THE PUBLIC SERVICES REFORM (PLANNING) (PRE-APPLICATION CONSULTATION) (SCOTLAND) ORDER 2013

EXPLANATORY DOCUMENT

Laid before the Scottish Parliament by the Scottish Ministers under Section 25(2) of the Public Services Reform (Scotland) Act 2010.

Contents

Introduction

1. This Explanatory Document has been prepared in respect of the draft Public Services Reform (Planning)(Pre-application consultation) (Scotland) Order 2013 ("the Order"), which is made in exercise of powers conferred by section 17 of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act"). This instrument is subject to the affirmative resolution procedure.

2. This document has been prepared for the purposes of section 25(2)(b) (procedure).

3. In accordance with section 26 a copy of the proposed explanatory document was laid before the Scottish Parliament as part of the consultation process along with a copy of the proposed draft Order.

4. The explanatory document now includes the details required by section 27(1)(f) of the 2010 Act, which relate to the consultation undertaken in accordance with section 26 and the representations received as a result of the consultation and the changes (if any) made to the Order as a result of those representations.

5. The Order amends section 35A of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"). Sections 35A to 35C were inserted by the Planning etc. (Scotland) Act 2006. The amendment provides that the requirements contained in section 35B for pre-application consultation with communities will not apply to applications for planning permission made under section 42 of the 1997 Act. These are applications for planning permission for development of land

without complying with conditions to which an existing planning permission is subject.

Background and Policy Objective

6. Requirements on prospective applicants for pre-application consultation (PAC) with communities came into force in 2009. They apply to the classes of developments prescribed by regulations made under section 35A(1). These classes are set out in regulation 4 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 as "national developments" (as specified in the National Planning Framework) or "major developments" (as specified in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 with reference to descriptions of various developments at or above certain threshold sizes).

7. In summary, the statutory PAC requirements (as set out in sections 35B and 35C of the 1997 Act and the Town and Country Planning (Development Management)(Scotland) Regulations 2008) are that the prospective applicant must:

- serve a Proposal of Application Notice (PoAN) on the planning authority
- consult with the Community Councils in the area
- hold a local public event
- publish information in a local newspaper regarding the proposed development, including where and when the public event is to be held and how representations can be made to the prospective applicant
- carry out any additional steps that the planning authority may require (the authority has 21 days from receipt of the PoAN to request additional consultation)
- prepare a report of the PAC. This report should include what consultation was carried out and, if applicable, how the proposal changed

8. No application can be made for 12 weeks from the submission of the PoAN.

9. PAC complements the planning application process for more significant and complex proposals. The rationale is that prospective applicants for significant developments must engage with the local community before finalising their planning application. This should make for a potentially smoother, quicker application process as significant community concerns could be addressed in advance of the planning application being submitted. The prospective applicant is under no obligation to take on the views of the public consulted, however not to do so may mean that more objections are made regarding the application.

10. It is at the application stage that the planning authority is obliged to consider any concerns before deciding whether to grant planning permission. It is important, therefore, that those who comment on proposals at the PAC stage follow up on any concerns once a planning application for the finalised proposal is made, and make any concerns known to the planning authority.

11. However, the PAC requirements also apply to planning applications for changes to conditions attached to a previous grant of planning permission for major or national development. The concern is that full PAC requirements are often disproportionate in such cases, especially given the publicity and consultation and opportunities to comment once the actual planning application is made.

12. Where a developer wishes to change a condition attached to a planning permission because, for example, it is impossible or impractical to comply or it undermines the effective operation or viability of the development, it is open to them to seek a new permission for the development with different conditions. section 42 of the 1997 Act makes provision for such applications (Section 42 Applications). It specifies that in considering such an application the planning authority can only consider the issue of the conditions on the original permission and whether they should be removed, replaced or amended.

13. As Section 42 Applications are applications for planning permission then, where they involve major or national developments, the full requirements for PAC will apply regardless of the nature of the condition(s) involved. In particular, the prospective applicant must hold a public event and is prevented from submitting an application for 12 weeks. The costs in terms of time and resources are potentially disproportionate especially for relatively minor amendments.

14. There is also the concern that communities themselves can end up under the mistaken impression that PAC in relation to Section 42 Applications relates to the whole development, which is not the case.

Section 17 of the 2010 Act

15. Section 17 provides that the Scottish Ministers may by order make any provision which they consider would remove or reduce any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation. A burden in this context could be a financial cost, an administrative inconvenience, an obstacle to best regulatory practice, an obstacle to efficiency, productivity or profitability, or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

16. The PAC provisions described above were developed to allow early consideration of significant development proposals. Although the legislation means they also apply prior to making an application to change conditions on an existing permission for such development, the PAC requirements were not designed for that purpose.

17. Planning authorities and developers have been concerned that the financial costs associated with carrying out PAC and the inconvenience and delay in being able to make an application to change conditions are disproportionate to any benefit. They could discourage changes being made which would affect the profitability of the development and, in some cases, could make the difference between developments going ahead and not. Even without the PAC requirements, the planning application process for such Section 42 Applications includes opportunities to make comments to the planning authority.

18. A survey of planning authorities and of a sample of planning consultants in late 2010/ early 2011 indicated there had been relatively few Section 42 Applications to which the PAC requirements applied, which may have been as a result of the economic downturn. One consultant had dealt with six such applications and estimated the costs of conducting PAC in such cases to be in the range £2, 000 to £10, 000. This does not include the costs of delay in making a Section 42 Application caused by the 12 week minimum period for PAC.

19. It is these financial burdens we wish to remove, as well as the inconvenience for applicants in having to carry out these activities and wait 12 weeks before applying, and for authorities in processing PoAN in such cases. Also, applying these PAC requirements on changes to conditions, given the requirements of the application process itself, is, in our opinion, and those of the majority of respondents to a previous public consultation exercise (see paragraphs 34-35 below), a barrier to the efficient operation of the planning system. It could result in the sort of problems mentioned in paragraph 17 above.

20. We had considered some form of reduced PAC in such cases or a screening process for Section 42 Applications (see paragraph 26 below) but ruled these out.

The Proposal

21. The intention is that for Section 42 Applications, the statutory requirements for PAC are removed.

Preconditions – Section 18(2) of the Public Services Reform (Scotland) Act 2010

22. This explanatory document is required to explain why these changes comply with the preconditions set out in section 18 of the 2010 Act.

23. The statutory 12 week period between the submission of Proposal of Application Notice and the planning application can be disproportionate. The requirement to consult with the local community, in particular holding community events, can be costly and potentially unproductive.

(a) the policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means

24. The existing legislation does not make provision for setting aside these requirements for particular types of application or in certain circumstances. Changing guidance would therefore have no impact.

