

Consultation Paper

Guidance on the promotion and use of Mediation in the Scottish planning system

December 2020



Scottish Government
Riaghaltas na h-Alba
gov.scot

CONSULTATION PAPER

GUIDANCE ON THE PROMOTION AND USE OF MEDIATION IN THE SCOTTISH PLANNING SYSTEM

Introduction

1. This consultation paper relates to the introduction of guidance on the promotion and use of mediation in the Scottish planning system.
2. The draft guidance is part of our wider work on planning reform and implementation of the Planning (Scotland) Act 2019, including steps to reduce conflict, improve community engagement and build public trust in planning matters. Other measures, also enabled by the 2019 Act, include: enhancements to community engagement in local development plans; the introduction of a right for community bodies to prepare Local Place Plans; and amendments to legislation around pre-application consultation with communities on major and national planning applications. The Scottish Government has already consulted on amendments to pre-application consultation arrangements and will consult on secondary legislation for the development of Local Place Plans in early 2021.

Mediation and alternative dispute resolution

3. Mediation is one of a range of techniques sometimes labelled as 'alternative dispute resolution (ADR)' which can include facilitation, conciliation and arbitration as well as mediation. These techniques can be used to help to build bridges between stakeholders and resolve issues of dispute. Generally, mediation is a process involving an independent third party, whose role is to help parties to identify the real issues between them, their concerns and needs, the options for resolving matters and, where possible, a solution which is acceptable to all concerned.
4. The Scottish Government has been supportive of the use of mediation, and other ADR techniques, particularly in the area of access to justice¹. This has included work to encourage the use of resolution services like 'mediation' and 'arbitration' which can be cheaper and less time consuming than going to court.
5. Examples of the use of mediation can also be found in a range of areas including:
 - the workplace²;

¹ Independent Review of Mediation: Our Response (2019)

<https://www.gov.scot/publications/scottish-government-response-independent-review-mediation-scotland/>

² <https://www.workplacemediation-scotland.com/>

- peer to peer mediation for children³;
- family situations⁴;
- community / neighbourhood situations⁵.

Mediation in planning in Scotland

6. There have been suggestions of a role for mediation to form part of the Scottish planning system for a number of years. Modernising the Planning System⁶ (2005) indicated the then Government's intention to examine the scope for introducing a mediation pilot project. Research based around that pilot study and supporting the use of mediation in planning was undertaken in 2010. In August 2011 the Government published an Output Paper which brought together some of the lessons from the Scottish Government's mediation pilot project and the three completed case studies. A copy of the paper is included in the supporting documents accompanying this consultation on Citizen Space.
7. A Guide⁷ on mediation in planning in Scotland, commissioned by the Government and produced by Core Solutions, was also published in 2009. The purpose of the guide was to help those involved in the planning system in Scotland better understand how mediation could be used to enhance the planning process. The use of mediation was also endorsed in Planning Advice Note 3/2010: Community Engagement⁸. It recognises that mediation can be used to help to build bridges between stakeholders and resolve issues of dispute with the aim that the various parties understand each other and try to reach an agreement that everyone can live with.
8. Scottish Planning Policy⁹ supports the use of mediation, with innovative engagement approaches tailored to unique circumstances. Mediation is also recognised as a potential dispute resolution method when considering compensation for land which is compulsorily purchased¹⁰.

³ <https://www.scottishmediation.org.uk/young-talk/peer-mediation/>

⁴ <https://www.relationships-scotland.org.uk/family-mediation>

⁵ <https://www.scmc.sacro.org.uk/mediation>

⁶ Modernising the Planning System (2005)

<https://www.webarchive.org.uk/wayback/archive/20180521034306/http://www.gov.scot/Publications/2005/06/27113519/35483>

⁷ A Guide to the Use of Mediation in the Planning System in Scotland (2009)

<https://www.gov.scot/publications/guide-use-mediation-planning-system-scotland/pages/1/>

⁸ Planning Advice Note 3/2010: Community Engagement (2010)

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2010/08/pan-3-2010-community-engagement/documents/pan-3-2010-pdf/pan-3-2010-pdf/govscot%3Adocument/pan%2B3%2B2010.pdf>

⁹ Scottish Planning Policy (2014) paragraph 6 <https://www.gov.scot/publications/scottish-planning-policy/>

¹⁰ Compulsory purchase in Scotland: guide for property owners and occupiers: section 3.1.37 (2019) <https://www.gov.scot/publications/compulsory-purchase-scotland-guide-property-owners-occupiers/pages/4/>

Mediation and The Planning (Scotland) Act 2019

9. In 2016, the report of an independent panel's review of planning, *Empowering planning to create great places*¹¹ considered the role of mediation, primarily in development planning. This led to a consultation question in *Places, People and Planning*¹² exploring whether professional mediation could support the process of allocating land at the Development Plan Examination. In addition, it noted that, if necessary and appropriate, consideration could be given to using professional mediation to further resolve any issues arising at the proposed Gatecheck stage. The analysis of consultation responses¹³ noted that there was not overwhelming support for the use of mediation, although 63% of civil society and 63% of business sector respondents supported the use of professional mediation in the process of land allocation. Whereas 53% of policy and planning and 61% of development industry respondents disagreed with the use of professional mediation in the process of allocating land.
10. At Stage 3 of the Scottish Parliament's consideration of the Planning (Scotland) Bill, an amendment was passed by the Parliament requiring the Scottish Ministers to introduce guidance on the promotion and use of mediation. This subsequently became section 40 of the 2019 Act, inserting section 268A into the Town and Country Planning (Scotland) Act 1997 (the 1997 Act).
11. The provision states that Scottish Ministers may issue guidance on the promotion and use of mediation in the Scottish planning system. It also requires that Ministers must issue such guidance within the period of two years beginning with the date on which the 2019 Act received Royal Assent, namely by 25 July 2021. Further discussion on this section of the 2019 Act can be found below.

¹¹ Empowering planning to deliver great places (2016)

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/05/empowering-planning-to-deliver-great-places/documents/empowering-planning-deliver-great-places-31-2016-pdf/empowering-planning-deliver-great-places-31-2016-pdf/govscot%3Adocument/Empowering%2BPlanning%2Bto%2BDeliver%2BGreat%2BPlaces%252C%2B31%2BMay%2B2016.pdf>

¹² Places, People and Planning (2017)

<https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2017/01/places-people-planning-consultation-future-scottish-planning-system/documents/00512753-pdf/00512753-pdf/govscot%3Adocument/00512753.pdf>

¹³ Planning Review: Analysis of consultation response (2017)

<https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2017/06/planning-review-analysis-of-consultation-responses-june-2017/documents/planning-review-analysis-consultation-responses-pdf/planning-review-analysis-consultation-responses-pdf/govscot%3Adocument/Planning%2BReview%2BAnalysis%2Bof%2Bconsultation%2Bresponses.pdf>

12. The relevant provisions of the Act are repeated in full in Annex A of the Draft Guidance. The requirements include:

- Ministers may issue guidance in relation to the promotion and use of mediation in relation to the following:
 - the preparation of local development plans and related evidence reports;
 - pre-application consultation;
 - assisting in the determination of an application for planning permission; and
 - any other matter related to planning that Ministers consider appropriate.
- Guidance may include:
 - the form of mediation that is to be used in a particular circumstance; and
 - the procedure to be followed in any such mediation.
- Local authorities must have regard to the guidance.
- Defining “mediation” to include any means of exploring, resolving or reducing disagreement between persons involving an impartial person that Ministers consider appropriate.

Objective

13. The intention of the guidance is to support one of the overarching themes of the review of planning – collaboration over conflict. The focus of the draft guidance is on identifying where there may be value in using mediation in the planning system in areas where there is some potential for conflict or disagreement.

The Draft Guidance

14. Mediation is a voluntary process, generally between two parties, which can be facilitated by a third, independent party. The thrust of the draft guidance is therefore aimed at promoting the use of mediation rather than requiring its use and, as set in the definition of mediation in the 2019 Act, as a means of exploring, resolving or reducing disagreement between persons.

15. In advance of preparing the draft guidance, the Scottish Government supported Scottish Mediation / PAS in preparing proposals for the promotion and use of mediation. Those draft proposals were subsequently tested in an online survey. Their proposals paper is included in the accompanying documents online.

16. In addition, the draft guidance reflects upon the work of Core Solutions in developing the Scottish Government’s Guide to the Use of Mediation

in the Planning System in Scotland and the outputs from research into mediation published in 2011.

17. The proposed draft guidance is contained in Annex A of this paper. The following section provides narrative around the draft guidance.

General Matters

What is Mediation

18. The 2019 Act defines “mediation” to include any means of exploring, resolving or reducing disagreement between persons involving an impartial person that Ministers consider appropriate.
19. In term of this draft guidance, the definition of ‘mediation’ therefore relates to processes which include the involvement of an impartial person rather than relying on the parties involved using mediation / facilitation style skills themselves.
20. In its proposal paper, Scottish Mediation / PAS suggested that there were two frameworks around mediation and defined them as ‘informal’ and ‘formal’.
- Informal Mediation opportunities – planners and other relevant stakeholders taking a mediation-style approach in their work in appropriate situations.
Formal Mediation opportunities – mediation is carried out by trained and experienced mediators when this is considered necessary.
21. For the terms of the guidance, we will use the terms ‘informal mediation’ and ‘mediation’ with the latter relating to the statutory definition in the 2019 Act.
22. With regard to the process of mediation, it can be a flexible process but may involve the following:

Stage 1: Identifying the need for mediation: one or more parties recognise that there is scope for an impartial person to assist them in exploring, resolving or reducing disagreement about a particular matter. Parties agree to mediation and identify an impartial person to assist.

Stage 2: Preparation: The person acting as the mediator may contact the parties in advance of the meeting to discuss and agree the procedures. This also gives the mediator an opportunity to begin to understand the parties concerns.

Stage 3: Scene Setting: Mediation typically involves a face-to-face meeting between the parties, though there is scope for this meeting to

be held online if necessary. The mediator and the parties will typically have an opportunity to set out their positions in opening statements.

Stage 4: Understanding the issues: With the assistance of the mediator, there is scope for the parties to begin to explore the issues which underpin their positions. This is also the point where possible solutions may begin to emerge. It should be noted that it is not the role of the mediator to promote particular solutions but it will be for the parties themselves to generate and agree them.

Stage 5: Coming to a resolution: Following the discussions about potential solutions, there is an opportunity for the parties to set out what has been agreed. If this is simple to set out, it may happen at the time of the meeting. However, there may be scope for the mediator to prepare the agreement over the following days and for this then to be signed off by the parties. There may be instances where parties may not reach a formal agreement but the opportunity to discuss and understand the other parties position may be a valuable outcome.

23. In terms of the use of online and face-to-face mediation, the partial EqIA accompanying this consultation paper notes that there may be circumstances where the use of either method may have a differential impact on people with particular protected characteristics. Additionally, any final guidance will need to take into account any public health guidance on face-to-face meetings in place at the time. Scottish Mediation has prepared a paper¹⁴ which sets out some of the advantages and disadvantages of using a range of online technologies.

When to mediate

24. A number of opportunities in the planning system have been suggested for the use of mediation. The Scottish Government's Guide to the Use of Mediation in the Planning System in Scotland suggests that there may be scope to mediate:

'Potentially at all stages of the system, but in particular in development planning and pre-application in order to build consensus and reduce objections, and post-rejection of an application in order to resolve issues before any fresh application is made.'

25. The Scottish Mediation / PAS survey questions focussed on the potential scope to mediate at early points in the relevant planning processes, it concluded:

'Whilst we still believe that mediation should be encouraged mainly in the early stages of any planning process, and that

¹⁴ <https://www.scottishmediation.org.uk/wp-content/uploads/2020/03/Mediation-using-Technology.pdf>

guidance is required to support stakeholders to understand when it might work best, based on our consideration of the responses we now also believe that mediation should be accessible when there is a conflict at any stage of the planning process.'

