - The Town and Country Planning (Appeals) (Scotland) Regulations 2013 (“the Appeals Regulations 2013”).
3. The changes come primarily as a result of the findings from our review of the first 12 months of the modernised planning system and from forums involving various stakeholders on a range of aspects of the modernised system, as well as responses to three month public consultations on amendments to the modernised planning system issued in October 2010 (“the 2010 Consultation”) and March 2012 (“the 2012 Consultation”), as part of Planning Reform Next Steps.
4. We are also taking the opportunity to re-introduce provisions dealing with the Crown and to extend the new appeals procedures (introduced in the 2008 version of the Appeals Regulations) to advertisement consent. The Town and Country Planning (Control of Advertisement) (Scotland) Amendment Regulations 2013, an additional instrument, is required to make consequential amendments to remove the existing appeal procedures for advertisement consent cases.
5. The proposed amendments relate to the following specific elements:-
 - i) Neighbour Notification and related Advertising of Planning Applications
 - ii) Consultation with Network Rail
 - iii) Provisions to deal with applications for Crown development (including those with national security sensitive information)
 - iv) Delegation of Planning Authority Interest cases

- v) Amendments to Local Review Procedures
- vi) Amendment to the Appeals Procedures

i) Neighbour Notification and related Advertising of Planning Applications

6. The changes introduced in 2009 to the neighbour notification and advertising of planning applications transferred responsibility for notification from applicants to planning authorities. In order to simplify procedures, a requirement was put in place to require neighbour notification to be sent to premises on neighbouring land and, where there are no such premises to which notification can be sent, an advert is to be placed by the planning authority in a local newspaper, with the cost recovered from the applicant.
7. The proposed changes would streamline the process around advertising planning applications and remove those requirements to advertise which serve no purpose, namely:
 - where neighbouring land is a road
 - where neighbouring land is vacant land owned by the applicant or the planning authority
 - for householder developments where neighbouring land has no premises
8. As part of a wider consultation on changes to planning fees, we proposed removing the requirement for the planning authority to recover the costs of placing the advert from the applicant, with such costs to be included in the planning application fee. We are not pursuing such changes at this time.

ii) Consultation with Network Rail

9. The proposed change stems from a recommendation by the Rail Accident Investigation Branch into the derailment of a train near Moy in Inverness-shire, in 2005, which was associated with a landslip. Planning authorities would be required to consult Network Rail on development proposals within 10 metres of the railway line. This is to allow their views on proposals to be considered in determining the planning application.

iii) Provisions to deal with applications for Crown development (including those with national security sensitive information)

10. When Crown immunity from planning control was removed in 2006, provisions were put in place to accommodate the Crown. In particular, provisions were introduced into primary legislation allowing applications for urgent Crown development to be made directly to Ministers and for dealing with cases involving national security sensitive information.
11. Secondary legislation on detailed procedures at the time was amended to apply procedures on appeals to applications for urgent Crown development with modifications.
12. Such legislation was also amended to allow information which the applicant believed to be national security sensitive to be withheld from an application without making it invalid. This meant the application could be made and, if the planning authority could not reach a decision without the

withheld information, the matter could be put before Ministers. Where appropriate, Ministers could then direct on what information was to be withheld from general public access (“closed”) and conduct a public local inquiry with “open” and “closed” sessions and information, and with appointed representatives to act for those parties without necessary security clearance to view the “closed” information. These procedures would also apply where representations involving national security sensitive issues were made in relation to an otherwise normal planning application.

