EXECUTIVE NOTE

DRAFT : THE PLANNING ETC. (SCOTLAND) ACT 2006 (CONSEQUENTIAL AMENDMENTS) ORDER 2009

The above instrument is to be made in exercise of the powers conferred by section 58(1) and (2) of the Planning Etc. (Scotland) Act 2006 (the 2006 Act). This draft Order is subject to affirmative resolution procedure.

Policy Objectives

The purpose of The Planning etc. (Scotland) Act 2006 (Consequential Amendments) Order 2009 is to amend certain pieces of primary legislation as a consequence of the coming into force of the main development management provisions in Part 3 of the Planning etc. (Scotland) on 3 August 2009.

The consequential amendments relate to the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Licensing (Scotland) Act 2005 and the Planning etc. (Scotland) Act 2006 itself. The changes to the latter come into force on 2 August in order that the provision in the 2006 Act are amended before they themselves come fully into force on 3rd August 2009.

Article 2 amends the Town and Country Planning (Scotland) Act 1997. Most of these amendments relate to adding text to cover the role of local reviews and local review bodies, which will replace appeals to the Scottish Ministers in relation to planning applications for local developments delegated by planning authorities to officers for decision. Sub-paragraph (2) ensures provisions allowing the removal of material from a planning register once a decision is made applies where that decision is made on local review as well as, for example, on appeal.

Sub-paragraph (3) amends section 60(2) of the Act which lists the circumstances in which a matter of detail specified in a condition attached to planning permission in principle is finally approved. The amendment adds approvals on successful local reviews to, for example, a decision on application to the authority and decision on appeal to the Scottish Ministers.

Sub-paragraph (6) similarly amends the section of the 1997 on interpretation so that various terms on decisions and timings of decisions etc include reference to decision on local review alongside the current references to decisions by Ministers on appeals and decisions by the planning authorities on applications.

Sub-paragraph (4) amends section 180 of the 1997 Act on appealing against a notice requiring the proper maintenance of land. Section 180 applies the provisions on appealing against enforcement under section 131 of the 1997 Act. The right to be heard in relation to enforcement appeals in section 131(2) will be repealed on 3 August and

Sub-paragraph (4) amends section 180 to remove the redundant reference to section 131(2).

Sub-paragraph (5) – amends section 266 of the 1997 Act, which allows expenses to be awarded in cases where a right to be heard exists and whether or not a local inquiry is held. With the removal on 3 August of the right to be heard in relation to certain procedures, such as called-in applications under section 46 and appeals under section 47 of the 1997 Act, this amendment ensures that awards of expenses can still be made

Sub-paragraph (7) – amends schedule 4 of the 1997 Act to take account of the fact that from 3 August paragraph 2(4) of that schedule which refers to a right to be heard in appeals will be repealed and hence the reference to it in paragraph 6(2)(a) of the Schedule will be redundant and that reference is therefore removed.

Article 3 amends the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997. Section 15 of that Act allows a planning authority to add a condition to a grant of listed building consent preventing the demolition of a listed building until certain mechanisms are in place, including a planning agreement under section 75 of the Town and Country planning (Scotland) Act. Section 75 will be amended by the 2006 Act to include unilateral obligations as well as agreed obligations. This consequential amendment allows section 15 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 to apply to both unilateral obligations and agreements under section 75. Both unilateral obligations and agreements may be entered on the Register of Sasines or the Land Register for Scotland.

Article 4 amends the Licensing (Scotland) Act 2005. Section 50 of this Act relates to certifying as part of the licensing process whether planning permission or outline planning permission has been granted. The changes made by the 2006 Act will replace outline planning permission with planning permission in principle. Planning permission in principle differs from outline planning permission in terms of duration of permission and the process for approval of detailed matters. While these changes make no significant difference to the licensing process, the latter needs to take account of the fact that a development proposal requiring licensing may benefit from a grant of planning permission, outline planning permission (granted prior to 3 August) or (from 3 August) planning permission in principle.

Article 5 – sections 20 and 21 of the Planning etc. (Scotland) Act 2006 replace provisions in sections 58 and 59 of the Town and Country Planning (Scotland) Act 1997 on planning permission and outline planning permission, the latter changing to planning permission in principle. One of the effects of the changes is that the specification of the time period within which development must be started will no longer be attached as a condition on either form of planning permission. However, the new versions of sections 58 and 59 allow this time period to be challenged by the applicant as if it were a condition on appeal to the Scottish Ministers. The amendments in article 5 allow that applicants who will have a right to seek local review rather than to appeal to the Scottish Ministers will also be able to challenge this time period through the local review process.

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

These consequential amendments are not expected to have any financial effects in themselves. 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

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
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

Directorate of the Built Environment
Scottish Government
14 May 2009