26. There is potential scope for mediation to be initiated by a number of parties. In planning matters, parties might include community councils, planning officials, developers / applicants, key agencies, and interested third parties.
27. When asked in the Scottish Mediation / PAS survey to suggest areas where mediation could be used in the planning system, there was not a clear call for mediation in any specific areas under development planning. However, there were a number of references to the use of mediation in enforcement.
28. Rather than consider the potential for mediation across all aspects of the planning system, we are proposing initially to focus on specific elements of the development planning and development management processes where: they were identified in the Scottish Mediation / PAS paper; and there appears to be the potential for disagreement between parties and mediatory action could provide for the exploration, resolution or reduction of such disagreement.
29. These are namely:
- Development Planning: Development Planning Schemes / Gatecheck and Development Plan Examinations
Development Management: Proposal of Application Notices / Pre-Application Consultation
30. This does not mean that mediation could not be used successfully in other areas of planning, and could be undertaken outwith the scope of this draft guidance. We would be keen to hear people's views on other areas of the planning system where guidance could be introduced, particularly where they have practical knowledge / experience of its use.

Q1. Have we got the range of areas to which the mediation guidance should cover right?

- Yes
- No
- No view

Please comment on your answer (particularly if you do not agree)

Policy support for the use of mediation

31. As noted above, there is already reference to mediation in Scottish Planning Policy – the Scottish Government’s document setting out national land use planning policies. It supports the use of mediation, with innovative engagement approaches tailored to unique circumstances.
32. As part of the wider work on planning reform, the Scottish Government is reviewing national land use planning policies. The outcome of the revision will lead to Draft National Planning Framework 4, due to be consulted in Parliament in Autumn 2021. The analysis of the responses to the National Planning Framework 4 Call for Ideas¹⁵ makes reference to the use of mediation in dispute resolution in considering housing numbers. Additionally the Scottish Mediation/PAS survey suggested that around 73% of respondents agreed/strongly agreed that National Planning Framework 4 should provide a policy framework for the use of mediation.

Q2. Do you agree with the suggestion to maintain policy support for the use of mediation in National Planning Framework 4?

- Yes
- No
- No view

Please comment on your answer (particularly if you do not agree)

Raising the visibility of mediation

33. Whilst noting the value of the 2009 guide to the use of mediation in the Scottish planning system, the Scottish Mediation / PAS report recommended the importance of making mediation as visible as possible in the planning system. It recognised that mediation has always been possible within the planning system but is in practice rarely used.
34. The survey accompanying the report asked respondents whether a standalone mediation guide would be sufficient to raise the visibility of mediation. Of those who responded, around 19% agreed/strongly agreed whereas 54% disagreed/strongly disagreed.
35. A number of the areas suggested for mediation are subject to further change through future implementation of the provisions in the 2019 Act. The Scottish Government will consider further how to raise the visibility of mediation in other areas of the reformed planning process as guidance and practice develops over the next few years.

¹⁵ NPF4 Call for Ideas: Analysis of Responses (2020) <https://www.gov.scot/publications/npf4-analysis-reponses-call-ideas/>

The cost of mediation

36. In considering access to civil justice, research literature on mediation suggests that rates of agreements seem to be consistent across diverse forms of mediation and service types (about 50-85%), and that there is high client satisfaction rate with mediation. It does however go on to note that the overall cost effectiveness of mediation is unclear.¹⁶
37. In developing the Business and Regulatory Impact Assessment (BRIA) accompanying this consultation paper, it has been a challenge to assess the potential resource implications to parties of mediation in terms of both costs and time. Some information is available from searches of the internet about the costs of mediation and these have been set out in the BRIA. These would suggest that the use of mediation may lead to a small increase in overall costs to parties but that the benefits of removing some conflict from the system may be more difficult to assess at this point.
38. There are a number of free mediation services available in Scotland. These include the community mediation services provided by Sacro (see footnote 5). There are also court based mediation services run by the Edinburgh Sheriff Court Mediation Clinic (including Edinburgh and Livingston Sheriff Courts) and by the Strathclyde Mediation Clinic (including Glasgow, Paisley, Kilmarnock, and Falkirk Sheriff Courts). Scottish Mediation¹⁷ operate a public Helpline to provide information about mediation and to connect parties to registered mediators. They also carry out work on training school students and teachers to enable the provision of mediation in schools.
39. There remains the matter of who pays for the mediation. The Scottish Mediation / PAS paper noted that respondents to its survey suggested a range of different funding options for mediation, many of which were a mixed model with part national, local and developer funding. It noted that if there is no clear route to funding, the option exists for all parties in a mediation process to fund the process equally. However, it expressed concern that this has the potential to exacerbate existing resource and power inequalities within the planning system.
40. We would like to build up more of a picture of current practice in mediation in planning / built environment around the costs to all parties. This should include other resource issues such as staff costs. We would also like to hear about your positive experiences of mediation, for example where it has broken a dispute or saved money / time.

Q3. Please tell us about your experience of using mediation including any financial / non-financial costs incurred. Please set out also how any costs were shared between the parties.

¹⁶ <https://www.gov.scot/publications/international-evidence-review-mediation-civil-justice/pages/5/>

¹⁷ <https://www.scottishmediation.org.uk/>

The potential role of mediation in development planning

41. The Scottish Mediation / PAS online survey suggested a number of opportunities in the development planning system to embed mediation. Those which received support were: the inclusion of mediation in guidance on Development Plan Schemes; in early engagement / at the gatecheck; and at Development Plan Examinations.

Development Plan Schemes / Early Engagement

42. Section 20B of the amended 1997¹⁸ Act requires each planning authority to prepare a Development Plan Scheme (DPS) at least annually. The scheme is to set out the authority's programme for preparing and reviewing their LDP and what is likely to be involved at each stage. It should contain three elements as set out in section 20B(4):

- (a) proposed timetabling;
- (b) details of what is likely to be involved at each stage; and
- (c) an account (referred to as an authority's "participation statement") of when consultation is likely to take place and with whom and of its likely form and of the steps to be taken to involve the public at large in the stages of preparation or review.

43. Circular 6/2013: Development Planning¹⁹ notes that the DPS must include a Participation Statement stating when, how and with whom consultation on the plan will take place. Scottish Ministers currently expect Participation Statements to contain a range of innovative techniques and activities for consulting stakeholders, tailored to local circumstances and the issues being dealt with in the plan.

44. There is currently no requirement to consult on the content of development plan schemes. However, a new section 20B(4A) is to be inserted into the 1997 Act and will require that in preparing their development plan scheme the planning authority is to seek the views of, and have regard to any views expressed by the public at large as to the content of the participation statement.

45. In order to encourage the use of mediation in the development plan system, the Scottish Government is proposing to amend its guidance to planning authorities to make specific reference to mediation as one of the range of techniques and activities for consulting stakeholders.

Q4. Do you agree with the proposal that the Scottish Government's guidance on Development Plan Schemes should

¹⁸ Town and Country Planning (Scotland) Act 1997
<https://www.legislation.gov.uk/ukpga/1997/8/section/20B>

¹⁹ Circular 6/2013: Development Planning - <https://www.gov.scot/publications/planning-series-circular-6-2013-development-planning/>

reference the use of mediation as one of a range of innovative techniques and activities for engaging stakeholders to be considered in the planning authority's participation statement?

- Yes
- No
- No view

Please comment on your answer (particularly if you do not agree)

46. The Scottish Mediation / PAS survey suggested that 86% of respondents agreed that there may be scope for the guidance on DPS to include reference to mediation. Whilst the survey doesn't reflect further on the circumstances, there may be limited opportunity for conflict and therefore a limited role for mediation in sections 20B(4)(a) and (b). However, there may be scope for mediation to form a part of the planning authority's engagement strategy as set out in its participation statement.
47. In light of the above, we would suggest that there is scope for planning authorities to consider and set out, in light of the local circumstances, the role that both informal mediation and mediation may have to play in its engagement strategy as set out in the participation statement. As the DPS is refreshed annually, there is scope for the potential role of mediation to change over the course of the period of plan preparation.

Q5. Do you agree with the proposal that planning authorities should consider the use of mediation when preparing the participation statement element of their Development Plan Schemes?

- Yes
- No
- No view

Please comment on your answer (particularly if you do not agree)

Gatecheck

48. The 2019 Act will introduce new requirements on a 'Gatecheck'. Section 16B(1) will require that, a planning authority, before preparing a local development plan, is to prepare an evidence report. This stage aims to ensure that plans are informed by appropriate evidence and that it is transparent and subject to early scrutiny through a gatecheck. The detailed requirements and associated guidance is currently in development.
49. The Scottish Mediation / PAS survey sought respondents views as to whether mediation should be encouraged at both the early engagement and gatecheck stages of the development plan process. Over 82% of respondents agreed or strongly agreed. Differing views were expressed in the comments ranging from mediation allowing for

the consideration of opposing views and determination of the best way forward to concerns that there is currently a lack of clarity on the 'gatecheck'.

50. We agree that, whilst the 'gatecheck' may be a good opportunity to introduce mediation, that further clarity is required on its workings before making any final decision. As the 'gatecheck' will not form part of the development plan process until 2022 we do not currently plan to include that in the guidance but will consider the scope of the use at a more appropriate time. We will also factor this in to our ongoing work to develop more detailed guidance, and potentially regulations, relating to the gatecheck.

Q6. Do you agree that the Scottish Government should further investigate the potential role of mediation at the gatecheck stage?

- Yes
- No
- No view

Please comment on your answer (particularly if you do not agree)

Reducing conflict in the Development Plan Examination

51. A Proposed Local Development Plan sets out the proposed policies²⁰ that would be used to assess planning applications and identifies development opportunities across the local authority area. The Local Development Plan should represent the planning authority's settled view as to what the final adopted content of the plan should be. Planning Advice Note 3/2010: Community Engagement currently suggests that planning authorities should seek to resolve differences and build support for the proposals through discussion and negotiation prior to the publication of the proposed plan.
52. Following the close of the period for representations on the Proposed Plan, planning authorities may make modifications, but only so as to take account of representations, consultation responses or minor drafting and technical matters.
53. Development Plan Examinations are intended as the principal means of independently examining any unresolved issues arising from representations on proposed local development plans, examining any unresolved issues raised in any representations. There may be an opportunity for mediation to reduce the number of unresolved issues prior to the development plan examination at this point.

²⁰ As a result of the Planning (Scotland) Act 2019, the statutory development plan will also include the National Planning Framework which will incorporate national planning policies alongside the spatial strategy. It is expected that this will reduce the need for many policies to be repeated in local development plans.

54. The planning authority must prepare a summary of unresolved issues in the manner prescribed in Regulation 20 and Schedule 4 of the Town and Country (Development Planning) (Scotland) Regulations 2008²¹.

55. The Planning and Environmental Appeals Division has suggested that there are a wide range of matters which are covered by Schedule 4 forms, examples include: complying with Scottish Planning Policy, renewable energy proposals and housing land supply. Bodies / persons which make representations included: individuals; community councils; individual developers; industry representative groups; plus the Scottish Government and its agencies. Some examples of Schedule 4 forms are included for information: East Ayrshire Council²², Scottish Borders Council²³, and West Dunbartonshire Council²⁴.

56. Circular 6/2013²⁵ currently suggests a typical time period of five months for the preparation of the documentation for the development plan examination. Regulations and guidance will however be updated to reflect the wider changes to development planning arising from the Planning (Scotland) Act 2019. This includes a new requirement for planning authorities to produce a report on the modifications made and the reasons for making them, when submitting the plan to Ministers. In the meantime, we would be interested in respondent's views as to whether mediation at this stage in the process is likely to reduce the number of issues carried forward into the development plan examination, and include their thoughts on the potential impacts of timings at this key stage in plan development.

Q7. Do you agree with the proposal that the Scottish Government guidance should encourage the use of mediation between parties in advance of the development plan examination stage?

- Yes
- No
- No view

Please comment on your answer (particularly if you do not agree)

The potential role of mediation in development management

57. The Scottish Mediation / PAS online survey suggested a number of opportunities in the development management system to embed

²¹ <https://www.legislation.gov.uk/ssi/2008/426/contents/made>

²² <https://www.east-ayrshire.gov.uk/Resources/PDF/L/LDP-Schedule-4-Document.pdf>

²³

[https://scottishborders.moderngov.co.uk/Data/Scottish%20Borders%20Council/201409251000/Agenda/Item%20No.%208%20-%20Appendix%20A%20-%20Unresolved%20Issues%20\(Schedule%204s\).pdf](https://scottishborders.moderngov.co.uk/Data/Scottish%20Borders%20Council/201409251000/Agenda/Item%20No.%208%20-%20Appendix%20A%20-%20Unresolved%20Issues%20(Schedule%204s).pdf)

²⁴ https://www.west-dunbarton.gov.uk/media/3965643/schedule_4s_all_.pdf

²⁵ <https://www.gov.scot/publications/planning-series-circular-6-2013-development-planning/pages/15/>

mediation. These focussed on the potential use around the Pre-Application Consultation process.

