

## **EXECUTIVE NOTE**

### **THE PLANNING ETC. (SCOTLAND) ACT 2006 (COMMENCEMENT NO. 7) ORDER 2009 – “THE COMMENCEMENT ORDER” SSI 2009 No. 100 (C.7)**

### **THE PLANNING ETC. (SCOTLAND) ACT 2006 (SAVING AND TRANSITIONAL PROVISIONS) ORDER 2009 - “THE SAVINGS AND TRANSITIONALS ORDER” SSI/2009/101**

The above instruments were made in exercise of the powers conferred by, with regard to the Commencement Order, section 59(2) of the Planning Etc. (Scotland) Act 2006 (the 2006 Act) and, in the case of Savings and Transitionals Order by section 58(1) of that Act. The Commencement order is not subject to any Parliamentary procedure. The Savings and Transitionals Order is subject to negative resolution procedure.

#### **Policy Objectives**

The purpose of the Commencement Order is to commence certain provisions of the Planning etc. (Scotland) Act on 6 April 2009. From 3 August 2009 new procedures will be put in place in relation to planning applications and planning appeals as well as the introduction of local review procedures as part of the reform of the planning system.

Certain aspects of the 2006 Act and related regulations need to come into force earlier, namely 6 April, so that planning authorities and prospective applicants can do preparatory work in anticipation of these changes on 3 August. The Commencement Order commences, in some cases partially, those provisions of the 2006 Act which are required for 6 April. The commencements of sections 5 (Hierarchy of developments), 11 (Pre-application consultation) and partial commencement of section 17 (Local developments: schemes of delegation) on 6 April, and the coming into force of related regulations, will mean planning authorities and prospective applicants will be able to:

- identify what, in the new system from 3 August, will be classed as major and local developments;
- prospective applicants will be able to see whether applications they intend to make on or after 3 August will require pre-application consultation with local communities beforehand and carry out such consultation; and
- planning authorities will be able to prepare and adopt their schemes of delegation for local developments;

The partial commencement of section 54(17)(a)(i) introduces the interpretation of the terms “local development” and “major development”, which relate to the hierarchy of developments relevant to sections 5, 11 and 17.

The Commencement of section 54(19) amends Schedule 14 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) which deals with blighted land. Chapter 2 of Part 5 of the 1997 Act deals with blight, i.e. the detrimental effects of planning proposals on land. An example might be land required for a long term infrastructure proposal that might then be difficult for the owners to sell. The Act allows certain people with an interest in land affected by blight to, in certain circumstances, serve a blight notice on the appropriate authority, requiring them to purchase the land. Section 100 of the Act defines “blighted land” as land falling within any paragraph of Schedule 14 of the Act. Paragraphs 1 and 2 of Schedule 14 deal with land allocated in development plans, and currently refers to structure and local plans. Section 54(19) replaces these references with references to strategic and local development plans, which will replace structure and local plans in the modernised planning system.

The Savings and Transitionals Order makes a transitional provision for section 11 of the 2006 Act and a saving provision in relation to section 54(19) and of that Act, both sections being commenced on 6 April by the Commencement Order.

Article 2 of Savings and Transitional Order ensures that while the new provisions in section 11 on pre-application consultation with communities (PAC) will come into force on 6 April, these will only apply in relation to certain planning applications made on or after 3 August. Prospective applicants can then carry out the minimum 12 week period of PAC, where it will apply, in advance of making an application on or after 3 August, when the majority of the new development management procedures come into effect.

Article 3 of the Savings and Transitionals Order has the effect of continuing to apply the blighted land definition to old-style development plans in addition to new-style plans, as it will be some years before all structure and local plans in Scotland have been replaced by strategic and local development plans, and there will be a period when both old and new-style plans exist in different parts of Scotland. The right to serve a blight notice needs to be retained through this period, regardless of the nature of the development plan in any locality, in order to safeguard the interests of landowners whose land may be detrimentally affected by planning proposals.

### **Consultation**

No consultation was undertaken on these particular orders. Consultation was undertaken on the related subordinate legislation (see links to executive notes below).

### **Financial Effects**

The blighted land provisions maintain an existing right, and so will not have any new financial effects.

The effects of new provisions on the hierarchy of developments, pre-application consultation and schemes of delegation 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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