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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 99**

**TOWN AND COUNTRY PLANNING**

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

*Made* - - - - 22nd February 2021  
*Laid before the Scottish  
Parliament* - - - - 24th February 2021  
*Coming into force* - - 1st October 2021

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 32, 35A, 35B, 35C and 275 of the Town and Country Planning (Scotland) Act 1997<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and interpretation**

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

(2) In these Regulations—

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

“the 2013 Regulations” means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013<sup>(2)</sup>.

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

2. The 2013 Regulations are amended in accordance with regulations 3 to 9.

**Pre-application consultation – exemptions**

3. After regulation 4 (pre-application consultation — classes of development) insert—

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(1) 1997 c.8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). Section 32 was substituted by section 7(1) of the Planning etc. (Scotland) Act 2006 (asp 17) (“the 2006 Act”). Sections 35A, 35B and 35C were inserted by section 11 of the 2006 Act and were relevantly amended by section 18 of the Planning (Scotland) Act 2019 (asp 13) (“the 2019 Act”). Sections 18(1), 18(2) and 18(4) of the 2019 Act were commenced by S.S.I. 2019/385.

(2) S.S.I. 2013/155.

**“Pre-application consultation – exemptions**

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

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

(a) the application for planning permission relates to proposed development—

(i) of the same character or description as development (or part of the development) in respect of which an earlier application for planning permission was made (“the earlier application”),

(ii) comprised within the description of the development contained in the proposal of application notice given to the planning authority under section 35B(2) of the Act in respect of the earlier application, and

(iii) to be situated on or within the same site as the development to which the earlier application related and on no other land except land which is solely for the purpose of providing a different means of access to the site of the proposed development,

(b) there has been compliance with the requirements of section 35B in respect of the earlier application,

(c) the planning authority have not exercised their power under section 39 to decline to determine the earlier application, and

(d) the application for planning permission is made no later than 18 months after the validation date of the earlier application.

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

**Content of pre-application screening notice**

**4.** In regulation 5 (content of pre-application screening notice)(3) after paragraph (1) insert—

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

(a) sufficient information to enable the earlier application to be identified by the planning authority,

(b) the information contained in the proposal of application notice given to the planning authority under section 35B(2) of the Act in respect of the earlier application, and

(c) a statement (for the purposes of assessment of the need to comply with section 35B), confirming the date, or latest date, on which the prospective applicant intends to make that application for planning permission.”.

### **Content of proposal of application notice**

5. In regulation 6 (content of proposal of application notice) after “undertake,” insert “including information as to”.

### **Pre-application consultation**

6. In regulation 7 (pre-application consultation)(4)—

(a) in paragraph (2)(a) for “one public event” substitute “two public events”,

(b) for paragraph (2)(b) substitute—

“(b) publish in a local newspaper circulating in the locality in which the proposed development is situated—

(i) a notice in respect of the first public event containing the information specified in paragraph (2A), and

(ii) a further notice in respect of the final public event containing the information specified in sub-paragraphs (a) to (c) and (e) of paragraph (2A).”.

(c) after paragraph (2) insert—

“(2A) The information is—

(a) a description of, and the location of, the proposed development,

(b) details as to how (including by what electronic means) further information may be obtained concerning the proposed development,

(c) the date and place of the public event,

(d) a statement explaining how, and by when, persons wishing to make comments to the prospective applicant relating to the proposal may do so, and

(e) a statement that comments made to the prospective applicant are not representations to the planning authority and if the prospective applicant submits an application there will be an opportunity to make representations on that application to the planning authority.”.

(d) in paragraph (3) for “such event is given under paragraph (2)(b)(iii)” substitute—

“the public event is given under paragraph (2)(b)(i) or (ii), as the case may be, and the final public event must be held at least 14 days after the first public event.”.

(e) after paragraph (3) insert—

“(4) The prospective applicant must at the final public event provide feedback to members of the public in respect of comments received by the prospective applicant as regards the proposed development.”.

### **Form and content of pre-application consultation report**

7. After regulation 7A (temporary relaxation of pre-application consultation requirements during Coronavirus emergency period)(5) insert—

#### **“Form and content of pre-application consultation report**

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

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(4) Regulation 7 was amended by [S.S.I. 2020/124](#).

(5) Regulation 7A was inserted by [S.S.I. 2020/124](#).