Background

58. Pre-application consultation (PAC) is a statutory requirement in relation to applications for planning permission for national and major developments – i.e. large scale development as opposed to local developments (as set by the hierarchy of developments²⁶). The purpose is for local communities to be made aware of proposals at an early stage, and have the opportunity to comment to the prospective applicant before the proposal is finalised and an application for planning permission is made. Details of the numbers of major developments in Scotland over the past three years can be found in the Island Communities impact assessment screening document at Annex D.
59. As noted in the recent consultation on changes to pre-application consultation²⁷, 'with increased guidance and awareness of the importance of engaging communities effectively in decisions about land, it may be possible to take a more co-operative approach to proposals.'

Proposal of Application Notices

60. Where PAC is required, the prospective applicant must provide to the planning authority a 'proposal of application notice' (PAN) at least 12 weeks prior to the submission of any application for planning permission. Current guidance on PANs is contained in Circular 3/2013.
61. The PAN must include the following information:
- i) a description in general terms of the development to be carried out;
 - ii) the postal address of the development site, if it has one;
 - iii) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify the site;
 - iv) detail as to how the prospective applicant may be contacted and corresponded with; and
 - v) an account of what consultation the prospective applicant proposes to undertake, when such consultation is to take place, with whom and what form it will take. This should include steps in addition to the statutory minimum for consultation.
62. The prospective applicant should indicate in the PAN what consultation, if any, they will undertake in addition to the statutory minimum.

²⁶ <https://www.gov.scot/publications/hierarchy-developments-planning-circular-5-2009/>

²⁷ <https://www.gov.scot/publications/proposed-changes-pre-application-consultation-requirements-planning-consultation/>

63. The planning authority must respond within 21 days of receipt of the notice specifying any additional notification and consultation they wish to see undertaken (including that indicated by the prospective applicant) beyond the statutory minimum, in order to make it binding on the prospective applicant.
64. In requiring additional pre-application consultation, planning authorities must have regard to the nature, extent and location of the proposed development and to its likely effects, both at that location and in its vicinity. Additional consultation requirements should be proportionate, specific and reasonable in the circumstances.
65. Current guidance directs parties on planning community engagement activity to Planning Advice Note 3/2010.
66. We propose that Scottish Government guidance on additional consultation activity at PAC should be amended to encourage parties to consider both informal mediation and mediation as methods to resolve any disputes / conflicts at this stage of the planning process.

Q8. Do you agree with the proposal that the Scottish Government guidance should amend its guidance on Proposal of Application Notices to encourage the use of mediation between parties in any additional consultation activity attached to PAC?

- Yes
- No
- No view

Please comment on your answer (particularly if you do not agree)

Pre-Application Consultation

67. When asked whether local authorities should suggest the use of mediation to applicants at the pre-application stage, just over 75% of respondents agreed / strongly agreed. There was much less support for mediators being present at pre-application consultation events (just under 47% agreed / strongly agreed). There was also support for reference to be in PAC reports to the use of mediation (78% agreed / strongly agreed).
68. We agree with respondents that there is scope for the use of mediation at pre-application consultation stage and where it has formed part of the developer's strategy to engage with the community, that reference should be made in the PAC report.
69. From an example cited in the Mediation in Planning Pilot Project: Output Paper, it could be suggested that at the PAC stage, any mediation may be best directed between the developer and community and considered at an early stage. Agreement that mediation is to be used as one of the consultation techniques may be most appropriately

arranged in advance of the submission of the proposal of application notice. Current guidance in Circular 3/2013 suggests that prospective applicants may want to consider approaching communities to help frame their PAC. Planning authorities, in considering any additional consultation, may want to seek the views of others, for example, relevant community councils.

70. Whilst there is currently no legal requirement on the content of the PAC report, with the content of PAC reports covered by guidance, at section 2.36 of Circular 3/2013, the Scottish Government has just completed a consultation on amendments to PAC procedures, including the contents of the PAC report. The Government consulted on whether the report should provide an explanation of how the prospective applicant took account of views raised during the pre-application consultation process.

71. We are not able to pre-empt the responses to the consultation on PAC reports, but have drafted guidance in terms of the current PAC requirements. We will consider how the guidance can be amended in light of the PAC consultation.

Q9. Do you agree with the proposal that the Scottish Government should provide guidance encouraging the use of mediation between parties in Pre-Application Consultation?

- Yes
- No
- No view

Please comment on your answer (particularly if you do not agree)

Impact Assessments

72. Included with this consultation paper are partial versions of the following assessments:

- Business and Regulatory Impact Assessment (Annex B)
- Equalities Impact Assessment (combining Child Rights and Wellbeing Impact Assessment) (Annex C)

Q10. Please give us any views you have on the content of these partial assessments.

Q11. Do you have or can you direct us to any information that would assist in finalising these assessments?

73. We have also included our initial assessments screening out requirements to undertake assessments on Island Communities Impact (Annex D), the Fairer Scotland Duty (Annex E) and Strategic Environmental Assessment (Annex F). Based on the information we

have identified, we do not consider there is a requirement to undertake full assessments in these cases.

Q12. Please give us your views on the Island Communities Impact, the Fairer Scotland Duty and Strategic Environmental Assessment screening documents and our conclusion that full assessments are not required.

Q13. If you consider that full assessments are required, please suggest any information sources that could help inform these assessments?

Responding to this Consultation

We are inviting responses to this consultation by 12 March 2021.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/local-government-and-communities/mediation-in-planning/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 12 March 2021.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Planning and Architecture Division
Scottish Government
Area 2F South
Victoria Quay
Edinburgh EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at planningmediation@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



GUIDANCE ON THE PROMOTION AND USE OF MEDIATION IN THE SCOTTISH PLANNING SYSTEM

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

ANNEX A GUIDANCE ON THE PROMOTION AND USE OF MEDIATION

Draft Guidance on the promotion and use of mediation in the Scottish planning system

Introduction

This guidance on the promotion and use of mediation in the planning system is issued under powers contained in section 268A of the Town and Country Planning (Scotland) Act 1997, as amended.

Background

There is no legislative requirement for the use of mediation in the Scottish planning system. However, section 268A of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) provides that the Scottish Ministers may prepare guidance on the promotion and use of mediation in the Scottish planning system. The relevant section of the Act is reproduced below.

For the purpose of this guidance, “mediation” is defined in terms of section 268A(7) of the 1997 Act and ‘includes any means of exploring, resolving or reducing disagreement between persons involving an impartial person that the Scottish Ministers consider appropriate’. Where the guidance refers to ‘mediation’ planning authorities are to have regard to such guidance, as set out in subsection 268A(3).

Where the term, ‘informal mediation’ is used in this guidance, this relates to situations where planners and other relevant stakeholders take a mediation-style / facilitatory approach in their work in appropriate situations but are not aided by an impartial third person.

Development Planning

Current advice on development planning is contained in Circular 6/2013: Development Planning. This guidance will supplement that contained in the Circular.

Preparation of the Planning Authority Development Plan Scheme (Questions 4 and 5 of the consultation paper relate)

Section 20B of the amended 1997²⁸ Act requires each planning authority to prepare a Development Plan Scheme (DPS) at least annually. The scheme is to set out the authority's programme for preparing and reviewing their Local Development Plan and what is likely to be involved at each stage.

In preparing participation statements under section 20B(4)(c), Scottish Ministers already expect such statements to contain a range of innovative

²⁸ Town and Country Planning (Scotland) Act 1997
<https://www.legislation.gov.uk/ukpga/1997/8/section/20B>

techniques and activities for consulting stakeholders, tailored to local circumstances and the issues being dealt with in the plan.

Scottish Ministers also expect planning authorities to consider what scope there may be for the use of informal mediation and mediation with parties including communities / developers, or any other such party as the planning authority considers appropriate, as the engagement practice evolves throughout the development of the LDP. The planning authority should have regard to any requests for the use of mediation requested by the public at large or communities when preparing its participation statement.

As with other techniques and activities, opportunities for informal mediation and mediation should be tailored to local circumstances and the issues being dealt with in the plan. Any such scope for the use of mediation should be set out in the planning authority's participation statement. Mediation, for example, may be appropriate in circumstances where a proposal / site in the emerging LDP has attracted community opposition which cannot be readily resolved.

Whilst mediation is generally considered to be a confidential process, parties are encouraged to be open and transparent with the results of any mediation.

Preparing for a Development Plan Examination

(Question 7 of the consultation paper relates)

Development Plan Examinations are intended as the principal means of independently examining any unresolved issues arising from representations on proposed local development plans, examining any unresolved issues raised in representations.

In advance of the Development Plan Examination, the planning authority must prepare a summary of unresolved issues in the manner prescribed in Regulation 20 and Schedule 4 of the Town and Country (Development Planning) (Scotland) Regulations 2008²⁹.

Planning authorities should look to resolve differences and build support for proposals through discussion and negotiation, and where possible prior to the publication of the proposed plan.

The approach to the final stages of preparing Local Development Plans will change as a result of the Planning (Scotland) Act 2019 and subsequent regulations and guidance. This aspect of the guidance can be updated to reflect any significant changes to this stage of the guidance as appropriate.

Development Management

(Questions 8 and 9 of the consultation paper relate)

The Scottish Government wants to encourage improved trust and open, positive working relationships from the earliest stages in the planning process

²⁹ <https://www.legislation.gov.uk/ssi/2008/426/contents/made>

and to provide, where possible, an early opportunity for community views to be reflected in proposals.

Current advice on Pre-Application Consultation and Proposal of Application Notices is contained in Circular 3/2013: Development Management Procedures. This guidance supplements that contained in the Circular.

Proposal of Application Notices

The prospective applicant should indicate in the Proposal of Application Notice what consultation, if any, they will undertake in addition to the statutory minimum.

When preparing its Proposal of Application Notice for any development requiring Pre-Application Consultation, the prospective applicant may want to consider approaching communities to help frame their PAC engagement. As a part of that dialogue, prospective applicants and communities are encouraged to consider whether, in the circumstances of the development proposal and any planning history of the site, informal mediation or mediation may be an appropriate method of encouraging dialogue between the parties.

In instances where the prospective applicant has not approached communities to help frame the PAC, prospective applicants are still encouraged to consider whether, in the circumstances of the development proposal and any planning history of the site, whether informal mediation or mediation may be an appropriate method of encouraging dialogue with communities.

Where mediation is to form part of the prospective applicant's engagement strategy, this should be recorded in the PAN.

On submission of a Proposal of Application Notice, the planning authority must respond within 21 days of receipt of the notice specifying any additional notification and consultation they wish to see undertaken (including that indicated by the prospective applicant) beyond the statutory minimum, in order to make it binding on the prospective applicant.

On reviewing the PAN, planning authorities should consider whether mediation might be helpful should any points of dispute arise between the prospective applicant and other parties.

In requiring any additional pre-application consultation, planning authorities must have regard to the nature, extent and location of the proposed development and to its likely effects, both at that location and in its vicinity. Additional consultation requirements should be proportionate, specific and reasonable in the circumstances.

Pre-Application Consultation

The applicant must prepare a report of what has been done during the pre-application phase to comply with the statutory requirements for PAC and any requirements set out in the planning authority's response to the proposal of application notice.

The legislation does not currently specify the content of the report beyond that it should set out what was done to effect compliance with the aforementioned requirements. Current guidance suggests that as a minimum applicants should set out how they have responded to the comments made, including whether and the extent to which the proposals have changed as a result of PAC.

Whilst mediation is generally considered to be a confidential process, parties are encouraged to be open and transparent with the results of any mediation. This should allow for any output from the mediation to be included in the PAC report.

Planning (Scotland) Act 2019: Section 40 Promotion and use of mediation etc.

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) After section 268 insert—
“*Promotion and use of mediation etc.*”

268A Promotion and use of mediation etc.

