

POLICY NOTE

THE PLANNING (SCOTLAND) ACT 2019 (COMMENCEMENT NO. 2, SAVING AND TRANSITIONAL PROVISIONS) REGULATIONS 2019

SSI 2019/377 (C. 19)

The above instrument was made in exercise of the powers conferred by section 63(2) and (3) of the Planning (Scotland) Act 2019. The instrument is laid but not subject to procedure.

These Regulations bring three sections of the Act into force. The saving and transitional arrangements make sure the new law only applies to applications or notices made after it comes into force.

Policy Objectives

Regulations 2(2)(a) and 4 relate to section 25 of the Planning (Scotland) Act 2019 (“the Act”), which implements the “Agent of Change” principle. Section 25 of the Act inserts new section 41A into the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”), which relates to applications for planning permission for “noise-sensitive developments”, where residents are likely to be affected by significant noise from existing activity in the vicinity. Where this is the case the planning authority must take particular account of whether the new development includes sufficient measures to “mitigate, minimise or manage” the effect of noise between the development and any existing cultural venues or facilities, dwellings or businesses in the vicinity. Cultural venues include in particular live music venues. The authority also may not place conditions on the planning permission that would impose additional costs on any existing “noise source” for acoustic design measures to address noise issues.

Regulation 4 provides that this requirement will only apply to applications made on or after 20 December 2019. This is to avoid any delay or repeated work on applications that may be close to decision. Scottish Government policy already expects planning authorities to give consideration to the Agent of Change principle when determining applications, but the introduction of a statutory requirement may lead to some changes in the way this consideration is undertaken and recorded.

Regulations 2(2)(b) and 5 to 10 relate to section 42 of the Act. This amends several sections of the 1997 Act to increase the maximum level of fines that can be imposed for failing to comply with the requirements of various types of notices issued to enforce planning controls. It also adds to the circumstances in which the courts should take into account any financial benefit gained from the offence (this is already in place in relation to failure to comply with an enforcement notice (section 136), stop notice (section 144) or temporary stop notice (section 144C)).

Regulations 5 to 10 provide that the new penalties will not apply to any offence committed in relation to a notice which was served before 20 December 2019.

Regulations 3 and 11 relate to section 23 of the Act. This amends section 34 of the 1997 Act on giving notice of applications. It requires that the planning authority must give notice of

any application for a major development to each local authority Councillor, MSP and MP representing the district to which the application relates. This applies to applications for planning permission, for approval required by a development order, for consent, agreement or approval required by a condition on planning permission, or for modification or discharge of a planning obligation.

Regulation 11 provides that this requirement will only apply to applications received on or after 1 March 2020, allowing time for authorities to amend their procedures. Details of planning applications received by a planning authority are already available to the public through the publication of a weekly list. However, it would not be helpful to require authorities to formally notify elected representatives of applications on which the period for making representations has closed.

Consultation

As these regulations only bring into force provisions of the Act, no consultation has been carried out in relation to this instrument.

Impact Assessments

As these regulations only bring into force provisions of the Act, no impact assessments have been carried out in relation to this instrument.

Financial Effects

The Minister for Local Government, Housing and Planning confirms that no BRIA is necessary, as the instrument only brings into force the provisions of the Act and in itself has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Local Government and Communities

November 2019