(b) the effect of the provision is proportionate to the policy objective

25. The policy is for proposals for major and national developments to be subject to PAC with communities to help address issues with significant developments before an application is forthcoming. A subsequent Section 42 Application considers only changes to conditions on the original permission, not the whole proposal. The subsequent planning application procedures should provide suitable opportunities for the public to make any concerns about changes to conditions known to the planning authority before it decides whether or not to grant permission.

26. We considered whether some reduced form of PAC for Section 42 Applications or some form of screening of individual proposals to change conditions to check the need for PAC. We concluded that in the interests of streamlining the planning system and given the opportunities for public comment to be made and considered by the planning authority in the procedures for Section 42 Applications, there is little merit in requiring additional pre-application consultation for changing conditions. Any other solution would create additional bureaucracy and delay and is generally unlikely to add much value to the outcomes in such cases.

(c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it

27. Some parties may be concerned about any drop in public consultation. The proposed changes aim to remove requirements which were designed to encourage greater community engagement on new developments as a whole, not an aspect of an existing permission. These PAC requirements, in terms of holding public events and, in particular, preventing an application being made for 12 weeks (as specified in the primary legislation) could be the difference between an otherwise acceptable development proceeding or not. As indicated, we believe the application process should provide suitable opportunities for public comment and for that to be considered before a decision is reached on the application.

(d) the provision does not remove any necessary protection

28. The changes do not remove the need for a planning application, nor a planning authority's obligation to consider public representations made on the application before deciding whether planning permission should

be granted. The changes make no changes to rights of appeal under planning legislation or general rights to pursue matters in the Courts.

(e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

29. As (d) above.

Section 27(1)(d)(ii) - include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens (within the meaning of that section).

30. The actual costs of complying with PAC requirements can run into thousands of pounds for the prospective applicant. Of more concern is the delay in actually submitting an application to make such a change (12 weeks as specified in the 1997 Act). This is on top of the uncertainty as to whether planning permission with the amended conditions will be granted. Between 3 August 2009 and the end of September 2011, 1025 major developments were granted planning permission. There are therefore at least that many permissions for which applications to change a condition or conditions would currently require PAC.

31. Officials surveyed planning authorities and a number of planning consultancies in late 2010 early 2011 on the number of Section 42 Applications where PAC was required during the period from August 2009 to September 2010. There were 17 responses: six consultancies and 11 planning authorities. Some who responded had no cases to report, the consultancies identified 11 cases and the planning authorities 13 cases. One consultant, who had dealt with six Section 42 Applications which had been subject to PAC, indicated the cost of holding PAC in such cases was £2,000 and £10,000.

32. A similar survey was issued as part of the 2012 consultation, covering the period 3 August 2009 to the end of April 2012. This time 16 planning authorities and 11 developers identified 96 Section 42 Applications with PAC. Responses indicated the costs of running PAC to be mainly between £1000 - £10,000. There were several estimates at the costs of delay associated with PAC in particular cases: £92,040; £106,000 per month; and one at £610,000 per week. Further details are in paragraphs 44-49 below

33. The downturn in economic activity in recent years is likely to have reduced the number of Section 42 Applications coming forward, as developers are not following up on their original permissions in the short term. This has, however, been a point of concern with planning authorities and developers for some time.

Consultation

34. We previously consulted publicly over October 2010 to January 2011 on possible changes in this regard. On the question of whether some reduction in PAC should be made, 80% of those who responded favoured a change, with some natural heritage groups and community bodies concerned about any reduction in public consultation. We put forward the following of options

- Option 1) remove PAC requirements from Section 42 Applications
- Option 2(a) reduce the 12 week period for PAC
- Option 2(b) reduce the 12 week period for PAC for Section 42 Applications
- Option 3) take a power to specify those applications to which PAC should not apply.

35. Of those who responded to the question on preferred option: 38% favored Option 1; 5% Option 2(a); 20% option 2(b) and 12% Option 3. Twenty five percent of those who responded did not pick a preferred option or picked combinations of options.

36. Having considered the responses to the initial consultation we concluded the proposed approach to remove PAC requirements from Section 42 Applications represents a pragmatic, proportionate and clear solution. We recognized there may be concerns that some changes to conditions would merit some form of pre-application consultation.

37. We do not consider setting up separate pre-application procedures for such applications as proportionate. They could potentially result in additional delays and different approaches being adopted across the country.

38. This proposal was the subject of a public consultation exercise which ran from 28 March to the 22 June 2012 and which related to a wider package of miscellaneous amendments to planning legislation. It was sent to just short of 11,000 addresses registered on our Planning e-mail alert list (which includes the planning authorities, statutory consultees, business organisations and members of the public). Respondents willing to have their responses made public are listed in the Annex to this document.

39. The response regarding the Order is summarised below. Copies of the responses to the general consultation, “Miscellaneous Amendments to the Planning System 2012”, (in so far as respondents were willing to have them released) and of the full analysis of responses and summary of consultation findings can be viewed via the following web links:

http://www.scotland.gov.uk/Publications/2012/08/1764 - Responses to the Consultation

http://www.scotland.gov.uk/Publications/2012/09/9618 - Main Analysis report

http://www.scotland.gov.uk/Publications/2012/09/3111 - Consultation Findings

40. We also issued another survey to planning authorities and a number of planning consultancies and developer interests to ask about Section 42 applications subject to PAC.

41. The main public consultation on Miscellaneous Amendments to the Planning System, of which this is one, received 94 responses in total. The following extract shows the breakdown of respondents across various groupings

Table 1: Consultation respondents, by respondent category

Group Type	Number	Percentage
1. Planning authorities	29	31%
2. Community councils and community groups	11	12%
3. Professional bodies	6	6%
4. Statutory bodies	4	4%
5. Consultants	6	6%
6. Developers	28	30%
7. Other organisations	5	5%
8. Individuals	5	5%
Total	94	100%

42. Seventy-six respondents commented on the proposal to remove PAC from Section 42 Applications. Of these Sixty-seven agreed with the proposal and 9 disagreed – see table 3 from the consultation analysis report below. The vast majority of respondents were planning authorities and developers, the majority of whom agreed with the proposal for the sorts of reasons mentioned above. There were some calls for further reductions in PAC requirements.

43. Those who disagreed were concerned about communities not being aware of these changes to conditions, but did not seem to appreciate that there would still be an application which would be subject to publicity and consultation requirements, and opportunity to make representations or objections to the planning authority. Two respondents were concerned about any reduction in public involvement in principle or that some changes to conditions would warrant PAC and another couple felt legislation could differentiate between those requiring PAC and those not.

Table 3: Question 4 - Do you agree or disagree with the proposed removal of PAC requirements in relation to Section 42 Applications?