(1) The Scottish Ministers may issue guidance in relation to the promotion and use of mediation in relation to the following—

- (a) the preparation of local development plans and related evidence reports under Part 2,
- (b) a prospective applicant’s compliance with any requirements in respect of pre-application consultation imposed under or by virtue of section 35B,
- (c) assisting in the determination of an application for planning permission,
- (d) any other matter related to planning that they consider appropriate.

(2) Guidance under subsection (1) may include provision about—

- (a) the form of mediation that is to be used in a particular circumstance, and
- (b) the procedure to be followed in any such mediation.

(3) Local authorities must have regard to any guidance issued under subsection (1).

(4) Before issuing any guidance under subsection (1), the Scottish Ministers must consult—

- (a) planning authorities, and
- (b) such other persons that the Scottish Ministers consider appropriate.

(5) The Scottish Ministers must make any guidance issued under subsection (1) publicly available.

(6) The power under subsection (1) to issue guidance includes power to—

- (a) issue guidance that varies guidance issued under that subsection, and
- (b) revoke guidance issued under that subsection.

(7) For the purposes of this section, “mediation” includes any means of exploring, resolving or reducing disagreement between persons involving an impartial person that the Scottish Ministers consider appropriate.

(8) The Scottish Ministers must issue guidance under subsection (1) within the period of two years beginning with the date on which the Planning (Scotland) Act 2019 received Royal Assent.”.

ANNEX B GUIDANCE ON THE PROMOTION AND USE OF MEDIATION – BUSINESS AND REGULATORY IMPACT ASSESSMENT (PARTIAL)

Purpose and intended effect

Background

1. Business and Regulatory Impact Assessments (BRIAs) look at the likely costs, benefits and risks of any proposed primary or secondary legislation. They also cover voluntary regulation, codes of practice, guidance, or policy changes that may have an impact on the public, private or third sector.
2. This consultation paper relates to the introduction of guidance on the promotion and use of mediation in the Scottish planning system.
3. The draft guidance is part of our wider work on planning reform and implementation of the Planning (Scotland) Act 2019, including steps to reduce conflict, improve community engagement and build public trust in planning matters. These include: changes in community engagement in local development plans; the introduction of Local Place Plans; and amendments to legislation around pre-application consultation.

Current Requirements for Mediation in Planning

4. There is currently no legislative requirement for the use of mediation in the Scottish planning system.
5. A guide³⁰ on mediation in planning in Scotland, commissioned by the Scottish Government and produced by Core Solutions, was published in 2009. The purpose of the guide was to help those involved in the planning system in Scotland better understand how mediation could be used to enhance the planning process. The use of mediation was also endorsed in Planning Advice Note 3/2010: Community Engagement.³¹ It recognises that mediation can be used to help to build bridges between stakeholders and resolve issues of dispute with the aim that the various parties understand each other and try to reach an agreement that everyone can live with.

Objective

6. The intention of the guidance is to support one of the overarching themes of the review of planning – collaboration over conflict. The focus of the draft guidance is on front-loading the potential use of mediation, and other similar facilitatory techniques, in the planning system.

³⁰ <https://www.gov.scot/publications/guide-use-mediation-planning-system-scotland/pages/1/>

³¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2010/08/pan-3-2010-community-engagement/documents/pan-3-2010-pdf/pan-3-2010-pdf/govscot%3Adocument/pan%2B3%2B2010.pdf>

Rationale for Government Intervention

7. Section 40³² of the 2019 Act inserts section 268A into the Town and Country Planning (Scotland) Act 1997. It states that Scottish Ministers may issue guidance on the promotion and use of mediation in the Scottish planning system. It also requires that Ministers must issue such guidance within the period of two years beginning with the date on which the 2019 Act received Royal Assent, namely by 25 July 2021.
8. National Performance Framework - These measures contribute to the following performance indicators:
 - We live in communities that are inclusive, empowered, resilient, and safe.
 - We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
 - We value, enjoy, protect and enhance our environment.

Consultation

• Within Government

9. The responsibility for these issues lies mainly with Planning and Architecture Division (PAD). Additionally PAD has engaged with Civil Justice colleagues responsible for Alternate Dispute Resolution, and the Directorate for Planning and Environmental Appeals.

• Public Consultation

10. The independent review of planning reported in May 2016, Empowering planning to create great places³³ considered the role of mediation, primarily in development planning. This led to a question in Places, People and Planning³⁴ asking if consultees considered that professional mediation could support the process of allocating land. The analysis of responses³⁵ noted that there was not overwhelming support for the use

³² Section 40 <https://www.legislation.gov.uk/asp/2019/13/section/40/enacted>

³³ Empowering planning to deliver great places (2016)

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/05/empowering-planning-to-deliver-great-places/documents/empowering-planning-deliver-great-places-31-2016-pdf/empowering-planning-deliver-great-places-31-2016-pdf/govscot%3Adocument/Empowering%2BPlanning%2Bto%2BDeliver%2BGreat%2BPlaces%252C%2B31%2BMay%2B2016.pdf>

³⁴ Places, People and Planning (2017)

<https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2017/01/places-people-planning-consultation-future-scottish-planning-system/documents/00512753-pdf/00512753-pdf/govscot%3Adocument/00512753.pdf>

³⁵ Planning Review: Analysis of consultation response (2017)

<https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2017/06/planning-review-analysis-of-consultation-responses-june-2017/documents/planning-review-analysis-consultation-responses-pdf/planning-review-analysis-consultation-responses->

of mediation with 63% of civil society and 63% of business sector respondents supported the use of professional mediation in the process of allocating land. 53% of policy and planning and 61% of development industry respondents disagreed with the use of professional mediation in the process of allocating land.

11. The guidance is based on proposals submitted by Scottish Mediation / PAS. The paper is enclosed in the supporting documents. The Scottish Government supported Scottish Mediation / PAS in preparing the proposals. The proposals were based in part on an online survey which generated between 50 - 124 responses on a range of questions. Respondents came from a variety of backgrounds:

- Individual / Community Group (33%)
- Planner (27%)
- Mediators (16%)
- Other (9%)
- Third Sector / Non-Profit (7%)
- Public Body / Agency (6%)
- Developers (2%)

12. There will be a further public consultation from December 2020 on the draft guidance.

- **Business**

13. The independent review of planning's report, Empowering planning to create great places³⁶ considered the role of mediation, primarily in development planning. This led to a question in Places, People and Planning³⁷ asking if consultees considered that professional mediation could support the process of allocating land at the Development Plan Examination. In addition, at the proposed Gatecheck stage, it noted that, if necessary and appropriate, consideration could be given to using professional mediation to further resolve any issues arising at this stage. The analysis of responses³⁸ noted that there was not overwhelming

[pdf/govscot%3Adocument/Planning%2BReview%2BAnalysis%2Bof%2Bconsultation%2Bresponses.pdf](https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/05/empowering-planning-to-deliver-great-places/documents/empowering-planning-deliver-great-places-31-2016-pdf/empowering-planning-deliver-great-places-31-2016-pdf/govscot%3Adocument/Planning%2BReview%2BAnalysis%2Bof%2Bconsultation%2Bresponses.pdf)

³⁶ Empowering planning to deliver great places (2016)

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/05/empowering-planning-to-deliver-great-places/documents/empowering-planning-deliver-great-places-31-2016-pdf/empowering-planning-deliver-great-places-31-2016-pdf/govscot%3Adocument/Empowering%2BPlanning%2Bto%2BDeliver%2BGreat%2BPlaces%252C%2B31%2BMay%2B2016.pdf>

[pdf/govscot%3Adocument/Empowering%2BPlanning%2Bto%2BDeliver%2BGreat%2BPlaces%252C%2B31%2BMay%2B2016.pdf](https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/05/empowering-planning-to-deliver-great-places/documents/empowering-planning-deliver-great-places-31-2016-pdf/empowering-planning-deliver-great-places-31-2016-pdf/govscot%3Adocument/Empowering%2BPlanning%2Bto%2BDeliver%2BGreat%2BPlaces%252C%2B31%2BMay%2B2016.pdf)

³⁷ Places, People and Planning (2017)

<https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2017/01/places-people-planning-consultation-future-scottish-planning-system/documents/00512753-pdf/00512753-pdf/govscot%3Adocument/00512753.pdf>

³⁸ Planning Review: Analysis of consultation response (2017)

<https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2017/06/planning-review-analysis-of-consultation-responses-june->

support for the use of mediation with 63% of civil society and 63% of business sector respondees supported the use of professional mediation in the process of land allocation. Whereas 53% of policy and planning and 61% of development industry respondees disagreed with the use of professional mediation in the process of allocating land.

14. As noted above, the Scottish Government supported Scottish Mediation / PAS in preparing the proposals. There was a relatively low response from developers (2% of respondents).

15. Further discussions with a number of specific companies will be conducted during the public consultation to get a firmer idea of the potential impacts on business of the guidance.

Options

16. This section looks at each of the measures and the options for each. For each proposal we have identified the same initial option.

Option 1 Do nothing.

17. The Scottish Ministers are required to prepare and consult on guidance under Section 268A of the amended 1997 Act within two years of the coming into force of the Act. There is therefore a legislative imperative to act.

Guidance on the use of mediation in development plan schemes

Option 2 Promote the use of mediation in Scottish Government guidance

18. We consider there is scope for the Scottish Government to supplement its guidance on the contents of planning authority development plan schemes in order to encourage the use of mediation in the development plan system. The Scottish Government is proposing to amend its guidance to planning authorities to make specific reference to mediation as one of the range of techniques and activities for consulting stakeholders.

Guidance on the use of mediation in development plan schemes

Option 2 Promote the use of mediation in local authority participation statements

19. The aim of the guidance is to encourage planning authorities to consider using mediation as one of the methods it uses when setting out its plans

[2017/documents/planning-review-analysis-consultation-responses-pdf/planning-review-analysis-consultation-responses-pdf/govscot%3Adocument/Planning%2BReview%2Banalysis%2Bof%2Bconsultation%2Bresponses.pdf](https://www.gov.scot/3A/document/Planning%2BReview%2Banalysis%2Bof%2Bconsultation%2Bresponses.pdf)

to consult on its local development plan. The Government is proposing that planning authorities consider and set out, in light of the local circumstances, the role that both informal mediation and mediation may have to play in its engagement strategy as set out in the participation statement. As the DPS is refreshed annually, there is scope for the potential role of both informal mediation and mediation to change over the course of the period of plan preparation.

Guidance on the use of mediation in advance of development plan examinations

Option 2 Promote the use of mediation in Scottish Government guidance

20. We have considered that there is scope for the Scottish Government to supplement its guidance to planning authorities in advance of the Development Plan Examination. Planning authorities should look to resolve differences and build support for proposals through discussion and negotiation, and where possible prior to the publication of the proposed plan.

Guidance on the use of mediation in proposal of application notices

Option 2

21. The Scottish Government is to amend guidance on additional consultation activity at PAC to encourage parties to consider both informal mediation and mediation as methods to resolve any disputes / conflicts at this stage of the planning process. The Government is supporting prospective applicants to consider what scope there may be for the use of mediation in advance of submitting a PAN.

Guidance on the use of mediation in pre-application consultation

Option 2

22. The Scottish Government is to amend guidance on additional consultation activity at PAC to encourage parties to consider both informal mediation and mediation as methods to resolve any disputes / conflicts at this stage of the planning process.

Sectors and groups affected

Communities

23. There will be an opportunity for communities to further engage constructively in the planning of the areas they live and work. With the voluntary nature of mediation, it will be for communities themselves to consider whether using mediation as a potential tool to engage with other parties in the planning system is appropriate in the circumstances.

Developers

24. For developers, the proposed guidance will impact upon prospective applicants for major and national developments in that they will be asked to consider mediation as part of their engagement strategy under PAC. For developers or representative bodies who make representations on the proposed plan, the guidance will encourage the use of mediation as a method of dealing with unresolved matters in advance of the LDP examination.
25. With the voluntary nature of mediation, it will be for developers themselves to consider whether using mediation as a potential tool to engage with other parties in the planning system is appropriate in the circumstances.

Mediators

26. The guidance will promote mediation through the assistance of an impartial person. Trained mediators are likely to be well placed to take up the opportunities which may arise.

Planning authorities

27. Planning authorities will be encouraged to consider mediation as a tool to engage with communities, developers and other public bodies in order to reduce matters which are unresolved in advance of a development plan examination. They will also be encouraged to consider the role of mediation when responding to proposal of application notices submitted by prospective applicants for national and major developments.

