

Local Government, Housing and Planning Committee

6th Meeting, 2021 (Session 6)

Tuesday 28 September 2021

Subordinate Legislation

Procedure for Negative Instruments

1. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.
2. If that is also agreed to, the Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Delegated Powers and Law Reform Committee consideration

3. At its meeting on 7 September, the Committee considered the following instrument(s) and determined that it did not need to draw the attention of the Parliament to (any of) the instrument(s) on any grounds within its remit.

Recommendation

4. The Committee is invited to consider any issues which it wishes to raise on these instruments.

The Town and Country Planning (Cairnryan Border Control Posts) (EU Exit) (Scotland) Special Development Amendment Order 2021 (SSI 2021/293)

Title of Instrument:	Town and Country Planning (Cairnryan Border Control Posts) (EU Exit) (Scotland) Special Development Amendment Order 2021
Type of Instrument:	Negative
Laid Date:	31 August 2021
Circulated to Members:	2 September 2021
Meeting Date:	28 September 2021
Minister to attend meeting:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	Yes – see Annexe B for a report extract and Annexe C for correspondence
Reporting deadline:	18 October 2021

Background

5. The development of land normally requires permission from a planning authority, usually the local or national park authority. However, a general planning permission for specific types of development, within a defined area can also be created by Scottish Ministers through a Special Development Order. A Special Development Order which automatically granted permission for the use of land for the stationing and processing of vehicles entering or leaving Great Britain, and the provision of associated temporary facilities and infrastructure at Cairnryan in Dumfries and Galloway came into force in March 2021. Such permission only applied to development undertaken by, or on behalf of Scottish Ministers. This instrument extends the planning permissions to cover development undertaken by, or on behalf of, UK Government authorities.

6. An electronic copy of the Order is available at: <https://www.legislation.gov.uk/ssi/2021/293/contents/made> .

7. A copy of the Scottish Government's Explanatory and Policy Notes are provided at Annexe A.

Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/292)

Title of Instrument:	Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2021
Type of Instrument:	Negative
Laid Date:	31 August 2021
Circulated to Members:	2 September 2021
Meeting Date:	28 September 2021
Minister to attend meeting:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	Yes – see Annexe B for a report extract and Annexe C for correspondence
Reporting deadline:	18 October 2021

Background

8. To adapt to the conditions imposed by the Coronavirus Pandemic, temporary amendments were made to the planning system. These included extending the duration periods of various types of planning permission, increasing the time available for work to start without having to gain new consents. This instrument extends these provisions until 31 March 2022.

9. Pre-Application Consultation (PAC) is required of national and major developments, and stipulates public events must be held. This requirement was suspended while public events were not possible so as not to prevent planning for major developments. In addition, new PAC requirements were introduced earlier this year (including hosting 2 public events) and were due to come into effect on 1 October 2021. The purpose of this instrument is to extend the suspension of public events as part of PAC and to delay the introduction of the new requirements until 31 March 2022.

10. Applicants can request a review of a planning decision which is conducted by a local review body (LRB). LRB meetings are held in public and this requirement has been suspended during the pandemic. These provisions extend this until 31 March 2022.

11. An electronic copy of the regulations is available at:
<https://www.legislation.gov.uk/ssi/2021/292/contents/made> .

12. A copy of the Scottish Government's Explanatory and Policy Notes are included below at Annexe A.

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Local Government, Housing and Planning Committee

Annexe A

The Town and Country Planning (Cairnryan Border Control Posts) (EU Exit) (Scotland) Special Development Amendment Order 2021 (SSI 2021/293)

Scottish Government Explanatory Note

This Order amends the Town and Country Planning (Cairnryan Border Control Posts) (EU Exit) (Scotland) Special Development Order 2021 (“the SDO”). Article 3 adds a definition of “border department” to the SDO, and expands the definition of “developer” to include a border department. Article 4 amends article 3 of the SDO so that the planning permission granted by the SDO includes permission for development for the purposes of any activity that forms part of the functions of a border department. Article 5 amends schedule 2 of the SDO which applies conditions to planning permission granted by article 3 of the SDO. Articles 3(c), 4(a)(ii) and (b), 5(b) and 6 make minor amendments to the SDO to correct typographical and formatting errors.

