

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2012

SSI 2012/325

Introduction

1. The above instrument was made in exercise of powers conferred by sections 30, 32, 43, 43A, and 275 of the Town and Country Planning (Scotland) Act 1997. The instrument is subject to the negative procedure.

Background

2. The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2012 (“Miscellaneous Amendments Regulations”) make a number of 1 amendments in secondary legislation to accommodate changes made to the Town and Country Planning (Scotland) Act 1997 as amended (“the 1997 Act”).
3. The changes to the 1997 Act in question are made by:
 - The Public Services Reform (Planning) (Pre-application Consultation) (Scotland) Order 2012 (“PSR(PAC) Order”); and
 - The Public Services Reform (Local Review procedure) (Scotland) Order 2012 (PSR(LR) Order”).
4. The amendments made by the Regulations will come into force on the same date as the proposed PSR(PAC) Order and PSR(LR) Order are to come into force.
5. The PSR(PAC) Order would amend Section 35A of the 1997 Act to remove the requirements for pre-application consultation from applications under section 42 of the 1997 Act. Applications under section 42 are for planning permission for changes to conditions attached to an existing planning permission (in effect a new permission is sought where only the conditions are different). Where such an application is currently made and relates to a major or national development, then the requirements for 12 weeks of pre-application consultation would apply. The explanatory document accompanying PSR(PAC) Order, which has been laid before Parliament alongside the Miscellaneous Amendments Regulations, explains the policy and justification for this change in more detail.
6. Regulation 2(2) Of the Miscellaneous Amendments Regulations makes a consequential amendment to regulation 11 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (“the DMR”), to remove the requirement for applications under section 42 for

national or major development to be accompanied by a report of pre-application consultation.

7. The PSR(LR) Order would allow an applicant and the planning authority to agree an extension to the time period for determining an application for local development which has been delegated to an officer for decision. This means where an applicant considers it worthwhile waiting a decision from the officer she can do so without losing her right to seek a review on the grounds of non-determination, if a decision is still not forthcoming. This avoids applicants losing such a right or seeking a local review on the grounds of non-determination prematurely for fear of being time barred from seeking such a review. Provisions for agreeing such an extension already exist for those applications to which a right of appeal to Ministers on the grounds of non-determination exists.
8. The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008, specify the period within which a local review on the grounds of non-determination can be sought: i.e. within 3 months after the end of the period for determining the application. Regulation 3 of the Miscellaneous Amendments Regulations amends regulation 2 of these 2008 Regulations to take account of the fact that it will be possible to agree an extension to this period.
9. The DMR specify the period within which an application should be determined. Regulation 2(3) Of the Miscellaneous Amendments Regulations amends the DMR so that this period no longer applies where there is agreement to extend the period allowed for determination of the application before the right to require a review arises.
10. The explanatory document accompanying the PSR(LR) Order says more about the policy justification for the change to allow extensions to be agreed.

Policy Objective

11. The amendments are intended to ensure the requirements of the 1997 Act are proportionate and provide suitable flexibility.

Consultation

12. The changes in the PSR(PAC) and PSR(LR) Orders have been the subject of a public consultation exercise. The changes in these Miscellaneous Amendments Regulations were not subject to consultation, but are purely consequential, technical amendments necessary to allow the changes in the PSR orders to function properly.

Impact Assessments

13. The explanatory documents for the PSR(PAC) Order and PSR(LR) Order, laid alongside these Miscellaneous Amendments Regulations, include a final Business and Regulatory Impact Assessment and an Equalities Impact Assessment. The former identifies in particular savings for applicants in the costs of running PAC events and the delay in making an application for a change in conditions. The equalities impact assessment does not identify any implications for equalities groups arising from these amendments.

Planning and Architecture Division
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