

PLANNING CIRCULAR 6/2013: Development Planning

Modifications

85. Section 18(3) to 18(9) and regulations 12 and 15 deal with pre-Examination modifications. Following the close of the period for representations on the Proposed Plan, planning authorities may make modifications, but only so as to take account of representations, consultation responses or minor drafting and technical matters.

86. There are four possible ways forward:

- (1) Where **no representations** have been received, or **all representations have been withdrawn or fully taken account of by 'non-notifiable modifications'** (i.e. only minor modifications such as minor wording or typographical changes):
 - the authority are to publish the plan, submit it to Scottish Ministers and advertise their intention to adopt it.

Where there are **unresolved representations** and the authority:

- (2) **decides not to make 'notifiable modifications'** (i.e. makes no significant modifications):

- they are to publish the plan (they may make non-notifiable modifications such as minor wording or typographical changes), and submit it to Scottish Ministers;

- (3) **decides to make 'notifiable modifications'** (defined in Regulation 15 as those that add, remove or significantly alter any policy or proposal in the plan):

- section 18(5) of the Act sets out that the planning authority are to publish the proposed local development plan as modified – i.e. not just a list of the modifications.
- The minimum publication requirements are the same as at the Main Issues Report stage, as set out at paragraph 73 above.

The making of 'notifiable modifications' brings with it a further opportunity to make representations. The modified version of the whole of the Proposed Plan will be subject to consultation, although the authority may wish to separately highlight the modifications.

Where the planning authority proposes notifiable modifications, they are required (under Regulation 15(2)) to give notice to the owner, lessee or occupier of any premises situated on a 'relevant site' or on neighbouring land. Relevant site means land in respect of which a modification removes, alters or introduces a specific proposal for the development of that land which if implemented would be likely to have a significant effect on the use or amenity of that land or neighbouring land (Regulation 15(4)).

A form is provided in Schedule 3 to the Regulations for the planning authority to use to as the form of notice for 'Notification of modifications made to the proposed local development plan' when notifying the owner, lessee or occupier of any premises situated on a 'relevant site' or on neighbouring land. It should also be accompanied by a map showing the location of the relevant site in question (Regulation 15(3)).

The authority must specify a date (at least 6 weeks ahead) by which further representations may be made.

- The authority would also have to update the Environmental Report, considering the potential environmental impacts of the modifications. Following receipt of any representations on the modified plan, the authority may then further modify the plan or submit it to Ministers.

(4) intends to make modifications that change the underlying aims or strategy of the Proposed Plan:

- they are required to prepare and publish a new proposed LDP.

Following the preparation of a new Proposed Plan, there would be publication and notification requirements, including notifying the owners, lessees and occupiers of all sites specifically proposed in the plan to be developed, and the neighbour notification of the owners, lessees and occupiers of the neighbouring land as set out in paragraphs 82–83 above.

87. From the Proposed Plan stage, Scottish Ministers expect an authority's priority to be to progress to adoption as quickly as possible. Pre-Examination negotiations and notifiable modifications can cause significant delay and so should not be undertaken as a matter of course, but only where the authority is minded to make significant changes to the plan. However, if authorities do wish to support a significant change to the plan, this should be done by pre-Examination modification, as set out in paragraph 86 (3) above. The Examination also provides an opportunity to change the plan, so if authorities see merit in a representation they may say so in their response to the reporter, and leave them to make appropriate recommendations.

Submission to Scottish Ministers

88. On submitting the plan to Scottish Ministers, sections 18(4) and 19(1) of the Act also require authorities to submit:

- their proposed Action Programme;
- a report of conformity with their current Participation Statement; and
- (if there are unresolved representations) a request that Scottish Ministers appoint a person to examine the Proposed Plan.

If possible, it would also be good practice to submit the material required under regulation 20 (and set out in paragraph 109 below) at this time.

89. The planning authority should include a Habitats Regulations Appraisal Record with the submission of their proposed LDP to Scottish Ministers. The HRA record should be a short document setting out in succinct terms:

- how the authority has determined that there is not likely to be a significant effect on a European site (if that is the case); and
- where a likely significant effect has been determined and an Appropriate Assessment has been undertaken, the conclusions reached and what action is proposed or has been taken to comply with the Habitats Regulations;
- a copy of any relevant correspondence from SNH.