

Guidance on the Promotion and Use of Mediation in the Scottish Planning System

Business and Regulatory Impact Assessment

July 2021

Business and Regulatory Impact Assessment

Guidance on the Promotion and Use of Mediation in the Scottish Planning System

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 BRIA relates to the introduction of guidance on the promotion and use of mediation in the Scottish planning system.
3. The guidance on mediation is part of a wider package of measures to improve community engagement in planning matters, building public trust arising from the Planning (Scotland) Act 2019¹. 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 no legislative requirement for the use of mediation in the Scottish planning system.
5. A guide² 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 Engagement³. 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 guidance is on

¹ <https://www.legislation.gov.uk/asp/2019/13/contents/enacted>

² <https://www.gov.scot/publications/guide-use-mediation-planning-system-scotland/pages/1/>

³ <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>

potential early use of mediation, and other similar facilitatory techniques, in the planning system.

Rationale for Government Intervention

7. Section 40⁴ 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 and 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 places⁵ considered the role of mediation, primarily in development planning. This led to a question in the Scottish Government consultation paper Places, People and Planning⁶ asking if consultees considered that professional mediation supports the process of allocating land.

⁴ Section 40 <https://www.legislation.gov.uk/asp/2019/13/section/40/enacted>

⁵ 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>

⁶ 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>

The analysis of responses⁷ noted that there was not overwhelming support for the use of mediation with 63% of civil society and 63% of business sector respondents supporting the use of professional mediation in the process of land allocation. 53% of policy and planning and 61% of development industry respondents disagreed with the use of professional mediation in the process of land allocation.

11. The guidance builds on proposals by Scottish Mediation / PAS and draws on the potential matters the guidance could cover as set out in section 268A of the 2019 Act. 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. A further public consultation from December 2020 to March 2021 was undertaken on the draft guidance. The Government received 41 responses. Responses were published on Citizen Space⁸. An independent analysis of the responses is to be published.

- **Business**

13. The independent review of planning's report, Empowering planning to create great places⁹ considered the role of mediation, primarily in development planning. This led to a question in Places, People and Planning¹⁰ asking if consultees considered that professional mediation could support the process of allocating land at the Development Plan Examination. In addition, at the

⁷ 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>

⁸ Consultation responses (2021) https://consult.gov.scot/local-government-and-communities/mediation-in-planning/consultation/published_select_respondent

⁹ 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>

¹⁰ 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>

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 responses¹¹ noted that there was not overwhelming support for the use of mediation - 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 land allocation.

14. Of the 41 responses, 12 were identified as being from the private sector. These were subdivided into responses from mediation services and from other businesses which included responses from the housing and aggregates sectors as well as representative bodies.
15. To support the development of this BRIA, four mediation service providers and four other businesses were contacted to provide additional information. These responses, plus any updates on costs from the consultation on changes to Pre-Application Consultation¹² have fed into the final BRIA.

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, consult on and issue guidance under Section 268A of the amended 1997 Act within two years of the coming into force of the 2019 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 include in its guidance to planning authorities a specific reference to mediation as one of the range of techniques and activities for consulting stakeholders.

¹¹ 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 Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021 https://www.legislation.gov.uk/ssi/2021/99/pdfs/ssifia_20210099_en.pdf Business and Regulatory Impact Assessment

Guidance on the use of mediation in development plan schemes (DPS)

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 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. The guidance also notes that planning authorities should look to factor in the potential use of mediation into the timetable required under regulations.

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 on procedures undertaken 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 Pre-Application Consultation (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, consult on and issue 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. As noted in the 2009 Guide to Mediation in Scotland¹³ 'a number of factors will influence the level of fee in each different situation. These factors will include duration, location, preparation required, the seniority, professional affiliation and experience of the mediator, the number of parties and the complexity of matters under discussion'. There are examples of mediation being free, such as this example¹⁴, 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. The ninth CEDR mediator audit (2021), though not Scottish based, shows a wide range of fees for commercial mediation¹⁵. We have gathered the following indicative information from public sources and additional information on the cost of a range of mediation practices:

- £100 per hour Scottish Mediation Helpline¹⁶

¹³ <https://www.gov.scot/publications/guide-use-mediation-planning-system-scotland/>

¹⁴ <https://www.sacro.org.uk/services/mediation/community-mediation-service>

¹⁵ Table, page 29 https://www.cedr.com/wp-content/uploads/2021/05/CEDR_Audit-2021-lr.pdf

¹⁶ <https://www.scottishmediation.org.uk/wp-content/uploads/2016/03/H-1-Mediation-Information-v1.pdf>

- Fees equate to around £100 per hour per party RICS Dispute Resolution Service¹⁷
- £300 – 1,500¹⁸
- £115 per hour (family mediation example)¹⁹ Quotes the average cost of family mediation as £140 per hour
- From £600²⁰ per party per day (includes preparation time)
- From £750²¹ per party per day

38. We have therefore assumed that the costs of mediation will be around £500 - 750 per party per day and for the purposes of the BRIA will assume £600 per party per day. This however does not include preparation time in advance plus staff time of the parties and costs of venue hire etc. There may for example be a fee of £250 per party for pre-mediation meetings. We had estimated that such additional costs could be in the region of an additional £2,500 per party. One developer suggested that this could be 2-3 times higher given the number of people involved directly and indirectly with the process through plan preparation, providing supporting information, meeting attendance etc. This suggests a range in total of £3,100 – £5,600 per party.

