

# **BUSINESS AND REGULATORY IMPACT ASSESSMENT**

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

### **Purpose and intended Effect**

#### **Background**

1. In August 2020 we published a consultation on proposed changes to the existing requirements for pre-application consultation (PAC) with local communities on applications for planning permission for national and major developments. These requirements were introduced in 2009, as part of the implementation of the Planning etc. (Scotland) Act 2006. The consultation closed on 6<sup>th</sup> November 2020 and 109 responses were received from a wide range of stakeholders. An independent analysis of the responses has been undertaken and can be found at: <https://consult.gov.scot/planning-architecture/pre-application-consultation-requirements/>.
2. The proposed changes to PAC are the first part of a wider package of measures on improving community engagement in planning matters and building public trust. The proposals for changes to PAC come from, in part, the report by the independent panel assigned to review the Scottish Planning system: 'Empowering Planning to Deliver Great Places'<sup>1</sup> (May 2016). The report referred to concerns that PAC can be a 'tick box' exercise and that there was a lack of feedback to communities on their views in the pre-application phase – i.e. prior to the finalised application being made. The report recommended an additional public event to allow for greater discussion of proposals. Subsequent consultation indicated a need for clarity and transparency around the process.
3. In addition, since the inception of PAC, there have been concerns about PAC requiring to be repeated in situations where PAC has been conducted previously and an application made, and then the developer seeks to make a subsequent application for the same, basic development (see paragraphs 36 to 38 below). The Planning (Scotland) Act 2019, which was developed as part of the response to the review mentioned above, includes new powers to specify exemptions from PAC requirements.
4. PAC is a statutory requirement in relation to applications for planning permission for national and major developments – i.e. large scale development as opposed to local developments (the third level of the planning hierarchy<sup>2</sup>). The aim is that local communities are made aware of proposals at an early stage, and have the opportunity to comment to the prospective applicant before the proposal is finalised and an application for planning permission is made.
5. PAC can increase the likelihood of a local community's views being taken on-board, as the ability to amend proposals to accommodate concerns is greater

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

<sup>2</sup> <https://www.gov.scot/publications/hierarchy-developments-planning-circular-5-2009/>

when the proposal is being developed than once finalised in an application. With increased guidance and awareness of the importance of engaging communities effectively in decisions about land, it may be possible to take a more cooperative approach to proposals. It is, however, up to the applicant to decide, having considered the outcome of PAC, what their detailed proposal for application should be.

6. Once the application is made to the planning authority, the various planning application consultation and publicity requirements will apply<sup>3</sup>, and anyone can make comment to the planning authority on the proposal, whether positive or negative. Indeed, it is important that they do so at this stage, as the proposal may have altered as a result of PAC and other pre-application discussions, and the planning authority will be considering the finalised proposal in the application, and comments submitted to them on that. The planning authority is required to give due consideration to any relevant planning issues (material considerations) when deciding whether to grant planning permission or not.

### **Current PAC Requirements**

7. The requirement for PAC to be undertaken is contained in sections 35A, 35B and 35C of the Town and Country Planning (Scotland) Act 1997<sup>4</sup>, as amended. The detailed requirements are set out in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013<sup>5</sup> (“the DM Regulations”).
8. The basic PAC requirements are currently that the prospective applicant must:
  - Serve a proposal of application notice (PAN) on the planning authority describing the proposal and location and indicating what consultation they intend carrying out as part of PAC.
  - Consult the community councils in whose area the proposal site is located or whose area adjoins the proposal site;
  - Hold a public event<sup>6</sup>.
  - Publish a notice in a local newspaper indicating: where information on the proposal can be obtained; how to make views known to the prospective applicant; and the details of the public event (the notice must be published at least 7 days prior to the public event).
  - Carry out any further PAC measures required by the planning authority (the authority has 21 days from the receipt of the PAN to make such requirements).

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<sup>3</sup> Neighbour notification, online weekly lists, newspaper notices where required, consultation with community councils and other bodies.

