

## **EXECUTIVE NOTE**

### **THE TOWN AND COUNTRY PLANNING (TEMPORARY STOP NOTICE) (SCOTLAND) REGULATIONS 2009 (SSI 2009/213)**

The above regulations were made in exercise of the powers conferred by section 144B(1) of the Town and Country Planning (Scotland) Act 1997. These Regulations are subject to negative resolution procedure.

#### **Policy Objectives**

It is the Scottish Government's policy intention that as few restrictions as possible should be placed on the ability of a planning authority to consider the use of a Temporary Stop Notice (TSN) where appropriate. The Planning etc. Scotland Act 2006 provides that a TSN cannot prohibit the use of a building as a dwellinghouse but makes provision for Scottish Ministers to make regulations setting out any other circumstances where the use of a TSN may be appropriate.

These Regulations set out one further restriction on the use of a TSN in that Regulation 2(2) does not allow a TSN to be used to 'move on' a person living in a caravan where the caravan was (a) already on a site and (b) was being occupied at the time as a person's main residence. These Regulations therefore extend similar protection to people whose main residence is a caravan as is provided in the primary legislation to people living in buildings.

#### **Consultation**

The enforcement measures in the 2006 Act, were, with the exception of Fixed Penalty Notices, set out in the White Paper: Modernising the Planning System. Further consultation on the draft regulations was undertaken between November 2007 and February 2008. 65 responses to the consultation paper were received. Roughly two-third came from PAs, community councils or other public bodies, with around one-third from business or professional interests. A small number of individual responses were also received.

The consultation showed strong support for the regulations and on the specific issue of extending the same protection to caravan dwellers as those who lived in buildings, there was almost total support.

#### **Financial Effects and Regulatory Impact Assessment**

The use of planning enforcement powers is a discretionary power and different planning authorities may have different procedures for investigating alleged breaches of planning control. This makes the estimation of costs associated with the regulations difficult to quantify, however we do not expect these regulations to carry any significant additional costs or have any significant financial impact on any particular group in the community.

Further details of the financial implications are set out in the accompanying regulatory impact assessment.

Scottish Government  
Directorate of the Built Environment  
June 2009

## **Regulatory Impact Assessment**

### **THE TOWN AND COUNTRY PLANNING (TEMPORARY STOP NOTICE) (SCOTLAND) REGULATIONS 2009**

#### **Introduction and Summary**

1. This is a Regulatory Impact Assessment (RIA) of the proposals for Regulations to implement the provisions made in the Planning etc (Scotland) Act 2006 (the 2006 Act) in respect of temporary stop notices (TSNs).
2. The assessment examines the impact of the proposed regulations on business and other interests. It considers the additional costs that may be imposed by the legislative changes and seeks to assess the wider benefits which may be brought by the changes.
3. The proposals for the regulations, and a draft of this assessment, were published for public consultation in late 2007-early 2008. The consultation covered, in addition to TSNs, proposals regarding Fixed Penalty Notices (FPNs), Notification of Initiation of Development and display of certain notices during work on certain categories of development. The consultation included a specific question inviting views on the draft RIA. A number of comments were received; these views have been incorporated into this RIA.

#### **Background**

4. The Town and Country Planning (Scotland) Act 1997 sets out a range of enforcement powers available to planning authorities to enable them to address breaches of planning control. The 2006 Act developed the existing framework, introducing a new power to issue a temporary stop notice.
5. The provisions in the 2006 Act allow for a TSN to be issued requiring the immediate halt of an activity which breaches planning control. The provisions make one exception in that a TSN cannot prohibit use of a building as a dwellinghouse. The provisions further allow that Scottish Ministers may make regulations setting out any other circumstances where it is considered that use of a TSN would not be appropriate.
6. It is the Scottish Governments intention that as few restrictions as possible should be placed on the ability of a planning authority to consider the use of a TSN where appropriate. The regulations therefore set out only one restriction on the use of a TSN: that it may not be used simply to 'move on' a person living in a caravan where the caravan was (1) already on a site and (2) was being occupied at the time as a person's main residence. In other words the regulations extend similar protection to people whose main residence is a caravan as is provided in the primary legislation as is provided to people living in buildings.

7. The draft regulations as consulted on included a provision that where it was considered that there was a ‘compelling’ need to require the removal of the caravan in the interests of public health or preventing damage to the environment or amenity a TSN could be served. This provision has been dropped following further consideration and concern that it may not be compliant with Human Rights legislation.

