

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

Equality Impact Assessment – Results

July 2021

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Title of Policy	Guidance on the promotion and use of mediation in the Scottish planning system
Summary of aims and desired outcomes of Policy	<p>The guidance is part of a programme to improve community engagement in planning, deriving from provisions contained within the Planning (Scotland) Act 2019.</p> <p>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 identifying where there may be value in the use of mediation in the planning system in areas where there is some potential for conflict or disagreement.</p>
Directorate: Division: team	Local Government and Communities, Planning and Architecture Division

Executive summary

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 protected characteristics of: age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, sex, sexual orientation, and religion and belief.

The Equality Act 2010 harmonised existing equality legislation and includes a public sector duty ('the Duty') which requires public authorities to pay due regard to the need to:

- Eliminate discrimination, harassment, victimisation or any other prohibited conduct;
- Advance equality of opportunity; and
- Foster good relations between different groups - by tackling prejudice and promoting understanding.

This Equality Impact Assessment (EQIA) has considered the potential impacts of introducing guidance on the promotion and use of mediation in the Scottish planning system on each of the protected characteristics. The provisions and how they may impact on people across the protected characteristics are set out under Key Findings.

Background

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.

Section 40 of the Planning (Scotland) Act 2019 (the 2019 Act) inserted section 268A into the Town and Country Planning (Scotland) Act 1997 (the 1997 Act). 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.

The guidance recognises that mediation is a voluntary process between parties. The Scottish Government is therefore not looking to be prescriptive, but supportive of mediation. Key points in the guidance include:

Development Planning:

- that mediation is one of the tools planning authorities may want to consider using when developing their participation statement;
- planning authorities are to look to set out in their participation statement the potential scope for mediation;
- the potential use of mediation as a method to resolve disputes prior to the proposed plan stage when the planning authority has a settled view.

Development Management:

- encourage prospective applicants undertaking Pre-Application Consultation to consider mediation as an engagement method with communities;

- planning authorities to consider if mediation, in appropriate circumstances, is something to be suggested as additional consultation activity.

The Scope of the EQIA

In order to determine the potential equality impact of the proposals, the Government undertook an initial review of equality issues in the Government's Equality Evidence Finder alongside evidence from the Planning Bill, with evidence updated where new information has become available. The Scottish Government undertook a public consultation between November 2020 and March 2021 which included a partial EQIA.

The evidence was supplemented by questions in the consultation paper asking: if consultees had any views on the content of the partial EQIA; and had, or could direct us to any information that would assist in finalising the assessment.

Key Findings

It is clear from the engagement during and since the Independent Panel's review of planning in 2016 that there is a need to improve public engagement measures in the Scottish planning system. It is also clear from that work that different groups in society have different levels of engagement with the planning system. Evidence would suggest that people wish to engage in planning though they are not always able to do so.

If not now, when? - Social Renewal Advisory Board report (2021) called on the public sector to give more control to people and communities over the decisions that affect their lives. In addition, The Social Capital in Scotland: Report (2020) noted that levels of perceived influence over local decision making have been consistently low over recent years, and across all subgroups of the population.

Therefore, 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. However, it has also been suggested in responses to the consultation that the guidance should highlight the need to adopt different mediation approaches to take account of the requirements of all those who wish to engage with the process. This included reference to the needs of those with protected characteristics such as ethnicity and language use, age and disability.

With current restrictions on public gatherings, there may also be concerns around how mediation can be undertaken face-to-face and what impact online opportunities might have on people's access to mediation. As an example, an online mediation service is provided by the RICS Digital Resolution Service. Whilst its guidance notes that ideally there should be access to a secure internet connection, plus appropriate device such as a smartphone, tablet or laptop, it can also be undertaken with access to a telephone and e-mail address.

The potential impact on each of the protected groups has been considered using the Scottish Government's Evidence Finder plus additional information. This is set out below.

Age

Evidence and conclusions relating to Children and Young People are primarily contained in a separate Childs Rights and Wellbeing Impact Assessment. Evidence below relating to the age characteristic relates primarily to older people's aspirations to maintain active engagement in their communities. Though there is additionally evidence around older people's disproportionate use of the internet.

A Fairer Scotland for Older People: framework for action (2019) tells us that older people want action to ensure they have access to opportunities to remain actively engaged with, and involved in, their communities.

The Scottish Household Survey Annual Report (2019) noted that 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.

Hard to Reach, Easy to Ignore (2017) makes references to how language barriers, lack of confidence and dominant characters can discriminate against some people including both younger and older people.

The Scottish Household Survey Annual Report (2020) noted that 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) of adults aged 16-24 reported using the internet compared to 43 per cent of those aged 75+.

Disability

Evidence below relating to the disability characteristic relates to disabled people's aspirations to maintain active engagement in their communities. In addition, evidence would suggest that disabled people's access to the internet is more limited.

