POLICY NOTE

THE TOWN AND COUNTRY PLANNING (PLAY SUFFICIENCY ASSESSMENT) (SCOTLAND) REGULATIONS 2023

SSI 2023/XXX

The above instrument was made in exercise of the powers conferred by section 16D(2) of the Town and Country Planning (Scotland) Act 1997(a) and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Summary Box

Provisions for the preparation of Play Sufficiency Assessments were introduced by section 7 of the Planning (Scotland) Act 2019 which inserted section 16D into the Town and Country Planning (Scotland) Act 1997. This instrument makes provision as to the form and content of play sufficiency assessments; the persons who must be consulted in preparing play sufficiency assessments and the publication of play sufficiency assessments.

Policy Objectives

1. Children's rights to play and relax; to have freedom of association; and their right for their views to be heard and be given due consideration are enshrined in the United Nations Convention on the Rights of the Child (UNCRC) Articles 31,15 and 12 respectively.

2. Research shows that play builds health and wellbeing in children and is essential for their healthy development from birth to adulthood, contributing to the capacity for learning, resilience and the development of their physical, cognitive, social and emotional skills.

3. Open spaces and other outdoor spaces provide many play opportunities for children and for their relaxation and recreation. However, various research and survey data highlight a number of issues relating to children's use of open spaces and play spaces, including those of accessibility, use, quality, inclusion etc and that some disparities exist for children with disabilities and from different cultural and socio-economic backgrounds.

4. The preparation of Play Sufficiency Assessments (PSA) is to ensure there is good quality data on the sufficiency of both formal and informal play spaces for children in planning authorities areas. The PSA will be used to inform the preparation of local development plans.

5. Policy 21: Play, recreation and sport within the National Planning Framework 4 (NPF4) sets out that local development plans should identify sites for sports, play and outdoor recreation for people of all ages, and support development proposals that protect, enhance or improve children's access to play.

6. Ensuring all children have access to good quality play opportunities will deliver the policy objectives contained in NPF4 and help local authorities to uphold the rights of children.

The Town and Country Planning (Play Sufficiency Assessment) (Scotland) Regulations 2023

7. The Planning (Scotland) Act 2019 inserted a new section 16D Play Sufficiency Assessment into the Town and Country Planning (Scotland) Act 1997 ("the Act"), which sets out that a planning authority must assess the sufficiency of play opportunities in its area for children in preparing an evidence report.

8. Section 16D(2) of the Act states that Scottish Ministers must by regulations make provisions about—
   a) the form and content of the assessment,
   b) such persons who must be consulted in relation to the assessment,
   c) publication of the assessment.

9. The Town and Country Planning (Play Sufficiency Assessment) (Scotland) Regulations 2023 ('the Regulations') form part of a wider package of measures on planning reform, and the PSA will form part of the evidence report that informs the preparation of a local development plan.

10. These are standalone regulations for the purposes of the preparation of play sufficiency assessments. There are no transitional arrangements required.

11. The Regulations will be supported by future guidance and sharing of good practice in implementation.

Form and Content of Play Sufficiency Assessment

12. Regulation 3 makes provisions in relation to the form and content of the play sufficiency assessment.

13. Regulation 3(1) sets out that the play sufficiency assessment must be in the form of a report, incorporating maps, setting out the assessment of the sufficiency of play opportunities for children accordingly.

14. Regulation 3(2) sets out the requirement to show formal play spaces, by means of a map.

15. Regulations 3(3) and 3(4) require the planning authority to assess and provide statements as regards the overall (a) quality, (b) quantity, and (c) accessibility of formal and informal play spaces in respect of each locality within its area; and in the totality of its area.

16. Further details to support the Regulations may be covered in guidance, including: an outline of potential indicators that planning authorities may wish to consider in assessing quality, quantity and accessibility; and the use of appropriate demographic datasets of children in planning authorities' areas to demonstrate considerations around accessibility and inclusion.

Such Persons who must be consulted

17. Regulation 4 sets out who the planning authority must consult in undertaking the assessment.

Publication

18. Regulation 5 requires the planning authority to publish the PSA by electronic means. This is intended to ensure it is readily available online, minimising the need for travelling to a location to view a printed copy.

19. As required by the Act, the completed PSA will form part of the evidence report which informs the preparation of the local development plan.

