

**ISLAND COMMUNITIES IMPACT ASSESSMENT – SCREENING  
Town and Country Planning (Pre-Application Consultation) (Scotland)  
Amendment Regulations 2021**

**Introduction**

1. This screening assessment relates to 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 (part of the implementation of the Planning etc. (Scotland) Act 2006).

***PAC and current requirements***

2. The aim of PAC 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.
3. The 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 (suspended during COVID-19 pandemic, and Scottish Government guidance published on using online alternatives).
  - 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).
4. The resulting planning application cannot be made until at least 12 weeks have passed from the service of the PA 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.
5. The PAC process does not remove the right or need for local communities or individuals to engage with the eventual planning application, which is where the planning authority will consider any representations before deciding whether to grant planning permission (with or without conditions) or refuse it.

### ***PAC – Proposed Changes to Consultation Requirements***

6. 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).
7. The changes are:
  - a minimum of two physical public events are held;
  - newspaper notice to be published in advance of the first and second (or final<sup>2</sup>) event;
  - the information which the public can obtain is available electronically as well as in physical format;
  - a minimum of 14 days between the first and final event, and
  - feedback on comments received must be provided at the final event.
8. The PAC report will be subject to statutory requirements on content. The role of the report is to demonstrate compliance with PAC requirements. The planning authority must refuse to deal with an application where PAC applies but the requirements are not complied with. These new information requirements go beyond that in an effort to improve transparency and consistency of process and encourage prospective applicants to improve their PAC. These requirements do not change the basis on which a planning authority may have to refuse to deal with an application to which PAC applies.

### ***Exemptions from PAC requirements***

9. Since the introduction of PAC requirements (2009) there have been some concerns about whether PAC was required to be gone through again where a further application was to be made for essentially the same development. For example, where an application was withdrawn or refused permission, the proposal amended and another application made.
10. The Planning (Scotland) Act 2019 introduced powers to specify the circumstances in which such exemptions would apply. An application is exempt from PAC where the development is similar to, or part of, a development in an earlier application which was subject to PAC. The legislation contains criteria in this regard linking the development in the latest application to that in the earlier application and in the PAN for the PAC previously carried out.
11. To be exempt the subsequent application must also be made to the planning authority within 18 months from when the earlier application was made. An exemption would not apply where the planning authority had refused to deal with the earlier application – either because it was a repeat application with no prospect of a different decision being reached, or had itself not complied with PAC requirements.

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<sup>1</sup> [Empowering planning to deliver great places: independent review report - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>2</sup> A Planning authority can require or a prospective applicant volunteer additional events as part of PAC.

12. Prospective applicants can seek a screening opinion from the planning authority, in advance of an application, as to whether their proposal is one to which the PAC requirements apply.
13. There is an additional related legislative change to PAC requirements 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).
14. This change is not included in this assessment, having been considered as part of the Bill process.

### ***COVID-19 and the changes***

15. Currently, the requirement for a physical public event as part of PAC is suspended, due to COVID-19 related restrictions on public gatherings. The intention is to bring the changes to PAC into force later in 2021, in the hope of avoiding the need to suspend some of the changes whilst some new elements come into force.

### **Implications of Proposed Changes for Island Communities**

16. This section considers the potential for differential impacts on island communities of each of the changes. The three island authorities are amongst those with the lowest number of such applications. Information for Highland Council, Argyll and Bute Council and North Ayrshire Council is not broken down to allow their island areas to be considered separately.
17. It is noted that even though the numbers of applications to which PAC applies is relatively low in the islands, the significance of individual cases may as a result be greater.

