

EXECUTIVE NOTE

THE PLANNING ETC. (SCOTLAND) ACT 2006 (COMMENCEMENT NO. 3) ORDER 2008 SSI/2008/164 (C.16)

THE PLANNING ETC. (SCOTLAND) ACT 2006 (DEVELOPMENT PLANNING) (SAVING PROVISIONS) ORDER 2008 SSI/2008/165

The Planning etc. (Scotland) Act 2006 (the 2006 Act) received Royal Assent on 20th December 2006, and amends the principal Act, the Town and Country Planning (Scotland) Act 1997 (the 1997 Act)). The existing Part 2 of the 1997 Act, dealing with development plans, will be replaced in its entirety by the provisions set out in part 2 of the 2006 Act. Part 2 of the 2006 Act is expected to be brought into force in its entirety around January 2009, but a number of orders are required to be made well in advance of this date. These largely deal with strategic development planning authorities (SDPAs), as explained in this note.

Under the 1997 Act, the development plan is composed of a nationwide two-tier system of structure plans and local plans. The 2006 Act replaces these with strategic development plans and local development plans. The latter will exist throughout the country, but the former will only be prepared in parts of the country where Ministers designate a SDPA. The intention is that these will only exist in the biggest city regions.

The **Commencement No. 3 Order** is being made now to allow appropriate structures to be put in place for the preparation of strategic development plans (SDPs) before the duty to prepare those plans comes into force. It will have three particular effects:

- Bringing into force the power for Ministers to designate by order groups of planning authorities as ‘strategic development planning authorities’ (SDPAs), allowing those authorities to move forward with certainty to put in place appropriate governance structures, to begin preparatory work on producing SDPs, and to identify appropriate boundaries for the SDP areas.
- Requiring planning authorities within SDPAs to have regard to guidance issued by Scottish Ministers under the new section 4(7) of the 1997 Act, as introduced by the 2006 Act.
- Commencing the provisions of the 2006 Act to the extent that they relate to the determination and redetermination of a SDP area. This will have the effect of requiring the SDPAs to propose a boundary for the SDP area to Scottish Ministers within 3 months of their being designated.

It is intended to make Orders designating the strategic development plan authorities following the commencement of section 2 for these purposes on 19th May 2008. These Orders will identify which planning authorities are to come together as SDPAs to jointly to prepare SDPs.

The **Savings Provisions Order** is needed as section 2 of the 2006 Act substitutes a whole new Part 2 for the existing Part 2 of the 1997 Act. Commencing section 2 would therefore, if nothing else were to be done, substitute the new provisions but only for limited purposes. As

the existing provisions are to continue to apply in full force and effect until such time as section 2 of the 2006 Act is commenced in its entirety, a saving provision is needed to ensure that the existing law is unaffected. It is intended that the Saving Provision Order will be revoked when making more general transitional provisions for Development Planning when commencing section 2 in its entirety.

Policy Objectives

Need for early commencement

The modernised planning system introduced by the 2006 Act will bring much-needed improvements to the arrangements for strategic planning, including the more efficient delivery of plans, and better engagement with stakeholders. It is important that these benefits are introduced as soon as is practical, and that the length of the transition period from the old to the new systems is minimised. Scottish Ministers therefore wish SDPAs to be in a position to start work on the new plans as soon as the main development planning provisions of the new Act are commenced (anticipated to be in January 2009). But in order for this to happen, the legal and advisory context needs to be in place first. Planning authorities need to know whether they are to be included in SDPAs; the boundaries for the SDP areas need to have been set; and governance structures need to be in place. Governance issues are covered in guidance issued by Scottish Ministers in Circular 2/2008, but there is a need to bring into force the legal requirement for planning authorities to have regard to this guidance.

Strategic development planning authority groupings

The proposed SDPA groupings will be the subject of separate designation orders (and an accompanying executive note) to be made on 19 May 2008.

Statutory Guidance for SDPAs

Scottish Ministers have published Circular 2/2008 which gives guidance to planning authorities on SDPAs. In particular it advises on governance issues, including the setting up of joint committees and the establishment of dedicated teams of officials to service them. It also provides guidance on how and where SDP area boundaries should be drawn. It will be an early task of the SDPAs to propose such boundaries to Scottish Ministers for confirmation. An effect of the Commencement No. 3 Order is to require planning authorities to have regard to this guidance.

Financial Effects

The requirement to prepare SDPs replaces the earlier requirement to prepare structure plans, so this is not a new duty on the authorities concerned. However the Scottish Government has accepted that there will be one-off start-up costs associated with setting up the new SDPAs. In particular, we are now giving stronger guidance that SDPAs should be serviced by small

dedicated teams of officials: where they do not already exist, these teams will need to be recruited, accommodated and equipped. £400,000 has therefore been identified within the current spending round to assist SDPAs with these one-off costs. Planning authorities will be expected to fund ongoing running costs from within their own resources.

Impacts

These orders have not been subject to formal assessment of their regulatory, equality or environmental impacts, as these are purely administrative measures required to pave the way for the later introduction of the new strategic development planning system. The wider package of secondary legislation required to introduce the new development planning system will be subject to equalities and regulatory impact assessment, and has already been screened for possible significant environmental effects. Following consultation, the Government has formally determined that strategic environmental assessment will not be required.

Stephen Hall
Directorate of the Built Environment
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