Scottish Government Policy Note

The above instrument (“the amendment Order”) was made in exercise of the powers conferred by section 30(2)(b) of the Town and Country Planning (Scotland) Act 1997. It amends the Town and Country Planning (Cairnryan Border Control Posts) (EU Exit) (Scotland) Special Development Order 2021 (“the SDO”). The instrument is subject to negative procedure.

Purpose of the instrument

The amendment Order provides for a wider range of Government functions, in addition to those of Scottish Ministers, to be carried out at any border facility that is consented under the SDO.

Policy Objectives

The SDO, which came into force on 25 March 2021, grants temporary planning permission for the development of border facilities to serve the ports at Cairnryan in Dumfries and Galloway. Development permitted by the SDO can only be carried out by, or on behalf of, the Scottish Ministers. Additionally, the planning permission granted by article 3 of the SDO relates to functions required to be carried out by on behalf of Scottish Ministers. As such, the SDO would not authorise a combined or multi-functional border facility at which relevant reserved functions of the UK Government can be carried out. The amendment Order addresses this by providing that development in connection with the functions of HMRC, BEIS, DfT and Defra (in addition to those of Scottish Ministers) may be carried out. The amendment Order

does not, however, alter any of the conditions, limitations or restrictions which the temporary planning permission granted by the SDO is subject to.

Consultation

Public consultation has not been carried out in respect of the amendment Order. However, Scottish Government has engaged with – and continues to engage with – key partners and stakeholders regarding the emerging proposals for border facilities serving Cairnryan. Additionally, consultation with those parties specified in schedule 3 to the SDO is required to be carried out before site-specific approval is sought from the Scottish Ministers under article 4(1). A report summarising the outcome of this consultation must be included in the written submission made to Scottish Ministers when such site-specific approval is sought. This provision is unchanged by the amendment Order.

Impact Assessments

A Business and Regulatory Impact Assessment (BRIA), Equality Impact Assessment (EqIA) and Children’s Rights and Wellbeing Impact Assessment (CRWIA) were carried out in respect of the SDO. The need for a Fairer Scotland Duty Assessment was screened out, as was the need for an Island Communities Impact Assessment. These assessments and screening assessments have been reviewed and are not considered to require updating in light of the amendment Order. This is on the basis that the amendment Order does not alter the scope of the temporary planning permission granted by the SDO, other than who can operate at any border facility consented under it. A Strategic Environmental Assessment (SEA) screening report was completed in respect of the amendment Order. This concluded that significant environmental effects were unlikely to arise, and a SEA was therefore not required.

Scottish Government
Directorate for Local Government and Communities

August 2021

Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/292)

Scottish Government Explanatory Note

These Regulations make amendments to the definitions of “emergency period” and “extended period” in sections 58(3C) and 59(8C) of the Town and Country Planning (Scotland) Act 1997 (“the Act”), as it has effect by virtue of paragraphs 8 to 10 of schedule 7 of the Coronavirus (Scotland) Act 2020, and in section 16(6) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the Listed Buildings Act”). These Regulations also make amendments to the Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2013, the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 and the Town and Country Planning (Pre-

Application Consultation) (Scotland) Amendment Regulations 2021.

Regulations 2 and 3 amend the definitions of “emergency period” and “extended period” in sections 58(3C) and 59(8C) of the Act and in section 16(6) of the Listed Buildings Act As currently defined by sections 58(3C) and 59(8C) of the Act, as amended by S.S.I. 2020/254 and S.S.I. 2021/100, the “emergency period” began on 7 April 2020 and would end on 30 September 2021 and the “extended period” began on 7 April 2020 and would end on 31 March 2022. As amended by these Regulations the “emergency period” is the period which began on 7 April 2020 and will end at the end of 31 March 2022 and the “extended period” is the period which began on 7 April 2020 and will end at the end of 30 September 2022.

As currently defined by section 16(6) of the Listed Buildings Act, as amended by S.S.I. 2020/254 and S.S.I. 2021/100, the “emergency period” began on 27 May 2020 and would end on 30 September 2021 and the “extended period” began on 27 May 2020 and would end on 31 March 2022. As amended by these Regulations the “emergency period” is the period which began on 27 May 2020 and will end at the end of 31 March 2022 and the “extended period” is the period which began on 27 May 2020 and will end at the end of 30 September 2022.