Other public bodies

28. Public bodies may be developers themselves and promote major or national developments. They will be encouraged to consider mediation as a tool to engage with communities in PAC and planning authorities in order to reduce matters which are unresolved in advance of a development plan examination.
29. With the voluntary nature of mediation, it will be for public bodies themselves to consider whether using mediation as a potential tool to engage with other parties in the planning system is appropriate in the circumstances.

Benefits

30. This section looks at each of the measures and the options for each. For each proposal we have identified the same initial benefit.

The Scottish Ministers are required to prepare and consult on guidance under Section 268A of the amended 1997 Act within two years of the coming into force of the Act. There is therefore a legislative imperative to act.

Promote the use of mediation in Scottish Government guidance on Development Plan Schemes

31. Throughout the planning system, opportunities are available for everyone to engage in the development decisions which affect them. Such engagement between stakeholders should be early, meaningful and proportionate. Innovative approaches, tailored to the unique circumstances are encouraged, for example, mediation initiatives. Effective engagement can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the planning process. The guidance's support for the use of mediation will support this.

Promote the use of mediation in local authority participation statements

32. Planning authorities should ensure that appropriate and proportionate steps are taken to engage with communities during the preparation of development plans. Throughout the planning system, opportunities are available for everyone to engage in the development decisions which affect them. Such engagement between stakeholders should be early, meaningful and proportionate. Innovative approaches, tailored to the unique circumstances are encouraged, for example, mediation initiatives. Effective engagement can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the planning process. The use of mediation will support this.

Promote the use of mediation in Scottish Government guidance in development plan examinations

33. Effective engagement can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the planning process. Planning authorities should look to resolve differences and build support for proposals through discussion and negotiation, and where possible prior to the publication of the proposed plan. The use of mediation will support this.

Guidance on the use of mediation in proposal of application notices

34. All those involved with the planning system have a responsibility to engage and work together constructively and proportionately to achieve quality places for Scotland. Throughout the planning system, opportunities are available for everyone to engage in the development decisions which affect them. Such engagement between stakeholders should be early, meaningful and proportionate. Innovative approaches, tailored to the unique circumstances are encouraged, for example

mediation. Effective engagement can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the planning process. Developers should ensure that appropriate and proportionate steps are taken to engage with communities when development proposals are being formed. The use of mediation will support this.

Guidance on the use of mediation in pre-application consultation

35. All those involved with the planning system have a responsibility to engage and work together constructively and proportionately to achieve quality places for Scotland. Throughout the planning system, opportunities are available for everyone to engage in the development decisions which affect them. Such engagement between stakeholders should be early, meaningful and proportionate. Innovative approaches, tailored to the unique circumstances are encouraged, for example mediation. Effective engagement can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the planning process. Developers should ensure that appropriate and proportionate steps are taken to engage with communities when development proposals are being formed. The use of mediation will support this.

Costs

Mediation costs

36. We have not been able to identify any publicly available information on the costs of mediation specifically related to the planning system. This may in part be due to a lack of reported cases, but also that costs are a circumstance of the particular cases. There are examples of mediation being free, such as this example in Fife³⁹, but that is primarily in the community mediation sector.

37. References online tend to compare costs of mediation against the costs of litigation where it is stated that mediation comes out cheaper. We have gathered the following indicative information from public sources on the cost of a range of mediation practices:

- £300 – 1,500⁴⁰
- £115 per hour (family mediation example)⁴¹ Quotes the average cost of family mediation as £140 per hour
- From £550⁴² per party per day (lists planning as one of the areas that the company covers)

³⁹ <https://www.sacro.org.uk/services/mediation/community-mediation-service>

⁴⁰ <https://www.resolutionpeople.co.uk/know-cost-court-v-cost-mediation/>

⁴¹ <https://www.mediateuk.co.uk/costs-payments/>

⁴² <http://www.mediationscotland.com/fees.html>

38. We have therefore assumed that the costs of mediation will be around £500 per party per day.

39. This however does not including preparation time in advance and staff time of the parties plus costs of venue hire etc. Such costs could be in the region of an additional £2,500 per party. This may be lower for community groups where representatives tend to be volunteers, though indirect costs may be incurred.

Planning authorities

Local Development Plan (LDP) engagement

40. The Updated Financial Memorandum to the Planning Bill⁴³ suggests that the cost of producing LDPs varies widely depending on the area covered by the planning authority, the complexity of the issues they face and the approach taken, including the amount of community and public engagement. Examples suggest that the total cost of an LDP currently could be around £500,000 to £750,000, including staff time, legal costs, examination and printing costs. We are assuming that the total cost of preparing an LDP is £625,000, the annual cost of preparing 34 LDPs over the next five years would be:

$$£625,000 \times 34 \text{ PAs} / 5 \text{ years} = £4,250,000 \text{ per year}$$

41. We have no firm figures on the cost of engagement on the LDP. Based around figures from the National Planning Framework, we have estimated a figure of around £80,000 per plan for the cost of consulting on an LDP.

$$£80,000 \times 34 \text{ PAs} / 5 \text{ years} = £544,000 \text{ per year}$$

42. The costs of examination vary depending on the number of unresolved issues to be considered at the end of the LDP preparation process. Examination costs ranged from just over £9,000 for Orkney Islands Council, to £50,000 for Glasgow City Council, to around £200,000 for Fife Council. We have assumed a figure of £50,000 per LDP.

$$£50,000 \times 34 \text{ PAs} / 5 \text{ years} = £340,000 \text{ per year}$$

43. We have no figures available which allow us to project forward with any certainty how many mediation events will support the preparation of local development plans. We will assume a range of 3 – 5 mediations per LDP. This equates to a possible cost of £61,000 - £102,000.

$$3 \text{ to } 5 \times £3,000 \times 34 \text{ PAs} / 5 \text{ years} = £61,200 - £102,000 \text{ per year}$$

⁴³

[https://www.parliament.scot/S5_Bills/Planning%20\(Scotland\)%20Bill/SPBill23AFMS052019.pdf](https://www.parliament.scot/S5_Bills/Planning%20(Scotland)%20Bill/SPBill23AFMS052019.pdf)

44. By removing a number of unresolved matters from the development plan examination, it is suggested that costs would be reduced to the planning authority. We are not able to estimate that potential saving.

Costs of Pre-application consultation

45. The recently completed consultation⁴⁴ on pre-application consultation procedures noted that there were 325 applications for major developments across Scotland in 2018-19. The numbers ranged from 0 for the Cairngorms National Park Authority to 39 for Glasgow City Council. The average number of applications for major development⁴⁵ between 2016/17 to 2018/19 is 332 applications.

46. The costs to planning authorities will be incurred in the consideration of the prospective applications proposal of application notice. We do not hold any figures for the cost of considering these documents, but have assumed that there will be little additional cost to the planning authority.

Developers

Engaging in the Local Development Plan

47. The updated financial memorandum suggests that the level of engagement developers have with the preparation of LDPs seems to be entirely discretionary and dependent on the number, value and complexity of sites they are promoting for inclusion. Current costs quoted ranged from £11,500 to £250,000 for dealing with one LDP, £15,000 to £50,000 per year for involvement with five or six, or between £10,000 to £80,000 per site or £180,000 to £230,000 for two sites.

48. We have no figures available which allow us to project forward with any certainty how many mediation events developers are likely to support in the preparation of local development plans. We will assume a range of 3 – 5 mediations per LDP. This equates to a possible cost of £61,000 - £102,000.

3 to 5 x £3,000 x 34 PAs / 5 years = £61,200 - £102,000 per year

Costs of pre-application consultation

49. As noted above, there were 325 applications for major developments across Scotland in 2018-19.

⁴⁴ <https://www.gov.scot/publications/proposed-changes-pre-application-consultation-requirements-planning-consultation/pages/14/>

⁴⁵ Planning applications for national development are small in number and not separately identified in our statistics. Many such developments are subject to alternative consent procedures rather than the planning application process.

50. The Scottish Land Commission has published a research report⁴⁶ on early engagement in planning, which indicated that respondents did not separately identify the costs of PAC sufficiently to do a cost benefit analysis. Fifteen respondents did make estimates, and indicated a range of £20,000 to £50,000, with most being at the lower end of that range. The report did not indicate if this was purely for meeting the statutory requirements or included additional, voluntary consultation measures. For the purposes of this assessment we will take a figure of £35,000. The average number of applications for major development between 2016/17 to 2018/19 is 332 applications.

51. This would suggest an annual figure of £11,620,000.

$$£35,000 \times 332 \text{ applications} = £11,620,000$$

52. We are estimating that around 5% of PACs will involve the use of mediation. This equates to around 17 per year which estimates to additional cost to developers of £49,800.

$$£3,000 \times (5\% \text{ of } 332 \text{ applications}) = £49,800$$

Scottish Firms Impact Test

53. This guidance may affect the costs for individual businesses of seeking to engage in a local development plan. The voluntary nature of mediation will provide businesses with the opportunity to weigh up in individual circumstances the costs and potential benefits.

54. This guidance may affect the cost of obtaining planning permission, applying to national and major developments, but not to local development, i.e. they apply to the larger developments in the planning hierarchy.

55. This guidance will not affect the number of projects subject to PAC procedures, but may add to the costs of those firms who do seek planning permission for national and major developments. The costs are not insignificant. However, it seems unlikely that the scale of costs compared to the overall costs of pursuing a development will be a deciding factor in whether to pursue that project.

Competition Assessment

56. There are no obvious impacts on competition of this guidance. The guidance would not favour one such business over another per se. Whether a business benefits from the guidance will depend on the circumstances of the case.

⁴⁶ <https://www.landcommission.gov.scot/our-work/housing-development/early-engagement-in-planning>

- Will the measure directly or indirectly limit the number or range of suppliers?

57.No. It does not involve significant additional costs in the overall context of the scale of projects involved.

- Will the measure limit the ability of suppliers to compete?

58.No. As above.

- Will the measure limit suppliers' incentives to compete vigorously?

59.No. As above

- Will the measure limit the choices and information available to consumers?

60.No. As above.

Consumer Assessment

61.The costs involved seem to have limited effect on the purchasers of goods and services. To the extent that the public are consumers of planning services in relation to another party's development, then the proposed changes should improve that engagement.

- Does the policy affect the quality, availability or price of any goods or services in a market?

62.No. This does not involve significant additional costs in the overall context of the scale of projects involved.

- Does the policy affect the essential services market, such as energy or water?

63.Not significantly. Developers in such sectors when pursuing national or major developments will be affected as regards the potential for using mediation. The changes do not involve significant additional costs in the overall context of the scale of projects involved.

- Does the policy involve storage or increased use of consumer data?

64.No.

- Does the policy increase opportunities for unscrupulous suppliers to target consumers?

65.No.

- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

66. In so far as the Planning system is a service and the public are its consumers, yes. The use of mediation should improve public information on proposals.

- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

67. No.

Test run of business forms

68. No new forms.

Digital Impact Test

69. The use of mediation on/off line is not prescribed in the guidance. Which method is used will be for parties to decide in the circumstances of the case.

- Does the measure take account of changing digital technologies and markets?

70. Yes

- Will the measure be applicable in a digital/online context?

71. The use of mediation on/off line is not prescribed in the guidance. Which method is used will be for parties to decide in the circumstances of the case.

- Is there a possibility the measures could be circumvented by digital / online transactions?

72. No.

- Alternatively will the measure **only** be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

73. No.

- If the measure can be applied in an offline **and** online environment will this in itself have any adverse impact on incumbent operators?

74. No.

Legal Aid Impact Test

75. These changes would seem unlikely to affect claims for legal aid.

Enforcement, sanctions and monitoring

76. As mediation is voluntary, there are no sanctions should parties not wish to mediate. There is the potential that should a prospective applicant fail to comply with additional requirements for consultation then the planning authority is required to decline to determine the application.

77. The Scottish Government is pursuing changes in the planning system which will come into force after this guidance has been issued. We remain keen to build up further details of the use of mediation in the planning system and will review the guidance in light of such experience.

78. The intention is that the guidance will come into force in July 2021. Stakeholders will receive notice of the publication through the Government's media channels such as its website, e-mail alerts and other social media channels.