13. These changes were not included in the relevant 2008 regulations which modernised the planning system in 2009, as the priority was to ensure the new provisions governing the majority of applications was in place timeously. The proposal is to re-introduce such provisions.
14. The DMR 2013 would allow national security sensitive information to be withheld without invalidating an application. The Appeals Regulations 2013 would apply certain of the procedures to applications for urgent Crown development and would set out procedures for dealing with national security sensitive information, e.g. on conducting inquiry sessions with open and closed evidence and appointed representatives.
15. Since 2006 we have introduced local review procedures in place of appeals where an application for local development is delegated to an officer for decision. The Local Review Regulations 2013 would include provisions so that a local review can be sought while withholding national security sensitive information. Where the local review body is unable to determine a case without such information, the case could be called-in for determination by Ministers and the procedures in the Appeals Regulations 2013 applied accordingly.

iv) Delegation of Planning Authority Interest cases

16. As part of the introduction of local reviews in 2009, a restriction was placed on delegating to officers for decision applications for local development in which the planning authority, or members of it, had an interest. This was to avoid members of authorities in local review bodies considering reviews of a delegated officer’s decision to refuse planning permission in such cases. This has meant that many applications which could otherwise have been so delegated have to go to committee for decision, resulting in additional resources being spent on and delays in reaching decisions.
17. Many planning authority schemes of delegation have thresholds for objections that will send controversial cases to committee for decision (where the right of challenge of the decision remains appeal to the Scottish Ministers). A planning authority can also take cases out of the scheme and to committee for decision. Ministers also require to be notified prior to certain planning authority interest cases being granted planning permission and could call-in such an application for their own determination.
18. The restriction does not therefore appear to be justified and we propose removing it.

v) Amendments to Local Review Procedures

19. We propose extending to three months the period which local review bodies have to determine reviews sought on the grounds of non-determination of a planning application. After that period, in the absence of a decision, planning permission is deemed to be refused and the local review body has no power to decide the case (the applicant can appeal to Scottish Ministers against this refusal). It is unlikely that, given statutory procedural requirements, local review bodies could determine such cases within the current two month period. This means cases can be refused unnecessarily, and an appeal may need to be pursued.

vi) Amendment to the Appeals Procedures

20. Currently all requests for any further information in relation to an appeal, called-in application or other case are covered by the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (The Appeals Regulations 2008). The Appeals Regulations 2008 require specific procedures in relation to circulation and statutory periods allowed for comment. This applies no matter how minor the additional information requested – plans for a larger scale or minor errors or omissions corrected. The proposed change would allow the reporter a measure of discretion as to whether all the statutory requirements for circulation and comment need apply to a particular request for further information.
21. The Appeals Regulations 2013 would be extended to apply to appeals in relation advertisement consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (“the Advertisement Regulations”). This would bring the latter under the more proportionate procedures introduced for other planning appeals in 2009, where, for example, the reporter decides whether further processing of the case is required and (giving due consideration to the appellant’s and the planning authority’s views) what form (written submissions, site inspection, hearing session, inquiry session or combination of these) is appropriate for the particular case.
22. We are also proposing a new “opt-in” procedure, so that where there are large volumes of representations, parties can be contacted to see whether they wish to be included in any further processing of the appeal. This is to avoid large amounts of paperwork being sent unnecessarily to members of the public who, while they may be interested in the outcome, do not wish to be involved closely with the processing of the case.

Rationale for Government Intervention

23. As well as consolidating the main planning regulations, the main changes in this package are designed to help improve the efficiency of the planning system and so improve its role in supporting sustainable economic growth. Some of the changes, namely consultation with Network Rail and the provisions on dealing with national security sensitive information, are about ensuring the effectiveness of the planning process, rather than streamlining.

24. Planning has a cross cutting role in relation to the National Performance Framework and its strategic targets of Wealthier & Fairer, Smarter, Healthier, Safer & Stronger and Greener. A more efficient planning system can contribute in a number of ways with reference to national indicators such as: improving the responsiveness of public services; increasing renewable electricity production; increasing the number of businesses and with increasing the number of new homes.

