

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (MISCELLANEOUS TEMPORARY MODIFICATIONS) (CORONAVIRUS) (SCOTLAND) REGULATIONS 2022

SSI 2022/66

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 32, 35A, 35B, 35C, 58(3D), 59(8D) and 275 of the Town and Country Planning (Scotland) Act 1997, section 16(7) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, section 12(9) of the Coronavirus (Scotland) Act 2020, section 9(9) of the Coronavirus (Scotland) (No. 2) Act 2020 and all other powers enabling them to do so. Town and Country Planning is a devolved matter. The instrument is subject to negative procedure.

Summary Box

These Regulations:

- **amend planning legislation with regard to the Coronavirus modifications put in place in 2020:**
 - **extending the duration of planning permission, planning permission in principle¹, listed building consent and conservation area consent; and**
 - **suspending requirements for public events in pre-application consultation (PAC)².**
- **postpone the coming into force of changes to PAC requirements from 1 April 2022 to 1 October 2022.**

The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Amendment Regulations 2022, laid before Parliament, also contain provisions related to postponement of PAC changes.

Changes to measures under the Coronavirus (Scotland) Act 2020 or the Coronavirus (Scotland) (No.2) Act 2020

This policy note gives effect to the requirement in the Coronavirus (Extension and Expiry) (Scotland) Act 2021 to lay before the Scottish Parliament a statement notifying it of any proposal to change a measure put in place by them to respond to the effect or spread or incidence of coronavirus under the Coronavirus (Scotland) Act 2020 or the Coronavirus (Scotland) (No.2) Act 2020 (the Coronavirus Acts). In the case of the Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2022 (the 2022 Regulations), the specific measures to which this requirement applies are the changes to the extended duration of planning permission, listed building consent and

¹ All references in this note to planning permission include planning permission in principle, unless separate reference is made to the latter. Planning permission in principle is where permission is sought in the absence of detailed proposals to establish the principle of development, with further approval of details required by conditions attached to the permission in principle.

² Note: the publicity and consultation requirements in relation to the resulting application for planning permission remain unchanged from the pre-Coronavirus requirements.

conservation area consent. The rest of this policy note explains the purpose of the proposed change to the measures.

Purpose of the instrument.

To address the impacts of Coronavirus, various temporary provisions were added to existing pieces of planning legislation. These included:

- extending the duration of planning permission, planning permission in principle, listed building consent and conservation area consent;
- suspending requirements for public events in pre-application consultation (PAC); and
- suspending requirements on applicants to make environmental impact assessment (EIA) reports available at a physical location.

The 2022 Regulations amend the temporary provisions for extending duration and for PAC, such that they remain in place until the end of 30 September 2022.

The 2022 Regulations also postpone the coming into force date of changes to PAC requirements from 1 April 2022 to 1 October 2022. The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Amendment Regulations 2022, also laid before Parliament, postpone part of the changes to PAC, namely a new time limit for making applications to which PAC requirements apply.

The ‘extended duration’ of planning permission, listed building consent and conservation area consent linked to the impacts of Coronavirus

Background

Planning permission is required under the Town and Country Planning (Scotland) Act 1997 (the Planning Act) for a wide range of building, engineering and other operations, and for significant changes in the use of land and buildings. Buildings can be listed under the Planning (Listed Buildings and Conservation Areas (Scotland) Act 1997 (the Listed Building Act) for their special architectural or historic interest. Listed building consent (LBC) is then required for works which would affect its character as a building of such interest. Similarly, areas can be designated under that Act for their special architectural or historic interests, i.e. as conservation areas. Subject to certain exceptions, the demolition of a building in a conservation area requires conservation area consent (CAC).

With each grant of planning permission, LBC and CAC a period is specified so that it lapses if works are not started within that period (the duration). In that situation, a new permission or consent would need to be applied for.

To avoid such lapse of permission or consent due to works being held up by Coronavirus restrictions on activity, and so to minimise backlogs in development and new applications, the Planning Act and the Listed Building Act were amended by, respectively, the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 to introduce ‘extended duration’. This change means that where a permission or consent would otherwise lapse during a specified ‘emergency period’, the duration is extended for a period of 6 months after the end of the emergency period, the ‘extended period’, after which it would lapse if work had not been commenced in accordance with the permission or consent.

In relation to applications for approval of conditions attached to a planning permission in principle, if the last date for making an application for an approval is within the emergency period, then the time limit for making such an application will be 6 months from the end of the emergency period.