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/1997/8/contents>

<sup>5</sup> <https://www.legislation.gov.uk/ssi/2013/155/contents>

<sup>6</sup> At the time of publication, during COVID-19, the requirement for a public event has been temporarily suspended, and guidance indicates online alternatives that should be used.

9. The planning application to which PAC relates cannot be submitted until at least 12 weeks have passed since the PAN was served on the planning authority. When an application is submitted, it must be accompanied by a report on the PAC. Currently the content of such reports is the subject of guidance rather than statutory requirement.
10. There is currently no maximum time limit for the application for which PAC relates to be submitted. Provision in the Planning (Scotland) Act 2019<sup>7</sup> introduces an 18 month time limit for making an application to which PAC applies, from when the PAN is served on the planning authority. This is intended to ensure that the views given during PAC are still relevant when the application is made. We intend to bring this time limit into force at the same time as the changes to PAC requirements proposed in this paper.

## **Objective**

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

## **Rationale for Government Intervention**

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

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<sup>7</sup> <https://www.legislation.gov.uk/asp/2019/13/contents>

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

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

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

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

## **Consultation**

- **Within Government**

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

- **Public Consultation**

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

## **Consultation Responses**

19. A public consultation was held between 13<sup>th</sup> August and 6<sup>th</sup> November 2020. There were 109 responses to the consultation. In October 2020, we also held three online events for community councils and other stakeholders and conducted phone call interviews with a number of developer representatives to discuss the consultation paper – issues raised were similar to those in the consultation responses.

20. Whilst in most cases the majority of respondents were supportive of the proposed changes, there was a lot of nuance in and qualification of responses. In broad terms, there was something of a split between the public and developers – with the former pushing for more legislative requirements, specification, quality control, and the latter not wanting additional legislative requirements or seeking more flexibility.

Taking account of the responses to the consultation we have outlined in the table below the changes which we propose to make to the proposals which we consulted on.

<b>Current PAC Requirement</b>	<b>Consultation Proposal</b>	<b>Proposed Change/ requirement Post Consultation</b>
<p><b>Proposal of application notice (PAN)</b></p> <p>Serve a PAN on the planning authority, describing the proposal and location and indicating what consultation they intend carrying out as part of PAC.</p>	<p>No Change</p>	<p><b>Proposal of application notice (PAN)</b></p> <p>Consequential changes to PAN information.</p> <p>Serve a PAN on the planning authority, describing the proposal and location and indicating what consultation they intend carrying out as part of PAC.</p>
<p><b>Consult the community councils</b></p> <p>Consult community Councils in whose area the proposal site is located or whose area adjoins the proposal site</p>	<p>No Change</p>	<p><b>Consult the community councils</b></p> <p>No Change</p> <p>Consult the community councils in whose area the proposal site is located or whose area adjoins the proposal site</p>
<p><b>Hold a public event<sup>8</sup></b></p>	<p>Hold a second (or final) public (physical) event which must include feedback to the public on the comments received on the proposal.</p> <p>A minimum of 7 days between events (just to prevent events on same day or consecutive days to 'tick the box')</p>	<p><b>Hold Public Events</b></p> <p>Change from consultation: Extend minimum period between events to 14 days</p> <p>Hold minimum two (physical) public events. The second (or final) public event must include feedback to the public on the comments received on the proposal.</p> <p>A minimum of 14 days between events</p>

<sup>8</sup> At present, during COVID-19, the requirement for a public event has been suspended, and guidance indicates online alternatives that should be used.

