

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (PRE-APPLICATION CONSULTATIONS) (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021/99

The Scottish Ministers make the above Regulations in exercise of the powers conferred by sections 32, 35A, 35B, 35C and 275 of the Town and Country Planning (Scotland) Act 1997, and all other powers enabling them to do so. Town and Country Planning is a devolved matter. The instrument is subject to the negative procedure.

Purpose of the instrument.

The Town and Country Planning (Pre-Application Consultations) (Scotland) Regulations 2021 (the Regulations) amend the existing detailed statutory requirements for pre-application consultation (PAC) which apply to major and national developments¹. They also specify criteria for exemptions from PAC requirements, made under powers introduced by the Planning (Scotland) Act 2019.

Policy Objectives

PAC and current requirements

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.

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).

The resulting planning application cannot be made until at least 12 weeks have passed from the service of the PAN on the planning authority. When an application is submitted, it must

¹ The hierarchy of developments has national developments, specified in the National Planning Framework, and major developments, specified in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009, with developments not so specified as national or major being local developments.

be accompanied by a report on the PAC. Currently the content of such reports is the subject of guidance.

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

The Regulations amend the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (the DMR). They also make transitional arrangements for the coming into force of the new provisions.

The 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’² (May 2016).

The Regulations amend the above requirements so that:

- a minimum of two physical public events are held (Regulation 6(a));
- newspaper notice to be published in advance of the first and second (or final³) event (Regulation 6(b));
- the information which the public can obtain is available electronically as well as in physical format. Regulation 6(c) reiterates the current list of content of a newspaper notice, but will require ((2A)(b)) that prospective applicants must indicate how (including by electronic means) information can be obtained on the proposals;
- a minimum of 14 days between the first and final event (Regulation 6(d)), and
- feedback on comments received must be provided at the final event (Regulation 6(e)).

Regulation 5 amends the content of a PAN to clarify that it allows information on who will be consulted, when and how, rather than necessarily precise dates or persons. For example, with an additional event at which feedback is provided, it may not be clear at the outset exactly when this might happen.

The PAC report will be subject to statutory requirements on content (Regulation 7). 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

Since the introduction of PAC requirements (2009) there have been some concerns about requirements for PAC again where a further application was to be made for essentially the

² [Empowering planning to deliver great places: independent review report - gov.scot \(www.gov.scot\)](http://www.gov.scot/Resource/0045/0045_0001_0000.pdf)

³ A Planning authority can require or a prospective applicant volunteer additional events as part of PAC.

same development. For example, where an application was withdrawn or refused permission, the proposal amended and another application made.

The Planning (Scotland) Act 2019 introduced powers to specify the circumstances in which such exemptions would apply. Regulation 3 introduces those circumstances. An application is exempt from PAC where the development is similar to, or part of, a development for which an earlier application, which was subject to PAC, was made. 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.

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.

Regulation 4 makes amendments to the legislation on prospective applicants obtaining screening opinions from the planning authority as to whether PAC requirements apply to their proposal. The provisions here cover information required to make screening decisions in relation to the new exemptions.

Regulations 8 and 9 make consequential changes to the DMR on content of applications for, respectively, planning permission and planning permission in principle. They provide that a PAC report is not required to be submitted where PAC is not required because an exemption from PAC applies.

Transitional Arrangements

The changes made to regulation 7 of the DMR and the new requirements of regulation 7B of the DMR introduced by regulation 8 will only apply to cases where the PAN is served on or after 1 October 2021 (the coming into force date of the Regulations). Where a PAN was served prior to that date, the earlier PAC requirements will continue to apply.

Consultation

A consultation paper on our proposals was issued on 13 August 2020, with responses requested by 6 November. This paper was the subject to an e-mail alert to those signed up to that, social media announcement and was circulated to community council liaison officers, for onward transmission to community councils, planning authorities, and to the Scottish Government Planning and Architecture Division's Development Management and Community Engagement Working Groups.

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. Around 22 representatives were involved in these online and phone discussions, and the issues raised were similar to those in the consultation responses. Consultation responses – in line with respondents' preferences - have been published on the Scottish Government's Citizen Space web site.

There were 109 responses to the 2020 consultation.

Group	Number	%
Community Bodies	3	2.8
Community Councils	30	27.5
Developers	16	14.7
Individuals	22	20.2
Planning Authorities	17	15.6
Planning/Other Consultants	6	5.5
Public and representative Bodies	15	3.8
TOTAL	109	100

The majority of respondents were supportive of the proposed changes, although there was a lot of nuance in and qualification of responses. In broad terms, there was a split between the public and developers. The public sought more detailed requirements and quality control, with some calls for more planning authority involvement and evaluation of PAC. Businesses were concerned about more statutory requirements and wanted more flexibility of process (requirements dependent of proposals and circumstances). There were calls for greater use of online/ digital mechanisms, instead of physical events, information and publicity (newspaper notices), with concerns too about a change to such approaches.