Purpose of the 2022 Regulations – Extended Duration

The affirmative SSIs extending the life of the duration extension powers under the Coronavirus Acts would mean these extended duration provisions will remain in place until 30 September 2022. The 2022 Regulations amend the relevant dates in the Planning Act and the Listed Building Act accordingly. The 2022 Regulations also replace and supersede the savings provisions in the Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2021³ (the 2021 Regulations), to reflect this change.

The provisions of the Listed Building Act apply certain LBC provisions to CAC, hence the limited amendments specific to CAC in the 2021 Regulations.

Regulation 2 of the 2022 Regulations amends the relevant sections of the Planning Act and the Listed Building Act to change the end of the emergency period from 31 March 2022 to 30 September 2022 for planning permission, planning permission in principle and LBC (and so CAC).

Regulation 3 of the 2022 Regulations amends the relevant sections of the Planning Act and the Listed Building Act to change the end of the extended period from 30 September 2022 to 31 March 2023 for planning permission, planning permission in principle and LBC (and so CAC).

When initially introduced, these extended duration provisions were accompanied by savings provisions. These saving provisions ensure that, where permission or consent is granted before the ‘emergency period’ ends, the extended duration provisions apply once the provisions of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 expire, and that Ministers can no longer make regulations extending the ‘emergency period’ or the ‘extended period’, for example, to further extend the duration of such permission or consent. These savings provisions therefore tie into the extension to the Coronavirus Acts and have effect after those Acts will be due to expire (30 September 2022).

The savings provisions specify a ‘relevant date’, in effect the end of the ‘emergency period’, and the savings provisions apply to permissions or consents granted before that date. The savings provisions refer to such permissions and consents as ‘relevant planning permission’ and ‘relevant consent’.

Regulation 4 of the 2022 Regulations replaces and supersedes the previous version of these savings provisions in the 2021 Regulations in relation to the extended duration of planning permission, amended to reflect the new ‘relevant date’ of 30 September 2022 (i.e. the end of the emergency period, when, with their intended extension, the Coronavirus Acts are due to expire).

³ SSI 2021/292

Regulation 5 of the 2022 Regulations does the same for the extended duration of LBC and CAC.

Regulation 6 of the 2022 Regulations revokes the now replaced and superseded previous savings provisions in regulations 4 and 5 of the 2021 Regulations.

Policy Objectives for Extended Duration

Despite the progress on emerging from Coronavirus lockdown and return to normal, concerns remain about the economic recovery and any potential barriers in that regard. Extending the life of the Coronavirus (Scotland) Act 2020 provisions to extend the duration of planning permission, LBC and CAC will support the construction sector in its recovery from the Coronavirus restrictions, reduce the burden on authorities needing to reconsider applications.

Pre-Application Consultation (PAC)

Background

The PAC requirements apply to national and major developments and require the party intending to make an application for planning permission (the prospective applicant) to:

- give the planning authority a proposal of application notice (PoAN);
- hold at least one public event;
- publish in a local newspaper a notice giving details of the event, where to obtain more information on proposals and how to submit comments to the prospective applicant;
- consult the community councils whose areas contain, or are next to, part or all of the proposal site; and
- carry out any additional consultation measures required by the planning authority in response to PoAN.

PAC requirements ensure early engagement by prospective applicants with local communities prior to applying for planning permission for national and major developments. The intention is that communities have early notice of proposals and an opportunity to comment to the prospective applicant at an early stage in the development of a proposal. Such early engagement is to increase the chances of issues being taken on board by the prospective applicant, compared to when a proposal is largely finalised in an application.

The resulting application must be accompanied by a report of the PAC, and where the planning authority considers the required PAC steps have not been carried out, they must refuse to deal with the application.

The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020⁴ amended the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013⁵ (the DMR) to suspend the requirement for holding a public event as part of PAC. Without this suspension, Coronavirus related restrictions on public gatherings would have prevented prospective applicants from complying with PAC requirements, and so have prevented them from making applications for national or major development. The Scottish Government published [Coronavirus guidance](#) on online engagement for PAC.

⁴ SSI 2020/124

⁵ SSI 2013/155

Another aspect to PAC is the Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021⁶ (the new PAC Regulations 2021), which will amend the DMR to introduce a package of amendments to PAC requirements:

- a minimum requirement for two public events;
- legal specification of the content of PAC reports which must accompany the eventual planning applications; and
- exemptions from PAC where a proposal for essentially the same development has been subject to PAC and an initial planning application made.

These changes are currently due to come into force on 1 April 2022.