Regulation 4 makes saving provisions in respect of planning permissions granted before the expiry of the emergency period. The provisions of sections 58 and 59 of the Act, as they had effect immediately before the expiry of the emergency period continue to have effect, with modifications, in relation to the duration of planning permissions granted before the expiry of the emergency period. The modifications are that the powers to make regulations to further amend the definitions of “emergency period” and “extended period” will not continue to have effect after the expiry of the Coronavirus (Scotland) Act 2020 at the end of 31 March 2022.

Regulation 5 makes equivalent saving provisions in respect of listed building consents granted before the expiry of the emergency period. The provisions of section 16 of the Listed Buildings Act continue to have effect as immediately before the expiry of the Coronavirus (Scotland) Act (No. 2) 2020, with modifications in relation to the duration of listed building consent granted before the expiry of the emergency period. The powers to make regulations to further amend the definitions of “emergency period” and “extended period” will not continue to have effect after the expiry of the Coronavirus (Scotland) (No. 2) Act 2020 at the end of 31 March 2022.

The provisions of regulations 4 and 5 replace and supercede the saving provisions contained in regulations 4 and 5 of the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021. Those provisions are therefore revoked by regulation 6 along with the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Amendment Regulations 2021 which amended them.

Regulation 7 amends the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 to modify the information required to be included in notices published under regulation 7(2) of those Regulations and to align

the dates of the emergency period with the changes made by regulation 2 of these Regulations.

Regulation 8 amends the date on which the Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021 come into force from 1 October 2021 to 1 April 2022 and makes consequential changes to the related transitional and savings provisions.

Regulation 9 amends the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 to remove, with effect from the end of 30 September 2021, the temporary suspension of the requirement to hold a meeting of a local review body in public.

Scottish Government Policy Note

The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2021 SSI 2021/292

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 32, 35A, 35B, 35C, 43A(10) and (11), 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**
 - **suspending requirements for public events in pre-application consultation (PAC)²; and**
 - **suspending requirements to hold local review body meetings in public.**

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.

- **postpone the coming into force of changes to PAC requirements from 1 October 2021 to 1 April 2022.**

The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Amendment Regulations 2021, 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. In the case of the Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2021 (the 2021 Regulations), the specific measures to which this requirement applies are the changes to the extended duration of planning permission, listed building consent and 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 to hold local review body (LRB) meetings in public;
- 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 2021 Regulations amend the temporary provisions for extending duration and for PAC, such that they remain in place until the end of 31 March 2022. They change the expiration date of the suspension regarding LRB meetings to the end of 30 September 2021.

The 2021 Regulations also postpone the coming into force date of changes to PAC requirements from 1 October 2021 to 1 April 2022. The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Amendment Regulations 2021, also laid before Parliament, postpone part of the changes to PAC, namely a new time limit for making applications to which PAC requirements apply.

No amendment is made by the 2021 Regulations to the suspension of requirements regarding availability of EIA reports. That suspension is linked to expiry of Part 1 of the Coronavirus (Scotland) Act 2020, and will therefore remain in place until the end

of 31 March 2022, by virtue of the Coronavirus (Extension and Expiry) (Scotland) Act 2021 amendment of section 12 of that 2020 Act³.

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 2021 Regulations – Extended Duration

The Coronavirus (Extension and Expiry) (Scotland) Act 2021 means these extended duration provisions will remain in place until 31 March 2022. The 2021 Regulations amend the relevant dates in the Planning Act and the Listed Building Act accordingly. The 2021 Regulations also replace and supersede the savings provisions in the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021⁴ (the Duration Regulations 2021), as amended by the Town and Country Planning (Emergency Period and

³ The discretion in the Coronavirus (Scotland) Act 2020 around Scottish public authorities’ compliance with provisions requiring documents to be made available in a particular manner has been retained. In line with this, the suspension of requirements on applicants making EIA reports available at a physical location is to be retained.

