

## **EXECUTIVE NOTE**

### **THE PLANNING ETC. (SCOTLAND) ACT 2006 (DEVELOPMENT PLANNING) (SAVING, TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) AMENDMENT ORDER 2011**

#### **SSI 2011/336**

1. The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 ('the 2008 Order') came into force on 28 February 2009, at the same time as the main provisions of the new development planning system introduced by the Planning etc (Scotland) Act 2006 ("the 2006 Act"). It functioned to allow certain old-style local plans that were in preparation at that time to continue to adoption, but following the new procedures from the point that they were submitted for examination.

2. Where a proposed local plan had been published before 28<sup>th</sup> February 2009 but no notice of a local inquiry into the plan had been published as at that date the provisions of article 5 of the 2008 Order operate to apply certain provisions of the old law and certain provisions of the new law to the process of preparation and adoption of the local plan. This means, for example, that such a plan is subject to the examination provisions in section 19 of the new Part 2 rather than being considered at a local inquiry under section 15 of the old Part 2. The post-examination provisions of the new Part 2 also apply to such a local plan as they apply to a new local development plan. These include the provisions as to publication of the adoption of a plan under new section 20A.

3. Sections 237 and 238 of the Town and Country Planning Act 1997 give a person aggrieved by a plan the right to challenge the validity of the plan by application to the Court of Session. In terms of section 238(4) the application must be made within 6 weeks from the relevant date. The relevant date for these purposes is determined in accordance with the provisions of section 238(5). Section 238(5) was amended by section 54(12)(d) of the 2006 Act and now sets the relevant date by reference to the publication of the constitution of the plan under new section 20A(1)(b). Article 5(2)(a) of the 2008 Order applies the old sections 237 and 238 in relation to the right to challenge a local plan.

4. The changes to the 2008 Order apply only to local plans subject to the transitional provisions in article 5 of the 2008 which are adopted or approved on or after the date on which the Order comes into force. It is considered that it would be expedient for the purposes of giving full effect to the provisions of the changes made by the 2006 Act to amend article 5 of the 2008 Order so that the challenge provisions set out in new section 238 should, insofar as they apply to such plans, relate to the publication provisions contained in new section 20A.

#### **Policy Objectives**

5. While no issue has been raised to date as to the effect of the transitional provisions, now that the matter has come to our attention it is desirable to amend the transitional provisions so that the 6 week legal challenge period is calculated by reference to the new publication requirements contained in section 20A.

6. Seven local plans have already been adopted under transitional arrangements. These will not be affected by this amendment order.

7. Seven further local plans are currently at the examination or post-examination stages. The most advanced of these is the East Dunbartonshire Local Plan which the Council expects to adopt in the week commencing 19 September 2011. In order to ensure that the changes are in force before this and other local plans are adopted, this amendment has been made with some urgency, to come into force on 17 September 2011.

### **Consultation**

8. This statutory instrument has not been subject to formal consultation, but we have discussed the amendment informally with a number of the planning authorities affected. We will use the Directorate for the Built Environment's e-alert system to inform stakeholders of the amendment.

### **Business and Regulatory Impact Assessment and other impacts**

9. Due to the technical and urgent nature of the amendment we have not prepared a formal business and regulatory impact assessment. However we do not consider that this amendment imposes any additional regulatory burden or has any other adverse effect on business. Nor have we identified any impacts on the environment or on equality groups arising from this amendment.

### **Financial Implications**

10. No significant financial implications have been identified.

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14 September 2011