

# Data Protection Impact Assessment (DPIA) – template for report

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## 1. Introduction

The purpose of this assessment is to consider the privacy implications associated with the consultation arrangements undertaken by the Planning and Architecture Division of the Scottish Government.

The Data Protection Impact Assessment (DPIA) was prompted by the development of the consultation on Scotland's fourth National Planning Framework (NPF4). The opportunity was taken to broaden out the consideration to the wider engagement work of the Division.

## 2. Document metadata

2.1 Name of Project: National Planning Framework 4, and associated consultations

2.2 Author of report: Graham Robinson

2.3 Date of report: November 2020

2.4 Name of Information Asset Owner (IAO) of relevant business unit: Graeme Walker

2.5 Date for review of DPIA:

Review date	Details of update	Completion date	Approval Date

## 3. Description of the project

3.1 Description of the work:

Planning and Architecture Division undertakes a range of consultations as statutory requirements, or through policy development with stakeholders such as community / amenity groups, businesses, other Government departments and agencies plus the public at large. The Scottish Government's policy on land use issues, Scottish Planning Policy (June 2014) supports the use of innovative techniques to support engagement in the planning system.

In general, when preparing consultation questionnaires, PAD will follow the main structure of the consultation paper. And respondents will be invited to give answers to specific questions. The opportunity will also be available to provide reasons for their answers, allowing a more in depth analysis to take place.

The Scottish Government is the data controller for the consultations. Views may be collected via Citizen Space or respondents send their responses in by e-mail or post.

Any questionnaire will be downloadable and hard copies may be posted / e-mailed out to meet specific respondent's requirements if requested. Hard copies will be returned directly to Planning and Architecture to ensure confidentiality. In order to fully analyse the results received, some personal

information will be requested to allow us to identify any data trends. Personal data will also be requested to enable a receipt of response or to enable feedback to any queries received.

It is our usual practice to publish the responses as per the preferences that respondents have indicated via Citizen Space, or, where responses arrived by e-mail / mail, via the Respondent Information Form (RIF), which asks about data release preferences.

Following the closure of any consultation, we would look to publish responses where approval has been given for this by the respondee. All the responses will be moderated.

In order to obtain an independent analysis of the responses submitted, PAD will normally commission an external analysis of these responses. The overall aim is to provide a clear and concise report for publication, which reflects an independent and robust analysis of the consultation responses, in order to inform the next stages of policy / legislatively development.

## **Consultation Process**

Consultations are hosted on Citizen Space, the Scottish Government's digital platform for consultations, and published on the [Consultation Hub](#), enabling people to submit their response online. Citizen Space is managed by the Scottish Government's Digital Engagement Team. Consultations are also published on the Scottish Government website, enabling people to e mail or post a response.

The consultations will run for a pre-determined length, depending on the circumstances of the case. Twelve weeks will be the default length of the consultation unless circumstances would indicate otherwise.

## **Governance**

The governance arrangements for consultations broadly involve the following:

1. Consultation Manager (Scottish Government): usually the policy lead for the Consultation.
2. Digital Engagement Manager, Comms (Scottish Government): manages the Citizen Space element of the consultation process.
3. Consultation Analysis Contract Manager (Scottish Government): manages the consultation analysis project on a day-to-day basis.
4. Delegated Purchasing Officer (Scottish Government): oversees the external procurement process, leading up to and including the award of a contract and any subsequent contract changes.
5. Tender Assessment Panel (Scottish Government): could include some of the above. The panel evaluates the bids from external tenderers against the award criteria set out in procurement Schedule 4. Technical Proposal.

In addition, the Data Protection and Information Assets Team will have some involvement in providing expertise to ensure that sufficient data protection measures are established and carried out.

## **Reporting**

The Consultation Analysis Contractor will be responsible for the analysis of the consultation responses, as well as the preparation of the final reports to a standard agreed with the Scottish Government. The final consultation analysis report will be published on the Scottish Government's website. Once the contractor has completed the analysis report, the Scottish Government will provide quality assurance, which includes checking for personally identifiable information.