<p><b>Newspaper Notice</b></p> <p>Publish a notice in a local newspaper indicating: where information on the proposal can be obtained; how to make views known to the prospective applicant; and the details of the public event (the notice must be published at least 7 days prior to the public event).</p>	<p>Newspaper notice required for each of the two statutory events (though, if known, details of the second event can also be included in the initial notice.)</p> <p>Information to be made available in hard copy and electronic formats.</p>	<p><b><u>Newspaper Notices</u></b></p> <p>No Change from consultation</p> <p>Publish a notice in a local newspaper prior to <u>each</u> statutory public event indicating: where information on the proposal can be obtained; how to make views known to the prospective applicant (not required for second/ final feedback event notice); and the details of the public event (the notice must be published at least 7 days prior to the public event).</p> <p>Information to be made available in hard copy and electronic formats.</p>
<p><b>Additional Consultation</b></p> <p>Carry out any additional consultation required by the planning authority and in the form they specify (the authority has 21 days from the receipt of the PAN to do so).</p>	<p>No Change</p>	<p><b>Additional Consultation</b></p> <p>No Change</p> <p>Carry out any additional consultation required by the planning authority and in the form they specify (the authority has 21 days from the receipt of the PAN to do so).</p>
<p><b>PAC Reports</b> – Content set out in guidance.</p> <p>Legal purpose is merely to demonstrate compliance with legal requirements above. It can also act as a transparency tool to show what was done at PAC and how the proposal changed as a result.</p>	<p>Specify content in legislation.</p> <p>(No change to primary legislation regarding its purpose)</p>	<p><b>PAC Reports</b></p> <p>Change from consultation: additional information on broad numbers attending events and commenting, and details of any additional PAC requirements specified by the planning authority in response to the PAN.</p>

<p><b>Time limits on making applications</b></p> <p>No application can be made within 12 weeks of the proposal of application notice (PAN) being served on the planning authority.</p>	<p>(No Change to minimum period proposed)</p> <p>New maximum period (Section 18 of the Planning (Scotland) Act 2019) – an application must be made within 12 months of service of the PAN. Transitional arrangement – where PAN served prior to coming into force date, the application can be made up to 18 months from that date.</p>	<p><b>Time Limits on making applications</b></p> <p>No change to transitional arrangement from consultation (Change already specified in the Planning (Scotland) Act 2019.)</p> <p>Application cannot be made within 12 weeks of service of the PAN on the planning authority.</p> <p>Application must be made within 18 months of the service of the PAN on the Planning Authority.</p>
<p><b>PAC Exemptions</b></p> <p>No provision</p>	<p>Where an earlier application was subject to PAC one subsequent application for basically the same development (with amendments) can be made without going through PAC.</p> <p>Criteria: This applies only to the same applicant as before</p> <p>It does not apply if the planning authority declined to determine the earlier application (i.e. otherwise it does not matter if that earlier application was withdrawn, refused, approved, called-in or appealed)</p> <p>The development in the second application must</p>	<p>Change from consultation: remove the limitation that where an earlier application was subject to PAC only one subsequent application for basically the same development (with amendments) can be made without going through PAC.</p> <p>Change from consultation – Amend definitions linking developments in the applications and the PAN to allow for PAC exemption for ‘part of the development’</p> <p>Criteria:</p> <p>It does not apply if the planning authority declined to determine the earlier application (i.e. otherwise it does not matter if that earlier application was withdrawn, refused, approved, called-in or appealed)</p>

	<p>be related to that in the earlier application.</p> <p>The development in the second application must be within the scope of the development in the PAN.</p> <p>The second application must be made within 18 months of the date the earlier application was made.</p>	<p>The development in a further application must be related to that in the earlier application (includes part of the development).</p> <p>The development in a further application must be within the scope of the development in the PAN (includes part of the development).</p> <p>A further application must be made within 18 months of the date the earlier application was made.</p>
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- **Business**

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

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

- EDF Energy
- Whiteburn
- RES
- Barret and David Wilson Homes
- Colliers International
- Scottish Property Federation
- Springfield
- Miller Homes

23. The views expressed in those discussions mirror a number of those in the written responses from developers and have fed into our consideration of the proposals to take forward.

