

2008 No. 427

TOWN AND COUNTRY PLANNING

**The Planning etc. (Scotland) Act 2006 (Development Planning)
(Saving, Transitional and Consequential Provisions) Order 2008**

Made - - - - - *18th December 2008*

Laid before the Scottish Parliament *19th December 2008*

Coming into force - - - *28th February 2009*

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, commencement and interpretation

1.—(1) This Order may be cited as the Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 and comes into force on 28th February 2009.

(2) In this Order—

“the Act” means the Town and Country Planning (Scotland) Act 1997(b);

“the 2006 Act” means the Planning etc. (Scotland) Act 2006;

“the 1983 Regulations” means the Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983(c);

“the 1994 Regulations” means the Conservation (National Habitats &c.) Regulation 1994(d);

“the 1995 Order” means the Designation of Structure Plan Areas (Scotland) Order 1995(e);

“the relevant date” means the date on which section 2 of the 2006 Act comes into force for all purposes;

“structure plan” and “local plan” have the same meaning as in the Act as it has effect immediately before the relevant date, and references to—

(a) a structure plan include references to a proposal for the alteration or repeal and replacement of a structure plan; and

(b) a local plan include references to a proposal to alter, repeal or replace a local plan, within the meaning of the Act as it has effect immediately before the relevant date.

(a) 2006 asp 17.

(b) 1997 c.8.

(c) S.I. 1983/1590.

(d) S.I. 1994/2716 as amended by S.S.I. 2007/80 and S.I. 2007/1843.

(e) S.I. 1995/3002.

Structure plans submitted to the Scottish Ministers

2.—(1) This article applies to a structure plan which has been submitted to the Scottish Ministers before the relevant date.

(2) Where this article applies the provisions of sections 6 to 10, 20, 21, 237 and 238 of the Act, the 1983 Regulations, the 1994 Regulations and the 1995 Order shall continue to have effect as they did immediately before the relevant date for the purposes of that structure plan.

Structure plans and alterations to structure plans not submitted to the Scottish Ministers

3.—(1) This article applies to a structure plan—

- (a) in respect of which, the planning authority have, before the relevant date, taken such steps as will in their opinion secure that the requirements of section 8(1) (publicity and consultation) or as, the case may be, section 9(4) (alteration and replacement of structure plans) of the Act (as those sections applied immediately before the relevant date) are satisfied; but
- (b) which has not been submitted to the Scottish Ministers before the relevant date.

(2) Where this article applies the provisions of—

- (a) sections 5 to 7, 8(1) and (2), 9(1) and (2), 21, 237 and 238 of the Act, the 1983 Regulations (other than regulations 11 to 19 and 21), the 1994 Regulations and the 1995 Order shall continue to have effect as they did immediately before the relevant date for the purposes of that structure plan; and
- (b) sections 10 (other than subsections (3)(b)(ii) and (iii) and (8)), 11, 12 (other than subsection (2) and (7)(a)(ii)), 13, 14, 23, 23A, 24 and 25 of the Act (as it has effect on the relevant date), and regulations made under such provisions, are to apply to the structure plan as they apply to a strategic development plan but as if—
 - (i) references to—
 - (a) a strategic development plan were references to a structure plan;
 - (b) the strategic development plan area were references, as the case may be—
 - (i) to the district of the planning authority; or
 - (ii) where two or more planning authorities are to prepare a structure plan jointly under section 5 of the Act (as continued in force by paragraph (2)(a)), to the structure plan area designated by the 1995 Order in respect of those authorities; and
 - (c) a strategic development planning authority were references to the planning authority or planning authorities, as the case may be, which are preparing the structure plan; and
 - (ii) the reference in section 10(1) of the Act to the date specified by virtue of section 9(8) of the Act is treated as reference to the end of the period prescribed under section 8(2) of the Act as it applied immediately before the relevant date, the reference in section 10(1)(a) of the Act to representations is treated as a reference to representations made to the planning authority within such period and the reference in section 10(1)(c) of the Act to persons making representations is treated as a reference to persons making such representations.

Local plans in respect of which notice of local inquiry has been given

4.—(1) This article applies to a local plan in respect of which notice by local advertisement of a local inquiry has been given under regulation 34 of the 1983 Regulations before the relevant date.

(2) Where this article applies the provisions of sections 11 to 21, 237 and 238 of the Act, the 1983 Regulations and the 1994 Regulations shall continue to have effect as they did immediately before the relevant date for the purposes of that local plan.

(3) In this article and in article 5(1) “notice by local advertisement” has the same meaning as in the 1983 Regulations.

Local plans where no notice of local inquiry has been served

- 5.—(1) This article applies to a local plan in respect of which, before the relevant date—
- (a) the planning authority have taken such steps as will in their opinion secure that the requirements of section 12(1)(a) of the Act (publicity and consultation) (as that section applied immediately before the relevant date) are satisfied; but
 - (b) notice by local advertisement of a local inquiry under regulation 34 of the 1983 Regulations has not been given.
- (2) Where this article applies the provisions of—
- (a) sections 11 to 13, 20 to 22, 237 and 238 of the Act, the 1983 Regulations (other than regulations 32 to 40) and the 1994 Regulations shall continue to have effect as they did immediately before the relevant date for the purposes of that local plan; and
 - (b) sections 19 (other than subsection (4) and (8)(a)(ii)), 20, 20A, 23A of the Act (as it has effect on the relevant date), and any regulations made under such provisions, are to apply to the local plan as they apply to a proposed local development plan but as if—
 - (i) references to a local development plan were references to a local plan;
 - (ii) references in section 19(1) and (3) to submission of the local development plan under paragraph (a) of section 18(4) were references to sending a local plan under section 12(3)(b) of the Act (as continued in force by paragraph (2)(a)); and
 - (iii) the circumstances mentioned in section 19(2) were that representations made within the period prescribed under section 12(2) of the Act (as continued in force by paragraph (2)(a)) have not either been withdrawn or taken account of in the proposed local plan and references in section 19(6)(b) and section 20A(1)(d)(ii) to persons who have made representations were references to the persons making such representations.