## **Consultation**

### **Within Government**

8. The Scottish Government Planning Directorate has consulted with colleagues in:

- Solicitors Local Authorities and Development Division
- Public health and Wellbeing Directorate , Equality Unit
- Crown Office Procurator Fiscal Service

### **Public consultation**

9. The enforcement measures in the 2006 Act were, with the exception of Fixed Penalty Notices, set out in the White Paper: Modernising the Planning System. Further consultation was undertaken on the draft regulations in late 2007-early 2008. Among those consulted and offering comments were planning authorities, community councils, public, business and professional bodies as well as individual businesses and members of the public.

10. The consultation showed strong support for the regulations with almost universal support for the TSN regulations. The principle that TSNs should not be used to ‘move on’ caravan dwellers was universally accepted, although some concerns were raised as to need for, and effectiveness of, the caveat mentioned above (paragraph 7) which was subsequently dropped.

## **Options**

11. The Scottish Government considered options for implementing the provisions of the 2006 Act. The options identified were:

- Option 1 –do nothing and remain with the status quo – i.e. existing enforcement powers as set out in the 1997 Act
- Option 2- Implement the provisions of the 2006 Act in regard to TSNs without regulations setting out any further situations where use of a TSN would not be appropriate.
- Option 3 – Implement the regulations as originally set out in the consultation paper with the option for planning authorities to issue a TSN where the siting of a caravan raised concern.
- Option 4 – Implement the regulations as amended with regard to consultation responses and legal advice. In this option there would be no caveat regarding the use of a TSN where there was considered to be a concern regarding the siting of a caravan.

12. Option 1 was not considered viable given the commitment in the White Paper, subsequently confirmed by the Scottish Parliament in approving the 2006 Act, to implement the enforcement provisions.

13. Option 2 was also considered not to be viable. The 2006 Act places a duty on the Scottish Ministers and planning authorities to carry out their duties under the Act in a manner which encourages equal opportunities and in particular the observance of equal opportunity requirements as set out in the Scotland Act 1998. Insofar as the regulations extend the exemption regarding use of a TSN in respect of a building as a dwelling house to people living in other forms of accommodation, the Scottish Government is of the view that the regulations are required to meet this obligation to equal opportunities.

14. Option 3 raised concerns about the inclusion of the regulation allowing issue of a TSN in certain circumstances. Legal opinion from Scottish Government lawyers was that the wording in the draft regulations did not define the circumstance in which a TSN could be issued sufficiently for such use to be compliant with Human Rights legislation. Consideration was given to the possibility of amending the text however no satisfactory solution could be agreed. Option 3 was therefore also rejected.

14. Option 4 would mean that the regulations would prohibit the use of a TSN to require the occupier of a caravan to vacate a site on which the caravan was sited provided that the caravan was in place before the TSN was issued and that the caravan was occupied by at least one person as their main residence. As previously noted this would be in accord with the commitment to ensure that legislation complies with equal opportunities requirements. The Scottish Government recommends that this option be accepted.

### **Costs and benefits**

15. There is an inherent difficulty in estimating any costs accurately as use of planning enforcement powers is discretionary and different planning authorities may have different procedures and processes for investigating alleged breaches of planning control, which may involve different costs. We do not however expect that extending the range of enforcement powers available to planning authorities will, in itself, carry any significant additional costs or have any significant financial impact on any particular group in the community.

### **Sectors affected**

16. Public sector. Planning authorities will have access to new power to address breaches of planning control.

17. Private Sector/Business/Individuals. Where a person (either an individual or a company) has committed a breach of planning control by carrying out an activity, and the planning authority consider that it is expedient that the activity be halted immediately, then a TSN may be issued.

## **Benefits**

18. Planning authorities will benefit;

Through having a wider range of enforcement powers available to them to respond appropriately to a breach of planning control.

19. Developers will benefit;

If earlier action is taken in respect of a breach of planning control. It is accepted, from anecdotal evidence and discussions with enforcement officers that the majority of breaches are inadvertent and easily corrected, particularly where identified at a nearly stage. While there may be a cost to a developer in complying with a TSN (eg through loss of revenue or costs associated with delays or changes to working practices) the cost of ceasing an activity or altering a working practice may be significantly less than any costs incurred in remediating damage at a later stage.

20. Communities will benefit:

Where TSNs are used to immediately halt unauthorised development which damages the local environment or amenities. Early intervention to stop such activities will mean quicker and easier resolution of the problem with less disruption to local amenity.