Consultation

20. This instrument was initially developed in conjunction with the instrument for bringing into effect the statutory requirements on preparing Open Space Strategies. In developing both proposals, the Scottish Government has engaged with stakeholders from across Scotland to understand their views, experiences and thoughts around open spaces and play opportunities. This collaborative, open stakeholder engagement has been used to shape the provisions in the draft Regulations and also highlighted points stakeholders would like covered in future guidance.

21. In developing these draft proposals on Open Space Strategies (OSS) and Play Sufficiency Assessments (PSA), the Scottish Government worked closely with a Core Group, consisting of representatives from Greenspace Scotland, Play Scotland, NatureScot and Public Health Scotland.

22. A joint OSSPSA wider Working Group, with a range of stakeholders with interests in open space and play, was convened as a sounding board in preparing the proposals for both sets of Regulations. Members of the Working Group have also taken part in further focused sessions or breakout workshops to discuss and advise on particular aspects.

23. Local authorities and Heads of Planning Scotland (HOPS) were represented on the Working Group, via two nominated authorities, offering valuable insights. Additionally, working through the Improvement Service and HOPS, the Scottish Government contacted every local authority in Scotland - and presentations and interactive workshops sessions took place. 66 local authority contacts have been involved in various discussions.

24. Following the above initial engagements, both sets of draft Regulations were prepared and published on 17 December 2021, on Scottish Government's Citizen Space website, for public consultation. The consultation period ran from 17 December 2021 to 31 March 2022.

25. Alongside the consultation, an engagement programme was run to seek the views of children and young people from across Scotland, led by Play Scotland and A Place in Childhood. Tailored questionnaires (CYP survey) suitable for children and young people were used to engage either online or in facilitated workshop sessions. This element of the consultation sought to gather the views of children and young people on issues relevant to the subject of the main consultation. Feedback was gathered from a wide range of children and young people, including those from different age groups, backgrounds, and different parts of the country, as well as engaging with groups working with disabled children and young people.

26. The Consultation Paper, published on 17 December 2021 can be viewed here: https://www.gov.scot/publications/consultation-open-space-strategies-play-sufficiency-assessments-regulations/

Responses to the Consultation

27. A total of 68 responses were provided to the main consultation. The largest respondent group was local or planning authorities, which accounted for 42.6% of responses. A further 1,066 young people were involved in the CYP survey - either by submitting an individual response (140) or participating in a group response (926).

28. Respondents to the consultation were invited to respond to 22 questions on proposals for the development of the two sets of draft Regulations plus the accompanying impact assessments. Of the 22 questions, 11 were related to draft Open Space Strategies Regulations, six were on the draft Play Sufficiency Assessment Regulations, four were on the Impact Assessments and one on any other comment.

29. The feedback gathered from the CYP survey has confirmed some of the issues and experiences around play and play experiences for children. The evidence support the relevance of the Regulations and the potential benefits that Play Sufficiency Assessments will bring, when implemented, to help ensure there is adequate provision of good quality, outdoor formal and informal play spaces in local areas that are accessible to all children, including those with protected characteristics. Further, identified needs or gaps in play provision will be taken into account in the preparation of local development plans.

30. In response to the consultation, the Scottish Government has reflected on its proposals in the consultation paper in finalising the Play Sufficiency Assessment Regulations.

31. The Consultation Analysis Report was published on 8 November 2022, and can be viewed here: https://www.gov.scot/publications/consultation-analysis-draft-open-space-strategies-regulations-draft-play-sufficiency-assessments-regulations/pages/4/

32. A full list of those consulted and who agreed to the release of this information is published on the Scottish Government website: https://consult.gov.scot/planning-architecture/os-strategies-ps-assessments/consultation/published_select_respondent?sort=submitted&order=ascending

Impact Assessments

33. A range of Impact Assessments have informed the proposed provisions in the Regulations. The Open Space Strategies Regulations and Play Sufficiency Assessment Regulations Impact Assessments consultation paper was published on 17 December 2021.

34. The consultation paper contained an Interim Equality Impact Assessment, Interim Child Rights and Wellbeing Impact Assessment, Fairer Scotland Duty – Assessment Not Required Declaration, Partial Island Communities Impact Assessment, Partial Business and Regulatory Impact Assessment (BRIA), and a Strategic Environmental Assessment – Pre-screening Notification.