⁴ SSI 2021/100

Extended Period) (Coronavirus) (Scotland) Amendment Regulations 2021⁵ (the Duration Amendment Regulations 2021), 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 2021 Regulations amends the relevant sections of the Planning Act and the Listed Building Act to change the end of the emergency period from 30 September 2021 to 31 March 2022 for planning permission, planning permission in principle and LBC.

Regulation 3 of the 2021 Regulations amends the relevant sections of the Planning Act and the Listed Building Act to change the end of the extended period from 31 March 2022 to 30 September 2022 for planning permission, planning permission in principle and LBC.

Regulations 4 and 5 of the Duration Regulations 2021 introduced savings provisions for the extended duration for planning permission, LBC and CAC. The Duration Amendment Regulations 2021 made some correcting amendments to those savings provisions.

The 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.

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 2021 Regulations replaces and supersedes the savings provisions in the Duration Regulations 2021 (as amended by the Duration Amendment Regulations 2021) in relation to the extended duration of planning permission, amended to reflect the new 'relevant date' of 31 March 2022 (i.e. the end of the emergency period).

Regulation 5 of the 2021 Regulations does the same for the extended duration of LBC and CAC.

Regulation 6 of the 2021 Regulations revokes the now replaced and superseded original savings provisions in regulations 4 and 5 of the Duration Regulations 2021 as amended by the Duration Amendment Regulations 2021, and revokes the latter regulations in their entirety.

Policy Objectives for Extended Duration

⁵ SSI 2021/142

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 and provide consistency to businesses operating across the UK.

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 2020⁶ amended the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013⁷ (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.

⁶ SSI 2020/124

⁷ SSI 2013/155

The DMR were also temporarily amended to add ‘including electronic means’ to the content of PAC newspaper notices as regards how to obtain further information on proposals.

Another aspect to PAC is the Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021⁸ (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;
- to add ‘including electronic means’ to the content of PAC newspaper notices as regards how to obtain further information on proposals;
- 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 October 2021.

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 October 2021, under the Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Regulations 2021⁹.

Purpose of the 2021 Regulations - PAC

The 2021 Regulations retain the suspension of public events in PAC until 31 March 2022, postpone the coming into force date of the new PAC Regulations 2021 and makes an amendment to requirements in the DMR relating to PAC newspaper notices. 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 2021 Regulations amends regulation 7(2)(b)(ii) of the DMR, so that the requirement for newspaper notices in relation to PAC to include “details as to where further information may be obtained concerning the proposed development”, is changed to “details as to how (including by what electronic means) further information may be obtained concerning the proposed development”.

Regulation 7(3)(a) of the 2021 Regulations removes regulation 7A(2)(b) of the DMR. The latter is a Coronavirus related modification in relation to the content of newspaper notices for PAC, which made the same change as Regulation 7(2) of the 2021 Regulations will, and so will itself become redundant.

Regulation 7(3)(b) of the 2021 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 “on the date on which Part 1 of the

⁸ SSI 2021/99

⁹ SSI 2021/101

Coronavirus (Scotland) Act 2020 expires in accordance with section 12 of that Act” with “at the end of 31 March 2022”. Although the amendment makes no change to expiration of these provisions¹⁰, it does provide a specific date to tie in with changes made to delay the commencement of the new PAC provisions until 1 April 2022.

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

Regulation 8(3) of the 2021 Regulations amends regulation 10 (transitional and savings provisions) of the new PAC Regulations 2021, substituting “1 April 2022” for “1 October 2021”. 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 April 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.

The 2021 Regulations therefore retain the suspension of the requirement for public events in PAC until the end of 31 March 2022¹¹. 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.

¹⁰ With the Coronavirus (Extension and Expiry)(Scotland) Act 2021, the expiration date in section 12 of the Coronavirus (Scotland) Act 2020 will be 31 March 2022.

¹¹ This situation will be kept under review and, if merited, legislation could be brought forward to specify an earlier expiration date.

The amendments to change the content of PAC newspaper notices, with regard to obtaining further information on proposals, are to smooth the transitions from the old PAC requirements to the new PAC requirements and out of the Coronavirus modifications. It avoids certain cases reverting to the old requirements on newspaper notice content in this regard. It will mean all such notices will need to comply with the requirement as specified in the current Coronavirus modifications and the new PAC Regulations 2021. Requiring some prospective applicants to revert to the old requirement helps no one, and could trigger a further newspaper notice unnecessarily and possibly a further, unnecessary public event (such notices being required to precede the public event).