Post-implementation review

79. The Scottish Government will conduct a review of the first 24 months of the operation of the guidance. As well as approaching planning authorities and the development industry, a survey of public views will also be carried out.

Summary and recommendation

80. The guidance has emerged from legislative requirements set out in the Planning (Scotland) Act 2019 and following an extensive review of the planning system.

81. Whilst this partial BRIA has identified the potential for extra financial costs to all parties, the benefits of using a collaborative engagement approach such as mediation has the potential to improve trust in the planning system and support collaboration over conflict.

Summary Costs and benefits Table

Summary and recommendation

The Scottish Government proposes to publish guidance on the promotion and use of mediation to help improve engagement between parties in the Scottish planning system.

It is a challenge to estimate the costs and benefits of mediation accurately as the guidance doesn't impose requirements on mediation, which is recognised as being voluntary. Based on the figures received and estimated thus far on the costs of mediation and the costs of current engagement in the planning processes, the suggested overall annual net cost to business of the changes is £110 – 150,000, with similar costs to other parties.

There is a legal imperative for the Scottish Government to act. Subject to the views received in the forthcoming public consultation, the proposals, as a package, would appear to represent a proportionate response.

13.1 Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1. Do nothing	No benefit	No cost
2. Require planning authorities to consider the use of mediation in development plan schemes and early engagement on the development plan examination	Improved accessibility of information with potential benefits for proposals and outcomes.	Increased costs across all sectors of £120 – 200,000 for all parties
3. Encourage prospective applicants to consider mediation in PAC.	Improved engagement and feedback for the prospective applicant and the public	Increased costs across all applications subject to PAC: £50,000 per year across the development industry

Declaration and publication

I have read the business and regulatory impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been/will be assessed with the support of businesses in Scotland.

Signed: Kevin Stewart

Date: 4 December 2020

Kevin Stewart, Minister for Local Government, Housing and Planning
Scottish Government Contact point: Graham Robinson
w w w . g o v . s c o t

©

ANNEX C GUIDANCE ON THE PROMOTION AND USE OF MEDIATION – PARTIAL EQUALITY AND CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENTS

Background

The public sector equality duty requires the Scottish Government to assess the impact of applying a proposed new or revised policy or practice. Equality legislation covers the characteristics of: age, disability, gender reassignment, sex including pregnancy and maternity, race, religion and belief, and sexual orientation.

An equality impact assessment (EQIA) aims to consider how a policy (a policy can cover: activities, functions, strategies, programmes, and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.

In addition, the Scottish Government has undertaken an initial impact assessment considering issues relating to Child Rights and Wellbeing. The Child Rights and Wellbeing Impact Assessment (CRWIA) is used to identify, research, analyse and record the impact of a proposed law or policy on children's human rights and wellbeing. It should be used on **all** new legislation and policy which impacts children, not just children's services.

Draft Guidance on the promotion and use of mediation

The draft guidance is part of our wider work on planning reform and implementation of the Planning (Scotland) Act 2019, including steps to reduce conflict, improve community engagement and build public trust in planning matters. They include the National Planning Framework, amended development planning procedures, the introduction of Local Place Plans plus guidance on both effective community engagement in local development plans and the mediation guidance.

The aim of this particular strand is to introduce guidance on the promotion and use of mediation. This is in light of the findings of the independent Review Panel charged to review the planning system, in their report 'Empowering Planning to Deliver Great Places' and subsequent public consultations in 2017⁴⁷.

⁴⁷ <https://hqnetwork.co.uk/download.cfm?doc=docm93jjm4n4102.pdf&ver=8399>

Further details are available in the consultation paper to which this assessment is attached.

Who will it affect?

We envisage that the guidance may potentially affect those seeking to engage in the planning system, both in development planning and development management.

We recognise that the impacts of the guidance may fall differently on different groups in society. Our initial evidence would suggest that people with disabilities, children, women and ethnic minority groups for example, experience a variety of challenges in engaging with planning, such as in relation to physical mobility and access, or language and communication issues.

What might prevent the desired outcomes being achieved?

We have not identified any factors which might prevent the desired outcomes.

Framing

Results of EQIA framing exercise

It is clear from the engagement during and since the Independent Panel's review that there is a need to improve public engagement measures. It is also clear from that work that different groups in society have different levels of engagement with the planning system.

From the evidence gathered so far, these amendments are likely to enhance the opportunities for engagement in shaping the places that people work and stay. However, whilst we believe they will generally have a positive effect, we see value in gathering further evidence.

Extent/Level of EQIA required

The potential impact on each of the protected groups has been considered using information in the Scottish Government's Evidence Finder⁴⁸ plus additional information below.

Further information is required on the impact of the changes on each of the protected characteristics. It is proposed to carry out consultation on the proposed guidance required to implement the policy intention and this will inform further development of the guidance.

Results of CRWIA framing exercise

The Articles of the United Nations Convention on the Rights of the Child (UNCRC) and the child wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

Our work on this to date indicates that a CRWIA is required to support the development of this policy. We note that guidance suggests that a CRWIA should be undertaken where the policy will be subject to extensive consultation, including with the Scottish Parliament.

The policy will specifically support Article 12 of the UNCRC. This relates to every child having a right to express their views and have them given due weight in accordance with their age and maturity. Children should be provided with the opportunity to be heard, either directly or through a representative or appropriate body. This links to the Respected and Responsible welfare indicators. Other Articles of the UNCRC may indirectly be relevant also.

We envisage that the policy will potentially impact upon the opportunity of children and young people to become more actively engaged in the planning system. However, there is the potential for intersectional issues to effect the perception of certain groups of children and young people of engagement. Research relating to

⁴⁸ <http://www.equalityevidence.scot/>

out of school groups and activities suggests this may particularly be an issue for both disabled children and older children.

We would want to gather evidence on the potential impacts on how the policy affects or could affect children and young people in practice.

Stage 2: Data and evidence gathering, involvement and consultation

Characteristic ⁴⁹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	<p>Scotland's population is ageing. In mid-2019, 19% of the population were aged 65 and over compared with 17% a decade earlier in mid-2009. Over the same period, the population aged 65 and over increased in all council areas.</p> <p>Nearly 9 in 10 adults (88 per cent) in Scotland use the internet either for work or personal use, a steady increase over time from 65 per cent in 2007. Notably, there has been a significant increase in internet use amongst older adults aged 60+ (from 29 per cent to 66 per cent). There are lower rates of internet use among older adults than among younger adults. In 2019, almost all (99 per cent) adults aged 16-24 reported using the internet compared to 43 per cent of those aged 75+.</p>	<p>Mid-2019 Population Estimates Scotland (2020)⁵⁰</p> <p>Scottish Household Survey: Annual Report 2019 (2020)⁵¹</p>	<p>Evidence would suggest that people wish to engage in planning though they are not always able to do so.</p> <p>As part of the consultation on the Scottish Government's proposals, we will be proactive in engaging with societal groups on the practical elements of supporting engagement.</p>

⁴⁹ Refer to Definitions of Protected Characteristics document for information on the characteristics

⁵⁰ <https://www.nrscotland.gov.uk/files/statistics/population-estimates/mid-19/mid-year-pop-est-19-report.pdf>

⁵¹ <https://www.gov.scot/publications/scottish-household-survey-2019-annual-report/>

	<p>Older people were less likely to have travelled the previous day. Only 51 per cent of those aged 80 and over had travelled the previous day and 65 per cent of those aged 70 to 79.</p> <p>Almost nine in 10 adults (87 per cent) aged 75 and above said they felt a very strong or fairly strong sense of belonging to their community, compared to just over seven in ten (73 per cent) of those aged between 16 and 24</p> <p>There is a clear relationship between age and use of internet, with lower rates of internet use among older adults. In 2018, 100 per cent of adults aged 16 to 24 reported using the internet compared to 38 per cent of those aged 75 and over. This gap is narrowing.</p> <p>The majority of young people feel they should be involved in planning in their local area and that their local councils should look at ways to support children and young people to do this.</p>	<p>Travel and Transport in Scotland 2018 (2019)⁵²</p> <p>Scottish Household Survey: Annual Report 2018 (2019)⁵³</p> <p>(as above)</p> <p>YoungScot survey (2017)⁵⁴</p>	
--	---	---	--

⁵² <https://www.transport.gov.scot/publication/transport-and-travel-in-scotland-2018-pdf-version/>

⁵³ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/>

⁵⁴ <https://www.gov.scot/publications/planning-review-young-scot-survey-results-june-2017/>

	<p>Around six in ten of young people surveyed (58 per cent) agreed that adults were good at taking their views into account when making decisions that affect them. This was an increase from 2017, when 53 per cent agreed.</p> <ul style="list-style-type: none"> • Boys were more positive on both questions. • Older children were more negative. • Respondents with a mental or physical health condition were less positive. <p>Democracy Matters to Children (2020) noted that ‘children’s paths to meaningful involvement in decision-making are currently limited and many children have limited or no experience of participation in democratic processes’. A number of local issues were identified as ones which children wanted to have a say in – this included planning and the built environment.</p>	<p>Young people's participation in decision making: attitudes and perceptions (2020)⁵⁵</p> <p>Democracy Matters to Children (2020)⁵⁶</p>	
DISABILITY	<p>In 2011, the proportion of people in Scotland with a long-term activity-limiting health problem or disability was 20%, the same as reported in the 2001 Census.</p>	<p>Scotland's 2011 Census (Release 2A, Table 8)⁵⁷</p>	<p>Evidence would suggest that people wish to engage in planning though they are not always able to do so.</p>

⁵⁵ <https://www.gov.scot/publications/young-peoples-participation-decision-making-scotland-attitudes-perceptions-2/>

⁵⁶ <https://www.childrensparliament.org.uk/our-work/democracy-matters-consultation/>

⁵⁷ <https://www.scotlandscensus.gov.uk/news/census-2011-release-2a>

	<p>Contains a range of recommendations (primarily aimed at England) including: - preparation of guidance on how and when to engage disabled people; - dedicated section in policy on access and inclusive design - plans not to be considered as ‘sound’ without evidence address disabled access; - permission granted only where sufficient provision for accessibility and inclusion - remove any requirement to prove immediate need for accessible housing.</p> <p>97% of disabled people or those with a long-term illness considered that people should be involved in making decisions about how local public services are planned.</p> <p>Through inclusive digital and offline engagement and capacity building, raise disabled people’s aspirations and opportunities to fulfil their potential, and strengthen participation and democracy.</p>	<p>Building for Equality: Disability and the Built Environment⁵⁸</p> <p>Scottish Social Attitudes Survey 2015: Table A16⁵⁹</p> <p>Supercharged: A human catastrophe (2020)⁶⁰</p>	<p>As part of the consultation on the Scottish Government’s proposals, we will be proactive in engaging with societal groups on the practical elements of supporting engagement.</p>
--	---	---	--

58

<https://publications.parliament.uk/pa/cm201617/cmselect/cmwomeq/631/631.pdf#:~:text=Building%20for%20Equality%3A%20Disability%20and%20the%20Built%20Environment,use%20of%20public%20money%2015%20Fiscal%20incentives%2017>

59 <https://www.gov.scot/publications/scottish-social-attitudes-survey-2015-attitudes-social-networks-civic-participation/>

60 <http://gda.scot//content/publications/GDA%E2%80%93Supercharged-Covid-19Report.pdf>

	Seventy-one per cent of adults who have some form of limiting long-term physical or mental health condition or illness reported using the internet, lower than for those who have some form of non-limiting condition or illness (90 per cent) and those who have none (94 per cent)	Scottish Household Survey: Annual Report 2019 (2020)	
SEX	<p>Scotland had a relatively even split between genders in 2018, with 51% females and 49% males, although this varied amongst age groups.</p> <p>Women are slightly more likely than men to become involved in the planning process. This was focussed on development management.</p> <p>Language barriers, lack of confidence and dominant characters can discriminate against some people during community engagement specifically women, minority ethnic groups, young and old people and people with disabilities.</p> <p>Overall there was no significant difference in use of internet between genders</p>	<p>Mid-2018 Population Estimates Scotland (2019)</p> <p>Planning and Community Involvement in Scotland (2004)⁶¹</p> <p>Hard to reach, easy to ignore (2017)⁶²</p> <p>Scotland's People Annual Report: Results from 2015</p>	<p>Evidence would suggest that people wish to engage in planning though they are not always able to do so.</p> <p>As part of the consultation on the Scottish Government's proposals, we will be proactive in engaging with societal groups on the practical elements of supporting engagement.</p>

⁶¹ <https://www.webarchive.org.uk/wayback/archive/20180515204336/http://www.gov.scot/Publications/2004/07/19657/40295>

⁶² <http://whatworksscotland.ac.uk/publications/hard-to-reach-or-easy-to-ignore-promoting-equality-in-community-engagement-evidence-review/>

	Do you feel able to influence planning decisions which affect your local area and how it is being developed? Findings on no influence / some influence were similar for male (61%, 35%) and female (59%, 36%)	Scottish Household Survey (2016) (section 8.2.2) ⁶³ The National Trust for Scotland Heritage Observatory briefing note (2017)	
PREGNANCY AND MATERNITY	We have not been able to gather any information regarding this characteristic		
GENDER REASSIGNMENT	We have not been able to gather any information regarding this characteristic		
SEXUAL ORIENTATION	As a whole, this group had no special needs or requirements when it came to planning. Their views were representative of the general population.	Consultation on the Modernisation of the Planning System with 'seldom heard' Groups (2009) ⁶⁴	
RACE	Language barriers, lack of confidence and dominant characters can discriminate against some people during community engagement specifically women, minority	Hard to Reach, Easy to Ignore (2017)	Evidence would suggest that people wish to engage in planning though they are not always able to do so.

