EXECUTIVE NOTE

THE PLANNING ETC. (SCOTLAND) ACT 2006 (COMMENCEMENT NO. 8) ORDER 2009
SSI 2009/179 (C.13)

1. The above instrument was made in exercise of the powers conferred by section 59(2) of the Planning etc. (Scotland) Act 2006. This commencement order is not subject to any parliamentary procedure.

Policy Objectives

2. The purpose of this commencement order is to bring into force the amendments to section 252 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) on "fees for applications etc.", made by section 31 of the Planning etc. (Scotland) Act 2006 (the 2006 Act). Paragraphs 4-6 below set out information on the provisions in section 31.

3. Changes to section 252 incorporate the powers for a range of charges, including application fees and advertising costs, to be made by planning authorities. The intention is that planning authorities should, from 3 August 2009 (when the majority of changes to planning application procedures come into force) continue to recover advertising costs from applicants and be able to recover costs for an additional category of advertising of planning applications. An affirmative SSI with regulations on cost recovery in this regard needs to be laid in draft before the Parliament this week. We therefore require to commence section 31 of the 2006 Act in order to lay and, subject to the views of Parliament, make these regulations (the Town and Country Planning (Cost of Publication) (Scotland) Regulations 2009), hence the short time between laying the commencement order and its coming into force.

4. With regard to the content of section 31 of the 2006 Act, it amends section 252 of the 1997 Act relating to fees and charges. Under new sections 252(1) and (1A) the Scottish Ministers may make regulations concerning the payment of a charge or fee to a planning authority for the performance by the authority of any of its functions, or anything it does in support of the performance of any such function. The regulations may also specify the person by whom the charge or fee is to be paid, how it is to be calculated, and who is to make the calculation. They may also make different provisions for different classes of case, specify when no charge or fee is to be made, and in what circumstances a charge or fee can be transferred from one planning authority to another.

5. Under section 252(1B), Ministers may make different provisions according to whether an application is made before or after the carrying out of the development to which it relates. This would allow authorities to make higher charges for retrospective applications.

6. These powers would allow Ministers to set out in detail how the new system of fees and charges is to operate, and it was thought that this is appropriate to set out in regulations, rather than on the face of the Act.

Consultation

7. No consultation was undertaken on this order. Public consultation was undertaken on the related subordinate legislation which sets out the relevant requirements for advertising planning applications (see links to executive notes below), and that consultation included the issue of recovering the costs of such advertising.

Financial Effects

8. 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 (Development Management) (Scotland) Regulations 2008 (SSI 2008/ 432)
http://www.opsi.gov.uk/legislation/scotland/ssi2008/en/ssien_20080432_en.pdf

Directorate of the Built Environment
Scottish Government
12 May 2009