Groups	Agree	Disagree	No Response	Total
1. Planning authorities	24	1	4	29
2. Community councils and community groups	2	7	2	11
3. Professional bodies	5		1	6
4. Statutory bodies	2		2	4
5. Consultants	5		1	6
6. Developers	25		3	28
7. Other organisations	2		3	5
8. Individuals	2	1	2	5
Overall Total	**67**	**9**	**18**	**94**
Overall Percentage	**71%**	**10%**	**19%**	**100%**

44. As part of the Business and Regulatory Impact Assessment (BRIA) process we spoke to 10 businesses about the package of changes to the planning system: Banks Group; Calachem; Mactaggart & Mickel; Sainsbury's; Scottish Land & Estates; Scottish Power; Scottish Property Federation; Tesco; Turley Associates; and Walker group. Of those who commented on this aspect, all were supportive of the change. One company suggested this would affect five applications a year and save around £2,000 in terms of the cost of conducting PAC.

45. The second survey of planning authorities and developer interests as regards Section 42 Applications and PAC sought information for the period 3 August 2009 (when PAC was introduced) and the end of April 2012. We received responses from 16 planning authorities and 11 companies/bodies from the development industry. Ninety-six Section 42 Applications requiring PAC were identified – 69 by planning authorities and 44 by developers, with 17 cases identified by both groups.

46. Five of the planning authorities and one of the developer bodies had responded to the previous survey for 3 August 2009 to 30 September 2010. That suggests our two surveys have identified around 100 such applications, though we did not get responses from all planning authorities in either survey.

47. Between one quarter and a third of the cases identified in the latest survey related to time limits for starting development or obtaining approval of matters of detail. Since 2009 such time limits are no longer specified in conditions on new permissions and so cannot be altered by a Section 42 Application.

48. A similar proportion related to hours of operation. Others included: relaxing conditions limiting the types of goods for sale; the mix of uses in a development (e.g. limiting the amount of retail floor space); the timing or level of financial contributions; amending house types or numbers; altering the nature of improvements to traffic management systems; landscaping; and the phasing of entry to residential development. There were a number of cases for extending the lifetime of minerals developments. A handful of cases were identified where applications for changes were discouraged by the need for PAC. One development was identified as possibly being discouraged altogether.

49. Developers indicated the costs of running PAC in these cases ranged mainly from £1000 to £10,000. There were few attempts to quantify the costs associated with the additional time for getting a decision associated with PAC. References were made to lost trading (e.g. delays in changing opening hours or in one case where changes to Christmas opening hours could not be made in time) or delays in bringing development on stream. Two developers provided figures, one quoting £92,400 and another citing £106,000 per month in one case and £610,000 per week in another (which included costs paid and revenues lost during the 12 week PAC period). It is unlikely that there is a typical cost of such delay, which will depend on a number of factors such as the nature of the development, the change of condition and the what stage the development is at (e.g. is it built and operating or has development yet to be started).

50. The proposed draft Order was laid before Parliament, as required by the Public Services Reform (Scotland) Act 2010. The Subordinate Legislation Committee agreed on 24 April that no points arose on the proposed draft Order.

51. The Local Government and Regeneration Committee held a round table session on 30 May to consider the proposed draft order and other planning issues. Representatives from: the Scottish Government Planning and Architecture Division; Royal Town Planning Institute, CoSLA, Heads of Planning Scotland; Homes for Scotland, CBI Scotland; Planning Aid for Scotland; Planning Democracy and Scottish Environment Link attended.

52. Members of the Committee sought the views on aspects of the proposed change from the bodies represented, primarily the nature of the changes in conditions and the extent of the problem being addressed. The bodies present had either no significant comment or indicated support for the change.

Impact Assessment

53. Copies of the finalised BRIA and Equalities Impact Assessment (EqIA) are attached. The 2012 consultation sought views on draft versions of these documents. There was a very low response in this regard. The

vast majority of those responding to the BRIA indicated that they had nothing else to add to the information and analysis and information in the draft. Responses on the EqIA indicated that the analysis undertaken thus far was comprehensive or that they envisaged no equalities impacts.

54. The BRIA indicates there will be costs savings for business as a result of this change. The EqIA does not identify any discrimination against equality groups.

55. The legislative changes were pre-screened in relation to requirements on strategic environmental assessment (SEA) and it was concluded there was no requirement for SEA.

Conclusion

56. Many of examples of Section 42 Applications identified above justify the need for such application, with associated publicity and consultation requirements and an opportunity for the public to make comment or object before an authority makes a decision. However, it is questionable whether requiring in all or most cases that applicants go through the requirements of PAC would result in them making significant changes to their proposals for changes to conditions. Prospective applicants would not be barred from seeking views on the public's potential concerns in the advance of any such application.

57. While ideally the PAC requirements would be targeted to precisely the cases in which it is appropriate, these will vary considerably with, for example, the type of development, location, nature of the condition and the change to it. Requirements need to be clear and consistent as well as proportionate. We conclude that the proposal achieves this and that no changes be made to the proposed Order removing PAC from Section 42 Applications.

Planning and Architecture Division

November 2012

ANNEX
THE PUBLIC SERVICES REFORM (PLANNING) (LOCAL REVIEW PROCEDURE) ORDER 2013

Explanatory Document

List of Respondents to Consultation

Planning authorities

Aberdeen City Council
Aberdeenshire Council
Angus Council
Argyll and Bute Council
Cairngorms National Park Authority
City of Edinburgh Council
Clackmannanshire Council
Comhairlenan EileanSiar
Convention of Scottish Local Authorities (COSLA)
Dumfries and Galloway Council
Dundee City Council
East Ayrshire Council
East Renfrewshire Council
Fife Council
Glasgow City Council
Inverclyde Council
Loch Lomond and the Trossachs National Park Authority
North Ayrshire Council
North Lanarkshire Council
Orkney Islands Council
Perth and Kinross Council
Renfrewshire Council
Scottish Borders Council
South Lanarkshire Council
West Dunbartonshire Council
West Lothian Council

Community councils and community groups

Brightons Community Council
Dowanhill, Hyndland and Kelvinside Community Council and Friends of Glasgow West (Combined Response)
Gorebridge Community Council
Greengairs Community Council and Planning Democracy
Hillhead Community Council
Killearn Community Council
Kirkhill&Bunchrew Community Council
Newtonhill, Muchalls&Cammachmore Community Council
Old Aberdeen Community Council
Rhu Shandon Community Council
Thornhill and Blairdrummond Community Council

Professional bodies

Chartered Institute of Architecture Technologies
The Law Society of Scotland
Royal Incorporation of Architects in Scotland
Royal Town Planning Institute Scotland
Society of Local Authority Lawyers and Administrators
The Stirling Society of Architects

Statutory bodies

The Coal Authority
Scottish Environment Protection Agency
Scottish Natural Heritage
Scottish Water

Consultants

Arcus Renewable Energy Consultants
GVA Grimley Ltd
Halliday Fraser Munro Planning
Keppie Planning and Development
Paull& Williamson LLP
Savills

Developers

ATH Resources plc
Banks Group
Colliers International
Confederation of UK Coal Producers (CoalPro)
EDF Energy
GVA Grimley Ltd on behalf of Aldi Stores Ltd
Infinis
LXB Manager LLP
McCarthy & Stone Retirement Lifestyles Ltd
Mobile Operators Association
Persimmon Homes West Scotland
RES UK & Ireland Limited
Sainsbury's Supermarkets Ltd
Scottish Coal
Scottish Grocers' Federation
Scottish Land and Estates
Scottish Property Federation
Scottish Retail Consortium
Scottish Renewables
Springfield Properties PLC
SSE Group
The Trinity Group
Walker Group (Scotland) Ltd
Wallace Planning Limited on behalf of CalaChem, Fujitsu, HW Coates and Syngerta "Chemical Cluster Companies" in the Grangemouth Chemical Complex
West Coast Energy Ltd
Westminster (Scotland) Ltd

Other Organisations

The Cockburn Association

Community Land Advisory Service
Planning Aid for Scotland
Regulatory Review Group
Royal Society for the Protection of Birds Scotland

Individuals

There were responses from five individuals.