⁶³ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2016-scottish-household-survey/pages/8/>

⁶⁴ <https://www.webarchive.org.uk/wayback/archive/20180516025616/http://www.gov.scot/Publications/2009/02/09150350/0>

	<p>ethnic groups, young and old people and people with disabilities.</p> <p>Some people from specific communities of interest and identity described finding it difficult to get involved in decisions, or having no experience of involvement at all. For example, some asylum seekers, EU citizens, foreign language groups, and some people from different ethnic minority groups described experiences of being detached from the wider community and formal decision-making organisations and forums. They did not know about local groups or understand whether and how they could get involved.</p> <p>Seventy-eight per cent of those whose ethnicity was recorded as White expressed a very or fairly strong feeling of belonging compared to 71 per cent of those whose ethnicity was recorded as minority ethnic.</p> <p>Accessible, affordable legal representation and or mediation should be made available for members of the Gypsy/Traveller community so that they may gain equal</p>	<p>Local Governance Review: analysis of responses to Democracy Matters (2019)⁶⁵</p> <p>Scottish Household Survey: Annual Report (2019)</p> <p>Planning processes in Scotland: a Gypsy/Traveller</p>	<p>As part of the consultation on the Scottish Government's proposals, we will be proactive in engaging with societal groups on the practical elements of supporting engagement.</p>
--	--	--	--

⁶⁵ <https://www.gov.scot/publications/local-governance-review-analysis-responses-democracy-matters/>

	<p>access to decision making within planning processes/appeals.</p> <p>In 2011 Gypsy/Travellers in Scotland, compared to the population as a whole, were more likely to report a long-term health problem or disability and were more likely to report bad or very bad general health.</p>	<p>perspective (2016)⁶⁶</p> <p>Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census (2015)⁶⁷</p>	
RELIGION OR BELIEF	<p>Some people from specific communities of interest and identity described finding it difficult to get involved in decisions, or having no experience of involvement at all. For example, some asylum seekers, EU citizens, foreign language groups, and some people from different ethnic minority groups described experiences of being detached from the wider community and formal decision-making organisations and forums. They did not know about local groups or understand whether and how they could get involved</p>	<p>Local Governance Review: analysis of responses to Democracy Matters (2019)</p>	<p>Evidence would suggest that people wish to engage in planning though they are not always able to do so.</p> <p>As part of the consultation on the Scottish Government's proposals, we will be proactive in engaging with societal groups on the practical elements of supporting engagement.</p>
MARRIAGE AND CIVIL PARTNERSHIP	<p>Not applicable</p>		

⁶⁶ <http://www.article12.org/wp-content/uploads/2016/03/Planning-Processes-in-Scotland-a-Gypsy-Traveller-Perspective.pdf>

⁶⁷ <https://www.gov.scot/publications/gypsy-travellers-scotland-comprehensive-analysis-2011-census/>

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence gathered, this section requires us to consider the potential impacts – negative and positive – that the policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			The aim is to have increased engagement for all sectors of society with mediation acting as one methodology available to communities. Children may already have experience of mediation in a different context through the use of peer-to-peer mediation at school.
Advancing equality of opportunity	X			As above. We will not be prescriptive about the use of either online or face to face mediations and will suggest that the method chosen is appropriate to the particular circumstances. This acknowledges that older people, amongst others, are slightly less likely to use online technologies whereas an online approach may work better with younger people.
Promoting good relations among and between different age groups	X			Mediation offers an opportunity to hear views across communities. Where parties are acting on behalf of a community (such as a community

				council), there should be scope for it to reflect wider community views.
--	--	--	--	--

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			The aim is to have increased engagement for all sectors of society with mediation acting as one methodology available to communities.
Advancing equality of opportunity	X			As above. We will not be prescriptive about the use of either online or face to face mediations and will suggest that the method chosen is appropriate to the particular circumstances. This acknowledges that disabled people, amongst others, are slightly less likely to use online technologies.
Promoting good relations among and between disabled and non-disabled people	X			Mediation offers an opportunity to hear views across communities. Where parties are acting on behalf of a community (such as a community council), there should be scope for it to reflect wider community views.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			Data indicates women can find engagement with Planning more challenging. The aim is to have increased engagement for all sectors of society with mediation acting as one methodology available to communities.
Advancing equality of opportunity	X			As above.
Promoting good relations between men and women	X			Mediation offers an opportunity to hear views across communities. Where parties are acting on behalf of a community (such as a community council), there should be scope for it to reflect wider community views.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No information available
Advancing equality of opportunity			X	No information available
Promoting good relations			X	No information available

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No information available
Advancing equality of opportunity			X	No information available
Promoting good relations			X	No information available

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No information available
Advancing equality of opportunity	X			The aim is to have increased engagement for all sectors of society with mediation acting as one methodology available to communities.
Promoting good relations			X	No information available

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			The aim is to have increased engagement for all sectors of society during pre-application consultation, with consistent and transparent

				reporting of the pre-application consultation process (including the issues raised and what was done to address them or why they could not be addressed).
Advancing equality of opportunity	X			Evidence would suggest that the Gypsy / Traveller community would value the introduction of mediation into the planning system.
Promoting good race relations	X			Mediation offers an opportunity to hear views across communities. Where parties are acting on behalf of a community (such as a community council), there should be scope for it to reflect wider community views.

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			The aim is to have increased engagement for all sectors of society with mediation acting as one methodology available to communities.
Advancing equality of opportunity	X			As above.
Promoting good relations	X			Mediation offers an opportunity to hear views for across communities. Where parties are acting on behalf of a community (such as a community council), there should be scope for it to reflect wider community views.

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership⁶⁸	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination				Not assessed

⁶⁸ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

<p>Have positive or negative impacts been identified for any of the equality groups?</p>	<p>Improving the opportunities for a more collaborative approach to planning has the opportunity to support people in their aspirations to engage in the planning system.</p> <p>Evidence would suggest that the Gypsy / Traveller community would value the introduction of mediation into the planning system.</p>
<p>Is the policy directly or indirectly discriminatory under the Equality Act 2010⁶⁹?</p>	<p>Potentially indirectly discriminatory in terms of those groups who would find it easier or who would be more likely to engage online than at physical events, for example younger age groups. There is evidence that other groups use online tools less often than others, e.g. older age groups and disabled people.</p> <p>Language barriers, lack of confidence and dominant characters can discriminate against some people during community engagement specifically women, minority ethnic groups, young and old people and people with disabilities.</p>
<p>If the policy is indirectly discriminatory, how is it justified under the relevant legislation?</p>	<p>N/A</p>
<p>If not justified, what mitigating action will be undertaken?</p>	<p>We will ask in the consultation about views on how the guidance can be drafted to mitigate against any barriers.</p>

⁶⁹ See EQIA – Setting the Scene for further information on the legislation.

Describing how Equality Impact analysis has shaped the policy making process

The EQIA has helped highlight the potential issues which may disproportionately impact on those with particular protected characteristics. We will seek views in the forthcoming consultation as to how the guidance can mitigate any potential barriers. We will also ask how guidance may assist in addressing the challenges people have in engaging in the planning system.

Monitoring and Review

Further work is required on the measures to monitor and review the guidance.

However, we have noted that this consultation may lead to an initial iteration of the guidance and that, as practice develops, further iterations may be developed.

ANNEX D GUIDANCE ON THE PROMOTION AND USE OF MEDIATION – ISLAND COMMUNITIES IMPACT ASSESSMENT – SCREENING

Introduction

This screening assessment relates to draft guidance on the promotion and use of mediation in the Scottish planning system. The requirement to prepare guidance was introduced in the Planning (Scotland) Act 2019.

This document seeks to identify whether there are issues which merit further exploration through an Island Communities Impact Assessment (ICIA). If significant issues are identified, a full ICIA will be carried out.

The background to mediation and what has led to those proposals is set out in the accompanying consultation paper.

The Islands (Scotland) Act 2018 (the 2018 Act)

The Islands (Scotland) Act 2018 provides for a duty on the Scottish Ministers and other relevant public bodies that they must have regard to island communities in exercising their functions and in the development of legislation.

The 2018 Act lists the following areas that are relevant considerations for islands and islands communities:

- Depopulation
- Economic development
- Environmental protection
- Health and wellbeing
- Community empowerment
- Transport
- Digital connectivity
- Fuel poverty
- Land management
- Biodiversity

The planning system has a role to play in the development and use of land in the long term public interest, including the future development of communities, and so may have a relevance to each of the considerations listed above.

Implications of Proposed Changes for Island Communities

Framing

Desk top analysis was undertaken of the evidence gathered for the development of the Planning Bill, including the equality impact assessment⁷⁰ and ICIA⁷¹, plus the

⁷⁰ <https://www.gov.scot/publications/planning-bill---post-stage-2-equality-impact-assessment/>

⁷¹ <https://www.gov.scot/publications/planning-bill---post-stage-2-island-communities-impact-assessment/>

integrated impact assessment accompanying the early engagement⁷² on National Planning Framework 4. Additional information was drawn from the screening ICIA⁷³ on changes to pre-application consultation requirements and a report prepared by Scottish Mediation / PAS⁷⁴ containing proposals for the scope of mediation.

Key data from the analysis included:

Population demographics: NRS Scotland Mid-Year Population Estimates Scotland, Mid-2019 (2020)⁷⁵ indicate that Na h-Eileanan Siar and the Orkney Islands are among the local authority areas with an older population in Scotland, with Shetland closer to the overall figures for Scotland. The Transport and Travel in Scotland Results from the Scottish Household Survey 2018 (2019)⁷⁶ indicates in turn that older people were less likely to have travelled the previous day. Only 51 per cent of those aged 80 and over had travelled the previous day and 65 per cent of those aged 70 to 79.

That survey also identified a variation in mode of travel by age. The older age group were more likely to catch a bus than younger children (33% compared to 9%), which may indicate older populations are more reliant on public transport.

Settlements data: National Records of Scotland (NRS) - Population Estimates for Settlements and Localities in Scotland, Mid-2016 (2018)⁷⁷ states that:

“The council areas with the lowest proportion of people living in a settlement⁷⁸ are Na h-Eileanan Siar (30%) and Shetland Islands (38%). Many communities in these islands are sparser than those in the rest of Scotland, due to crofting and other factors, and so do not fulfil the density requirements needed to be counted as a settlement.”

