

## **EXECUTIVE NOTE**

### **DRAFT : THE TOWN AND COUNTRY PLANNING (CHARGES FOR PUBLICATION OF NOTICES) (SCOTLAND) REGULATIONS 2009**

1. The above instrument is to be made in exercise of the powers conferred by section 252(1) and (1A)(a), (b) and (d) of the Town and Country Planning (Scotland) Act 1997. This instrument is subject to affirmative resolution procedure.

#### **Policy Objectives**

2. The Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009 (the draft Regulations) make provision for the recovery of costs of the publication of a notice in a newspaper incurred by the planning authority in accordance with regulation 20 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (the DMR 2008) which come into force on 3 August 2009. There will be four separate instances when such notices under regulation 20 of the DMR 2008 may be required: i) where the planning authority is unable to serve notice on “neighbouring land” to a proposal site due to the absence of premises on it; ii) where the applicant has been unable to notify the owners and agricultural tenants of the proposal site; iii) where the application relates to a development specified in Schedule 3 (developments which may have impacts over a wider area) and iv) where the application relates to development that does not accord with the provisions of the development plan. Where more than one of the criteria for publication is met a notice need only be placed once. The draft regulations allow that where a notice contains a number of applications the cost of the notice can be divided up amongst the applications.

3. The requirements in the DMR 2008 are intended to ensure that where notification of parties has been unable to be carried out or where proposals may have a potentially negative effect over a wider area or run contrary to the development plan for the area (i.e. where people may have an expectation that the policies in a development plan will be followed but which the proposals contravene), there is an opportunity to comment to the planning authority. Thereafter it is for the planning authority to consider whether the comments received are material considerations which may affect their decision on the application.

4. The intention is that where such publication is required the planning authority can recover the cost of advertising from the applicant.

5. Draft regulation 1 covers the citation, commencement and interpretation of the regulations.

6. Draft regulation 2(1) specifies that where publication is required under regulation 20 of the DMR the planning authority are to charge the cost of the advert to the applicant in accordance with these regulations.

7. Draft regulation 2(2) requires the planning authority to notify the applicant in writing of the cost and specifies that the applicant must pay the costs within 21 days.

8. Draft regulation 2(3) sets out how the amount to be paid by the applicant is to be calculated and allows that a) where a notice is required for a single application the applicant is to pay the cost of that notice, or b) where a number of applications appear in the same advert, a share of the cost of the advert, namely the cost of the advert divided by the number of applications which appear in it.

9. Draft regulation 3 allows that where the applicant has agreed to receive communications in electronic formats, the notification at regulation 2(2) can be made by e-mail.

10. The new version of Section 34(4)(c) of the Town and Country Planning (Scotland) Act 1997 which comes into force on 3 August will require the planning authority to recover the cost of publication of a notice before the planning authority can determine the application.

11. There are current provisions within the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 to recover costs of advertising specified in i) to iii) in paragraph 2. above. The current requirement to publicise development plan departures is set out in a direction and therefore does not have provisions to recover costs.

### **Consultation**

12. The power to recover costs for publication was included in the public consultation draft of the DMR 2008 issued in January 2008. The DMR 2008 were subject to negative parliamentary procedure and as powers to charge applicants are contained in Section 252 of the amended 1997 Act are affirmative powers, a separate instrument is required.

### **Financial Effects**

13. A regulatory impact assessment for the Regulations is attached.

Directorate of the Built Environment  
Scottish Government  
15 May 2009

## **Regulatory Impact Assessment**

### **Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009**

#### **1. Title of Proposal**

1.1 Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009

#### **2. Introduction**

##### *Objectives*

2.1 The procedures for development management stem from provisions in the Planning etc. (Scotland) Act 2006 (the 2006 Act) primarily amending the Town and Country Planning (Scotland) Act 1997 (the 1997 Act).

2.2 Where regulation provides that costs can be recovered, the amendments to section 34 of the Town and Country Planning (Scotland) Act 1997 require the planning authority to recover such costs before determining the application.

2.3 **These cost of publication regulations therefore make provision for the recovery of costs of publication of a newspaper notice incurred by the planning authority in accordance with regulation 20 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (the DMR 2008) which come into force on 3 August 2009.** There will be four separate instances when such advertising might occur: i) where the planning authority is unable to serve notice on “neighbouring land” to a proposal site due to the absence of premises on it; ii) where the applicant has been unable to notify the owners and agricultural tenants of the proposal site; iii) where the application relates to a development specified in Schedule 3 of the DMR 2008 (developments which may have impacts over a wider area) and iv) where the application relates to development that does not accord with the provisions of the development plan. Where one of these criteria is met a notice need only be published once. The cost of publication regulations allow that where a notice contains a number of applications the cost of the publication can be divided up amongst the applications.

2.4 The requirements for newspaper notices in the DMR 2008 are intended to ensure that where notification of parties has been unable to be carried out or where proposals may have a potentially negative effect over a wider area or run contrary to the development plan for the area (i.e. where people may have an expectation that the policies in a development plan will be followed but which the proposals contravene), there is an opportunity to comment to the planning authority. Thereafter it is for the planning authority to consider whether the comments received are material considerations which may affect their decision on the application.

2.5 There are current provisions within the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 to recover costs for the publishing of notices required as a result of i) - iii) in paragraph 2.3. The current requirement to advertise development plan departures is set out in a direction and therefore does not have provisions to recover costs.

2.6 The power to recover costs was included in the consultation draft of the DMR 2008, which were subject to negative resolution procedures. As powers to charge applicants are contained in Section 252 of the amended 1997 Act, and these are affirmative powers, a separate instrument is required.

### **3. Consultation**

3.1 Relevant Scottish Government Directorates and Agencies were consulted on the formal public consultation paper *Development Management* published in January 2008.

3.2 *Development Management* stated that where the relevant regulations included a requirement for planning authorities to advertise applications in a local newspaper, the Government considered that the planning authority should be able to recover costs from the applicant. The Government indicated that it would include provisions to this effect. No significant concerns were raised by the respondents to the consultation.

### **4. Options**

4.1 Two options have been considered.

Option 1 Do nothing. This will lead to the cost recovery provisions currently in place not being brought into the new planning system.

Option 2 Introduce Regulations allowing planning authorities to recover the cost of publishing a notice including where there is a departure from the development plan.

### **5. Costs and benefits**

#### **Sectors and groups affected**

5.1 The Regulations will impact upon planning authorities and those submitting relevant planning applications.

#### **Benefits**

##### **Option 1**

5.2 We would not envisage any benefits for planning authorities as this option would remove their ability to re-charge costs

5.3 Conversely, there would be a cost saving for business which would not be required to pay for the local advertisement currently undertaken by the planning authority.

## **Option 2**

5.4 Option 2 would support the Government's policy position as set out in *Development Management* that where there is a requirement for planning authorities to give notice in a local newspaper, the planning authority is able to recover costs from the applicant.

5.5 In addition, the Government is seeking to promote a plan led system. To that end it only seems reasonable that where the planning authority has to publicise an application because the applicant has chosen to go against the adopted development plan, the planning authority should be able to recover the cost of such advertising. It is hoped that with changes to the development planning system providing more up-to-date development plans, there should be less requirement for advertising departures which arise because outdated plans do not reflect the current realities and demands for development.

## **Costs**

### **Option 1**

5.6 This option would lead to the removal of the ability of planning authorities to recover costs for local advertisement. The total cost would therefore be transferred to the planning authority. The Scottish Government does not collect figures for the number of planning applications where the planning authority can currently re-charge the costs for local advertisement. We are therefore not in a position to estimate this cost.

### **Option 2**

5.7 For three of the four categories of development which require local advertisement, there will be no additional costs as the power to recover such costs is already in place.

5.8 However, as noted in section 2, there will be additional costs for business where the development is contrary to the development plan. The Scottish Government collects figures on the number of such applications. Between 2005-6 and 2007-8, the total figure for all 32 Scottish planning authorities has been in the region of 2,300 applications per year. This is approximately 5% of planning applications. Using the figure of £200 per advertisement used in the Regulatory Impact Assessment for the DMR 2008, this gives a total cost in the region of £0.5M across Scotland per annum.

5.9 This is likely to be the maximum figure for three main reasons. Firstly, the planning authority may publicise more than one application at a time and the costs can be apportioned on a pro rata basis; secondly, the application may already have been publicised for one of the other three reasons, in which case no further advert is required; finally, as noted at paragraph 5.5, changes to the development planning system should lead to fewer requirements for advertising development plan departures.

## **6. Small/micro firms impact test**

6.1 Most small and micro businesses will only occasionally deal with the planning system. In terms of commercial changes of use or building works, the publication cost is likely to be a relatively minor part of the overall cost of development.

## **7. Legal Aid impact test**

7.1 These regulations do not create new rights or responsibilities that could give rise to increased use of legal processes. The Regulations will not impact on an individual's right of access to justice through the availability of legal aid.

## **8. "Test run" of business forms**

8.1 No new forms are being introduced.

## **9. Competition assessment**

9.1 The Regulations relate to all relevant applications for planning permission. We do not believe these regulations will distort or restrict competition between firms or suppliers selling the same or similar products or services.

## **10. Enforcement, sanctions and monitoring**

10.1 The Regulations require that where additional publication has been undertaken then the applicant is to pay the costs incurred by the planning authority within 21 days.

10.2 Planning authorities will have their own procedures for recovering these costs. In addition, section 34(4)(c) of the 1997 Act sets out that the planning authority may not determine the application until such costs have been paid. In practice, applicants will not be advised of their planning permission should the planning authority be minded to grant it.

## **11. Implementation and delivery plan**

### Implementation of the Regulations

11.1 The Regulations will be laid before the Scottish Parliament in May 2009 with a coming into force date of 3 August 2009.

### Guidance for businesses and enforcers

11.2 Commentary on the Regulations will be contained in a Circular which will provide a statement of Scottish Government policy and contain guidance on policy implementation through these legislative changes.

## **12. Post-implementation review**

12.1 The Government is committed to ensuring that this legislation and associated guidance are, and remain, fit for purpose. The intention will be to have a review of the range of changes to the planning system as part of modernising package after a year from implementation (which is August 2009 for the development management aspect of modernisation).

## **13. Summary and recommendation**

13.1 The Regulations will ensure that planning authorities will be able to recover the costs of additional advertisement necessary by statute.

13.2 In view of the above, it is recommended that the Regulations are introduced into Scottish law.

## **14. Declaration and publication**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.*

**Signed**

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**Date**

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Stewart Stevenson MSP  
Minister for Transport, Infrastructure and Climate Change

**Contact point**

Alan Cameron  
Scottish Government  
Directorate for the Built Environment  
Area 2H-Bridge  
Victoria Quay  
Edinburgh EH6 6QQ

Tel 0131 244 7065

E-mail [alan.cameron@scotland.gsi.gov.uk](mailto:alan.cameron@scotland.gsi.gov.uk)