In addition, section 18(3) of the Planning (Scotland) Act 2019 specifies an application must be made within 18 months from the giving of the PoAN to the planning authority. This is also currently due to come into force on 1 April 2022, under the Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Regulations 2021⁷.

Purpose of the 2022 Regulations - PAC

The 2022 Regulations retain the suspension of public events in PAC until 30 September 2022, postpone the coming into force date of the new PAC Regulations 2021. The separate commencement and transitional amendment regulations postpone the new time limit for making applications to which PAC requirements apply – see Annex A to this note.

Regulation 7(2) of the 2022 Regulations amends regulation 7A(3) of the DMR, which defines the emergency period during which the suspension of requirements for public events in PAC applies. It replaces “31 March 2022” with “30 September 2022”.

Regulation 8(2) of the 2022 Regulations amends regulation 1(1) (citation, commencement and interpretation) of the new PAC Regulations 2021, substituting “1 October 2022” for “1 April 2022”.

Regulation 8(3) of the 2021 Regulations amends regulation 10 (transitional and savings provisions) of the new PAC Regulations 2021, substituting “1 October 2022” for “1 April 2022”. This transitional and saving arrangement deals with cases where PAC was begun before the new PAC Regulations 2021 come into force, which will now be on 1 October 2022.

Policy Objectives - PAC

Although Coronavirus related restrictions are being lifted, there is a degree of uncertainty relating to infection rates and other variants, which may cause reversals in the emergence from lockdown and other public health related measures. Re-introducing requirements for public events in PAC could risk a situation where prospective applicants are unable to comply with them where local or national restrictions have to be re-introduced. It may also mean a degree of disruption and uncertainty for all parties as events and arrangements are cancelled or re-scheduled. The result could be increased costs for business and delays and uncertainty, or cancellation, in the coming forward of proposals for national and major developments.

⁶ SSI 2021/99

⁷ SSI 2021/101 as amended by SSI 2021/291

The 2022 Regulations therefore retain the suspension of the requirement for public events in PAC until the end of 30 September 2022⁸. Prior to that date, it would be open to prospective applicants to use public events if they chose, or for planning authorities to require them in individual cases when responding to the PoAN.

Given that one of the main changes in the new PAC Regulations 2021 is a requirement for a second public event, that too would be suspended. Splitting the package of changes to PAC measures could lead to potential confusion about what changes do and do not apply and when, and complicate further the transitions from old to new PAC requirements and out of Coronavirus modifications, with resulting impacts on the flow of proposals for national and major development. In addition, the business and regulatory impact assessment for the new PAC Regulations 2021 indicated they would involve a net cost to business of £3.5 million per annum.

Given the potential impacts indicated above, at a time when economic recovery requires encouragement, the intention is to postpone the introduction of the changes to PAC requirements until 1 April 2022.

Extension of these various Coronavirus modifications to the end of September 2022 would also coincide with the previously announced end to the flexible approach to planning enforcement, adopted in response to the pandemic.

Consultation

The retention of the extended duration provisions was discussed with various groups in the context of the affirmative SSIs to extend the expiration dates of the Coronavirus Acts, which extends the life of these provisions. The amendments in the 2022 Regulations to the dates in relevant legislation implement the position established by the Act, and are essentially consequential in nature.

On the PAC related measures, no specific consultation has been undertaken as we see this as retention of a temporary precautionary measure to keep the existing PAC requirements in the face of the uncertainties around Coronavirus, and the need to support economic recovery by minimising such uncertainty and costs in the coming months.

Financial Effects

The provisions on extending the duration of planning permission, LBC and CAC are in effect consequential amendments flowing from the affirmative SSI extending the life of the Coronavirus Acts, and do not in themselves have financial impacts.

There will be no financial costs imposed on planning authorities or business as a result of the provisions on PAC, as the existing arrangements remain in place. The original suspension meant potential savings to business, primarily not having to hold public events for PAC, though these might be offset by costs of online engagement they chose to do or planning authorities might require them to do.

⁸ This situation will be kept under review and, if merited, legislation could be brought forward to specify an earlier expiration date.

The postponement of the coming into force date of new PAC requirements will mean a delay in the imposition of the net costs to business (£3.5 million per annum) identified in our BRIA for those changes – see the entry on the Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021 in Annex B to this note.

Assessments

The provisions in the 2022 Regulations on ‘extended duration’ make in effect consequential changes to the dates for the emergency period and extended period, to facilitate the decision on the affirmative SSIs extending the Coronavirus Acts to retain extended duration until 30 September 2022. We have not done additional assessments in this regard.

