POLICY NOTE

THE TOWN AND COUNTRY PLANNING (MISCELLANEOUS TEMPORARY MODIFICATIONS) (CORONAVIRUS) (SCOTLAND) REGULATIONS 2020

SSI 2020/124

The Scottish Ministers make the above Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, sections 35B(5), 40, 43A(10) and (11) 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. Section 2(2) of the European Communities Act 1972 is cited as the changes made to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 will apply in relation to applications for multi-stage consent as well as in relation to applications for planning permission. The instrument is subject to negative procedure.

Purpose of the instrument.

In light of the current public health advice relating to the COVID 19 outbreak, the purpose of this instrument is to amend various regulations to remove a number of requirements that would be contrary to the current public health policy as regards COVID 19. It removes the requirements for:

- a 'public event' as part of the mandatory pre-application consultation (PAC) on major and national developments. No application for planning permission for such development can be made to the planning authority without first having a public event, along with other consultation steps.

- local review body (LRB) meetings to be held in public. It is currently a requirement that such meetings, particularly where reviews of applications are determined, are held in public. LRBs can only determine reviews at such public meetings.

- suspending the need for an applicant to make a hard copy of an environmental report available for inspection by the public, in a specified location.

Policy Objectives

Pre-Application Consultation (PAC)

PAC was introduced to give the public an opportunity to engage with, and influence, prospective applicants on the latter's proposals before these were finalised for an application for planning permission. The aim was early engagement, as once proposals enter the formal application process the scope for changes in light of public comments is limited.

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (SSI 2013 No.155) ("the Development Management Regulations") require PAC to include the following steps: a 'public event', consultation with the community councils for, and adjoining, the site of the proposed development, and placing a newspaper notice indicating where and when the public event will be held. That newspaper notice must also indicate: how the prospective applicant can be contacted; details as to where further

information may be obtained concerning the proposed development; and specify how and by when comments can be made to the prospective applicant on the proposals.

In addition, the prospective applicant must serve a proposal of application notice on the planning authority prior to undertaking the statutorily required PAC. The planning authority has 21 days to specify any additional consultation steps the prospective applicant must complete as part of PAC.

Where an applicant has failed to take the statutorily specified steps or the ones required by the planning authority, the latter is obliged not to accept that application.

Changes to PAC Procedures

A requirement to hold a public event runs contrary to the current ban on public gatherings. It is not clear that the current planning legislation would extend to holding an alternative that would avoid such contact, such as a 'virtual' public event.

Regulation 2 amends the Development Management Regulations, making the requirements for pre-application consultation set out in regulation 7(2) subject to a new regulation 7A. Paragraph (2) of this new regulation removes the requirement for a public event, the need to give details of such an event in the newspaper notice on PAC and the requirement to publish the newspaper notice at least seven days in advance of the public event. It also amends the requirements for a newspaper notice so that it indicates where information on the proposed development is available 'electronically'.

Paragraph (1)(b) of new regulation 7A provides that the removal of these requirements will apply to cases where the proposal of application notice (PAN), sent by the prospective applicant to the planning authority at the outset of PAC, was served before or during the emergency period. The emergency period is defined as from the date the Regulations come into force until the end of the emergency period as specified in the Coronavirus (Scotland) Act 2020.

Paragraph (1)(a) of new regulation 7A provides that the exemption from holding a public event only holds if the application for planning permission is made during the emergency period or within six months of the end of the emergency period. This ensures that those who have proceeded on the basis of the emergency provisions will not be required to do a public event immediately the emergency period ends, potentially with little warning and at a time when public venues may be scarce, which could risk derailing project timetables. If, however, the application is not made before the end of that six month period, they will then have to do a public event.

Where a PAN is served after the emergency period, a public event will be required before an application can be made.

As a result of the dislocation caused by COVID 19, and the related impact on the economy, major and national development proposals are likely to be few and at the same time much needed. The Scottish Government therefore considers it necessary to remove what will in effect be a barrier to the making of applications for these developments.