Confidential responses

There were also five responses from organisations which did not give permission for their response to be published

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT (BRIA)

MISCELLANEOUS AMENDMENTS TO THE PLANNING SYSTEM – CHANGES TO THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Purpose and Intended Effect

Objectives

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

2. This BRIA relates to that part of the package of miscellaneous amendments to the planning system which involves amendments to the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act") and related consequential changes to planning regulations. Further elements of the package of miscellaneous amendments will be included in regulations to be laid before Parliament at a later date.

Background

3. The proposed changes come as a result of the findings from our review of the first 12 months of the modernised planning system and forums involving various stakeholders on a range of aspects of the modernised system, as well as responses to the consultation papers on amendments to the modernised planning system issued in October 2010 ("the 2010 Consultation") and March 2012 ("the 2012 Consultation"). The proposed amendments covered by this BRIA relate to the following specific elements:-

- Pre-Application Consultation with Communities (PAC)

- Amendments regarding applications with a right to local review

Pre-Application Consultation with Communities (PAC)

4. Concerns have been expressed by applicants and planning authorities that the requirements for 12 weeks of pre-application consultation can often be disproportionate where an application for planning permission is required for a change of a condition(s) on an existing permission (known as Section 42 Applications) for a major or national development.

5. The requirements to have carried out PAC prior to making a planning application for a major or a national development came into force on 3 August 2009. From that date to the end of June 2012 1,472 planning permissions for major developments were granted. That means there

are at least that many permissions where the applicant or developer might conceivably wish or need to seek an amendment to a condition on such a permission.

6. We do not have accurate figures for the numbers of Section 42 Applications affected or which may have been discouraged (or the developments which may have been discouraged) by the PAC requirements on such applications. Officials surveyed planning authorities and a number of planning consultancies in late 2010/ early 2011 on the number of Section 42 Applications where PAC was required during the period from August 2009 to September 2010. We also sought information on the costs of PAC and views of how proportional existing requirements were. There were 17 responses: six consultancies and 11 planning authorities. Some who responded had no cases to report. The consultancies identified 11 cases and the planning authorities 13 cases.

7. We had a similar survey in 2012 covering the period 3 August 2009 to and the end of April 2012. We received responses from 16 planning authorities and 11 companies/bodies from the development industry. Ninety-six Section 42 Applications requiring PAC were identified – 69 by planning authorities and 44 by developers, with 17 cases identified by both groups. Five of the planning authorities and one of the developer bodies had responded to the previous survey for 3 August 2009 to 30 September 2010.

8. The downturn in economic activity in recent years may have reduced the number of Section 42 Applications coming forward, as developers are not following up on their original permissions. However, these figures may give some indication of the level of activity of concern, rather than the number of permissions granted for major development. Of more significance is likely to be the individual importance of a particular major or national development to the area or indeed the nation, and the need to ensure the planning requirements on it are proportionate.

9. The costs of complying with PAC requirements can run into thousands of pounds. A number of the responses estimated the costs of conducting PAC, which mainly fell into the range £1,000 - £10, 000. Such costs are in addition to being unable to submit an application for such changes for 12 weeks. The survey and direct discussions with business on impacts gave a number of estimates in terms of costs of delays: one developer cited a case where such cost was £92,400, another cited £610, 000 per week in one case, another estimated £106,000 per month of delay.

10. It is unlikely that there is a “typical” cost of such delay, which will depend on a number of factors such as the nature of the development, the change of condition and the what stage the development is at (e.g. is it built and operating or has development yet to be started).

Amendments regarding applications with a right to local review

11. When provisions were drafted so that appeals to Ministers in certain cases were replaced by local reviews by the planning authority, certain provisions of the 1997 Act were not appropriately amended to include reference to local reviews.

12. In particular, provision exists to extend by agreement the period after which an appeal on the grounds of non-determination can be made, allowing more time for a decision on the application to be reached while preserving the applicant's right to appeal on the grounds of non-determination; but no such provision for such extension was made for local review cases.

13. The absence of such provision may mean local reviews on the grounds of non-determination are sought prematurely, for fear of losing that right, or the right is lost by waiting for a decision that is thought to be imminent. Also, given that whether an appeal or local review procedure applies depends on the content of an individual authority's scheme of delegation, there may be some confusion as to whether an extension can be agreed in an individual case.

14. We propose to make an amendment to allow the agreement of such extensions in local review cases.

15. There are a number of other points in the 1997 Act where the absence of provision means it may be unclear how the 1997 Act applies to applications to which a right of local review applies. A Planning etc. (Scotland) Act 2006 (Supplementary and Consequential Provisions) (Scotland) Order (the Consequential Provisions Order) is proposed to address these omissions is also part of the package of planning changes. Unlike the changes in paragraph 14, these amendments are unlikely to affect the day to day running of the planning system and are more legal/technical in nature.

Rationale for Government Intervention

16. These changes relate to making public services more responsive and contribute to making Scotland wealthier and fairer and to assist in contributing to sustainable economic growth. The changes should streamline the statutory requirements on applicants for planning permission and planning authorities. The technical amendments in relation to cases to which the right to a local review apply are about the proper operation of the planning system and ensuring various planning mechanisms apply to such cases and/ or make clear how they apply in such cases.

Consultation

17. The issue of reducing PAC requirements and some options in that regard were the subject of a three month public consultation exercise starting in October 2010 – "Amendments to the Modernised Planning System: Consultation Paper" ("the 2010 Consultation"). A specific legislative proposal in this regard and an amendment regarding agreeing extensions to period after which a local review on the grounds of non-determination can be sought were included in a 3 month public consultation, "Consultation on Miscellaneous Amendments to the Planning System" ("the 2012 consultation"), which started in March 2012.