Consultation

25. A number of the proposals were included in the 2010 Consultation and again in the 2012 Consultation. The proposals not discussed in either of those papers are largely technical and are:
- a) The re-introduction of provisions on Crown development and national security provisions.
 - b) The extension of the appeal procedures introduced in 2009 to control of advertisement appeals.
 - c) An “opt-in” procedure in relation to the further processing of appeals (for use where large numbers of representations are involved).
26. The consultation papers, copies of the responses to them and the related analyses of the responses can be viewed via:
www.scotland.gov.uk/Topics/Built-Environment/planning/publications/consult
27. There was a low level of response to the 2012 Consultation regarding the draft BRIA which accompanied it, though most of those who did comment felt it was comprehensive. There was a high level of support for the proposals, with the majority of responses coming from planning authorities, developers and planning consultants.

Within Government

- i) Neighbour Notification and related Advertising of Planning Applications*
28. Concerns about the procedures in this area emanated from planning authorities. Prior to the 2010 Consultation a Working Group made up of planning authority representatives was set up to suggest possible amendments. Having considered their suggestions the Scottish Government brought forward the proposals in the 2010 Consultation and, in light of responses to it, decided to pursue the proposals in this BRIA, which were included in the 2012 consultation, along with the proposed change regarding advertising householder developments.
- ii) Consultation with Network Rail*
29. Other than the 2010 and 2012 Consultations, discussion on these proposals has been limited to Network Rail.
- iv) Delegation of Planning Authority Interest Cases*

30. This issue was with planning authority representatives prior to the 2010 Consultation.
31. All other proposals have been discussed with relevant policy officials across the Scottish Government.

Business

32. Prior to the 2010 consultation we spoke to Network Rail about the consultation requirement. As part of the BRIA process around the 2012 Consultation we spoke to the following businesses and business groups about the proposals therein:

Banks Group
Calachem
Mactaggart & Mickel
Sainsbury's
Scottish Land & Estates
Scottish Power
Scottish Property Federation
Tesco
Turley Associates
Walker Group

Options

33. None of the individual amendments in this package in themselves is likely to make a significant impact on business. They are based on stakeholders' experience of the modernised planning system and make marginal improvements to the procedures to make the system more streamlined as a whole. For the purposes of assessing the impact of these changes, therefore, the options to be considered are:

Option 1 – Maintain the status quo

Option 2 – Implement changes i)-vi)

Sectors and groups affected

34. Following the numbering in paragraph 5 above, the sectors and groups affected by each of these changes are:
 - i) **Advertising** - applicants for planning permission who need to have their applications advertised on the grounds in paragraph 7 would be affected, and the planning authorities, who are responsible for carrying out neighbour notification, placing adverts and recovering the costs of the latter from the applicant.
 - ii) **Consulting Network Rail** - Any person, body, firm, company etc. who might propose development within 10 metres of a railway line. Though the actual effect on such parties would depend on whether

there are any issues of concern arising from proposals in such close proximity to the railway line.

iii) **Crown development and national security** - These provisions could apply to any case where the development proposal involved national security sensitive information or where a representation on an otherwise normal case related to such information. It would seem likely that Government departments responsible for defence and the security services would be most likely to be affected.

iv) **Delegation of planning authority interest cases** - Planning authorities or members of planning authorities making planning applications or those applicants making applications where the planning authority owns the land or has a financial interest in it.

v) **Extending period for determining certain local reviews** - Applicants for planning permission for local development where the application is delegated to an officer for decision, and who challenge that decision.

vi) **Allow the reporter discretion on handling minor pieces of additional information, applying new appeal procedures to advertisement cases and opt-in procedure** – The first element would affect all parties to appeals and applications called-in by Ministers. The second change would potentially affect any party wishing to put in place an advertisement or signage not covered by exemptions in the Advertisement Regulations who breached the controls on advertisements, was refused consent or had it granted with conditions.

The “opt-in” would apply to all parties (other than the planning authority, the applicant/appellant and statutory consultees) who made representations on a case considered under the Appeals regulations. The cases in question include planning application appeals, applications called-in for decision by Ministers, planning enforcement notice appeals, listed building and conservation area consent appeals. This procedure would be applied, however, in cases where there are large numbers of representations, especially where “copy” letters or pro-forma representations are used.