We have made some minor changes to the PAC procedures in light of the consultation responses. PAC reports are to have information on numbers attending events and making written representations and on any additional consultation requirements made by the planning authority. We have increased the minimum period between the two required events – from 7 to 14 days.

We have not been able to address the calls for more quality control and scrutiny of how prospective applicants carry out PAC, or allow for more flexibility in approach depending on the emerging circumstances of the case (e.g. levels of interest at first events affecting the need for a second event). This would need a more involved system, with a party like the planning authority acting as monitor and decision maker throughout each PAC. The Planning review did not recommend such an overhaul, and we did not pursue such changes through the Planning (Scotland) Act 2019.

Simply leaving options open to prospective applicants would lead to uncertainty of process, not to mention concern amongst those who already have issues with how some prospective applicants conduct PAC.

Whilst responses to the consultation indicated a number of positive experiences regarding working online and conducting PAC online during COVID-19, there were a number of concerns too. The consultation was based on the idea of physical public events, and the undertaking we have given that the suspension of requirements for physical public events during the COVID-19 pandemic is temporary. Also, we have yet to systematically assess the implications of moving PAC even further online.

Guidance will accompany the coming into force of the new provisions and may help to guide the process and indicate what PAC is intended to achieve, and what considerations and approaches can help make it a more effective process.

On PAC exemptions, there were some concerns amongst the public about the principle of exemptions and complexity, while developers were concerned about complexity and the scope of exemptions and suggested specific relaxations.

In response to the consultation we have allowed for exemptions to apply to part of a development that was previously subject to PAC and an earlier application – it being disproportionate and illogical to allow an application for the whole development to be exempt but not one for part of that development.

We removed the proposed criterion that exemption apply only to the same applicant, planning being concerned with development and land not with who is the applicant.

The PAC exemptions involve a degree of judgement as to how developments in new applications relate to those in an earlier application and to the PAN for PAC. There is, therefore, an element of seeing how the legislation seeking to define such judgements operates in practice.

Assessments

As well as a Business and Regulatory Impact Assessment (BRIA), covered in the next section, we have also carried out an Equalities Impact Assessment (EQIA) and Child Rights and Wellbeing Impact Assessment (CRWIA). Copies of the results accompany this note.

The EQIA indicated the desire across various groups with protected characteristics to engage in planning generally, but facing various challenges. The CRWIA did not identify any negative impacts from the proposals. In both cases it is difficult to form a complete picture.

The proposed changes represent an increase in engagement activity where PAC applies. Whilst they will not in themselves address all of the potential concerns identified, guidance will accompany the changes, and this can address the challenges and the approaches to achieving broader engagement at PAC.

PAC is intended as a light touch procedure which occurs at the outset of the development of proposals, where the options for change are potentially greater than at the application stage. PAC exemptions relate to cases where a PAC on the same basic development has occurred already and an application has been made, but an amended version of that proposal is the subject of another application. It is about being proportionate and recognising what PAC can realistically achieve, and that it is not a replacement for the planning application process.

We issued a screening paper with our consultation as regards an Island Communities Impact Assessment (ICIA). Our conclusion was that the changes to procedures do not have significantly different effects in island communities compared to other communities in Scotland. The PAC requirements already allow for the planning authority to add additional consultation requirements to PAC, which island authorities could use to address specific issues. Again guidance can help indicate approaches to consultation in different circumstances. A copy of our ICIA screening document accompanies this note.

We have screened out of the Fairer Scotland Duty Assessment, as the changes are amendments to existing procedures rather than strategic policy. A Data Protection Impact Assessment is not considered relevant to the changes.

Financial Effects

There will be additional costs to business from the additional requirements for events and publicity for these. We would not anticipate significant costs from statutory requirements on PAC reports, as similar information should already be being provided in such reports, in line with existing guidance.

There may be some savings for business where PAC exemptions apply. The aforementioned costs and these benefits are difficult to calculate, as predicting case numbers is an issue, the number of potential PAC exemptions and also given the wide range of costs developers incur in carrying out PAC.

Through the Business and Regulatory Impact Assessment (BRIA) process we estimated a net additional cost to business of £3.5 Million per year. The consultation responses did not indicate a different figure or order or magnitude in this regard. The final BRIA accompanies this policy note.

DLGC: Planning Division
Scottish Government
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