18. The earlier 2010 consultation, responses and analysis of responses can be viewed using the following links:

http://www.scotland.gov.uk/Publications/2010/10/20093159/0 - 2010 consultation paper.

http://www.scotland.gov.uk/Publications/2011/03/04164803/0 - 2010 consultation - copies of responses

http://www.scotland.gov.uk/Publications/2011/12/21145052/0 - 2010 consultation analysis of responses

19. The 2012 consultation "Miscellaneous Amendments to the Planning System" and responses and analysis can be viewed at:

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

Within Government

20. Prior to the 2010 Consultation we discussed with planning authorities the issues regarding the removal of PAC from Section 42 Applications and possible ways to alleviate the problems using existing regulation making powers and guidance. They also highlighted the issue of agreeing extensions to the period after which a local review on the ground of non-determination can be sought.

Public Consultation

PAC

21. Prior to the 2010 Consultation the concerns around PAC had been discussed with a representative from the Association of Scottish Community Councils.

22. The 2010 consultation received 92 responses, mostly from planning authorities (25) and developers (26). Other responses were received

from consultants (9), community groups (9), statutory consultees (4), natural heritage groups (4), professional bodies (3), individuals and other groups (3 and 9 respectively).

23. The 2010 consultation sought views on whether change was needed regarding PAC and the following options:

- Option 3(1) - Remove PAC requirement for Section 42 Applications
- Option 3(2(a)) – Reduce the 12 week minimum period for PAC
- Option 3(2(b)) - Reduce the minimum period of 12 weeks for PAC for Section 42 Applications
- Option 3(3) - Take power to specify types of application or applications in certain circumstances where PAC doesn't apply

24. Seventy-four respondents answered the question about the need for change, with 90% agreeing change was needed. Developers, agents and planning authorities were in favour of change. Some of the natural heritage and community respondents were against any reduction in PAC.

25. On the question about a preferred option, of those who answered this question: over a third (38%) favoured Option 3(1); 20% in favour of Option 3(2(b)); 12% favouring regulations specifying the types of application to which PAC (Option 3(3)) should apply; and 5% favouring Option 3(2(a)). Some 25% of those replying to this question did not pick one of the options suggested: for a third of these it was simply that they had no outright preference and about half referred to a mix of the options (often a mix of Options 3(1) and 3(2(a)). A couple specifically referred to not wanting any change.

26. Planning authorities and developers favoured Option 3(1). Individuals, community groups, natural heritage groups and statutory consultees tended to favour the least significant change (i.e. Option 3(2(b)) or no change). The views expressed, together helped us to narrow down the options to a specific legislative proposal, namely Option 3(1), on which to consult.

27. The 2012 consultation contained various miscellaneous amendments to the planning system, including specifically removing PAC from Section 42 Applications. There were 94 responses, mainly from planning authorities (29) and developers (28) with a smaller numbers of responses from community groups (11), consultants (6), professional bodies (6), statutory bodies 4, other groups and individuals (5 in each).

28. Eighty-eight percent (67 out of 76) of those who responded on removing PAC from Section 42 Applications agreed with the proposal. Some of the community groups in particular (7) were concerned about any loss in public consultation, though some of these at least did not seem to appreciate that there would still be an application for planning

permission (Section 42 Application) which would be subject to publicity and consultation requirements and where the public would have a chance to make representations to the planning authority before a decision was made.

Agreeing extensions to the period after which a local review on the ground of non-determination can be sought

29. This is mainly a technical change and there was no extensive consultation prior to the 2012 consultation, although planning authorities had flagged it up as an issue. The 2012 consultation saw 74 responses on this particular issue and 94% agreed with the proposed change. Some respondents were concerned about time inefficiencies, although the proposals would only allow an extension where both the applicant and the planning authority agree. The main aim is to allow applicants to retain their right to local review on the grounds of non-determination and avoid premature local reviews.

Business

30. Prior to the 2010 consultation the issues around PAC were discussed with representatives from the minerals, housing and retail sectors, the legal profession and planning authorities. For the purposes of the BRIAs for the package of planning changes, we spoke to the following businesses and bodies:

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

31. On removing PAC, responses ranged from those appreciating the general benefit of the change, even though it would not affect their business, to those seeing significant benefits for their activities, in terms of costs of carrying out PAC, preventing delays and allowing more flexibility of programming work. In terms of the costs of running PAC, the figures they suggested were in line with the range of mainly £1,000 - £10,000. In terms of costs of delays while going through 12 weeks of PAC for a change of condition, an example of £106,000 per month was cited by one developer.

32. On being able to agree extensions to the period for determining applications subject to local review, they had no significant views.

Pre-Application Consultation with Communities (PAC)

Options

Option 1 – Do Nothing

33. The Scottish Government does not consider the do nothing option to be appropriate. We recognise that having to do 12 weeks of PAC for relatively minor changes to conditions on permissions for major developments could make the difference between a project going ahead or not proceeding or at least involve unnecessary delay and cost.

Option 2 – Use Guidance or Existing Regulation making Powers to try to Alleviate the Problem

34. Discussions with stakeholders indicated that preparing guidance or using existing regulations would not be effective.

35. While the Scottish Ministers can make regulations which specify the types of 'development' to which PAC requirements apply (currently all major and national developments), they do not have powers to specify the types of 'application' to which PAC applies, e.g. PAC requirements, including the 12 week minimum period for PAC, would apply to all major developments whether the application was for permission for an entirely new proposal or for a change of conditions on an existing permission for a proposal (i.e. a Section 42 Application).

Option 3 – Change the Requirements of the 1997 Act

36. The 2010 Consultation paper explored the following options for amending the 1997 Act to address this issue:

- Option 3(1) - Remove PAC requirement for Section 42 Applications
- Option 3(2(a)) – Reduce the 12 week minimum period for PAC
- Option 3(2(b)) - Reduce the minimum period of 12 weeks for PAC for Section 42 Applications
- Option 3(3) - Take power to specify types of application or applications in certain circumstances where PAC doesn't apply

Sectors and Groups Affected

37. PAC provisions affect any prospective applicant for planning permission whose proposal constitutes a major development or national development. National developments relate to national infrastructure projects described in the National Planning Framework. Major developments are those which meet or exceed the thresholds in The Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009. While the latter have specific size

thresholds for certain types of development, e.g. house building, energy generation and marine fish farming projects, there are also general size thresholds. PAC provisions also affect the communities and planning authorities in whose areas major and national developments are proposed.

Benefits

Option 1 – Do Nothing

38. Prospective applicants should benefit from constructive, better informed communities engaging constructively with proposals at an early stage. Where the consultation discloses significant community resistance, then developers will be aware of the issues that concern affected communities. Applications submitted to authorities would be more considered, taking into account community views, thereby leading to faster decisions and better outcomes. Communities will have the opportunity to interact with prospective developers, to assist them in understanding views and objections, to refine proposals and to mitigate negative impacts. However, the view is that any benefits of this in relation to applications to change conditions on a planning permission do not justify the costs.