Benefits

Option 1 – Maintain the status quo

35. It is difficult to quantify any benefits associated with not implementing this package. The benefits associated with not implementing each element of the package:

- i) No loss of income for local newspapers (see i) in paragraph 36
- ii) Some concerns were expressed about delays in decision making associated with additional consultation with Network Rail and considering their views, so any such delay would be avoided.
- iii) Some of the other concerns and issues of perception associated with these changes would not arise (see paragraph 38 on the costs of Option 2)

Option 2 – Implement changes i)-vi)

36. The benefits of implementing the changes i)-vi):

i) Planning authorities do not have to place unnecessary advertisements. Information received from half of the planning authorities (January 2012 survey) indicated that in the period April 2010 to March 2011 they had recovered from applicants almost £800,000 on advertising planning applications. The survey results indicated these authorities were spending £1.02 million on advertising some 17, 000 planning applications. On average 60% of their applications were being advertised. There were approximately 42,000 applications that year in total – suggesting 25,000 required to be advertised, which suggests £1.5 million spent on advertising planning applications. It should be noted that the numbers of applications which require to be advertised and the cost of advertising can vary significantly for authorities – e.g. differences exist in particular between rural and urban authorities.

A survey by officials of planning authorities in late 2010/ early 2011 on advertising costs had 12 responses (just over one third of planning authorities). In total just over half of the newspaper notices placed for planning applications were as a result of being unable to neighbour notify due to the absence of premises on neighbouring land. That would suggest the changes proposed would be reducing a significant proportion of a £750,000 cost (i.e. half of the above-mentioned £1.5 million), excluding administration costs.

In addition there would be savings in administrative costs for authorities in placing and recovering the cost of these newspaper notices and the delays in decision making associated with these measures.

ii) Ensure Network Rail's comments about a proposal's impact of the operation of the railway, or vice versa, including safety issues, can be taken into account in determining applications close to the railway line.

iii) Recognised procedures would be in place for applications for urgent Crown development and proposals involving national security sensitive matters could obtain planning permission as appropriate, otherwise, if developed, they would be in breach of planning control.

iv) Planning authorities would be able to delegate a considerable number of minor and non-contentious cases to officers for decision without the delay and administrative costs associated with putting them to committee for decision (allowing these resources to be focussed on other cases).

A survey of planning authorities, to which 22 responded, identified 478 applications over an 11 month period (August 2009 to June 2010) to which the restriction applied. The authorities in question felt some 343 (83%) would have been delegated for decision but for the restriction.

v) Avoiding deemed refusals by extending the period for determining reviews on the grounds of non-determination should cut down on delays associated with entering a further appeal procedure.

vi) The changes to appeals, on handling minor additional information and the “opt-in” should help speed up the processing of the cases in which they are needed, reducing delays and administrative costs. Similarly, applying the newer, more streamlined appeal procedures to advertisement consent cases should reduce delays and costs.

Costs

Option 1 – Maintain the status quo

37. The costs associated with maintaining the status quo:
- i) Costs and delays associated with unnecessary newspaper advertising of applications are retained (See i) in paragraph 36).
 - ii) Loss of the benefits of considering Network Rail’s views on the impacts and issues associated with developments near the railway (including on safety issues).
 - iii) Confusions and delay caused by a lack of recognised procedures for applications for urgent crown development. Failure to address the risk that developments where national security sensitive information is an issue would be unable to obtain planning permission.
 - iv) The costs associated with the additional processing of cases which could be delegated to officers for decision would remain (see iv) in paragraph 36).
 - v) Local reviews on the grounds of non-determination remain likely to be deemed refused, triggering the need for an appeal.
 - vi) The savings in cost and time from streamlined appeal procedures would be foregone (see vi) in paragraph 36).