### **Options**

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



## **Providing Information on the Proposal - Format Requirements**

### ***Do nothing***

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

### ***Require details to be available in hard copy and electronic format***

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

## **An Additional Public Event**

### ***Do nothing***

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

### ***Require alternative measures for providing feedback***

28. At present, the PAC report and the finalised application in effect provide feedback, but not before the proposal is finalised and application is made to the planning authority.
29. Other forms of feedback could be provided by online means. However, at this juncture, although various online approaches are being tried during the COVID-19 emergency, we have no systematic analysis of how well that has worked as an alternative or complement to physical, public events. Concerns have been expressed at the onset of the COVID-19 emergency about those who may lose out as so much public engagement activity moves online.

### ***Require an additional public event***

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

### ***Change proposed following Consultation***

31. It is proposed that the minimum time limit between events is increased from 7 days (consultation proposal) to 14 days.

## **Requirements on the content of PAC reports**

### ***Do nothing***

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

### ***Options - Specifying the content of PAC Reports in legislation***

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

### ***Change proposed following Consultation***

34. Additional information to be included in PAC report on the broad numbers of attendees and those who comment on the proposal, as well as any additional consultation requirements which were specified by the planning authority in response to the PAN.

35. Consequential changes will be required to take account of other changes which are proposed below. For example removing the requirement for applications for major and national development to be accompanied by a PAC report where a new PAC exemption applies.

## **Exemption from PAC for applications in certain circumstances**

### ***Do nothing***

36. The concern is that requiring PAC in certain circumstances is largely redundant. The purpose of PAC is to provide early engagement with the local community before the proposals are finalised for the purposes of making an application – i.e. while the prospective applicant's options may still allow for various changes. Once an application is made to the planning authority, the extent to which proposal can be varied, for example due to public concern, is restricted<sup>9</sup>.

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

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<sup>9</sup> The planning authority cannot agree to changes to the description of development in an application if it considers those changes to be substantial – section 32A of the Town and Country Planning (Scotland) Act 1997.

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

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

39. This is the only option we have considered. We are not contemplating that certain development types or proposals in the major development and national development categories should be entirely exempt from PAC requirements.

40. As indicated, the basis for considering exemptions from PAC requirement is where these are likely to be redundant. Exemption would not apply where the planning authority had declined to determine (i.e. refused to deal with) the earlier application. That means it could apply where the earlier application is:

- withdrawn;
- refused;
- permission is granted;
- subject to an appeal;
- subject to call-in for determination by Scottish Ministers; or
- a second application is made whilst the earlier application is still before the planning authority.

41. The intention is that further criteria apply to the developments in the applications. Firstly that the second application is made by the same applicant as the earlier application. Then that both applications must be within the scope of what was considered at PAC, i.e. that they fall within the description contained in the proposal of application notice.

42. In addition, the proposal in the second application must be for ‘development of the same character or description as development to which an earlier application relates and to no other development’ and where ‘the application relates to the same site as that to which the earlier application related, or to part of that site, and to no other land except land included solely for the purpose of providing a different means of access to the site’. This description of development is to allow for some changes to be made but that the development proposal is basically the same. It is taken from the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004<sup>10</sup> (Regulations 7(a) and 8(c)).

43. In settling on this description of how the development in the subsequent application relates to that in the earlier application, we wanted to use a

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<sup>10</sup> <https://www.legislation.gov.uk/ssi/2004/219/contents/made>

concept for relating applications that was already established in planning, rather than inventing a new concept for the same thing.

44. We also propose the use of a time limit on the exemption – this would be 18 months from the date the earlier application was made to the planning authority. This would potentially allow an application to be made and determined, and a proposal revised, without leaving exemptions open ended (given we are introducing a new time limit on making an initial application to which PAC requirements apply).