With regard to the extending the life of the temporary suspensions on holding public events in relation to PAC and on making EIA reports available at a physical location, various assessments were done at the time these were introduced.

The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 introduced these temporary suspensions regarding PAC - see the entry on these regulations in Annex B to this note for a summary regarding related assessments.

With regard to postponing the coming into force date of the new PAC requirements, again various assessments were carried out in relation to the Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021 – see the entry on these regulations in Annex B to this policy note summarising the assessments. Whilst the impacts and costs will be delayed, we do not consider there to be a change in the nature or magnitude of these as a result.

Scottish Government
Directorate for Local Government and Communities

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The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2022

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

These amendment regulations alter the Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provisions) Regulations 2021⁹ to delay the coming into force of a new time limit for making applications for planning permission to which pre-application consultation (PAC) requirements apply. This is to keep this provision in line with the coming into force of the wider package of changes to the PAC requirements in the Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021. As discussed in the main policy note, the latter regulations have their coming into force date postponed by the Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2022.

Purpose of the Instrument

Background

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

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

Regulation 3 currently brings section 18(3) of the 2019 Act into force on 1 April 2022. Section 18(3) amends section 35B(3) of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act). Section 35B of the 1997 Act relates to compliance with PAC requirements, and section 35B(3) currently provides that no application for planning permission can be made within 12 weeks from a proposal of application notice (PoAN) being served on the planning authority. The PoAN sets out what consultation the party intending to make an application ('the prospective applicant') intends to carry out during PAC.

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

⁹ SSI 2021/101 as amended by SSI 2021/291 (which initially postponed the coming into force date from 1 October 2021 to 1 April 2022)

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

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

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

The Changes

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

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

Policy Objective

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

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The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2021

Assessments

The section on assessments in the main policy note referred to previous legislation and the assessments done in those regards – see entries below on the relevant regulations for a summary of the position regarding assessments.

Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020

These 2020 regulations introduced the temporary suspension of requirements for:

- Local review body meetings to be held in public (now expired);
- The holding of at least one public event in relation to pre-application consultation for national and major development; and
- Applicants to make environmental impact assessment reports available at a physical location (EIA reports have pre-existing requirements to be available online).

Link to Policy Note and Assessments for this SSI - [The Town and Country Planning \(Miscellaneous Temporary Modifications\) \(Coronavirus\) \(Scotland\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ssi/2020/10/1/1)

Summary of Assessments

We have carried out a Business and Regulatory Impact Assessment and Equalities Impact Assessment (EQIA), though we have been unable to carry out the normal consultation on these. We have screened out at stage one of Children’s Rights and Welfare Impact Assessment (CRWIA). Similarly, we have screened out of the Fairer Scotland Duty Assessment, as the changes are temporary and technical rather than strategic.

The EQIA and CRWIA screening acknowledge that some in particular groups may be disadvantaged due to potentially limited access to online tools. However, the alternatives of suspending public involvement in planning or the processing of applications are not considered tenable options in the circumstances.

These Regulations fall out with the scope of Strategic Environmental Assessment as per Section 4(3)(a) as their sole purpose is to serve a civil emergency. A Data Protection Impact Assessment is not considered relevant to the changes. In the circumstances, we have not done an Islands Impact Assessment, though we acknowledge that more remote areas with more limited online capabilities may be at something of a disadvantage for this temporary period.

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

These regulations¹⁰ make a number of changes to pre-application consultation (PAC) requirements:

¹⁰ These regulations previously contained an amendment to add ‘including electronic means’ to the content of PAC newspaper notices as regards how to obtain further information on proposals. This provision was in place

- a statutory minimum of two public events;
- statutory specification of the content of PAC reports which must accompany the eventual planning applications; and
- exemptions from PAC where a proposal for essentially the same development has been subject to PAC and an initial planning application made.

Link to Policy Note and Assessments for this SSI: [The Town and Country Planning \(Pre-Application Consultation\) \(Scotland\) Amendment Regulations 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2021/0001/20210001)

Summary of Assessment

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).

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.

We have screened out of the Fairer Scotland Duty Assessment, as the changes are amendments to existing procedures rather than strategic policy. The regulations have been pre-screened for Strategic Environmental Assessment, which concluded they would have minimal environmental effects. A Data Protection Impact Assessment is not considered relevant.

Financial Effects

as a temporary Coronavirus modification and has already been made permanent in order to avoid transitional problems when moving from the Coronavirus modifications to the new PAC requirements and, in some cases, potentially having to apply the PAC requirements that applied prior to Coronavirus modifications.

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.

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