

2011 No. 348

TOWN AND COUNTRY PLANNING

The Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Amendment Order 2011

Made - - - - 28th September 2011

Laid before the Scottish Parliament 30th September 2011

Coming into force - - 14th November 2011

The Scottish Ministers make the following Order in exercise of the powers conferred by section 58(1) and (2) of the Planning etc. (Scotland) Act 2006(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Amendment Order 2011 and comes into force on 14th November 2011.

Amendment of Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2010

2.—(1) The Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2010(b) is amended in accordance with paragraph (2).

(2) For article 3 substitute—

“Planning obligations

3.—(1) Subject to paragraph (2)—

- (a) an existing planning agreement shall have effect as if made under section 75 (planning obligations) of the Act as that provision has effect on 1st February 2011 (following commencement of section 23(1) (planning obligations) of the 2006 Act on that date)(c);
- (b) sections 75, 75A (modification and discharge of planning obligations) and 75B (appeals) of the Act (as those provisions have effect on 1st February 2011) apply in relation to an existing planning obligation as they apply to a planning obligation entered into by an agreement entered into under section 75 of the Act on or after that date and, for the purpose of such application, references in those sections and regulations made under the Act to—

(a) 2006 asp 17.

(b) S.S.I. 2010/431.

(c) Section 23(1) of the Planning etc. (Scotland) Act 2006 is commenced by S.S.I. 2010/400.

(i) a planning obligation shall be treated as including a reference to an existing planning obligation;

(ii) a relevant instrument shall be treated as including a reference to an existing planning agreement.

(2) Sections 75(5) and (6) and 75C (planning obligations: continuing liability of former owner etc.) of the Act shall not apply in relation to an existing planning agreement.

(3) In this article—

“existing planning agreement” means an agreement entered into under, or having effect as if entered into under, section 75 of the Act before 1st February 2011; and

“existing planning obligation” means an obligation entered into by an existing planning agreement.”.

AILEEN CAMPBELL

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
28th September 2011

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2011 (“the 2011 Order”) insofar as it makes the transitional and savings provisions in connection with the commencement of section 23 of the Planning etc. (Scotland) Act 2006 (“the 2006 Act”). Section 23(1) of the 2006 Act inserted new sections 75 to 75C into the Town and County Planning (Scotland) Act 1997 (“the 1997 Act”) in substitution for the previous section 75 of the 1997 Act with effect from 1st February 2011.

Article 2 substitutes a new article 3 to replace article 3 of the 2011 Order. The new article 3(1)(a) provides that an agreement entered into under section 75 of the 1997 Act before 1st February 2011 is to have effect as if made under section 75 after that date. New article 3(1)(b) makes it clear that new sections 75 to 75B apply to an obligation contained in such an agreement in the same way as they apply to a planning obligation contained in an agreement entered into on or after 1st February 2011. Section 23(2) of the 2006 Act preserves the application of provisions of the old section 75(3) and (4) of the 1997 Act relating to enforceability of obligations in respect of agreements entered into before 1st February 2011. New article 3(2) provides that the equivalent enforcement provisions contained in the new section 75(5) and (6) and 75C do not apply in relation to such agreements notwithstanding that the agreement has effect as if made under the new section 75. New article 3(3) provides definitions of “existing planning agreement” and “existing planning obligation”.

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