

## EXECUTIVE NOTE

### **THE TOWN AND COUNTRY PLANNING (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2009 SSI 2009/220**

The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009 (the 2009 Regulations) are made in exercise of powers conferred by sections 20B, 30, 32, 34, 38A, 43A, 131, 147, 267 and 275 of the Town and Country Planning (Scotland) Act 1997. The Regulations are subject to negative resolution procedure.

#### **Policy Objectives**

The 2009 Regulations make technical amendments to various pieces of subordinate legislation in part to ensure older legislation can accommodate the new arrangements in the modernised planning system and in part to deal with errors and omissions in some of the newer instruments which came to light during Parliamentary processing or subsequently.

#### **Regulation 2 – Amendment of the Town and Country Planning (Appeals) (Written Submissions procedure) (Scotland) Regulations 1990 (the 1990 Written Submissions Regulations).**

A number of types of appeal under the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 are having the right to be heard for parties removed, with, from 3 August, the reporter who is considering the case deciding what the process for gathering any information should be. This process may consist of a written submissions procedure, hearing or inquiry procedures or a combination of all of these. New appeal regulations, The Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the 2008 Appeals Regulations), will cover these different processes for cases where there is no longer a right to be heard.

However, certain appeal procedures will retain the right to be heard, for example, those under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Consequently, procedures for such cases are not covered in the 2008 Appeals Regulations. The 1990 Written Submissions Regulations are therefore retained for those appeals not covered by the 2008 Appeals Regulations where parties decide to proceed via written submissions.

The amendments in Regulation 2 remove from the 1990 Written Submissions Regulations references to the appeal procedures which will be covered by the new 2008 Appeals Regulations, e.g. appeals against enforcement notices, notices under section 179 and enforcement of tree preservation orders.

There is also a provision (Regulation (2)(6)) which preserves the 1990 Written Submissions Regulations in their entirety for all the types of appeal to which they currently apply where an appeal is made before 3 August. This means that where someone starts an appeal under the current system, the process will remain in accordance with the current requirements, rather than changing in mid-procedure come 3 August.

### **Regulation 3 – Amendment of the Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Regulations 1992 (the 1992 Enforcement Regulations)**

The 1992 Enforcement Regulations contains requirements in relation to the serving of enforcement notices and in relation to appeals against various notices, namely notices under section 179, enforcement notices, listed building enforcement notices and conservation area consent enforcement notices. As outlined above, certain types of appeal will in future be covered by the 2008 Appeals Regulations.

Regulation 3(2) removes references to appeals against enforcement notices and notices under section 179 from Regulation 5 of the 1992 Enforcement Regulations which deals with requirements on appellants to submit a written statement of case with an appeal. In future the processing of such cases will be dealt with under the 2008 Appeals Regulations.

Regulation 3(3) similarly amends Regulation 6 of the 1992 Enforcement regulations, which relates to statements supplied by planning authority in appeal cases.

Regulation 3(4) – this adds requirements for information to be held on enforcement registers in relation to new powers relating to temporary stop notices and notices requiring submission of a retrospective planning application.

Regulation 3(5) – Regulation 8 of the 1992 Enforcement Regulations describes how they apply to certain notices served by Ministers. The amendments here remove references to enforcement notice appeals, which will be covered by the 2008 Appeals Regulations.

Regulation 3(6) – Regulations 5, 6 and 8 of the 1992 Enforcement Regulations on planning authorities submitting statements on certain appeals are saved in their current form for appeals made before the 3 August, as appeals made before that date will be processed largely in accordance with existing legislation.

### **Regulation 4 – Amendment of the Town and Country Planning (Appeals) (Scotland) Regulations 2008**

The amendments here correct 2 errors in terminology. These were highlighted by the Subordinate Legislation Committee and an undertaking was given to change them at the earliest opportunity.

### **Regulation 5 – Amendment of the Town and Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008**

The amendment here corrects an error in terminology. This was highlighted by the Subordinate Legislation Committee and an undertaking was given to change it at the earliest opportunity.

### **Regulation 6 – Amendment of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008**

The amendment here inserts an omitted word. This was highlighted by the Subordinate Legislation Committee and an undertaking was given to change it at the earliest opportunity.