It is the responsibility of the contractor to ensure that their methods do not contravene the provisions of current Data Protection Laws. The contractor will, in conjunction with the Scottish Government and in its own right, and in respect of the research contract, make all necessary preparations to ensure it will be compliant with Data Protection Laws.

Data Protection Laws means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification of re-enactment thereof, and the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data on the free movement of such data, and repealing Directive 95/46/EC.

Where personal data and/or or special category data, as defined under the General Data Protection Regulation (EU) 2016/679, is to be processed as part of the contract, the data protection schedule (part of the Scottish Government terms and conditions) will be completed with the appropriate details and obligations for the contract. The data protection schedule will be signed off as forming part of the overall contract, thereby meeting the Government’s obligation to have a legally binding controller processor contract in place where personal data are processed in connection with a contract. For the purposes of any such processing, the supplier will usually act as the data processor and the purchaser (the Scottish Government) acts as the data controller.

### **Risk Management**

Managing risk, including disclosure of personal data or the possibility of an individual being identified in data outputs, is essential to the successful operation of the consultation. Risk management, data protection, and research ethics are key considerations in planning and procuring the consultation analysis. These issues were outlined in the consultation analysis procurement specification. Measures will be continually reviewed to ensure that personal data is handled in accordance with data protection legislation

### 3.2 Personal data to be processed.

Variable	Data Source
E-mail address	Citizen Space (online responses). Respondent Information Form (e mailed or postal responses).
Name	Citizen Space (online responses). Respondent Information Form (e mailed or postal responses).
Whether a person is responding on behalf of an organisation, or issuing a response as an individual. (If respondent is from an organisation, they are asked the type of organisation – developer, public sector, community council etc.).	Citizen Space (online responses). Respondent Information Form (e mailed or postal responses).
Postal address	Respondent Information Form (postal responses).
Contact telephone number	Respondent Information Form (e mailed or postal responses).

### 3.3 Describe how this data will be processed:

#### **DATA CONTROLLER AND DATA PROCESSORS**

**Data Controller:** The Scottish Government.

The Information Asset Owner is: Graeme Walker

The Consultation Analysis Contract Manager: tbc as per each consultation / contract plus PAD:  
Business Management Unit

**Data Processor:** The appointed Contractor / Any appointed Sub-Contractors. The Contractor would need written permission from the Scottish Government, as the Data Controller, to contract them.

#### **DATA SUBJECTS**

The data subjects are the self-selecting respondents to the consultation. Responses may be submitted by both individual members of the public and by organisations. During the data collection process, all respondents are asked to provide information about themselves, either via the Citizen Space online platform or by completing a Respondent Information Form. This form asks respondents to state their publication preference as follows.

*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*

If **individual** respondents do not answer this question, the default position is not to publish their response.

If **organisation** respondents select 'do not publish' or do not answer this question, the organisation name may still be listed as having responded to the consultation.

Respondents are also asked to indicate whether they are content to be contacted again in the future by the Scottish Government in relation to this specific consultation exercise.

#### **DATA COLLECTION, STORAGE AND TRANSFER**

Data will predominately be collected from data subjects electronically via the Citizen Space online platform. Some respondents may also submit their response via post or email and these are uploaded on to Citizen Space by the Scottish Government. Responses on Citizen Space can either be downloaded individually or automatically entered into a database (downloadable onto Excel).

**Data Access:** after the consultation analysis contract is awarded, the Contractor will be provided with login details for Citizen Space (for the single consultation only), where they will be able to access the consultation responses submitted online or uploaded as attachments, and download the database of online responses onto Microsoft Excel.

To ensure secure access, the login information should only be provided to pre-arranged, named individuals within the contractor. It should also be sent by secure email, using an iFix-approved [Secure Data Handling tool](#) or [eRDM Connect](#). As the login details provide free access to the information, they should be treated as securely as the information itself.

The database will include all or some of the following information about each respondent who replied using the online data form:

- Name
- Email address
- Responding as an individual or an organisation?
- (If responding on behalf of an organisation) Organisation's name and sector (from list of options - e.g. public, private, third).
- Permission to publish consultation response? (public response with name, publish response only, do not publish response).
- Content to be contacted by the Scottish Government in the future in relation to this consultation exercise?
- All inputted responses to the consultation questions.

The database will include all or some of the following information about each respondent who replied by e mail or post and either completed a Respondent Information Form or provided the information within their response.

- Name
- Email address
- Responding as an individual or an organisation?
- (If responding on behalf of an organisation) Organisation's name and sector (from list of options - e.g. public, private, third).
- Permission to publish consultation response? (public response with name, publish response only, do not publish response).
- Content to be contacted by the Scottish Government in the future in relation to this consultation exercise?
- All inputted responses to the consultation questions.

#### **DATA CLEANING:**

Before beginning the analysis, the Contractor is required to identify any blank or duplicate responses. Multiple different responses submitted by the same individual or organisation should be combined into a single composite response, using an approach agreed with the Scottish Government. Blank responses will be removed before analysis.

For audit and quality control purposes, a record should be kept of any exclusions or changes made to responses included in the final database (i.e. any responses that are excluded from the analysis and the reason for exclusion; any identified as campaign responses; and any reclassification of organisation type). This information should be provided in a separate worksheet within the master database and referred to in the final report.

#### **DATA PUBLICATION**

Responses will be published in accordance with respondents' expressed publication preferences. Where respondents have given permission for their response to be published, with or without their name, and after the Scottish Government has redacted any personal data or defamatory content, consultation responses will be published at <http://consult.gov.scot>.

#### **DATA PURGING AND ARCHIVAL**

At the end of the contract, clean datasets will be transferred to the Data Controller (Scottish Government). The datasets will be held on a secure, password protected server in the Scottish Government, in a sub-folder which is restricted to a limited number of staff working on the Consultation. It is expected that the data will only be held for as long as the data is required after the contract is completed. As soon as possible after the contract is completed, a review will take place to determine whether the data needs to be retained or destroyed. If it is decided that there is no

rationale to justify continuing to hold the data, then it will be destroyed. If it is decided that there is justification to continue to hold the data then it can be held until a further review 12 months later.

## **EVENT ORGANISATION**

To ensure stakeholders can continue to effectively engage in the development and implementation of National Planning Framework 4 and associated programmes Planning and Architecture Division may sometimes organise events either to gather ideas. These events provide stakeholders with an opportunity to contribute their ideas, hear more about developments and inform subsequent responses. To organise such events, we will take bookings by email and collate using a spreadsheet. In order to maintain ongoing relationships and allow for any follow up / feedback, information will only be held during the programme of engagement and no longer than three months after the project has been completed. Attendees will be invited to sign up to hear about future updates (e.g. be part of a future consultee panel, newsletter list, etc.).

### 3.4 Explain the legal basis for the sharing with internal or external partners:

The legal basis for processing personal data will be public task.

The analysis of the data arising from the consultations provides information that will assist the Scottish Ministers in fulfilling their duties to engage under a range of legislation, including those requiring the preparation of impact assessments under environmental, equalities and islands legislation. The information may form the basis of future discussion with key stakeholders.

In terms of the National Planning Framework, in preparing the Framework, Ministers are to consult with those people in considers may be able to deliver the six outcomes set in the Planning (Scotland) Act 2019.

## **4. Stakeholder analysis and consultation**

### 4.1 List all the groups involved in the project, and state their interest.

Colleagues within the Government's Data Protection Team were consulted on this DPIA. With regard to the current project (NPF4) the consultees will be listed in a Programme of Engagement. More generally the consultees are across a range of Government agencies, local authorities, other public bodies, the third sector, development and business interests plus community interests.

<b>Group</b>	<b>Interest</b>
Local authorities	Statutory role as decision-makers in the planning system
Other public bodies	May have a role as a key agency / statutory consultee, or use planning to delivery development. Key Agencies in Development Planning are listed here: <a href="https://www.gov.scot/groups/key-agencies-group/">https://www.gov.scot/groups/key-agencies-group/</a> Development Management statutory consultees

	are listed in Schedule 5 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.
Public at large	Development decisions impact on the places they live, work or play
Community councils	Statutory role in the planning system
Equality, Amenity and Environmental Interests / Groups	Provide representations reflecting their particular cultural, environmental, societal interest
Business and developer interests	Private sector organisations, individual businesses and enterprises which use the planning system to deliver investment and development
Data Protection and Information Asset Team	Advice on completing the DPIA
Digital Engagement Unit	Creating the consultation in Citizen Space
Contractor (sub-contractor)	The contractor for the consultation analysis will be the Data Processor and will be responsible for the organisation, input and analysis of the consultation responses, as well as the preparation of the final consultation analysis report for the Scottish Government.

#### 4.2 Method used to consult with these groups when making the DPIA.

Respondents will be invited, through the consultation, to comment on the DPIA

#### 4.3 Method used to communicate the outcomes of the DPIA .

Our IIA report will reference work on the DPIA. Stakeholders will be informed when it has been completed and that responses will be published and processed in line with data protection requirements and their stated choices in the RIF. We will publish the finalised DPIA on our website.

### 5. Questions to identify privacy issues

#### 5.1 Involvement of multiple organisations

This consultation analysis will generally involves 2 organisations:

- The Scottish Government as the Data Controller.
- The Contractor engaged to undertake analysis of the consultation responses on behalf of the Scottish Government as the Data Processor.

The data protection schedule will be signed off as forming part of the overall contract, thereby meeting the Government's obligation to have a legally binding controller processor contract in place where personal data are processed in connection with a contract.

All staff involved in processing data will be aware of procedures for data security and privacy, to comply with GDPR. All project staff will know how to recognise a personal data breach (PDB) and how to report suspected breaches in line with GDPR requirements. All third parties are asked to sign appropriate agreements to ensure that they comply with data protection legislation and information security.

## 5.2 Anonymity and pseudonymity

Scottish Government will be responsible for ensuring that responses are published in accordance with respondents' expressed publication preferences.

Individual respondents' names will be published with their responses only if they have given explicit permission for this. Where an individual respondent selects 'publish response only', SG will redact their name and any other potentially identifiable information from their response. Any direct quotations from responses included in the report will not be attributed to identifiable individuals, regardless of their expressed publication preference. There will be no quotations from responses where permission to publish has not been given.

Organisation respondents which select the option 'publish response only (without name)' may still have the organisation name published, but the name of the specific person submitting the response will not be published. Organisations which have given permission for their response to be published could be mentioned by name in the final report, though it is also possible that, rather than being explicitly named, they might be referred to as 'an organisation from the private/public/third sector' etc.

When the Contractor (the Data Processor) is given access to the dataset of responses, they will have access to the full respondent information provided by each respondent - e.g. name, contact details – as well as to their response. It will be the responsibility of the Contractor to comply with GDPR and the Scottish Government's Terms and Conditions, and ensure that no individuals are identifiable in the final report but also that appropriate anonymization measures are taken in the report as well.

We will keep under review whether anything else needs to be redacted from responses should it risk revealing a respondent's identity.

## 5.3 Technology

Measures are in place to ensure that data is collected, stored or transferred to and from the contractor using secure technologies.

Citizen Space is a secure online platform to which contractors will be given log-in access as required.

Where responses are not received via Citizen Space, such as by post / email, these are uploaded on to Citizen Space by the Scottish Government

Contractor data protection requirements / security measures are addressed through the SG's standard Terms and Conditions which include provisions for data protection.

The research contractor data handling procedures may include:

- Information Security Management System,
- Physical Security,
- Access Control,
- Security and Privacy Enhancement Technologies,
- Training and security checks in relation to personnel,
- Incident/Reponses Management/Business Continuity.

## 5.4 Identification methods

Identifiable respondent information is accessible in the dataset created through Citizen Space

## 5.5 Sensitive/Special Category personal data

It is not anticipated that many of the consultation responses would contain 'special category data,' as defined by GDPR. The legal basis for processing this data, under Article 9 of GDPR, will be 'substantial public interest.'

*(g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject'.*

However, there is a risk that such data is submitted in free text boxes. Data on text boxes will be reviewed and irrelevant 'special category' data removed.

Any plan to proactively collect such data will trigger a review of the DPIA or the development of a new DPIA.

## 5.6 Changes to data handling procedures

There will be no changes to general data handling procedures for consultations.

## 5.7 Statutory exemptions/protection

We don't believe that there any exemptions from the Data Protection Act will apply to this project. Though exemptions for statistical and research purposes may apply.

## 5.8 Justification

In order to obtain an independent and objective analysis of the responses submitted, the Scottish Government commissions this analysis to an independent contractor. The overall aim of the project is to provide a clear and concise report for publication, which reflects an independent and robust analysis of the consultation responses, in order to inform the next stages of policy development

## 5.9 Other risks

None identified

## 6. General Data Protection Regulation (GDPR) Principles

Principle	Compliant – Yes/No	Description of how you have complied
6.1 Principle 1 – fair and lawful, and meeting the conditions for processing	Yes	The legal basis for processing personal data will be public task. Planning and Architecture Division has prepared a privacy statement which is available on the Scottish Government website. <a href="https://www.transformingplanning.scot/privacy/">https://www.transformingplanning.scot/privacy/</a> The Scottish Government would communicate this to consultees before they make their comments in any consultation?
6.2 Principle 2 – purpose limitation	Yes	The data will be collected for specific purposes and will not be processed in a manner incompatible with those proposes. The purpose will be clearly explained to respondents prior to responding..

6.3 Principle 3 – adequacy, relevance and data minimisation	Yes	<p>The consultation will only gather necessary to achieve the project’s objectives.</p> <p>Participants are able to input as much information as they would like to open questions, and are able to skip open questions.</p>
6.4 Principle 4 – accurate, kept up to date, deletion		<p>The data from the consultation and analysis does not need to be kept up to date as it represents the participants’ views and circumstances at the point of collection. (See Principle 5 for deletion) and will be deleted in accordance with SG retention and disposal strategy.</p>
6.5 Principle 5 – kept for no longer than necessary, anonymization		<p>The data processor will be processing data which is directly identifiable in the dataset. On anonymization measures, see section 5.2.</p> <p>Review measures will be in place to ensure that the data will be deleted by the contractor at the end of the contract, and will be kept for no longer than is necessary for its lawful purpose by the Scottish Government.</p>
6.6 GDPR Articles 12-22 – data subject rights		<p>Data subjects rights are set in the SG privacy policy which is to be found in the RIF linked to the consultation process.</p> <p>The data controller will process and manage any requests to exercise the rights of the data subject.</p>
6.7 Principle 6 - security		<p>Data will be protected from loss or unlawful processing using appropriate methods, including storing electronic data on password protected secure servers, providing the contractor with a password to access the secure Citizen Space platform (which will give them access until the project is completed).</p> <p>The Data processor is subject to SG Terms and Conditions which cover data security.</p>
6.8 GDPR Article 44 - Personal data shall not be transferred to a country or territory outside the European Economic Area.	Yes	<p>The project is not expected to involve the transfer of data outside the EEA.</p> <p>However, if there is an open competition tendering process to procure the consultation analysis, there is a possibility that the contract could be won by a supplier outside of the EEA, in which case appropriate safeguards will be put in place and data subjects would be advised in advance.</p> <p>Delib is registered as a data processor. For customers in the EU, Rackspace is its Infrastructure as a Service hosting provider. Rackspace provides and manages the UK datacentres in which the Citizen Space site is hosted.</p>

## 7. Risks identified and appropriate solutions or mitigation actions proposed

Is the risk eliminated, reduced or accepted?

