

EXECUTIVE NOTE

The Town and Country Planning (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2009 (SSI 2009/343)

The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Amendment (No. 2) Order 2009 (SSI 2009/344)

1. The package of secondary legislation introducing the new development planning system came into force on 28 February 2009, and that introducing the new development management system on 3 August 2009. The *Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008* (‘the Transitionals Order’) included measures aimed at allowing old-style local plans that had passed their consultation stage to proceed to adoption, but subject to the new-style examination procedures.

2. Under the 1997 Act, proposals for old-style local plans were subject to publicity under section 12(1) of the Act and people could make representations under section 12(2). The planning authority then prepared a ‘finalised plan’ under section 12(3) and gave people the opportunity to make objections under section 12(4). It was these objections that were the subject of any public local inquiry.

3. The amendment to the Transitionals Order will mean that the new style examination would similarly be into issues raised in these ‘section 12(4) objections’. As the Transitionals Order currently stands, article 5(2)b(iii) states that an examination would be triggered by representations made at the earlier section 12(2) consultative draft stage. Similarly, regulation 30(3)b of the main *Town and Country Planning (Development Planning) (Scotland) Regulations 2008* (the ‘Development Planning Regulations’) equated the unresolved representations which are to be the subject of the examination with representations made at that earlier stage, prior to the finalisation of the plan by the planning authority.

4. *The Town and Country Planning (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2009* (the ‘Miscellaneous Amendments Regulations’), and the *Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Amendment (No. 2) Order 2009* (the ‘Transitionals Amendment Order’) alter this position, firstly by providing that planning authorities should request the appointment of a person to examine the plan following the expiry of the section 12(4) objection period, and secondly by redefining the unresolved objections that are to be the subject of the examination as objections timeously made following the publication of the plan under section 12(3).

5. The Transitionals Amendment Order also makes a minor change to article 3(2)b(ii) of the Transitionals Order to clarify that this provision also applies to alterations of existing structure plans.

6. The Miscellaneous Amendments Regulations also make a minor change to regulation 30(3)a(ii) of the Development Planning Regulations to clarify that this transitional provision also refers to any proposal to alter, repeal or replace a local plan. They will also rectify statutory reference in the changes made to the Habitats Regulations and the EIA Regulations, as described below and amend the EIA Regulations to take account of changes to the

provisions in the Town and Country Planning (Scotland) Act 1997 made by the Planning etc. (Scotland) Act 2006.

7. **Regulation 2** corrects a cross reference in the Habitats Regulations and is made under powers contained in section 2(2) of the European Communities Act 1972.

8. **Regulation 3** amends the EIA Regulations to revoke the application of provisions to enforcement notice appeal cases. Prior to the changes to the planning system on 3 August it was possible for planning permission for a previously unauthorised development to be granted by Scottish Ministers as a result of an enforcement notice appeal. It was necessary, therefore, to ensure that prior to granting planning permission in such circumstances the appropriate environmental impact assessment procedures were carried out to ensure compliance with the EU Directive in this regard. As part of the modernisation of the planning system the ability to appeal against enforcement notices on the basis that planning permission should be granted and for Ministers to grant permission in response to such an appeal were removed. Consequently it is no longer necessary to apply the EIA Regulations to enforcement notice appeal cases, indeed to continue to do so could require appellants to carry out EIA unnecessarily, and at substantial cost. This regulation also includes a transitional arrangement so that the EIA regulations to be revoked will continue to apply to any enforcement notice appeal cases which were underway prior to 3 August, and so which could still result in a grant of planning permission.

Policy Objectives

9. It is necessary to amend the transitional arrangements for development plans in order that examinations into these transitional plans will equate more closely to inquiries held under local plans under the previous system. The changes to the EIA Regulations bring those Regulations into line with the changes made to the enforcement systems under the modernised planning system.

10. We believe 9 planning authorities are potentially affected by the amendments to the development plan transitional provisions in that they still have old-style local plans progressing through the system. However we do not expect the amendment to entail any delay or other inconvenience to these authorities with the possible exception of the Highland Council, who have already submitted two local plans (West Highlands & Islands and Sutherland) to the Scottish Government for examination. The Government is working with the Highland Council to minimise any delay or disruption to the examination of these plans.

Consultation

11. These statutory instruments have not been subject to formal consultation, but informal discussions have been held with Highland Council as the planning authority potentially most affected.

Regulatory Impact Assessment and other impacts

12. Making these amendments will assist the business and local government sectors by removing any uncertainty over the legal basis for the examination of old-style development plans which are covered by the transitional arrangements.

Financial Implications

13. No significant financial implications have been identified.

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