Local Review Bodies (LRB)

Background

Where an application for planning permission is for local development and is delegated to an officer of the authority for decision, then the applicant has a right to a local review of the decision, or the failure to take a decision, on the application¹². The local review is conducted by a local review body (LRB) consisting of members of the planning authority.

Under the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013¹³ (the LRB Regulations), LRB meetings are required to be held in public. This requirement was suspended by the Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020. This was to avoid local review decisions on planning applications being held up due to Coronavirus lockdown restrictions, there being no legal provision specifying that the ‘held in public’ requirement could be met by online or similar means.

Purpose of the 2021 Regulations - LRB

Regulation 9(2) of the 2021 Regulations amends regulation 7A(2) of the LRB Regulations, which defines the emergency period during which the requirement to hold LRB meetings in public is suspended. It replaces “on the date on which Part 1 of the Coronavirus (Scotland) Act 2020 expires in accordance with section 12 of that Act” with “at the end of 30 September 2021”. Without this amendment the suspension would continue until 31 March 2022, in line with section 12 of the Coronavirus (Scotland) Act 2020, as amended by the Coronavirus (Extension and Expiry) (Scotland) Act 2021.

Policy Objective - LRB

During the passage of the Coronavirus (Extension and Expiry) (Scotland) Act 2021, the Scottish Government accepted, and Parliament passed, amendments to remove the discretion that local authorities and licensing boards have under the Section 6 and paragraph 4(5)(d) of Schedule 5 (alcohol licensing: licensing boards etc.), and Section 7 and paragraph 13 (grounds for exclusion of the public from meetings of local authorities) of Schedule 6 (Functioning of public bodies) of the Coronavirus (Scotland) Act 2020. This removal of discretion will apply after 30 September 2021.

¹² The other developments in the planning hierarchy, national and major development, have rights of appeal to the Scottish Ministers.

¹³ SSI 2013/157

As with meetings of local authorities generally and licensing boards, LRB meetings are meetings of members of the local authority for the area¹⁴. In order to be consistent with the above mentioned removal of discretion by the Coronavirus (Extension and Expiry) (Scotland) Act 2021, the intention is that the temporary suspension of requirements regarding LRB meetings being held in public should likewise cease after 30 September 2021.

Consultation

The retention of the extended duration provisions was discussed with various groups in the context of the Coronavirus (Extension and Expiry) (Scotland) Act 2021, which extends the life of these provisions. The amendments in the 2021 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, again 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.

There has been no specific consultation on the change regarding LRB meetings. This change is considered to be consistent with similar provisions in the Coronavirus (Scotland) Act 2020 as amended by the Coronavirus (Extension and Expiry) (Scotland) Act 2021, as passed by Parliament.

Financial Effects

The provisions on extending the duration of planning permission, LBC and CAC are in effect consequential amendments flowing from the Coronavirus (Extension and Expiry) (Scotland) Act 2021, 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.

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.

With the re-introduction of the requirement to hold LRB meetings in public, there will be a return to the costs to local authorities involved in holding a physical meeting and managing public access, and for the public in attending (it remains to be seen the

¹⁴ In The Loch Lomond and the Trossachs National Park, the National Park Authority is the planning authority.

extent to which planning authorities who are live streaming our placing video recordings online or similar, will continue to so do). The suspension of this requirement was only ever intended to be temporary.

Assessments

The provisions in the 2021 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 Coronavirus (Extension and Expiry)(Scotland) Act 2021 to retain extended duration until 31 March 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.

We have not carried out assessments regarding the re-introduction of requirements for public meetings for LRB. This was only ever intended to be a temporary measure and is now being brought to an end in line with similar requirements in the Coronavirus (Scotland) Act 2020 as amended by the Coronavirus (Extension and Expiry) (Scotland) Act 2021.

The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 introduced these temporary suspensions regarding PAC and LRB -see the entry on these regulations in Annex B to this note for a summary regarding related assessments (which also includes reference to EIA reports – see footnote 3 on page 2 of this note).