21. Finally there will be a benefit to ethnic minorities, as Gypsy/Travellers will potentially be the main beneficiaries of the regulations.

## **Costs**

22. Planning authorities:

There may be some costs associated with the issue of TSNs, particularly if this is done outside office hours. Such costs will of course vary depending on circumstances. However it should be borne in mind that planning authorities already have a responsibility to investigate breaches of planning control and to take any enforcement action they deem appropriate. Introduction of TSNs will not therefore lead directly to significant additional costs.

23. Some planning authorities drew attention to the fact that they may be liable for compensation for costs where a TSN was issued. While it is the case that compensation may be paid, this is restricted to certain circumstances. Primarily compensation may be paid if a TSN was wrongly issued prohibiting an activity for which permission was either not required or had already been granted. Liability for such claims would easily be avoidable. It is also the case that compensation may also be payable if existing enforcement powers are incorrectly used so there is no issue of increasing liability. It should be noted that, while the issue of compensation is frequently mentioned and taken into account when enforcement action is considered, actual cases where compensation has been paid are extremely rare.

24. Developers:

Some developer responses to the consultation expressed concern that TSNs could cost developers substantial sums in lost revenue or costs. Clearly, where a developer is issued with a TSN, there is a potential for costs to be incurred either through changing working practice to comply with the TSN or through having to cease an activity. Equally it is clear that before a TSN is issued the planning authority has to be satisfied that there has been a breach of planning control, so developers who comply with the

terms of any planning consent will avoid the situation where they incur enforcement action. Again, costs would potentially be incurred if any form of enforcement action was taken, so introduction of a new power does not in itself signify additional costs. As noted above, the costs of early compliance with enforcement action may be significantly lower than those which might arise from compliance with enforcement action at a later stage of development.

25. Concern was also expressed by developers that being forced to cease work on a development would have major implications in terms of cost and, potentially, viability of the development. It should be borne in mind, however, that a TSN prohibits *specific* activities; that in most cases compliance would require a change to working practices, and that issuing a TSN would not necessarily mean that work on a development would need to cease altogether. It should be borne in mind also that any enforcement action taken by a planning authority is required to be commensurate to the scale of the breach, therefore a complete cessation of development would only occur where the planning authority were satisfied that this was the most appropriate action. Furthermore a TSN may only be in force for a maximum of 28 days and it is not competent to issue a further TSN at the end of the period (although further alternative enforcement action such as issuing an enforcement notice may be taken).

#### **Small/Micro firms Impact Test.**

26. We take the view that the impact on such firms would be minimal. Enforcement action would only be taken where there was a breach of planning control.

27. In considering appropriate action the planning authority will consider the scale and impact of the breach, rather than the size of the company. That said, guidance issued by the Scottish Government on the use of planning enforcement powers emphasises that in taking enforcement action against small companies, the planning authority should take into account the potential effects on the company's operations and commercial viability.

#### **Legal Aid Impact Test**

28. The Legal Aid Test looks at an individual's right to access to justice through availability of legal aid and possible expenditure from the legal aid fund.

29. The regulations do not create any new legal procedures, as they do not create any new offences, nor do they include a right of appeal. The regulations do not therefore create any new grounds where Legal Aid might be available.

### **Implementation and delivery plan**

#### **Implementation of the regulations**

30. The regulations will be laid before parliament in June 2009 with a coming into force date of 3 August 2009. Planning authority enforcement officers will be kept informed of progress through the Scottish Planning Enforcement Forum.

**Guidance on the use of the powers**

31. The regulations will be accompanied by a Circular which will provide a statement of Scottish Government policy and contain guidance on policy implementation through these legislative and procedural changes.

**Post –implementation review**

32. The intention is to review the policy after its first year of operation to ensure it is delivering the intended benefits, is fostering good partnership working, and no administrative or legal barriers are reducing the potential of its impact. This review will take the form of consultation with those implementing the powers.

**Summary and recommendation**

33. The TSN regulations will ensure that there are robust and workable enforcement powers available to planning authorities to enable them to carry out their statutory obligations in respect of enforcement of planning control in their respective areas.

34. In view of the above, it is recommended that option 4 be implemented and that the regulations are introduced into Scottish law.

**Declaration and publication**

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

**Signed** .....

**Date** .....

Stewart Stevenson MSP  
Minister For Transport, Infrastructure and Climate Change