### **Provision of Information**

18. Prior to the COVID-19 emergency, the PAC newspaper notice was required to say where “details as to where further information may be obtained concerning the proposed development”. As part of the miscellaneous temporary provisions brought in during the COVID-19 emergency, the option to provide this information by electronic means was introduced.
19. The proposal is that the current provision should be amended to make this provision of information to be by electronic means and in hard copy.
20. Figures indicate that island communities have older populations and that internet use is less in older age groups than younger (see paragraphs 34 to 37 below), and that there is a gap between premises in the islands able to

access superfast and fibre broadband when compared to premises in other parts of rural Scotland. However, this change would extend the availability of information to both hard copy and electronic means, it is hard to see how overall this would put island communities at a disadvantage compared to the rest of Scotland.

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

21. Currently the content of PAC reports is covered by guidance. In order to improve consistency and transparency of such reports, the intention is to specify requirements on content in legislation. Section 35C(1) of the Town and Country Planning (Scotland) Act 1997 already requires the report to say what has been done to comply with PAC requirements.

22. The additional requirements are:

- (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."

23. Guidance could elaborate on some of these requirements, for example, some of the considerations that should be covered when explaining their response to the points raised, such as practical, commercial or design considerations.
24. The actual content of a report will therefore be dependent on the proposal, its location, the PAC discussions, views expressed and information made available. Where proposals are to be located in the islands, then, for example, to the extent local communities raise island related issues during PAC, these should be reflected in the PAC report, along with the response to them.
25. There would not appear to be any reason why this sort of approach to prescribed content should have any different impact in relation to development proposals on the islands.

### **Exemption from PAC for Applications in Certain Circumstances**

26. The intention with regard to exemptions from PAC is that where a further application is made for the same basic development (albeit possibly with some changes), or part of that development, then that application could be exempt from PAC. That development would also have to be within the scope of the proposal described in the proposal of application notice (PAN) served on the planning authority in relation to the PAC for the previous application.
27. This would apply where an earlier application was withdrawn, granted (and a revised permission needed for example), or refused. Also where the earlier application was appealed, called in by Scottish Ministers for a decision, or still before the planning authority (it would not apply where the planning authority declined to determine the earlier application).
28. There will also be a time limit that exceptions would only apply where a further application is made within 18 months from when the earlier application (to which Pac applied) was made.
29. As indicated, the aim is to avoid excessive requirements for PAC in cases where the same basic proposal has been through PAC already.
30. We are not aware of reasons why such exemption from procedural requirements might be regarded as having more or less of an impact on island communities than other communities in remoter parts of Scotland. Major developments tend to be concentrated in local authority areas with more densely populated areas, but we do not have information indicating, for example, that individual communities within those areas would necessarily experience more consultation fatigue arising from repeated PAC on the same basic proposal than island communities.

## **An Additional Public Event**

31. The intention is that the second public event must include feedback to the public on the prospective applicants consideration of the views expressed during PAC.
32. The original requirement for a public event was, and this additional one will be a live face to face event in a physical location (the requirement for a public event in PAC is currently suspended, temporarily, during COVID-19 pandemic. These changes will not come into force until later in 2021).
33. One can anticipate that in locations with more scattered and / or older communities, where convenient locations for such events may be limited, or transport connections are more limited, there may be difficulties in interested members of the public attending such public events.
34. National Records of Scotland (NRS) - Population Estimates for Settlements and Localities in Scotland, Mid-2016 (2018)<sup>3</sup> states that:

“The council areas with the lowest proportion of people living in a settlement<sup>4</sup> are Na h-Eileanan Siar (30%) and Shetland Islands (38%). Many communities in these islands are sparser than those in the rest of Scotland, due to crofting and other factors, and so do not fulfil the density requirements needed to be counted as a settlement.”
35. The Orkney Islands has the next lowest proportion of people living in a settlement.
36. NRS Scotland Mid-Year Population Estimates Scotland, Mid-2019 (2020)<sup>5</sup> indicate that Na h-Eileanan Siar and the Orkney Islands are among the local authority areas with an older population in Scotland, with Shetland closer to the overall figures for Scotland. The Transport and Travel in Scotland Results from the Scottish Household Survey 2018 (2019)<sup>6</sup> indicates in turn that older people were less likely to have travelled the previous day. Only 51 per cent of those aged 80 and over had travelled the previous day and 65 per cent of those aged 70 to 79.
37. That survey also identified a variation in mode of travel by age. The older age group were more likely to catch a bus than younger children (33% compared to 9%), which may indicate older populations are more reliant on public transport.
38. The Transport and Travel in Scotland also includes the results of experimental analysis on the accessibility of bus services in Scotland, carried out by the GI-SAT team in Scottish Government. Those results in Annex B of that document