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

August 2021

ANNEX A

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

The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Amendment Regulations 2021

These amendment regulations alter the Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provisions) Regulations 2021¹⁵ to delay the coming into force of a new time limit for making applications for planning permission to which pre-application consultation (PAC) requirement 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 2021.

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 October 2021. 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) and 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

¹⁵ SSI 2021/101

given to the planning authority. Thus preventing PAC being too divorced in time from the application.

Regulation 3 currently specifies a coming into force date of 1 October 2021 for section 18(3) of the 2019 Act. This is to align 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 2021

Regulation 2 of The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Amendment Regulations 2021, 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 April 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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ANNEX B**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 regulations introduced the temporary suspension of requirements for:

- Local review body meetings to be held in public;
- 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/2020/12/1/1)

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

- a statutory minimum of two public events;
- to add 'including electronic means' to the content of PAC newspaper notices as regards how to obtain further information on proposals;
- 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/2021/0001/20210001/1)

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. 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.

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Annexe B

Extract from [SUBORDINATE LEGISLATION CONSIDERED BY THE DELEGATED POWERS AND LAW REFORM COMMITTEE ON 7 SEPTEMBER 2021](#)

Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/292)

In SSI 2021/292, suspension of the requirement to hold public consultation events about proposed building developments during the coronavirus pandemic is continued to 31 March 2022. Similar provision is made in SSI 2021/291 (C.16) which also defers to 31 March 2022 implementation of changes to pre-application consultations to require that at least two public consultation events must be held. As other coronavirus restrictions have been removed or relaxed in recent months, and it was not clear why these particular suspensions remained necessary, the Committee queried the delay in re-introducing the requirement to have public consultation events. The Committee noted that the move to online consultations appeared to have been a helpful additional means of reaching the public and questioned whether the effectiveness of online consultations has been evaluated.

While these are policy issues and so do not fall within the Committee's remit, it nevertheless agreed to make the lead committee aware of the queries raised, and write to the Minister for Public Finance, Planning and Community Wealth, Tom Arthur MSP to highlight its discussion.

Town and Country Planning (Cairnryan Border Control Posts) (EU Exit) (Scotland) Special Development Amendment Order 2021 (SSI 2021/293)

The Session 5 Delegated Powers and Law Reform Committee considered the principal order, the Town and Country Planning (Cairnryan Border Control Posts) (EU Exit) (Scotland) Special Development Order 2021 (SSI 2021/98), in March 2021. The Committee agreed to highlight that the Scottish Government has rectified 4 minor formatting and typographical points raised by its predecessor Committee when it considered the principal Order. Three of those points were rectified by this amending instrument and one by way of a correction slip.

[Letter from the Delegated Powers and Law Reform Committee to the Minister for Public Finance, Planning and Community Wealth](#)

10 September 2021

Dear Tom,

At its meeting on Tuesday 7 September 2021 the Delegated Powers and Law Reform Committee considered the following instruments:

- Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Amendment Regulations 2021 (SSI 2021/291 (C.16))
- Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/292)

As you will know, in SSI 2021/292 the suspension of the requirement to hold public consultation events about proposed building developments during the coronavirus pandemic is continued to 31 March 2022. Similar provision is made in SSI 2021/291 (C.16) which also defers to 31 March 2022 implementation of changes to pre-application consultations to require that at least two public consultation events must be held. As other coronavirus restrictions have been removed or relaxed in recent months, and it was not clear why these particular suspensions remained necessary, the Committee queried the delay in re-introducing the requirement to have public consultation events. The Committee noted that the move to online consultations appeared to have been a helpful additional means of reaching the public and questioned whether the effectiveness of online consultations has been evaluated.

While acknowledging that these are policy choices and so do not directly fall within the Committee's remit, they do touch on the wider requirement for a consistency of approach across subject areas in responding to covid. The Committee therefore agreed to make the lead committee aware of the queries raised and highlighted these in its report. It also agreed to write to you as the responsible Minister to highlight its discussion and for a response on these points

The Committee would welcome a response by **Friday 24 September 2021**.

Yours sincerely,

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee