

Executive Note

The Town and Country Planning (Inquiries Procedure) (Scotland) Amendment Rules 2009 (SSI 2009/212)

The above instrument was made in exercise of the powers conferred by section 9 of the Tribunals and Inquiries Act 1992. The Inquiries Procedure Amendment Rules is subject to negative resolution procedure.

Policy Objectives

The purpose of the Town and Country Planning (Inquiries Procedure) (Scotland) Amendment Rules 2009 is to make changes to the following existing inquiry procedure rules:

- (a) The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997 (procedure where Ministers decide the case); and
- (b) The Town and Country Planning (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997 (procedures where a person appointed by Ministers decides the case),

to remove from their jurisdiction appeals that are covered by the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the 2008 Regulations) which come into force on 3 August 2009. These amendment rules will clarify the administrative arrangements for handling planning inquiries, and are essential to prevent many planning cases which will be handled by the Scottish Government falling under two separate and different statutory procedures.

The amendments are as follows:

Rule 2 substitutes part of the application of the Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997 (Rule 2(2)). This removes from the remit of the Rules, those appeal provisions listed between 2(a) and 2(b)(i)-(vii) (which are now to be subject to the 2008 Regulations). The replacement Rule 2(2) also retains some existing matters relating to the application of the Rules, particularly to differentiate between the use of the two separate sets of rules listed at (a) and (b) above. For example, where a case would normally be determined by an appointed person but Ministers direct that they themselves will determine the case, the provisions specify that the rules in (a) above will apply.

In a similar amendment, Rule 3 substitutes part of the application of the Town and Country Planning Appeal (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997 (Rule 2(2)). This again removes from the remit of the Rules, those applications listed between 2(a) and 2(b)(i)-(vii) (which are now to be subject to the 2008 Regulations), while retaining those provisions which differentiate between the two sets of rules. As an example of the latter, where a case which would normally be processed and decided by an appointed person using the rules in (b), but Ministers direct that they themselves will determine the case, the provisions specify that the rules in (b) will not apply.

This means that appeals under sections 47, 75B, 75F, 130, 154, 169 and 180 of the Town and Country Planning (Scotland) Act 1997 will follow the processes in the 2008 regulations and not 'old style' inquiries under the rules listed at (a) or (b). These are appeals relating to decisions made by planning authorities on planning applications, and failure to take such decisions; and also relating to planning authority decisions or actions on planning obligations, good neighbour agreements, enforcement, certificates of lawful use or development, trees and amenity notices. The regulations relate to cases determined either by Scottish Ministers or by persons appointed to determine appeals on Ministers' behalf. The Inquiry Procedure Rules at (a) and (b) will remain in force for cases not covered by the 2008 regulations where a right to be heard remains, such as listed building consent appeals.

Consultation

These regulations involve an amendment to the Inquiries Procedures Rules under the Inquiries and Tribunals Act. We are required to consult the Scottish Committee of the Administrative Justice and Tribunals Council before laying the regulations. We have consulted the Scottish Committee to seek their view on our proposed approach. We have not undertaken wider public consultation on what is a presentational change; although we had previously carried out a public consultation in relation to the new arrangements covered by the 2008 regulations. This is not a change of policy.

Financial Effects

It is not anticipated that this legislation will have any financial effect.

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