Option 2 – Use Guidance or Existing Regulation making Powers to try to Alleviate the Problem

39. Some unnecessary PAC could be avoided where in future planning authorities avoid, where possible, using rigid conditions that require to be amended by a Section 42 Application. However, the ability to frame conditions more flexibly would not necessarily be related to the (lack of) need for PAC. Also, some of the statutory requirements regarding PAC could be reduced. However, there would still be the minimum 12 week period for any PAC and it is still almost inevitable that there would be some conditions that would need to be changed on the planning permission for a major or national development.

Option 3(1) - Remove PAC requirement for Section 42 Applications

40. This straightforward change is likely to create certainty. It would mean a removal of the costs for the developer and should avoid communities being involved in numerous PAC on relatively minor issues.

Option 3(2(a)) – Reduce the 12 week minimum period for PAC

41. Prospective applicants could have a much reduced delay and could submit an application once they had complied with statutory PAC requirements and those, if any, of the planning authority.

Option 3(2(b)) - Reduce the minimum period of 12 weeks for PAC for Section 42 Applications

42. This is similar to 3(2(a)) but would apply to a smaller group of prospective applicants, i.e. only those applying under section 42 of the 1997 Act.

Option 3(3) - Take power to specify types of application or applications in certain circumstances where PAC does not apply

43. Prospective applicants would, where appropriate, no longer have to do PAC. This could apply to a wider range of applications than Option 3(1).

Costs

Option 1 – Do Nothing

44. The costs associated with carrying out PAC vary depending on the proposal, its location, and any further consultation requirements specified by the planning authority. We have previously estimated that the cost might be in the region of £20,000 for an individual PAC for planning permission for a major development. The responses received to our survey of consultants suggested the costs of running PAC to be mainly in the range of £1, 000 - £10, 000. There were some estimates by developers of the costs of delays in particular cases, one citing £92,040, another £610,000 per week and another £106,000 per week. It seems unlikely there is a typical cost for such delay, which will be dependant on a number of factors (see paragraph 10 above)

45. For communities and community groups, there will be marginal costs in preparing for, travelling to and contributing to pre-application consultation events. The biggest cost might be in terms of excessive expectations, i.e. in having a PAC in relation to a Section 42 Application, communities may not realise that only the conditions are open to consideration, not the whole of the development.

Option 2 – Use Guidance or Existing Regulation making Powers to try to Alleviate the Problem

46. Such changes can only address some of the cases where PAC would be triggered unnecessarily. In those instances where a PAC would be required the costs described for Option 1 would apply.

Option 3(1) - Remove PAC requirement for Section 42 Applications

47. The costs described under Option 1 would be saved for Section 42 Applications. However, communities and community groups would not be able to contribute their views prior to the submission of an

application to alter a condition and may therefore raise their concerns during the formal processing of the Section 42 Application.

Option 3(2(a)) – Reduce the 12 week minimum period for PAC

48. Prospective applicants would still face the costs of PAC and, in some cases, unjustifiable delay. Some communities might feel the process is being rushed and become disillusioned with PAC generally.

Option 3(2(b)) - Reduce the minimum period of 12 weeks for PAC for Section 42 Applications

49. Applicants would have to undertake a PAC and incur the associated costs. Any disillusionment with the process among communities might be less in that the reduced timescale applies to a smaller group of cases, but might still occur in relation to the PAC being solely related to changes in conditions and not to the development as a whole.

Option 3(3) - Take power to specify types of application or applications in certain circumstances where PAC doesn't apply

50. This approach means a loss in the benefits of PAC. It would also be difficult to define clearly and simply those cases which would be exempt from PAC, which would introduce a lack of clarity about which procedures might apply to a particular application. Avoiding complexity and uncertainty is a key aim.

Amendments regarding applications with a right to local review

51. The proposed amendments are mostly technical. They either ensure the legislation applies various, existing planning mechanisms to cases which are eligible to local review, rather than a right of appeal to Ministers, or clarify how such mechanisms apply. There are no options as such, it is a question of making these technical amendments or not. The amendments relate to:

i) Section 43A(8) – This section of the 1997 Act specifies, amongst other things, the applicant's right to seek a local review on the ground that the authority has failed to determine it within the specified period. There is a time limit of 3 months for seeking such a local review. This is similar to cases where the applicant has a right of appeal to the Scottish Ministers, except that, in the latter, the applicant and planning authority can agree an extension to the period for determination and preserve the 3 month period for an appeal on the grounds of non-determination. This ability to agree an extension was not included in relation to local review cases. The result is applicants may lose their right of local review on the grounds of non-determination if they wait too long for a decision, or that

they may prematurely seek a local review when a decision was imminent.

ii) Section 39 on declining to determine applications. This section of the 1997 gives planning authorities the discretion to decline to determine subsequent similar applications in certain circumstances – in effect returning them to the applicant. Basically, this is about planning authorities being able to refuse to consider a repeat application for the same development where there have been previous refusals and nothing in the development plan or any other material considerations have changed. Part of this provision relates to the circumstance where earlier applications may or may not have been subject to an appeal to Ministers, but makes no provision for where the case is subject to a right of local review, i.e. where there is no right of appeal to Ministers.

The amendment basically substitutes references to appeals and appeal decisions with references to local reviews and review decisions in relevant cases.

iii) Section 43A makes provision for schemes of delegation for applications relating to local development and triggering rights to local reviews instead of to appeals to Ministers. There are a number of amendments to this:

a) Additional provisions of the Act are applied to appointed persons dealing with delegated cases, in particular as the latter need not necessarily be an officer of the planning authority e.g. varying applications (section 32A), call-in and other directions apply (sections 43(1) and (2) and 46)) and the ability to direct on the duration of permission (sections 58, 59 and 60).

b) Make clear the right to local review on the grounds of non-determination (i.e. where the officer has not issued a decision within a specified period) does not apply where the appointed person has declined to determine the application under section 39 or Scottish Ministers have called-in the application for their determination under section 46.

iv) Section 46 relates to the call-in of applications by Scottish Ministers for their determination. This section is being amended to make clear that such powers apply in relation to applications subject to local review.

v) Section 59 specifies the time period within which development granted planning permission in principle must be started and when applications for approval of matters of detail

required by conditions must be made. In respect of the latter, the current provisions specify one period in relation to when a previous application for approval was refused on appeal to Ministers, and this amendment makes clear it applies in relation to such applications refused on local review.

vi) Section 218(1)(c) refers to applications for planning permission deemed to have been made when an appeal against enforcement action is made on the grounds that planning permission should be granted. This ground of appeal against enforcement action has been removed and so section 218(1)(c) is being deleted.

Sectors and Groups Affected

52. Applicants for planning permission for local development where the application is delegated to an officer for decision. Local Developments are those which are neither national nor major developments (see paragraph 37 above).