### **Changes following Consultation**

45. It is proposed that the “same applicant” criterion is removed due to the complexity involved in site and business ownership, but also as developments may change hands and planning is primarily about the development and the and not who the applicant is.
46. Removal of the limitation where an earlier application which was subject to PAC that only one subsequent application for basically the same development can be made without going through PAC. Reliance will be on the time limit on exemptions limiting the number of potential exemptions. This also facilitates the exemption of part of a development from PAC requirements (see below) and removal of the same applicant criterion.
47. It is also proposed to amend the definition linking developments in the applications and PAN to allow for PAC exemption for part of the development previously subject to PAC and an earlier application.
48. It is proposed that criteria for PAC exemption are:
- It does not apply if the planning authority declined to determine the earlier application (i.e. otherwise it does not matter if that earlier application was withdrawn, refused, approved, called-in or appealed)
  - The development in the second application must be related to that in the earlier application (includes part of the development).
  - The development in the second application must be within the scope of the development in the PAN (includes part of the development).
  - A PAC exempt application must be made within 18 months of the date the earlier application was made.

### **Sectors and groups affected**

49. The changes will apply to applicants for planning permission for national and major developments. As prospective applicants they will be required to carry out any additional public event, draft their PAC report in accordance with any new statutory requirements, but may be exempt from PAC altogether when making such an application in certain specified circumstances.

50. Local communities will have the opportunity to: access details of proposals more easily; attend any additional PAC public event and make their views known to the prospective applicant, and should receive more feedback; and will benefit from the transparency and consistency as regards the content of PAC reports when an application is made. On the other hand they may feel aggrieved at the exemptions from PAC, although the intention is that these would only apply to proposals where a previous application had been made for the same or amended version of the same basic development, which had been subject to PAC.
51. Planning authorities should, as a result of statutory specification of PAC reports, have more information on which to decide whether PAC requirements have been complied with, though they may face more requests for screening as to whether PAC is required, as a result of any new provisions on PAC exemptions.

### **Benefits**

#### ***Format requirements when providing information on the proposal – Do nothing***

52. No benefits

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

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

#### ***Public events - Do nothing***

54. No benefits.

#### ***Public events – An additional public event***

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

#### ***Content of PAC reports - Do nothing***

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

### ***Content of PAC reports – Prescribe content***

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

### ***Exemptions from PAC – do nothing***

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

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

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

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

61. The Scottish Land Commission has published a research report<sup>11</sup> on early engagement in planning, which indicated that respondents did not separately identify the costs of PAC sufficiently to do a cost benefit analysis. Fifteen respondents did make estimates, and indicated a range of £20K to £50K, with most being at the lower end of that range. The report did not indicate if this

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<sup>11</sup> “The Value of Early Engagement in Planning” (June 2020) - <https://landcommission.gov.scot/our-work/housing-development/early-engagement-in-planning>

was purely for meeting the statutory requirements or included additional, voluntary consultation measures.

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

63. We do not know how many applications for national and major developments per year are applications which would fall into those categories identified for exemption.

64. If we assume the figure is 5%. The average number of applications for major development<sup>12</sup> between 2016/17 to 2018/19 is 332 applications. That suggests a saving of:

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

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

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

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

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

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

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

## **Costs**

### ***Format requirements when providing details on the proposal – Do nothing***

68. No additional costs.

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

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

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

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<sup>12</sup> Planning applications for national development are small in number and not separately identified in our statistics. Many such developments are subject to alternative consent procedures rather than the planning application process.

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

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

**Public events - Do nothing**

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

**Public events – An additional public event**

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

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

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

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

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

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

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

$$(£7K \times 315) + (£1500 \times 315) = £2.68 \text{ million}$$

**Content of PAC reports - Do nothing**

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

**Content of PAC reports – Prescribe content**

78. Applicants to which PAC requirements apply are already required to produce PAC reports, though their content is the subject of guidance. A more detailed specification in legislation may mean more information than has been supplied by some applicants in the past will be required. These new requirements do not involve more consultation or analysis, but potentially



more of a record of what occurred and supplying copies of information. Any increase in cost should therefore be minimal for those who would have approached PAC in a rigorous way in any event.

***Exemptions from PAC – do nothing***

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

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

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

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

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

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

**Scottish Firms Impact Test**

84. These changes affect the costs of obtaining planning permission, and apply to national and major developments, but not to local development, i.e. they apply to the larger developments in the planning hierarchy.