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<sup>3</sup> <https://www.nrscotland.gov.uk/files//statistics/settlements-localities/set-loc-16/set-loc-2016-publication-updated.pdf>

<sup>4</sup> A settlement is defined to be a group of high density postcodes whose combined population rounds to 500 people or more. They are separated by low density postcodes

<sup>5</sup> <https://www.nrscotland.gov.uk/files//statistics/population-estimates/mid-19/mid-year-pop-est-19-report.pdf> - Figure 13, page 26

<sup>6</sup> <https://www.transport.gov.scot/publication/transport-and-travel-in-scotland-results-from-the-scottish-household-survey-1/>

indicate that a higher proportion of ‘small accessible towns’, ‘small remote towns’, ‘accessible rural’ and ‘remote rural’ areas score towards the ‘least accessible’ end of the spectrum, compared to ‘large urban areas’ and ‘other urban areas’

39. The Scottish Government’s National Islands Plan refers to the costs and availability of transport in the islands and the difficulties in travelling between islands, when overnight stays may be required, adding to costs.
40. There is evidence therefore that given a more scattered and older population and the availability of, and reliance upon, public transport, may mean island populations may be less able to attend public events, or that it is more difficult and costly to do so. However, it is hard to make any conclusion as to the significance of any such challenges compared to other more remote parts of mainland Scotland, where populations may also be more scattered, older and where access to public transport at least may be more difficult compared to say larger urban areas.

### ***Mitigation***

41. If there is some significant difference in the ability of island communities to attend public events, how might that be addressed?
42. PAC requirements already include requirements on prospective applicants to make information available to the public and allow comments on the proposals to be submitted to them. At present, such availability of information is online, due to the COVID-19 emergency.
43. Also, during the COVID-19 emergency, the requirement for a physical public event as part of PAC has been suspended. Guidance indicates online measures for engagement which should be used instead.
44. An evaluation of such measures has yet to be undertaken. Availability of information online is included as part of the proposed legislative changes. As to whether one or more of the public events should be or could be held online, we would need to await the aforementioned evaluation. In the meantime, guidance could suggest such online events as an addition to the required physical public events, particularly in areas with more scattered populations.
45. This would not necessarily be a total solution for island communities. Whilst setting out the way to try to close the gap in digital connectivity, The National Plan for Scotland’s Islands (2019)<sup>7</sup> does indicate a gap between premises in the islands able to access superfast and fibre broadband when compared to premises in other parts of rural Scotland. Also, in their response to the ‘Call for Ideas’ on the Scottish Government’s National Planning Framework (NPF) 4, Orkney Islands Council indicated “the islands still experience some of the poorest broadband and mobile phone connectivity speeds in the UK.

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<sup>7</sup> <https://www.gov.scot/publications/national-plan-scotlands-islands/>

Improved digital connectivity and investment in digital infrastructure to ensure equal coverage across Scotland should remain as a key objective in NPF4”<sup>8</sup>.

46. In addition, above we indicated that Na h-Eileanan Siar and the Orkney Islands have a higher proportion of older people in their population, and that older people are less likely or able to travel. The Scottish Household Survey 2018 refers to a clear relationship between age and use of internet, with lower rates of internet use among older adults. In 2018, 100 per cent of adults aged 16 to 24 reported using the internet compared to 38 per cent of those aged 75 and over. This gap is, however, narrowing.
47. As regards any other particular challenges there may be for island communities to engage in public events, this seems likely to be a matter for guidance, rather than trying to anticipate specific issues and solutions in legislation.
48. Planning authorities have the power to require additional consultation steps as part of PAC upon receipt of the prospective applications PAN. As a result, where there are clear difficulties for certain communities, planning authorities can seek measures to address these in PAC, and this could be informed by guidance.