Costs and Benefits

53. Amendment i) should allow more flexibility in the system. Amendments ii) to vi) simply ensure the proper operation of the system, e.g. time limits under section 59 should apply to cases eligible for local review as with any other; where an application has been called-in by Ministers for determination, it makes no sense for the applicant to be able to seek a local review on the grounds of non-determination. Amendment ii) would make it clear how the discretion for planning authorities to decline to determine applications applies where local reviews are involved. In blocking any loophole in this regard this may look like an additional cost where it is applied; however, use of such powers is thought to be rare and we see no justification for applicants in some cases being able to, for example, wear down opposition by making repeat applications for the same development

Scottish Firms Impact test

Pre-Application Consultation with Communities (PAC)

54. During the 2010 Consultation and 2012 Consultation we sought information from planning authorities and consultants on the instances of PAC on Section 42 Applications. Paragraphs 9-10 above give an indication of the potential savings to firms in not having to carry out PAC in such cases.

55. Our face to face discussions with firms as part of the BRIA process (see paragraphs 30-32 above) indicated support for the change, but did not have significant further information to add to that already gleaned from the surveys.

Amendments with regard to applications with a right to local review

56. The majority of these are legal/ technical amendments which simply ensure the proper operation of the planning legislation in relation to such cases. The one which perhaps represents a more significant change, at least in terms of the day to day operation of the system, is that allowing extensions to the period after which a local review can be sought. This change simply introduces a degree of flexibility in these cases and puts them on the same footing as cases to which a right of appeal applies.

57. None of our face to face discussions raised particular issues in this regard.

Competition Assessment

58. The planning system can affect any business in any market. The aim is to ensure procedures are proportionate and clear to avoid planning creating unnecessary barriers to business and competition.

59. The proposals on PAC will affect those carrying out major developments, though as this is de-regulatory and is about ensuring planning requirements are proportionate.

60. The changes in relation to applications where a right of local review applies will affect those carrying out local developments. However, the changes are about allowing more flexibility and/or ensuring the requirements of the planning system with regard to the applications in question are clear and operate appropriately.

61. There is no indication of any restriction on competition arising from the changes; no direct or indirect limitation on the number or range of suppliers; no additional limitation on the ability of suppliers to compete or reduction in their incentives to compete.

Test run of Business Forms

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

Legal Aid Impact Test - Pre-Application Consultation with Communities

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

Enforcement, Sanctions and Monitoring

64. These proposed amendments relate to the changes in process in the existing planning system and do not involve additional enforcement,

sanction or monitoring procedures. We will continue to liaise with our stakeholders as to the operation of the planning system.

Implementation and delivery plan

65. The amendments to remove PAC from Section 42 Applications and to allow the applicant and authority to agree an extension to the period after which a local review can be sought for non-determination will, subject to Parliamentary approval, come into force on 2 February 2013. These two changes are being made by separate orders under the Public Services Reform (Scotland) Act 2010 (PSR Orders). Consequential amendments arising from these changes will be included in a separate instrument, the Town and Country Planning (Miscellaneous Amendments) (Scotland) Order 2012, which will come into force on the same date.

66. E-mail alerts will be issued to stakeholders and planning authorities when the Orders and regulations are laid and when they have completed their Parliamentary procedures. These alerts will contain links to the legislation and guidance.

67. We intend to produce consolidated regulations, which will also include other elements of the package of amendments to the planning system. These will be laid before Parliament subsequently in 2013. Accompanying the consolidated legislation will be revised guidance in consolidated Scottish Government Circulars.

68. Most of the technical amendments in the Consequential Provisions Order (listed at paragraph 51 ii) to vi)) will also come into force on 2 February 2011. These are unlikely to have significant immediate effects as they address legal/ technical issues rather than the mechanisms of the planning system in day to day use.

69. We will address the effects of all of these changes in our regular liaison with our stakeholders on the effects of these changes.

Summary and recommendation

70. In response to our consultations, most parties were supportive of the changes regarding PAC and agreeing extensions to the period after which a local review on non-determination can be sought. Some community bodies responding to the 2010 and 1012 consultations were concerned about any drop in consultation in relation to PAC.

71. As indicated in paragraphs 6 to 10 above we also surveyed planning authorities and a number of developers and their representatives regarding information about PAC and Section 42 Applications.

72. Having considered the responses to our consultations, the costs and benefits of the options, we have concluded that removing PAC from

Section 42 Applications represents a simple and proportionate response to this issue. There will continue to be applications for planning permission in such cases (i.e. the Section 42 Applications itself) which come with publicity and consultation requirements and allow parties to make representations which planning authorities will have to take into account before deciding the application. While Option 3(3) looks like the best way to target PAC to appropriate applications, the difficulties in actually defining legally which are the appropriate cases at all and in a way that is clear cut for all stakeholders effectively rules it out.

73. We recommend that:

- Option 3(1) be adopted, i.e. removal of PAC requirements from Section 42 Applications. This is a proportionate, clear and simple change to address concerns about excessive requirements for PAC on changes to planning conditions.

- Applicants and planning authorities should be able to agree an extension to the period for determination whilst retaining the applicant's right to local review on the grounds of non-determination of the application. This allows a degree of flexibility and consistency across the planning system.

- The legal/ technical changes in the Consequential Provisions Order (see paragraph 51 items ii)-vi)) are pursued in order to clarify the legal position with regard to cases where the right to local review applies.

Summary costs and benefits table

PAC

Option	Benefits	Costs
1 – Do Nothing	• Full public engagement prior to application being made. • Public concerns taken onboard in applications • Fewer objections at application stage • Developer and planning authority view is generally any such benefit negligible in relation to changes to conditions	• Costs of running PAC – developers indicate costs £1000-£10,000 • Delay in getting a change in condition – developer examples £92K, £610K per week, £106K per month • Costs disproportionate to any benefit which might be gleaned • Public disillusioned or confused where

		PAC only relates to changes in conditions not to the whole development.
Option 2 Use Regulations or Guidance	• Could remove or reduce the costs of PAC and remove delays identified in Option 1 in some cases. • Benefits of Option 1 in some cases	• This would not necessarily remove PAC where it is unnecessary • Costs in Option 1 could still be incurred unnecessarily in many cases
Option 3(1) – remove PAC for Section 42 Applications	• Would avoid costs in Option 1 in relation to changes to conditions, which are unlikely to benefit from PAC • Simple/ Clear cut – no confusion or complex judgements about the need for PAC	• There may be cases in which PAC on a change of conditions is appropriate and the benefits in option 1 would be lost. • However, these are likely to be few in number and there remains the Section 42 Application itself, to which objections can be made
Option 3(2(a)) – reduce 12 week period for all PAC	• See Benefits of Option 1 • Reduced costs of delay due to PAC (see Costs Option 1)	• Costs in running PAC re Option 1 • Public Disillusion where PAC only is about conditions not the whole development • Public disillusion where they feel PAC being rushed in some cases relating to the whole development
Option 3(2(b)) – reduce 12 week period for PAC in relation to Section 42 Applications	• See benefits Option 1 • Reduce costs of delay (see Costs Option 1)	• Unnecessary PAC still being required in some cases • Costs in running PAC in Option 1 • Public Disillusion as PAC is only about

		conditions not the whole development • Possible confusion re which minimum period applies
Option 3(3) – power to regulate for which types of applications or applications in particular circumstances where PAC not required	• The benefits in Option 1 could be targeted to appropriate applications. • Costs in Option 1 of holding PAC could be avoided in appropriate cases. • Costs of Delay in Option 1 could be avoided in appropriate cases. • Benefits may be largely theoretical giving drafting problems (see Costs)	• Near impossible to define in legislation the necessary criteria • Any such criteria unlikely to be clear creating confusion and dispute and delay over whether PAC is required or not. • Costs in Option 1 for running PAC and the delay would still be incurred in some cases.