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

## **Competition Assessment**

86. There are no obvious impacts on competition of these procedural amendments as regards obtaining planning permission. The changes will apply to any business that is pursuing national or major developments. The changes would not favour one such business over another per se. Whether a business benefits from the proposed PAC exemptions depends on the planning circumstances of the case.

87. Requirements for an additional public event and prescribed content of PAC reports are unlikely to involve significant expenditures in the context of the wider costs of pursuing a national or major developments.

88. In some sectors businesses which pursue major developments may be competing with those who are operating at a smaller scale, i.e. local development, which do not require PAC at all. As indicated, however, the added costs from an additional PAC event or from prescribed content of PAC reports are unlikely to make a significant difference to competitiveness in the overall cost context of national and major developments.

- Will the measure directly or indirectly limit the number or range of suppliers?

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

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

90. No. As above.

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

91. No. As above

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

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

## Consumer Assessment

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

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

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

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

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

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

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

97. No.

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

98. No.

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

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

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

100. No.

### **Test run of business forms**

101. No new forms.

### **Digital Impact Test**

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

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

103. Yes

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

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

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

105. No

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

106. No.

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

107. No.

### **Legal Aid Impact Test**

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

## **Enforcement, sanctions and monitoring**

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

## **Implementation and delivery plan**

113. The intention is that the legislative changes will be laid in parliament on 25<sup>th</sup> February and come into force on 1<sup>st</sup> October 2021. The legislative changes will be conveyed to planning authorities and the wider public sphere through planning guidance in e-mail alerts to planning authorities and stakeholders and the Scottish Government's web site. Guidance on the new procedures will also be published in advance of the provisions coming into force.

## **Post-implementation review**

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

## **Summary and recommendation**

115. The proposed changes to public events and PAC reports emerged from an extensive review of the planning system and subsequent consultation on the recommendations arising from that and consultation on the Scottish Government's response. The electronic availability of information on proposals, alongside requirements to make it available in hard copy, reflect

the general trend in the use of information technology and some of the recent temporary changes in light of the COVID-19 emergency.

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

117. Doing nothing is simply not a realistic option.

### Summary costs and benefits table

#### Summary and recommendation

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

Based on the figures received thus far on the costs of various measures and using approximations based on those submissions, and assuming a particular level of applications qualifying for PAC exemption, the suggested overall annual net cost of the changes is £3.5 million.

Doing nothing in the face of the concerns which emerged through the planning review is not considered tenable. Subject to the views received in the forthcoming public consultation, the proposals, as a package, would appear to represent a proportionate response to the concerns.

#### 13.1 Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1. Do nothing	No benefit	£802K in the absence of exemptions from PAC in certain circumstances.
2. Require detail of proposals to be available in hard copy and electronic format.	Improved accessibility of information and widen the engagement in PAC with potential benefits for proposals and outcomes.	Increased costs across all applications subject to PAC: £1.5 million

3. Require an additional public event.	Improved engagement and feedback for the public	Increased costs across all applications subject to PAC: £2.5 million.
4. Prescribe content of PAC Report.	Improved consistency of reporting and transparency of process. Possibly improved quality of PAC.	Not significant (PAC Reports should be providing most of this information already)
5. Exemptions from PAC in certain circumstances	A more proportionate approach to PAC. Saving costs to applicants (£581K), and potential costs of consultation fatigue etc.	Concern in some quarters about any reduction in PAC. Due to changes made following the consultation more applications may be exempt from having to carry out PAC which could increase savings which are estimated, however it has not been possible to quantify what that additional saving may be.
6. Implementation of package.	As for 2. To 5 combined, but with increased financial savings associated with exemptions (£789K)	A total of 2. To 5., but with reduced costs with exemptions. Net cost £3.5 million

### **Declaration and publication**

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

**Signed: Aileen Campbell**

**Date: 22<sup>nd</sup> February 2021**

**Aileen Campbell, Cabinet Secretary for Communities and Local Government**

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