

## EXECUTIVE NOTE

### THE TOWN AND COUNTRY PLANNING (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2011

SSI 2011/138

#### Introduction

1. The above instrument was made in exercise of the powers conferred by sections 8(10(b)), 16(20(b)), 32, 38A(1), 43, 43A(10), 75B(3), 75F(3), 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them to do so. The instrument is subject to negative resolution procedure.

#### Background

2. The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2011 (the 2011 Regulations) amend a number of pieces of subordinate legislation made under the Town and Country Planning (Scotland) Act 1997 as amended (the 1997 Act) as part of the modernisation of the planning system, which has been implemented over the last 2-3 years. Most are relatively minor corrections and clarifications identified during the operation of the new system.

3. In addition, the 2011 Regulations include a new requirement on planning authorities to consult the Crofters Commission on planning applications where development may have an adverse effect on the continued use of land for crofting. This change arose as a result of undertakings given by the Minister for the Environment and Climate Change during the passage of the then Crofting Reform (Scotland) Bill, to bring forward changes to subordinate legislation on such consultation.

4. A consultation on Amendments to the Modernised Planning System, issued in October 2010, included a number of other, more significant changes relating to pre-application consultation and neighbour notification amongst others; however, these other provisions will require further work before legislation can be laid before the Parliament.

#### Policy Objectives

5. The new requirement for consultation with the Crofters Commission should ensure that decisions on planning applications affecting crofting land are made in light of the views of the Crofters Commission. The aims of the changes more generally are to ensure the requirements of the planning legislation are proportionate and allow for efficient processing of planning proposals to enable Government's central purpose.

#### The Changes

**Regulation 1(2) and (3)** – the 2011 Regulations have a split coming into force date. The relatively minor amendments can come into force straight away. The requirement to consult the Crofters Commission will come into force in October. This is to allow the Commission and the relevant planning authorities to put in place arrangements to deal effectively with the flow of consultations.

***Regulation 2 Changes to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (the DMR)***

***Regulation 2(2)*** – This relates to the current provisions specifying that national developments and major developments in the planning system require pre-determination hearings and referral of applications to full council for determination. The revised wording addresses concerns about a possible deficiency in the wording of the original. There is no change in the categories of development for which PAC is required.

***Regulation 2(3)*** – sub-paragraph (a) clarifies that the requirement to send notice of the decision on an application applies in relation to any authority or body, as well as any individual, which made representations.

- sub-paragraph (b) corrects an error in a cross reference to part of the 1997 Act on the duration of planning permission - information on which is to be included in the decision notice.

***Regulation 2(4)*** – This amends Regulation 35 of the DMR which makes certain changes to the DMR when they are applied to planning applications for marine fish farming development. This amendment means that requirements to provide a design statement with applications for local developments in certain designated areas do not apply where the development involves an alteration or extension to an existing marine fish farm. This brings the requirements for design statements in such cases in line with the requirements on land based developments.

***Regulation 2(5)*** – This introduces a new requirement to consult the Crofters Commission on applications where development may have an adverse effect on the continued use of land for crofting.

***Regulation 2(6)*** – This amends the forms of notice around appeals and local reviews to be included in decision notices and specifying the period within which an appeal or local review can be sought. It clarifies that the period starts on the date of the decision notice.

***Regulation 3 – Amendments of the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the Appeals Regulations)***

***Regulation 3(2)*** - sub-paragraph (a) allows that the notice of appeal by the appellant when indicating his or her view on the preferred type of further procedure in relation to processing an appeal (e.g. written submissions, a hearing or public local inquiry) can include the option of no further procedure.

- sub-paragraph (b) – requires that where a planning authority has issued a decision notice to an applicant, then the applicant must include a copy of it when making an appeal to the Scottish Ministers.

***Regulation 3(3)*** – This allows that the planning authority's response to the appeal can, when specifying the preferred type of procedure for processing the case, indicate they consider no further procedure is required.