35. The Interim Impact Assessments published for consultation can be viewed here: https://www.gov.scot/publications/open-space-strategies-play-sufficiency-assessments-regulations-impact-assessments/documents/

Output from the Assessments

36. Both the Equality Impact Assessment (EQIA) and the Child Rights and Welfare Impact Assessment (CRWIA) recognise that barriers exist in the equal access to play opportunities and the Regulations may potentially have an impact on some people, and/or communities, either directly or indirectly, and in different ways. This includes impacts on children with protected characteristics and from different cultural and socio-economic backgrounds.

37. The CRWIA highlights how the Regulations relate to the relevant Articles of the UNCRC and finds they may contribute positively to the upholding of children's rights. It is considered that the Regulations and future guidance and sharing of good practice will help to ensure there is access to adequate, good quality outdoor play opportunities for all children locally and that children's views and their meaningful involvement are sought in the process.

38. While maintaining a light-touch approach to regulations, associated guidance can provide a further steer on potential indicators and appropriate demographic datasets that may be used in the assessment and the need to engage with all children, including disabled children and those with protected characteristics during the preparation of the play sufficiency assessment. The Scottish Government will produce appropriate guidance. Copies of both the EQIA and CRWIA accompany this policy note.

39. The Scottish Government screened out the requirement to undertake a Fairer Scotland Duty Assessment. The Fairer Scotland Duty applies to 'strategic decisions' – these are the key, high-level choices or plans that the Scottish Government makes. Having considered the Fairer Scotland Duty Guidance, the Scottish Government can confirm that the secondary legislation on PSA does not constitute a strategic decision and therefore an assessment is not required. The Screening Assessment is available online.

40. In relation to impacts on island communities, the Scottish Government published a partial Island Communities Impact Assessment (ICIA) with the consultation. Views were sought on the potential impacts on Island communities through the consultation process and we have responded to the comments received accordingly in the final ICIA. It notes that the provisions in the regulations and guidance offer flexibility for local circumstances including island communities and are not likely to have an impact that is significantly different from the rest of the country.

41. Requirements under the Environmental Assessment (Scotland) Act 2005 have been met, via a pre-screening notification, which can be viewed on the Strategic Environmental Assessment Database: https://www.strategicenvironmentalassessment.gov.scot/

42. A partial BRIA was published as part of the consultation, examining the likely costs, benefits and risks of the regulations. Further details are provided below.

Financial Effects

43. A final Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The responses to the consultation on the Partial BRIA highlighted some concern about the capacity of planning authorities to resource the implementation of the Regulations and commented that the estimated costs included in the Partial BRIA in the amount of £28,125 for preparing both the Open Space Strategy and the Play Sufficiency Assessment were underestimated. However, no further information to assist the quantification of costs was provided in the consultation responses.

    Background on the figures and calculations is provided in the Partial Business and Regulatory Impact Assessment (BRIA).

44. The Scottish Government has put out a call for additional information, through the Heads of Planning Scotland (HOPS) network. Only four responses were received. For the combined budget estimate to prepare both the Play Sufficiency Assessment and the Open Space Strategy, one planning authority quoted £20,000, which is lower than the estimate used in the Partial BRIA and the other quoted a budget in the region of £115,000. Both have qualified their estimates either subject to the final regulations or other factors. Another planning authority noted they have commissioned external consultants to map and assess the formal play spaces which is contracted at just under £15,000. A fourth planning authority noted that for the combined Open Space Strategy and Play Sufficiency Assessment, they have used council's internal team resource equivalent to 3 officers to carry out the audit, with one leading on strategy, assessment and consultation, but no information on costing of such staff resource was given.

45. There are clearly different options as to how planning authorities look to resource the PSA work, including outsourcing and working across teams within the councils. Without a more robust evidence base, the information received so far can only be taken as largely anecdotal, and does not alter the estimated costs as set out in the BRIA.

46. Proportionality has been an important consideration in the finalisation of the Regulations, and where appropriate, the specific provision in the proposal has been adjusted or simplified to avoid unnecessary or disproportionate resource implication, thus providing a clear and proportionate statutory framework for the preparation of the play sufficiency assessment.

Scottish Government
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March 2023