- (a) the dates on which, and places where, public events were held as required in accordance with regulation 7(2),
- (b) a description of—
  - (i) any additional consultation or notification required by the planning authority in relation to the proposed application under section 35B(7) of the Act,
  - (ii) any additional steps taken by the prospective applicant to consult with members of the public as regards the proposed development,
- (c) a list of bodies, groups and organisations who were consulted by the prospective applicant,
- (d) evidence as to how the prospective applicant carried out the activities described under sub-paragraphs (a), (b) and (c),
- (e) copies of—
  - (i) any materials sent to consultees,
  - (ii) any materials provided to those attending a public event, and
  - (iii) any visual presentation shown or displayed at a public event,
- (f) photographs of any display boards or models at public events,
- (g) confirmation as to whether consultees and attendees at public events were informed that pre-application consultation does not remove the right or the potential need to comment on the final application once it is made to the planning authority,
- (i) a summary of—
  - (i) the written responses to consultations, and
  - (ii) views raised at public events,
 including an indication of the number of written responses received and the number of persons who attended the public events,
- (j) an explanation of how the prospective applicant took account of views raised during the pre-application consultation process, and
- (k) an explanation of how members of the public were given feedback on the prospective applicant’s consideration of the views raised during the pre-application consultation process.”.

### **Form and content of an application for planning permission**

- 8.** In regulation 9 (form and content of an application for planning permission)—
- (a) in paragraph (3)(e) after “the application” insert “is not an exempt application and”, and
  - (b) in paragraph (4) after the definition of “electronic communications network” insert—
    - ““exempt application” means an application for planning permission relating to development belonging to the categories of national developments or major developments to which section 35A(1) of the Act does not apply.”.

### **Application for planning permission in principle**

- 9.** In regulation 10 (application for planning permission in principle) in paragraph (3)(e) after “the application” insert “is not an exempt application (as defined in regulation 9(4)) and”.

### **Transitional and saving provisions**

**10.** In relation to an application for planning permission where the prospective applicant has before 1 October 2021 given a proposal of application notice to the planning authority in respect of that application—

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

St Andrew's House,  
Edinburgh  
22nd February 2021

*AILEEN CAMPBELL*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (“the 2013 Regulations”) in respect of provisions relating to pre-application consultation. Section 35A(1) of the Town and Country Planning (Scotland) Act 1997 (“the Act”) requires that before submitting an application for planning permission for certain classes of development the prospective applicant must undertake pre-application consultation as set out in section 35B of the Act and related provisions of the 2013 Regulations.

Section 35A(2)(b), introduced by section 18 of the Planning (Scotland) Act 2019, provides that the pre-application consultation requirements will not apply in certain circumstances. Regulation 3 inserts a new regulation 4A into the 2013 Regulations which specifies these circumstances. New regulation 4A(3) also requires additional information to be submitted with an application for planning permission where the applicant is relying on this exemption from the pre-application requirements.

Regulation 4 inserts a new paragraph (1A) into regulation 5 of the 2013 Regulations to require additional information to be included in a notice under section 35A(3) where the notice relates to development of the same character or description as has been applied for in an earlier application for planning permission. Regulation 5 modifies the requirements in respect of the information to be included in a proposal of application notice given under section 35B(2) of the Act.

Regulation 6 amends regulation 7 of the 2013 Regulations to provide that a minimum of two public events will be required and to alter the publication requirements in take account of this. It also requires that the prospective applicant must at the final public event provide feedback to the public in respect of comments received regarding the proposed development.

Regulation 7 introduces a new regulation 7B into the 2013 Regulations to set out prescribed content to be included in a pre-application consultation report under section 35C of the Act. Regulation 8 and 9 make consequential changes to the list of things which are to be submitted with an application for planning permission and planning permission in principle.

Regulation 10 makes transitional and saving provisions. Regulation 10(a) makes savings provisions in respect of the requirements contained in regulation 7 of the 2013 Regulation as they apply immediately before these Regulations come into force on 1 October 2021. Where a proposal of application notice has been given in respect of an application before that date the provisions of regulation 7 continue to apply without the amendments made by regulation 6. Those provisions are subject to the modifications made by regulation 7A of the 2013 Regulations where it applies. Regulation 10(b) provides that the new requirements of regulation 7B do not apply in relation to the submission of an application for planning permission if the proposal of application notice for that application was given before 1 October 2021.