Internet use: is less in older age groups than younger, and that there is a gap between premises in the islands able to access superfast and fibre broadband when compared to premises in other parts of rural Scotland. (see Appendix A)

Numbers of planning applications for major applications: Appendix B indicates the location of applications for major development in the different planning authority areas of Scotland. It indicates that the three island authorities are amongst those with the lowest number of such applications. Information for

⁷² <https://www.transformingplanning.scot/national-planning-framework/resources/> (under impact assessment tab)

⁷³ <https://www.gov.scot/publications/proposed-changes-pre-application-consultation-requirements-planning-consultation/> (Annex D)

⁷⁴ Paper to accompany consultation

⁷⁵ <https://www.nrscotland.gov.uk/files//statistics/population-estimates/mid-19/mid-year-pop-est-19-report.pdf> - Figure 13, page 26

⁷⁶ <https://www.transport.gov.scot/publication/transport-and-travel-in-scotland-results-from-the-scottish-household-survey-1/>

⁷⁷ <https://www.nrscotland.gov.uk/files//statistics/settlements-localities/set-loc-16/set-loc-2016-publication-updated.pdf>

⁷⁸ A settlement is defined to be a group of high density postcodes whose combined population rounds to 500 people or more. They are separated by low density postcodes

Highland Council, Argyll and Bute Council and North Ayrshire Council is not broken down to allow their island areas to be considered separately.

This section considers the potential for differential impacts on island communities of each element of the draft guidance. The two specific areas covered by the draft guidance are:

Development Planning – Development Plan Schemes and Development Plan Examinations

Development Management – procedures around pre-application consultation

Development Planning

All of the relevant local authorities (Comhairle nan Eilean Siar, Highland Council, Shetland Islands Council, Orkney Islands Council, Argyll & Bute Council and North Ayrshire Council) are covered by local development plans prepared under the provisions contained in the amended Town and Country Planning (Scotland) Act 1997.

Proposals in the draft guidance would provide Scottish Government guidance and require local authorities to consider the potential use of mediation between parties when developing the participation statement element of their Development Plan Scheme. These Schemes are prepared on an annual basis with the participation statement element setting when consultation is likely to take place on the LDP, with whom and of its likely form and of the steps to be taken to involve the public at large in the stages of preparation or review.

Proposals in the draft guidance would provide for planning authorities to consider the use of mediation in resolving issues in advance of any development plan examination.

Development management

Elements of the draft guidance relating to development management focus on pre-application consultation between the prospective developers of national and major developments and communities. National developments are set out in the National Planning Framework whilst the range and scale of major developments are set out in the planning hierarchy. These include developments relating to housing, renewable energy and retail developments.

It is noted that even though the numbers of applications to which PAC applies (see BRIA at Annex B) is relatively low in the islands, on an individual basis, the significance of individual cases may as a result be greater.

Potential issues and mitigation

The main potential issue for communities is having access to any mediation event proposed by the developer or local authority. This may be similar to communities and the public having access to other public events, such as those organised under PAC requirements.

One can anticipate that in locations with more scattered and / or older communities, where convenient locations for such events may be limited, or transport connections are more limited, there may be difficulties in interested members of the public attending such events.

The Scottish Mediation / PAS paper asked about the scope for online mediation. Just under 90% of respondents agreed / strongly agreed that online mediation may be an option in appropriate circumstances.

There is also evidence that given a more scattered and older population and the availability of, and reliance upon, public transport, may mean island populations may be less able to attend mediation events, or that it is more difficult and costly to do so. However, it is hard to make any conclusion as to the significance of any such challenges compared to other more remote parts of mainland Scotland, where populations may also be more scattered, older and where access to public transport at least may be more difficult compared to larger urban areas.

During the COVID-19 emergency, the requirement for a physical public event as part of PAC has been suspended. Guidance indicates online measures for engagement which should be used instead. An evaluation of such measures has yet to be undertaken.

We do not plan to require mediation is undertaken face to face, but will note that there is an opportunity for mediation to be undertaken under appropriate circumstances particular to a local area.

This would not necessarily be a total solution for island communities. Whilst setting out the way to try to close the gap in digital connectivity, The National Plan for Scotland's Islands (2019)⁷⁹, does indicate a gap between premises in the islands able to access superfast and fibre broadband when compared to premises in other parts of rural Scotland – See Appendix A. Also, in their response to the 'Call for Ideas' on the Scottish Government's National Planning Framework 4 (NPF4), Orkney Islands Council indicated "the islands still experience some of the poorest broadband and mobile phone connectivity speeds in the UK. Improved digital connectivity and investment in digital infrastructure to ensure equal coverage across Scotland should remain as a key objective in NPF4"⁸⁰.

In addition, above we indicated that Na h-Eileanan Siar and the Orkney Islands have a higher proportion of older people in their population, and that older people are less likely or able to travel. The Scottish Household Survey 2020⁸¹ refers to a clear relationship between age and use of internet, with lower rates of internet use among older adults. In 2019, nearly 100 per cent of adults aged 16 to 24 reported using the internet compared to 43 per cent of those aged 75 and over. This gap is, however, narrowing.

⁷⁹ <https://www.gov.scot/publications/national-plan-scotlands-islands/>

⁸⁰ <https://www.transformingplanning.scot/media/1692/305-orkney-islands-council.pdf> - paragraph 1.20

⁸¹ <https://www.gov.scot/publications/scottish-household-survey-2019-annual-report/pages/8/>

Conclusion

It seems likely that Island communities would welcome the opportunities provided by guidance on the promotion and use of mediation. There may be some issues around ability to attend face-to-face events, given the specific nature of island communities, such as the potential need to travel between islands. With the information we have identified at this stage, the significance of these issues, as distinct from those in other remote parts of mainland Scotland, is difficult to gauge.

Our conclusion at this stage is that there does not seem to be significant implications from the proposed guidance for Island Communities specifically. However, as the scope of the engagement undertaken to date is relatively small, we are keen to carry out further engagement to ensure any issues are fully addressed, and any necessary mitigating measures can be considered. Therefore, the consultation paper seeks views on this screening assessment and conclusions and for any additional data or information.

Planning and Architecture Division
Scottish Government
December 2020

**APPENDIX A - THE NATIONAL PLAN FOR SCOTLAND'S ISLANDS (2019) -
DIGITAL CONNECTIVITY**

Percentage of premises with access to broadband

Local Authority	Percentage of premises with access to superfast broadband (2014)	Percentage of premises with access to superfast broadband (2019)	Percentage of premises with access to fibre broadband (2014)	Percentage of premises with access to fibre broadband (2019)
Orkney ¹	11.1	65.7	12.0	82.5
Shetland ²	28.9	74.2	35.1	86.3
Comhairle nan Eilean Siar	1.3	76.5	1.6	89.8
Argyll & Bute	0.9	83.3	0.9	92.5
Highland	20.3	80.1	21.8	93.6
North Ayrshire	40.9	96.3	43.3	99.3

1. Data only available from December 2014.

2. Data only available from September 2014.

APPENDIX B – NUMBERS OF APPLICATIONS FOR MAJOR DEVELOPMENT DETERMINED BY YEAR AND BY PLANNING AUTHORITY AREA

	2018/19	2017/18	2016/17
Aberdeen City	16	14	19
Aberdeenshire	18	15	22
Angus	3	4	8
Argyll and Bute	7	5	10
Cairngorms National Park	0	0	3
Clackmannanshire	1	1	0
Dumfries and Galloway	15	11	7
Dundee City	4	7	10
East Ayrshire	6	8	6
East Dunbartonshire	2	4	3
East Lothian	12	13	9
East Renfrewshire	1	7	3
City of Edinburgh	26	26	34
Falkirk	10	6	7
Fife	15	26	20
Glasgow City	39	53	37
Highland	27	17	26
Inverclyde	3	2	1
Loch Lomond and The Trossachs National Park	1	0	1
Midlothian	6	7	6
Moray	9	8	4
Na h-Eileanan Siar	1	1	1
North Ayrshire	6	7	7
North Lanarkshire	16	20	22
Orkney Islands	2	0	0
Perth and Kinross	15	10	14
Renfrewshire	8	3	12
Scottish Borders	6	10	7
Shetland Islands	1	1	1
South Ayrshire	11	12	3
South Lanarkshire	20	15	18
Stirling	5	9	6
West Dunbartonshire	4	4	6
West Lothian	9	5	8
SCOTLAND	325	331	341

ANNEX E GUIDANCE ON THE PROMOTION AND USE OF MEDIATION – FAIRER SCOTLAND DUTY ASSESSMENT

ASSESSMENT NOT REQUIRED DECLARATION

Policy title	Guidance on the promotion and use of mediation
Directorate: Division: team	Directorate for Local Government and Communities Planning and Architecture Division
Policy lead responsible for taking the decision	Graham Robinson

Rationale for decision
<p>The Fairer Scotland Duty applies to 'decisions of a strategic nature' – these are the key, high-level choices or plans that the Scottish Government makes. The duty normally applies to new strategies, action plans, strategic delivery decisions about setting priorities and/or allocating resources, major new policy proposals, and preparing new legislation.</p> <p>Having considered the Fairer Scotland Duty Interim Guidance, I confirm that the guidance on mediation does not constitute a strategic decision and therefore an assessment is not required.</p>

I confirm that the decision to not carry out a Fairer Scotland assessment has been authorised by:

Name and job title of Deputy Director (or equivalent)	Date authorisation given
John McNairney, Chief Planner	03/12/2020

ANNEX F GUIDANCE ON THE PROMOTION AND USE OF MEDIATION – STRATEGIC ENVIRONMENTAL ASSESSMENT PRE – SCREENING ASSESSMENT

SEA PRE-SCREENING DOCUMENT	
Responsible Authority:	Scottish Government
Title of the plan:	Guidance on the promotion and use of mediation in the Scottish planning system
What prompted the plan: (e.g. a legislative, regulatory or administrative provision)	<p>Provisions in Section 40 of The Planning (Scotland) Act 2019 require Scottish Ministers to prepare guidance on the promotion and use of mediation in the Scottish planning system by 25 July 2021.</p> <p>The 2019 Act also requires in advance of publishing the guidance, Ministers are to consult planning authorities and other such bodies as are considered appropriate. Due to the scope of the draft guidance, this should additionally include: the general public; community councils; developers; and key agencies.</p>
Plan subject: (e.g. transport)	Town and Country Planning
Brief summary of the plan: (including the area or location to which the plan related)	<p>The draft guidance focusses on the use of mediation as a means of exploring, resolving or reducing disagreement between persons in the Scottish planning system. Persons can include: planning authorities; the general public; community councils; developers; and key agencies. It will apply across the whole of Scotland with local authorities needing to have regard to the guidance.</p> <p>The advice in the guidance will focus particularly on the potential use of mediation in development planning (consultation arrangements as set out in the participation statement and resolving issues in advance of the development plan examination) and development management (promoting the use of mediation in pre-application consultation on national and major developments with communities). Local Development Plans are developed by all Scottish planning authorities. There were in the region of 325 applications for major developments in Scotland in 2018/19.</p>

<p>Brief summary of the likely environmental consequences: (including whether it has been determined that the plan is likely to have</p> <p>Brief summary of the likely environmental consequences: (including whether it has been determined that the plan is likely to have no or minimum effects, either directly or indirectly)</p>	<p>The intention of the guidance is to support one of the overarching themes within the review of planning – collaboration over conflict. The focus of the draft guidance is on identifying the potential use of mediation in the planning system in areas where it is clear there is the potential for conflict or disagreement. Due to the inherent voluntary nature of mediation, there is no statutory requirement to enter into mediation by parties.</p> <p>The intention of the guidance is to support one of the overarching themes within the review of planning – collaboration over conflict. The focus of the draft guidance is on identifying the potential use of mediation in the planning system in areas where it is clear there is the potential for conflict or disagreement. Due to the inherent voluntary nature of mediation, there is no statutory requirement to enter into mediation by parties.</p> <p>In response to the criteria in Schedule 2 of the SEA (Scotland) Act 2005, the aim of the guidance is to support decision-making processes in the planning system. Mediation has the potential to influence decision making through the consideration of the views of all relevant parties. It has the potential to form one element of the consultation on the development plan. Though the final decision on the plan rests with the planning authority.</p> <p>With regard to pre-application consultation, it has the potential to influence the prospective applicants planning application. However, the decision on the planning application rests ultimately with the decision-maker.</p> <p>If any changes to the plan or any mitigation was required in order to resolve potential points of conflict these would be subject to their own SEA requirements, as part of the planning process. It is therefore our view that the guidance would have no or minimal environmental effects once implemented.</p>
<p>Contact details:</p>	<p>Graham Robinson Planning and Architecture Division, Scottish Government e-mail: Graham.Robinson@gov.scot</p>
<p>Date of opinion:</p>	<p>3 December 2020</p>



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2020

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80004-463-0 (web only)

Published by The Scottish Government, December 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS807166 (12/20)

w w w . g o v . s c o t