Option 2 – Implement changes i)-vi)

38. The costs associated with making the changes are:
- i) Local newspapers will see a drop in advertising income (see i) in paragraph 36). Planning authorities, however, reported a significant increase in advertising as a result of the changes in 2009, i.e. the pre planning modernisation requirements avoided some of the unnecessary advertising we are now trying to address.

There were concerns about any reduction in publicity for planning applications, despite the requirements being removed relate to notices for parties who will know about the application anyway or will not be directly affected by the proposal.
 - ii) Some consultation responses were concerned about delays in processing due to additional consultation. There will be administrative costs for Network Rail. Should the consultation criterion lead to unnecessary consultations, it would be open to Network Rail to write to planning authorities specifying classes of development on which they do not need to be consulted.

Whether Network Rail's comments would lead to changes to proposals or conditions on permissions or even refusal would depend on the circumstances of a particular case.

iii) While these are additional processing requirements, in their absence there would be confusion about the procedures to be followed (applications for urgent Crown development) and/or applications could not be processed at all (those involving national security sensitive information). Such cases are not expected to be common – e.g. in the six years and more since Crown immunity from planning control was removed, there have been no cases in which applications could not be processed through normal planning procedures due to concerns about such information.

Costs would be likely to fall on the Scottish Government, in relation to additional processing requirements, and Government departments, as developers or holders of national security sensitive information are responsible for paying for “appointed representatives” to act in relation to such information for those who are prevented from viewing it).

iv) None. Some consultation responses were concerned about a loss of transparency of delegation and decision making (schemes of delegation are publicly available and authorities are required to make reports of handling and decision notices publicly available).

v) Some consultation responses indicated concerns that extending the period for determination for local reviews on the grounds of non-determination would encourage delays in decision making.

vi) Perceptions that the changes to procedures on appeals and applications called-in by Ministers might detract from a transparent and fair process for considering these cases.

Scottish Firms Impact Test

39. Other than the Network Rail consultation and the national security provisions, the proposed changes are intended to ensure procedures are proportionate and efficient and for the most part involve reductions in regulatory requirements. Responses to the public consultations were generally supportive.
40. The discussions with the 10 firms and bodies mentioned in paragraph 32 did not highlight significant concerns. They had little specifically to say about the proposals in the 2012 consultation to which this BRIA refers. They saw little that would significantly affect them in particular. Three of these parties were concerned that consultation with Network Rail would delay decisions on applications. Several were concerned about the extension of the period for determining local reviews would lead to delays. One party felt the fuller requirements should be retained regarding circulation and comment on any new information in appeals regardless of how minor it was judged to be.

Competition Assessment

41. None of the changes i)-vi) are likely to affect competition issues as they streamline planning processes generally.
42. While removal of the need to advertise may benefit larger scale developers in that delays cost more, for smaller developers the cost of advertising is a larger proportion of their overall costs. However, the sums involved are not expected to be more significant for some firms than others nor restrict new entrants to a market.
43. Allowing more delegation of local developments largely returns the system to the position on delegation prior to the introduction of local reviews to which the schemes of delegation and the restriction regarding planning authority interest cases relate.
44. Planning guides the future development and use of land. Planning is about where development should happen, where it should not and how it interacts with its surroundings. Planning therefore cuts across potentially all sectors of business, from those for whom carrying out development is a significant part of their business, e.g. housebuilders, to those who may need development in order to carry out their business, e.g. call centres.
45. The changes are largely about making that process more efficient not about changing what the decision is. They will not therefore directly or indirectly limit the number or range of suppliers, competition or the incentives to compete vigorously.
46. The one exception to this might conceivably be the requirement to consult Network Rail on developments near railway lines. Even if concerns in this regard meant planning permission were refused, that does not prevent a developer seeking a more suitable location or at least not seeking a location as close as 10 metres to a railway line. It is difficult to see therefore that this change would in reality be likely to limit business along the lines mentioned in paragraph 45.