Amendments regarding applications subject to right of local review

Option	**Benefits**	**Costs**
Option 1 – Do nothing	Nil	• Applications or permissions may be "stuck" where legislation makes no provision for them • Delay or increased risks due to legal uncertainty as to appropriate course as provisions not clear • Applicants may avoid appropriate planning mechanisms
Option 2 – Amend sections of the 1997 Cat to provide for cases subject to local review	• Avoids Costs in Option 1.	nil

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: 21 November 2012

Minister for Local Government and Planning

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EQUALITY IMPACT ASSESSMENT RECORD

Title of policy/ practice/ strategy/ legislation etc	**Miscellaneous Amendments to the Planning System 2012 – amendments to the Town and Country Planning (Scotland) Act 1997**	
Minister	**Minister for Local Government & Planning**	
Lead official	**Alan Cameron**	
Officials involved in the EQIA	**name**	**team**
	Alan Cameron **Graham Robinson**	**Planning and Architecture Division**
Directorate: Division: team	**Planning and Architecture Division**	
Is this new or revision to an existing policy?	**Amendments to existing legislation**	

1. The public sector equality duty requires the Scottish Government to pay "due regard" to the need to:

   - eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;

   - advance equality of opportunity between people who share a protected characteristic and those who do not; and

   - foster good relations between people who share a relevant protected characteristic.

2. These three requirements apply across the "protected characteristics" of age; disability; gender reassignment; pregnancy and maternity; race; religion and belief; sex and sexual orientation.

3. Equality considerations are therefore integrated into all the functions and policies of Scottish Government Directorates and Agencies.

4. Equalities Impact Assessment (EQIA) enables us to consider how our policies may impact, either positively or negatively, on different sectors of the population in different ways.

What is the purpose of the proposed policy (or changes to be made to the policy)?

5. The objective is to ensure that statutory planning procedures are proportionate, efficient and effective. In particular those that relate to the development management procedures and planning appeals introduced in August 2009.

6. This EqIA relates to a number of refinements and amendments to the Town and Country Planning (Scotland) Act 1997 regarding procedures on:

Development Management

- Remove requirements for pre-application consultation on planning applications to amend conditions

Local Review Procedures

- allow applicants and planning authorities to agree an extension to the period after which the applicant can seek local review on the grounds of non-determination (as is the case with planning appeals)

- technical legal amendments to ensure the provisions of the 1997 Act are appropriately applied to applications to which new rights to local review apply.

Who is affected by the policy or who is intended to benefit from the proposed policy and how?

6. These changes are primarily about streamlining the planning process and ensuring requirements are clear, proportionate and effective. The main change to applications with a right to local reviews is the ability to agree extensions, thus allowing the applicant to allow more time for the planning authority to issue a decision while preserving his or her right to challenge their failure to issue a decision after the extended period. The technical amendments in relation to such applications are to ensure the mechanisms of the planning system are applied or clarify their application in such cases. With regard to the changes in development management, there will be a more proportionate requirement to consult with communities.

How have you or will you put the policy into practice, and who is or will be delivering it?

7. The initial consideration of these procedural requirements rests with Scotland's planning authorities, though applicants will face some reduced requirements, namely reductions in pre-application consultation in certain cases. There will be amendments as appropriate

to the guidance introduced in 2009 in relation to Development Management and Appeals.

How does the policy fit into our wider or related policy initiatives?

8. These changes will help improve clarity of the existing provisions and contribute to achieving a planning system which is efficient and *fit for purpose*.

What we already know about the diverse needs and/or experiences of your target audience

9. Equality Impact Assessments were prepared for the planning legislation these proposals seek to amend. Building on those assessments, we are not aware of any evidence that any of the equality strands will be affected by the proposals. The proposals will affect all business or individuals seeking approval of a relevant planning application proportionately.

Do we need more information to help us understand the diverse needs and/or experience of our target audience?

10. We recognised that there was scope to increase our knowledge as to whether and if so how the proposals in relation to the removal of pre-application consultation requirements and the ability to agree extensions in local review cases may affect particular sections of society. To assist in this, we included a specific question in the consultation paper "Miscellaneous Amendments to the Planning System 2012" seeking views on whether there are particular impacts on societal groups that we should be aware of.

11. Most respondents either did not respond at all (36 respondents) or indicated that they had no comments to make (37 respondents). The other comments largely fell into two, essentially inter-related, categories:

- Nine respondents said that it was unlikely that the proposals would impact on equalities groups
- Eleven respondents said that the partial EQIA was comprehensive - which might suggest, although it is not stated in these responses, that the respondents agree with the conclusions reached in the EQIA.

Describing how Equality Impact analysis has shaped the policy making process

12. These changes are largely technical, fine tuning measures with regard to the existing planning procedures. However, the need for this equality impact analysis has ensured we are not complacent in considering the impact of the measures involved. We did not believe

there were likely to be any such impacts and nothing has emerged to contradict that view.

Monitoring and Review

13. These amendments arise from a review of the modernisation of the planning system and are designed, in part, to address some concerns around the changes. We are in regular, ongoing contact with planning system stakeholders or their representative bodies, and will take the opportunity to take views on these amendments.

Authorisation

14. These changes are largely technical refinements and fine tunings of the existing procedural requirements.

- This Equality Impact Assessment has informed the development of this policy:

  Yes ☒ **No** ☐

- Opportunities to promote equality in respect of age, disability, gender, gender identity/transgender, sexual orientation, race and religion and belief have been considered, i.e.:
  - Eliminating unlawful discrimination, harassment, victimisation;
  - Removing or minimising any barriers and/or disadvantages;
  - Taking steps which assist with promoting equality and meeting people's different needs;
  - Encouraging participation (e.g. in public life)
  - Fostering good relations, tackling prejudice and promoting understanding.

  Yes ☒ **No** ☐

Declaration

I am satisfied with the equality impact assessment that has been undertaken for Miscellaneous Amendments to the Planning System 2012 – amendments to the Town and Country Planning (Scotland) Act 1997 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: JOHN MCNAIRNEY
Position: Chief Planner
Authorisation date: 22 November 2012