## **Conclusion**

49. It is worth noting that in relation to the Planning (Scotland) Bill – now the Planning (Scotland) Act 2019 – a joint statement was made by the Scottish Government and members of the Strategic Islands Group (Updated – June 2019) on the Island Communities Impact Assessment<sup>9</sup>.
50. On ‘Proposal 8 Improving public trust’, the statement refers to there being agreement that greater structure for pre-application consultations would be helpful, to allow for feedback. This could benefit from stronger guidance, although it was also acknowledged that this is not an island-specific issue. No island-specific recommendations were made in this regard.
51. It seems likely therefore that Island communities would welcome the opportunities provided by the requirement for a second public event. There may be some issues around ability to attend such physical events, given the specific nature of island communities, such as the potential need to travel between islands. With the information we have identified, the significance of these issues, as distinct from those in other remote parts of mainland Scotland, is hard to gauge.
52. Nevertheless, in looking at mitigation of such differential impacts, whilst digital/online alternatives may go some way to addressing these, guidance may need to look at other solutions for particular issues that may arise where more scattered or older populations are involved or in areas where there are specific issues relating to transport infrastructure. Such guidance can be

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<sup>8</sup> <https://www.transformingplanning.scot/media/1692/305-orkney-islands-council.pdf> - paragraph 1.20

<sup>9</sup> <https://www.gov.scot/publications/planning-bill---post-stage-2-island-communities-impact-assessment/>



backed up with existing planning authority powers to require additional consultation steps as part of PAC in individual cases.

53. As regards the proposals for statutory requirements on the content of PAC reports and exemptions for PAC in the circumstances indicated, with the information identified at this stage, there do not appear to be specific significant issues for Island Communities beyond those for some other parts of Scotland.
54. The public consultation sought the views of stakeholders on a draft version of this screening document<sup>10</sup> and our initial conclusion that an Island Communities Impact Assessment is not required. The responses to the consultation included several respondents (individuals, community councils, developers and public and representative bodies) who agreed with the conclusion that a full assessment is not required, although a number of responses were qualified as the respondent did not live on an island and therefore felt they may not be best placed to comment. Online events may be preferred for some participants in some remoter areas although online connectivity can be an issue in these areas.
55. A few respondents (community councils) disagreed with the conclusion that a full assessment is not required. Reasons to require a full and comprehensive impact assessment included the impact on small fragile communities could be disproportionate given the island environment, no area (island or otherwise) should be excluded from a full assessment and issues relating to broadband, mobile signals, remoteness etc. should be resolved in an inclusive way. Note: some respondents may have thought this assessment related to individual proposals rather than the legislative changes.
56. One respondent highlighted the benefit of e-consultation in providing wider access to communities who may not be able to travel to physical events. However, the challenges of e-consultation should be recognised (e.g. connectivity issues) and consultation in island communities was recommended via a letter drop.
57. Taking account of our analysis and the responses to the consultation, our conclusion is that, given the mitigation that could be covered in guidance, and that planning authorities retain the ability to specify additional consultation requirements at the outset of PAC, there do not seem to be significant implications from the proposed changes for Island Communities specifically. This is not to disregard the potential that, whilst numbers of major developments may be relatively low in number in the islands, the significance of a single development of this nature may be greater as a result.

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<sup>10</sup> That document was drafted on the basis of consultation proposals for change, whereas this version includes the post consultation finalised proposals. There were no significant changes to the proposals that affect the content or conclusions in this document.

ICIA completed by: Alan Cameron

Position: Planning Policy Manager

Signature: Alan Cameron

Date completed: 17 February 2021

ICIA approved by: John McNairney

Position: Chief Planner

Signature: John McNairney

Date approved: 17 February 2021