39. The costs for community groups who wish to engage in mediation will depend on similar factors as to those set out in paragraph 36 above. It will also depend on how costs are distributed between the parties. Whilst normally these are shared by parties, it has been suggested that there are examples of costs being paid for by one party. Where community groups are represented by volunteers, costs may be reduced but of course will depend on personal time being available.

Planning authorities

Local Development Plan engagement

40. The Updated Financial Memorandum to the Planning Bill²² 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. 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:

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

¹⁷ Online Mediation: A guide to negotiating disputes digitally (2020)
<https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/drs/client-guide-online-mediation/>

¹⁸ <https://www.resolutionpeople.co.uk/know-cost-court-v-cost-mediation/>

¹⁹ <https://www.mediateuk.co.uk/costs-payments/>

²⁰ <https://www.cedr.com/commercial/fee-mediated-mediation/>

²¹ http://www.eskhill.com/mediation-fees.htm#xl_HeadingAnchor:58S3Wiy

²² [https://www.parliament.scot/S5_Bills/Planning%20\(Scotland\)%20Bill/SPBill23AFMS052019.pdf](https://www.parliament.scot/S5_Bills/Planning%20(Scotland)%20Bill/SPBill23AFMS052019.pdf)

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 a 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. Whilst we will assume a range of 3 – 5 mediations per LDP, at least one consultee suggested this could be significantly higher. This equates to a possible cost of £61,200 - £190,400.

$3 \text{ to } 5 \text{ mediations} \times £3,100 - £5,600 \times 34 \text{ PAs} / 5 \text{ years} = £61,200 - £190,400 \text{ per year}$

44. By removing a number of unresolved matters from the development plan examination as a result of mediation, costs could be reduced to the planning authority. We are not able to estimate that potential saving.

Costs of Pre-application consultation

45. Appendix A²³ to the recently completed consultation paper 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 Cairngorms National Park Authority to 39 for Glasgow City Council. The average number of applications for major development²⁴ 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.

²³ <https://www.gov.scot/publications/proposed-changes-pre-application-consultation-requirements-planning-consultation/pages/14/>

²⁴ 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.

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 £61,200 - £190,400.

3 to 5 mediations x £3,100 - £5,600 x 34 PAs / 5 years = £61,200 - £190,400 per year

Costs of Pre-Application Consultation

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

50. The Scottish Land Commission published a research report²⁵ 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 x 332 applications = £11,620,000

52. We are estimating that around 5% of PACs may involve the use of mediation. This equates to around 17 per year which estimates to additional cost to developers of between £52,700 – £95,200.

£3,100 - £5,600 x (5% of 332 applications) = £52,700 - £95,200

53. We have no figures available which allow us to project forward with any certainty how mediation will ultimately reduce the costs to the development

²⁵ <https://www.landcommission.gov.scot/our-work/housing-development/early-engagement-in-planning>

industry by reducing issues of conflict with the planning authority or communities.

Scottish Firms Impact Test

54. 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.
55. 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.
56. 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

57. 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.

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

58. 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?

59. No. As above.

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

60. No. As above

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

61. No. As above.

Consumer Assessment

62. 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, or avoid disproportionate engagement which might be frustrating rather than productive.

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

63. 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?

64. 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?

65. No.

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

66. No.

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

67. 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?

68. No.

Test run of business forms

69. No new forms.

Digital Impact Test

70. 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?

71. Yes.

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

72. 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?

73. No.

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

74. No.

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

75. No.

Legal Aid Impact Test

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

Enforcement, sanctions and monitoring

77. As mediation is voluntary, there are no sanctions should parties not wish to mediate.

78. 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.

79. 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

80. 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.

Conclusions

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

82. Whilst this 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 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 planning processes, the suggested overall annual cost to business of the changes is £114,000 – £285,600, with the range of costs to planning authorities being £61,200 - £190,400, primarily in local development planning. As noted above, we have not been able to estimate the financial benefits of reducing conflict in the Scottish planning system.

There is a legal imperative for the Scottish Government to act. The proposals, as a package, would appear to represent a proportionate response.

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.	We have not been able to estimate the financial benefits of our proposals. Improved accessibility of information with potential benefits for proposals and outcomes.	Increased costs across all sectors of £120,000 – £380,000 for all parties.
3. Encourage prospective applicants to consider mediation in PAC.	We have not been able to estimate the financial benefits of our proposals. Improved engagement and feedback for the prospective applicant and the public.	Increased costs across all applications subject to PAC: £52,000 - £95,000 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: Tom Arthur MSP

Date: 24 June 2021

**Tom Arthur MSP, Minister for Public Finance, Planning and Community Wealth
Scottish Government Contact point: Graham Robinson
w w w . g o v . s c o t**

©



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

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: 978-1-80201-123-4 (web only)

Published by The Scottish Government, July 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS898346 (07/21)

W W W . g o v . s c o t