**Regulation 3(4)** - The change here is to clarify that the statement of appeal in cases such as enforcement notice appeals, is to be submitted at the same time as the notice of appeal and is to contain certain specified information on a form obtainable from the Scottish Ministers. It also provides that when specifying the preferred type of procedure for processing the case, the appellant may indicate they consider no further procedure is required.

**Regulation 3(5)** – This provides that the planning authority when specifying the preferred type of procedure for processing the case in enforcement and other appeals, may indicate they consider no further procedure is required.

**Regulation 3(6)** – The Appeals Regulations also apply in part to the processing of applications for planning permission called in by the Scottish Ministers for their determination. Regulation 17 of the Appeals Regulations applies the Hearing Session Rules and the Inquiry Session Rules to such applications (these rules are set out in the Schedules to the Appeals Regulations). Rule 1(1) in each set of Rules refers to the appointed person’s determination that a hearing or inquiry will be held and his notification of parties to that effect. The amendment at Regulation 3(5)(a) specifies that the references to the appointed person in rule 1(1) are, in the case of called in applications, to be read as references to the Scottish Ministers.

Regulation 17(2)(b) of the Appeals Regulations also specifies that references to the appointed person in the hearing Session Rules and the Inquiry Session Rules are treated as references to the person appointed to hold the hearing or inquiry sessions. The amendments in Regulation 3(5)(b) and (c) ensure that, in called-in application cases, references to appointed person in rule 1(1) are not read in this way – i.e. they are read as references to the Scottish Ministers in line with the previous amendment.

***Regulation 4 Amendments to the Town and Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008 (The Review Regulations)***

**Regulation 4(2)** – this makes a similar amendment to that in Regulation 3(2)(b) above, but in relation to the applicant who is seeking a local review indicating he or she thinks no further procedure is required.

***Regulation 5 Amendment to the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (the Development Planning Regulations)***

**Regulation 5(2)-(4)** The Development Planning Regulations set out procedures for the preparation and approval or adoption of Strategic Development Plans and Local Development Plans respectively. In doing so they specify certain other plans and matters which those preparing the plan (the strategic planning authority or the planning authority) must have regard to. The Flood Risk Management (Scotland) Act 2009 introduced requirements for new “flood risk management plans” and “local flood risk management plans” and the Marine (Scotland) Act 2010 introduced requirements for “national marine plans” and “regional marine plans”. The changes here make the necessary changes to the Development Planning Regulations to ensure regard is to be had to these new plans.

***Regulation 6 Amendment of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010***

***Regulation 7 Amendment of the own and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010***

6. Regulations 6 and 7 correct the omission of the word “Planning” from the title of regulations cross referred to in these 2 new sets of Regulations. These changes stem from undertaking given to the Subordinate Legislation Committee during the passage of the Regulations in question.

**Consultation**

7. Most of the changes in the 2011 Regulations were contained in the consultation paper “Amendments to the Modernised Planning System” (October 2010 – January 2011). The changes at Regulations 2(2), 3(6), 6 and 7 were not included; however, these are purely technical corrections which would not require consultation.

8. An analysis of responses relating to the provisions included in the 2011 Regulations is attached. In summary, there were 88 responses received by the deadline of 28 January 2011. Most responses had no comment on those elements of the consultation paper which are included in the 2011 Regulations.

9. Although 16 responses welcomed the new requirement to consult the Crofters Commission, 4 responses, among developers, felt it was unnecessary and that the Crofters Commission could use crofting legislation or their involvement in development plan preparation to address their concerns.

10. One response from the fish farming sector welcomed the changes to requirements for design statements, though another environment body had concerns, though planning authorities can still require a design statement in individual cases if they so wish.

11. The changes to Development Planning Regulations were generally welcomed.

12. The other amendments to the DMR, Appeals Regulations and local Review Regulations attracted little comment.

**Impacts Assessments**

13. A final Business Regulatory Impact Assessment is attached, although there is not expected to be significant impacts on business of these changes. An Equalities Impact Assessment is also attached, though there are not expected to be any implications regarding equalities issues.

Directorate for the Built Environment  
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