### **Regulation 7 – Amendment of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008**

Regulation 7(2) – removes words which inadvertently limit the scope of the Development Management Regulations.

Regulation 7(3)- amends the definition of “neighbouring land” to clarify it in light of apparent inappropriate interpretations made by stakeholders.

Regulation 7(4) – Clarifies the intention that requirements for design and design and access statements do not apply in relation to applications for planning permission in principle. The requirements on the content of such applications in Regulation 10 of the development Management regulations excluded reference to such statements, however, it was felt that the requirements for such statements as set out in Regulation 13 should also be disapplied in the relation to in applications for planning permission in principle to make the position clear.

Regulation 7(5) – This amends the requirements for advertising planning applications to make it clear the requirements for advertising development plan departures and applications specified as having potentially wider amenity implications apply only to applications for planning permission and planning permission in principle. Without this it could have been applied to applications for approval of conditions or applications for certificates of lawful use or development, which would have been excessive.

Regulation 7(6) – this amends the categories of development for which applications should be subject to requirements around pre-determination hearing and referral of the application to full council for decision. The intention was that in relation to major developments, those which are significantly contrary to the development plan, rather than just the local development plan, should be subject to these procedures. The word “local” is therefore omitted.

Regulation 7(7)(a) – amends an incorrect reference to “planning permission in principle” to “planning permission”.

Regulation 7(7)(b) – amends the transitional arrangements which were designed to bring applications made before 3 August but not determined before that date into the new system which will exist from 3 August. The amendment removes references to certain provisions which relate solely to applications made under the Development Management Regulations after 3 August rather than relevant to applications made under current legislation before that date.

This amendment also introduces a new paragraph (3A) to Regulation 45 of Development Management Regulations on transitional arrangements for applications made before the new system comes into effect on 3 August but which are not determined by that date. It ensures that specified provisions in the new Development Management Regulations apply to such applications even though the applications were made under different legislation in the current planning system.

Regulation 7(8) –

(a) and (d) – introduce a savings provision to ensure existing provisions for, amongst other things, neighbour notification and identification and notification of proposal site owners are retained for the purposes of certain applications for minerals permission. The procedures for such applications are not subject to the changes associated with planning modernisation and will continue to rely on existing procedures.

(b) – amends incorrect reference to “planning permission in principle” to read “planning permission” .

(c) – this more accurately specifies elements of current procedural requirements on periods for determining applications which should not apply to applications made before 3 August but which will be determined some time after that date. These applications will be covered by the time periods specified in the Development Management Regulations.

Regulation 7(9) – This adds another entry on Part II of the planning register to accommodate certain cases subject to Environmental Impact Assessment Regulations. Without it the information for registers as specified in the Development Management Regulations would no longer have accommodated decisions of deemed refusal on applications where applicants did not timeously acknowledge a planning authority’s request for an environmental statement.

## **Consultation**

The provisions of the Planning etc. (Scotland) Act 2006 being commenced have been subject to consultation through the Bill process. The saving, consequential and transitional provisions are technical measures just to smooth the transition to the new system and were not subject to public consultation.

## **Financial Effects**

The effects of the main changes to the planning system were covered in the financial memorandum accompanying the bill, which became the Planning Etc. (Scotland) Act 2006, and the Executive Notes and Regulatory Impact Assessments accompanying the related secondary legislation, which has already been through the Parliament:

Financial memorandum for the Bill

<http://www.scottish.parliament.uk/business/bills/51-planning/index.htm>

The Town and Country planning (Hierarchy of Developments) (Scotland) Regulations 2009 (SSI 2009/51)

[http://www.opsi.gov.uk/legislation/scotland/ssi2009/en/ssien\\_20090051\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2009/en/ssien_20090051_en.pdf)

The Town and Country Planning (Development Management) (Scotland) Regulations 2008 (SSI 2008/ 432)

[http://www.opsi.gov.uk/legislation/scotland/ssi2008/en/ssien\\_20080432\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2008/en/ssien_20080432_en.pdf)

The Town and Country Planning (Schemes of Delegation and Local Reviews) (Scotland) Regulations 2008 (SSI 2008/ 433)

[http://www.opsi.gov.uk/legislation/scotland/ssi2008/en/ssien\\_20080433\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2008/en/ssien_20080433_en.pdf)

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