Test run of Business Forms

47. There are no new business forms required as a result of proposals.

Legal Aid Impact Test- Neighbour Notification and Related Advertising of Planning Applications

48. The changes do not introduce new procedure or right of appeal to a court or tribunal.

Enforcement, Sanctions and Monitoring

49. These proposed amendments relate to the changes in process in the existing planning system and do not involve additional enforcement, sanction or monitoring procedures.

Implementation and Delivery

50. The changes will be included in the consolidated versions of the regulations on the main planning procedures:
 - The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013;
 - The Town and Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013 ; and
 - The Town and Country Planning (Appeals) (Scotland) Regulations 2013 (“the Appeals Regulations 2013”).
51. An additional statutory instrument will make amendments to the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. This is to remove the appeal procedures therein, as such procedures will be covered by the Appeals Regulations 2013 mentioned above.
52. These statutory instruments will be laid before Parliament and an e-mail sent to those who have signed up for planning e-mail alerts (which previously reached 5000 recipients) and to Heads of Planning Scotland (HoPS) and their development management sub-committee. This e-mail will include links to the legislation laid before Parliament and to guidance on the specific changes.
53. A further e-mail will be issued to these parties once the regulations have completed their parliamentary processes along with links to the updated Circulars containing guidance on Development Management procedures, Appeals and Schemes of Delegation and Local Reviews.

Review

54. We will consider the effect of these changes through our regular liaison events with stakeholders and review within 5 years.

Summary and Conclusion

81. In response to our consultations, most parties were supportive of the changes. Some parties, community bodies in particular, responding to the 2010 and 1012 consultations were concerned about any drop in publicity for applications and about transparency issues around delegated decision making on applications and appeal procedures as a result of the changes.
82. Having considered the responses to our consultations, the costs and benefits of the options, we have concluded that the proposals for changes described in this BRIA represent proportionate and reasonable changes to planning procedures. While we recognise the concerns about possible delays, we believe that on balance the package would streamline procedures.

Summary costs and benefits table

Options	Costs	Benefits
Option 1. Maintain the status quo	<ul style="list-style-type: none"> • Forego the benefits of Option 2 (see below) 	<ul style="list-style-type: none"> • Local newspaper will not experience a drop in income. • No potential delay associated with additional consultation with Network Rail, or costs in addressing their concerns. • Planning authority members would not be seen to overturn planning officer decisions on review in planning authority interest cases • Avoid any suggestion of a delay in processing local reviews sought on the grounds of non-determination. • Consistency of approach to any new information no matter how minor. • Planning authority or applicant may feel they have a greater say in the processing of appeal cases.
Option 2. Amendments to existing requirements	<ul style="list-style-type: none"> • Some drop in newspapers' revenue from advertising planning applications (or at least a return to levels prior to the modernisation in 2009) • The benefits of Option 1 in terms of possible delays and issues of perceptions of fairness and transparency may arise. 	<ul style="list-style-type: none"> • Removing the costs to applicants and planning authorities (administration) of unnecessary advertising, which combined can run into hundreds of pounds per application. • Planning decisions take into account the impact on the rail network or its impact

	<ul style="list-style-type: none"> • While there will be costs associated with running open and closed appeal procedures regarding national security, there will at least be a procedure in such cases. 	<p>on the development</p> <ul style="list-style-type: none"> • Recognised procedures would be in place for applications for urgent Crown development. • Developments involving national security sensitive information would be able to obtain planning permission. • Avoid the costs and delays of minor and non-contentious cases having to go to planning Committee for decision (survey suggests in excess of 400 such applications per annum). • Reduce the likelihood of local review cases being automatically refused permission triggering the need for the applicant to enter another appeal process. • Reporters can apply proportionate requirements on the circulation and comment on minor pieces of additional information • The reporter can decide the process appropriate to the case – avoiding Planning authorities or applicants requiring unnecessary hearings in advertisement cases • Reporters are not required to repeatedly send out material to many parties pointlessly.
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Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: DEREK MACKAY

Date: May 21, 2013

Minister for Local Government and Planning

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