Development plan

6. Schedule 1 to the Act applies to—
- (a) a structure plan and any alteration to or replacement of a structure plan to which article 2 or 3 applies and which is approved by the Scottish Ministers after the relevant date; and
 - (b) a local plan and any alteration to or replacement of a local plan to which article 4 or 5 applies and which is adopted by the planning authority or approved by the Scottish Ministers after the relevant date,

in the same way as it applies to an old development plan within the meaning of that Schedule as if such structure plan, local plan, alteration or replacement is in force as respects any area immediately before the relevant date.

Preparation of local development plans where no strategic development plan approved

7. Where a planning authority prepare a local development plan or two or more planning authorities prepare a joint local development plan and—

- (a) the land to which the proposed local development plan relates is within a strategic development plan area; and
- (b) a strategic development plan has not been approved by the Scottish Ministers for that area,

section 16(6) of the Act (as it has effect on the relevant date) is to have effect as if the reference to the strategic development plan is a reference to the structure plan for the land to which the local development plan relates.

Amendments to the Conservation (Natural Habitats, &c.) Regulations 1994

- 8.**—(1) Part IVA of the 1994 Regulations is amended in accordance with paragraphs (2) to (4).
- (2) In regulation 85A(1)—
- (a) for the definition of “land use plan” substitute, ““land use plan” means a strategic development plan or local development plan or supplementary guidance as provided for in Part 2 of the 1997 Planning Act;”;
 - (b) for sub-paragraph (c) of the definition of “plan-making authority” substitute—
 - “(c) the Scottish Ministers when exercising powers under section 13 (approval or rejection of strategic development plans), 20 (constitution of local development plans) or section 23A (default powers of the Scottish Ministers) of the 1997 Planning Act.”.
- (3) In regulation 85A(2)—
- (a) in sub-paragraph (a) for “a local plan under section 17” substitute, “a local development plan under section 20”;
 - (b) after sub-paragraph (a) insert—
 - “(aa) the adoption of supplementary guidance under section 22 of the 1997 Planning Act;”;
 - (c) in sub-paragraph (b) for “a structure plan under section 10 or a local plan under section 19” substitute, “a strategic development plan under section 13 or a local development plan under section 20”.
- (4) In regulation 85D—
- (a) in paragraph (1) for “a joint structure plan under section 5 or joint local plan under section 11” substitute “a strategic development plan under section 4 or a joint local development plan under section 16”;
 - (b) in paragraphs (2) and (3) for “a joint structure plan or joint local plan” substitute, “a strategic development plan or a joint local development plan”; and
 - (c) in paragraphs (5) for “a joint structure or local plan” substitute, “a strategic development plan or a joint local development plan”.

Amendment to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992

9.—(1) The Town and Country Planning (General Permitted Development) (Scotland) Order 1992(a) is amended in accordance with paragraph (2).

(2) In class 33 (development by local authorities) of Schedule 1 after “a local plan adopted under section 12 of the Act” in each place where those words occur insert, “(as in force immediately before the commencement for all purposes of section 2 of the Planning etc. (Scotland) Act 2006) or a local development plan constituted under section 20 of the Act”.

(a) S.I. 1992/223.

Revocation

10. Subject to articles 2 to 5, the 1983 Regulations and the 1995 Order are revoked.

St Andrew's House,
Edinburgh
18th December 2008

STEWART STEVENSON
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes saving, transitional and consequential provisions in relation to the substitution of a new Part 2 to the Town and Country Planning (Scotland) Act 1997 (c.8) (“the 1997 Act”) by section 2 of the Planning etc. (Scotland) Act 2006 (asp 17).

Article 2 continues the previous law in force for the purposes of a structure plan which is submitted to the Scottish Ministers before the date on which section 2 of the 2006 Act comes into force for all purpose (“the relevant date”). Article 3 continues certain provisions of the previous law and applies with modifications certain provisions of the new law as introduced by the 2006 Act to structure plans which have been publicised but not yet submitted to the Scottish Ministers. Such a structure plan may be examined under section 12 of the new provisions in the same way as a proposed strategic development plan. References to a structure plan include by virtue of article 1(2) a proposal to alter or to repeal and replace a structure plan.

Article 4 continues the previous law for the purposes of a local plan in respect of which notice of a local inquiry has been given before the relevant date. Article 5 continues certain provisions of the previous law and applies with modifications certain provisions of the new law as introduced by the 2006 Act to local plans which have been publicised but in respect of which no notice has been given of a local inquiry before the relevant date. Such a local plan may be examined under section 19 of the new provisions in the same way as a proposed local development plan. References to a local plan include by virtue of article 1(2) a proposal to alter, repeal or replace a structure plan.

Article 6 provides that a structure plan or local plan approved or adopted after the relevant date will be treated as the development plan for the land to which it relates. In the circumstances where there is no strategic development plan for an area article 7 operates to apply section 16(6) of the Act as amended by the 2006 Act as if references to the strategic development plan were references to the structure plan.

Articles 8 and 9 make consequential amendments to the Conservation (Natural Habitats, &.) Regulations 1994 and the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 respectively. Article 10 revokes, subject to savings provisions in articles 2 to 5, the Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983 and the Designation of Structure Plan Areas (Scotland) Order 1995.

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