Through inclusive digital and offline engagement and capacity building, *Supercharged: A Human Catastrophe* (2020), prepared by the Glasgow Disability Alliance, suggests raising disabled people's aspirations and opportunities to fulfil their potential, and strengthen participation and democracy. It also suggests that the lived experience of disabled people in the redesign of public spaces and town planning should be embedded.

Hard to Reach, Easy to Ignore (2017) also makes references to how language barriers, lack of confidence and dominant characters can discriminate against disabled people.

The Scottish Household Survey Annual Report (2020) reported that 71 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).

Sex

The Scottish Household Survey Annual Report (2019) noted that the majority of all adults said that they felt a very strong or fairly strong sense of belonging, with the gender of the respondent having no bearing on their strength of belonging.

Historical research would indicate that women are slightly more likely than men to become involved in the planning process. This report was focussed on development management (*Planning and Community Involvement in Scotland* (2004)).

The National Trust for Scotland Heritage Observatory briefing note (2017) asked if people felt able to influence planning decisions which affect their local area and how it is being developed. Findings on no

influence / some influence were similar for male (61%, 35%) and female (59%, 36%).

Hard to Reach, Easy to Ignore (2017) also includes reference to the barriers that women can face in community engagement. The Royal Town Planning Institute's most recent guidance from 2007 suggests that there is evidence of an under-representation of disabled women in consultation processes. It goes on to note that women can find it more difficult to engage in planning processes since they are more likely to provide unpaid care and the timing and places of consultation may not recognise caring responsibilities.

Sexual Orientation

As a whole, Consultation on the Modernisation of the Planning System with 'seldom heard' Groups (2009) suggested that this group had no special needs or requirements when it came to planning with their views representative of the general population.

The findings of Inclusive participation in rural Scotland: research report (2021) suggest that the rural experiences of the LGBTI community in Scotland often constitute barriers to participation in society more generally. It concluded that the lack of participation in decision-making can have the unintended effect of reinforcing already existing barriers.

In its summary Hard to Reach, Easy to Ignore (2017) noted that communities are now recognised to exist beyond geographical areas, therefore more needs to be done to tackle the inequalities faced by communities of identity (such as the LGBT+ group).

Race

Evidence below relating to the race characteristic relates primarily to people's aspirations to maintain active engagement in their communities. Hard to Reach, Easy to Ignore (2017) also includes reference to minority ethnic groups when considering discrimination against people with this protected characteristic.

Article 12's Planning processes in Scotland: a Gypsy/Traveller perspective (2016) makes a number of recommendations including on improvements to consultation arrangements, including the potential for the use of mediation by the community.

The Young Gypsy/Travellers Discuss the United Nations Convention on the Rights of the Child - Children and Young People's Evidence Bank report (2018) contains the recommendations of young people with regards to the Concluding Observations published in 2016, and the issues which they feel continue to impact upon their lives, and those of their families, friends and communities. The recommendations included:

“We should be consulted about where sites should be”;

“We should be part of the planning process to allow us to say what type of sites and facilities we want”;

“There should be more opportunities for us to take part in decision making and have our voices heard”.

Religion and Belief

Planning Advice Note 3/2010: Community Engagement recognises that an understanding is needed about the support particular individuals or groups require to help them engage. It notes that the needs of minority groups should be accommodated where possible, including the opportunity to access information in alternative formats such as the provision of information in alternative languages.

Other Protected Characteristics

We have not been able to gather any information regarding the other protected characteristics.

Recommendations and Conclusion

The EQIA has supported the development of Scottish Government guidance on the promotion and use of mediation in the Scottish planning system. The aim of the guidance is to have increased community engagement for all sectors of society, with mediation acting as one methodology available to communities.

The EQIA has helped highlight the potential issues which may impact disproportionately on those with particular protected characteristics.

We noted the potential for indirect discrimination 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.

We will not be prescriptive about the use of either online or face-to-face mediation with the method chosen to be appropriate to the particular circumstances and attendees. This acknowledges that older people, and disabled people, are less likely to use online technologies whereas an online approach may work better with younger people.

We note that online techniques employed by RICS includes access to mediation via a telephone and e-mail rather than internet enabled devices.

We also note from Hard to Reach, Easy to Ignore that 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.

Whilst we have noted these concerns, it is considered that by its nature, mediation practices and processes should mitigate against these factors. The principal role of the mediator being to facilitate communication between the parties in conflict with a view to helping them reach a voluntary resolution to their dispute that is timely, fair and cost-effective.

By promoting engagement in shaping the places people live, the guidance may have a positive impact across all protected characteristics where we have identified evidence. Supporting engagement in the planning system should also provide opportunities to tackle discrimination and advance equality. By encouraging people from protected groups to participate in public life, the guidance should promote good relations among and between people of different protected characteristics.

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