There will still be some measure of pre-application consultation with the community as the other steps will remain in place. Planning authorities will still be able to use their existing powers in relation to PAC to require additional steps relevant to the proposed development, their locality and the public health position prevailing at the time. There will also still be the chance for the public to comment to the planning authority on the application once it has been submitted.

The Scottish Government intends to issue guidance on alternative, online approaches to PAC in the absence of a public event. The aim is that prospective applicants take account of this when setting out in their PAN their consultation measures, and planning authorities can consider these and whether they need to use the powers mentioned above to require more consultation. With a longer timescale, and in normal circumstances, it might have been possible to develop and consult upon an alternative statutory requirement which works for applicants and the public. At this juncture, it is considered the need for quick and decisive action rules this out.

Local Review Body (LRB) meetings

Meetings of LRBs where local review applications are determined are required to be held in public, meaning that if this is not possible, the LRB cannot determine local reviews.

Regulation 3(3) introduces new regulation 7A into the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (SSI 2013 No.157) ("the Local Review Regulations").

Regulation 7 of the Local Review Regulations sets out procedures for meetings of the local review body. Regulation 3(2) of these regulations makes this subject to new regulation 7A, which provides that the requirement for LRB meetings to be held in public does not apply during the 'emergency period'. The emergency period is defined coming into force on 24 April 2020 and expiring in accordance with the provisions of section 12 of the Coronavirus (Scotland) Act 2020.

A local review body is a committee of the local authority. Provisions already exist, in the Local Government (Scotland) Act 2003, for local authority meetings to be held remotely, and the Coronavirus (Scotland) Act 2020 makes provision for the public to be excluded on public health grounds. However this does not address the need for LRB meetings to be held "in public", hence the reason for this regulation.

Where the LRB considers that it needs further information to determine a review, this may be done by written submissions or by a hearing session, separate from the meeting to determine the review. If those making representations agree, it may be possible for hearing sessions to be held remotely, or LRBs may agree to confine themselves to written submissions during the emergency period.

Environmental Impact Assessment (EIA) Procedures

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017 No.102) ("the EIA Regulations") set out the requirements for undertaking EIA where this is required in connection with a planning application. The applicant must

produce an EIA report which is submitted to the planning authority (or the Scottish Ministers) with the application. The planning authority or Ministers are required to publish the report, but, under regulation 25 the applicant must make copies available for inspection at a specified address, usually the applicant's offices.

Regulation 4 amends regulation 25(3) of the EIA Regulations, suspending the need for an applicant to make a hard copy available for inspection by the public, in a location specified by them, for the duration of the emergency period. The emergency period is defined coming into force on 24 April 2020 and expiring in accordance with the provisions of section 12 of the Coronavirus (Scotland) Act 2020.

The Coronavirus (Scotland) Act 2020 deals with any statutory requirements for the Scottish Ministers or a Scottish public authority to make documents physically available for inspection, allowing them instead to make the information available online during the emergency period. However, that provision does not extend to requirements on private companies or individuals, therefore it is necessary to amend the EIA Regulations directly. Anyone who wishes to view the EIA report will be able to access it online where it is published by the Scottish Ministers or planning authority to which it is submitted.

Consultation

As this is an emergency measure, and intended to be temporary, no formal public consultation was undertaken. These changes have been discussed with representatives from SOLACE, SOLAR, CoSLA, The Royal Town Planning Institute Scotland, Heads of Planning Scotland, and the Key Agencies Group (membership includes Scottish Natural Heritage, Historic Environment Scotland, Scottish Environment Protection Agency and Scottish Water), Homes for Scotland and the Scottish Property Federation.

Financial Effects

There will be no financial costs imposed on business as a result of these changes. Indeed, in PAC, prospective applicants will be spared the costs of staging a public event. Those savings may be offset by any other consultation steps they undertake instead or which a planning authority may require, under existing PAC powers, in an individual case. Similarly, applicants submitting an EIA report will be spared any costs that might be associated with making hard copies available.

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), as the changes are technical and temporary changes driven by the public health policy. 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.

DLGC: Planning Division
Scottish Government
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