

POLICY NOTE

THE PLANNING (SCOTLAND) ACT 2019 (COMMENCEMENT NO. 6 AND TRANSITIONAL PROVISION) AMENDMENT REGULATIONS 2022

SSI 2022/67 (C. 5)

The above instrument was made in exercise of the powers conferred by section 63(2) and (3) of the Planning (Scotland) Act 2019 (the 2019 Act). The instrument is subject to no procedure.

The instrument amends regulations 3 and 4 of The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provisions) Regulations 2021 (SSI 2021/101)¹ on the bringing into force section 18(3) of the Planning (Scotland) Act 2019. Section 18(3) introduces an 18 month time limit on making an application for planning permission where pre-application consultation (PAC) requirements apply.

The amendment postpones the coming into force of this provision from 1 April 2022 until 1 October 2022.

This SSI is linked to The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2022, which is also before Parliament and includes additional changes to PAC requirements.

Purpose of the Regulations

Background

The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provisions) Regulations 2021 (SSI 2021/101) - the SSI to be amended

Regulations 3 and 4 of the Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provisions) Regulations 2021 relate to pre-application consultation (PAC) requirements. PAC requirements ensure early engagement by prospective applicants with local communities prior to applying for planning permission for national and major developments. The intention is that communities have early notice of proposals and an opportunity to comment to the prospective applicant at an early stage in the development of a proposal. Such early engagement is to increase the chances of issues being taken on board by the prospective applicant, compared to when a proposal is largely finalised in an application.

Regulation 3 currently brings section 18(3) of the 2019 Act into force on 1 April 2022. Section 18(3) amends section 35B(3) of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act).

Section 35B of the 1997 Act relates to compliance with PAC requirements, and section 35B(3) currently provides that no application for planning permission can be made within

¹ As previously amended by SSI 2021/291 (which postponed the original coming into force date from 1 October 2021 to 1 April 2022.)

12 weeks from a proposal of application notice (PoAN) being served on the planning authority. The PoAN sets out what consultation the party intending to make an application ('the prospective applicant') intends to carry out during PAC.

Section 18(3) of the 2019 Act will add a time limit to section 35B(3) specifying that to comply with PAC requirements an application must be made within 18 months from when the PoAN is given to the planning authority - thus preventing PAC being too divorced in time from the application.

Regulation 3 aligns with the coming into force of a package of other PAC measures in the Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021, laid before Parliament on 24 February 2021.

Rather than allow prospective applicants who gave a PoAN to the planning authority prior to the coming into force date of the new time limit to avoid that limit altogether, the intention is to apply it in such cases but with a transitional arrangement.

Regulation 4 therefore makes a transitional provision to adjust the application of the new time limit where a PoAN was served prior to the coming into force date. In those cases ('relevant applications') as described in regulation 4(2), a time limit of 18 months from the coming into force date will apply. This means where a PoAN was served prior to the coming into force date of the new time limit, those prospective applicants who might otherwise suddenly find they had little or no time to make an application will have 18 months from that date to so do.

The Changes

The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Amendment Regulations 2022

Regulation 2 of The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Amendment Regulations 2022, amends the dates in regulations 3 and 4 of The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provisions) Regulations 2021. Specifically regulation 2(2) introduces a coming into force date of 1 October 2022 for the new time limit, and regulation 2(3) similarly amends the date from which the time limit for making an application is calculated in transitional cases.

Policy Objectives

The reason for this change is that wider package of changes to PAC requirements in the Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021 is to be delayed. This relates to the continued suspension of requirements for a public event in PAC, which would affect the changes to PAC (which include requirements for an additional public event). In view of that, and to avoid further complications in the transition from Coronavirus modifications and to new PAC requirements, as well as avoiding additional costs to business at a time of economic recovery, the intention is to postpone the package of changes to PAC requirements - see policy note for The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2022.

Consultation

As these regulations only specify a coming into date force of a provision of the 2019 Act (and make transitional provision), no specific consultation has been carried out in relation to this instrument.

Impact Assessments

As these regulations only specify a coming into force date of a provision of the 2019 Act (and make transitional provision), no specific assessment has been carried out in relation to this instrument.

Financial Effects

The Minister for Public Finance, Planning and Community Wealth confirms that no Business and Regulatory Impact Assessment is necessary: these regulations specify a coming into force date of a section of the 2019 Act and make transitional provision. The instrument itself has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Local Government and Communities

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