Risk	Ref	Solution or mitigation	Result
We may not have a lawful basis to process the personal data	PAD1	We have identified an appropriate lawful basis 6(1)(e) 'necessary in the performance of a task carried out in the public interest' to meet our duties under the Planning (Scotland) Act 2019.	<b>Eliminated</b>
We may fail to keep personal data protected against loss, unauthorised access and accidental damage	PAD2	Electronic data is securely transferred to the data processor and must be password protected or encrypted.  Any paper copies of documents holding personal information (i.e. posted responses) are kept in locked cabinets when possible.  Data processing staff are required to comply with SG terms and conditions around data security.	<b>Reduced</b>
Our data processors may further process the personal data without our instruction or knowledge	PAD3	We have an appropriate contract in place with our data processors which sets out their legal obligations in relation to current data protection rules.	<b>Reduced</b>
We may publish data that may enable the identification of individuals	PAD4	The data will be reviewed and prepared for redaction to ensure that where an individual has not provided permission for their name to be published it is removed. This responsibility sits with the policy lead.	<b>Reduced</b>
We may fail to properly inform individuals of the data processing activity	PAD5	A privacy notice will be in place to fully inform individuals about the processing and will be made available to view in Citizen Space before any data is request. The privacy notice will also be available in hard copy.	<b>Reduced</b>
We may process special category data without lawful basis	PAD6	Free text box content will be reviewed and any irrelevant data will be deleted as soon as possible.	<b>Reduced</b>
We may keep personal data for longer than necessary	PAD7	There is a process to ensure that personal data is deleted at the end of consultations timeously. (see above under Data Purging and Archival section for timescales)	<b>Reduced</b>

## 8. Incorporating Privacy Risks into planning

Explain how the risks and solutions or mitigation actions will be incorporated into the project/business plan, and how they will be monitored. There must be a named official responsible for addressing and monitoring each risk.

Risk	Ref	How risk will be incorporated into planning	Owner
<p>We may fail to keep personal data protected against loss, unauthorised access and accidental damage</p> <p>Our data processors may further process the personal data without our instruction or knowledge</p>	PAD2 PAD3	<p>An inception meeting will be scheduled before any analysis has begun to run through any queries.</p> <p>The Project Manager and the Contractor will have regular written or telephone updates and can address any issues that may arise.</p> <p>There is a project risk register, which will be discussed and updated regularly</p>	Information Asset Owner
<p>We may publish data that may enable the identification of individuals</p> <p>We may fail to properly inform individuals of the data processing activity</p> <p>We may process special category data without lawful basis</p>	PAD4 PAD5 PAD6	The data will be reviewed and prepared for redaction to ensure that the appropriate permissions are in place and that information in free text boxes is reviewed. This responsibility sits with the policy lead	Information Asset Owner
We may keep personal data for longer than necessary	PAD7	It will be the responsibility to comply with the requirements of removing personal data within the required time limit.	Information Asset Owner

## 9. Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

Advice from DPO	Action

## 10. Authorisation and publication

The DPIA report should be signed by your Information Asset Owner (IAO). The IAO will be the Deputy Director or Head of Division.

Before signing the DPIA report, an IAO should ensure that she/he is satisfied that the impact assessment is robust, has addressed all the relevant issues and that appropriate actions have been taken.

By signing the DPIA report, the IAO is confirming that the impact of applying the policy has been sufficiently assessed against the individuals' right to privacy.

The results of the impact assessment must be published in the eRDM with the phrase "DPIA report" and the name of the project or initiative in the title.

Details of any relevant information asset must be added to the Information Asset Register, with a note that a DPIA has been conducted.

**I confirm that the impact of undertaking the National Planning Framework 4, and associated consultations has been sufficiently assessed against the needs of the privacy duty:**

Name and job title of a IAO or equivalent	Date each version authorised
Graeme Walker, Business Manager	11 November 2020