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for people
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RSPB Scotland

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19 February 2008

Dear Mr Bullingham

Planning Enforcement Regulations 2007 Consultation

RSPB Scotland welcomes the opportunity to comment on this consultation paper. Our comments and a completed respondent information form and Equal Opportunities Questionnaire are attached. I hope that you find our comments useful when producing the regulations. However, please do not hesitate to contact me if you wish to discuss any of these comments further.

Yours sincerely,

Peter Gordon
Conservation Planner



**Consultation Response: Planning Enforcement Regulations 2007
RSPB Scotland Response to Consultation
February 2008**

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RSPB Scotland welcomes the opportunity to comment on this consultation paper. RSPB Scotland is part of the RSPB, a UK-wide charity with over a million members, researching environmental problems, campaigning for sustainable solutions, and managing land for biodiversity and people. RSPB Scotland aims to promote the conservation of birds and their habitats, is supported by over 75,000 members in Scotland and employs around 200 staff to promote the conservation of birds and biodiversity.

The Society welcomes these proposals for secondary legislation to implement new powers introduced by The Planning etc (Scotland) Act 2006.

Fixed Penalty Notices

We welcome the introduction of fixed penalty notices as a method of addressing breaches of enforcement notices or breach of condition notices and consider them more likely to be an effective deterrent, especially for minor breaches, than the threat of prosecution which is potentially time-consuming and expensive.

Q1. Do you support the proposal that penalties should be increased for continuing breaches and if not, why not?

RSPB Scotland supports the intention of this proposal as we believe that a ratcheting of the penalty will be more likely to secure timely action by perpetrators of any breach. We commend the suggestion made by The Highland Council that a more efficient mechanism than repetitive notices would be to issue a single notice specifying time-scales for compliance so that the planning authority may increase the penalty through time.

Q3. Do you have any views on the proposed increase in the amount of each subsequent fixed penalty, in particular with regard to the number of FPNs that would be required to reach the maximum and whether the fixed penalty should increase by a larger amount for each subsequent offence?

We consider that larger increases for each subsequent offence – or failure to comply within a specified time-scale as outlined in Q1 answer - would offer a more effective deterrent to persistent offenders. There is the drawback that the maximum level of penalty would be reached in fewer steps but, as existing options would remain open, the planning authority could still initiate a prosecution for very persistent offenders.

Notification of Initiation of Development, Notice of Completion of Development and On-site Notices

RSPB Scotland welcomes these measures which will assist planning authorities to control development more effectively and help inform the public.

Q4. Do you have any views on the proposed level of information requested in the NID [Notice of initiation of development] or any suggestions for other information, for example declaring that any suspensive conditions had been met, that might be useful?

We support the level of information sought. It is unclear from paragraph 27 whether details of planning enforcement action would be confined to that which has been initiated by that particular planning authority. It would certainly be useful if a fuller geographical picture could be provided but, in the absence of a national register, this would be administratively difficult for individual planning authorities.

Q5. Are you content with the proposed time limits for recording relevant enforcement action?

Three years appears to us to be an unduly restrictive period and we would suggest five years as a more appropriate limit.

Paragraph 29 refers to the need for a developer to display a notice from the time development begins until it is completed. We support this but query how well this is likely to be maintained in practice.

Q6. Bearing in mind that the purpose of the notice is to make people aware of the development and direct them to the appropriate contacts for further information, are you content with the level of information to be included? **Yes.**

Q7. Are you content with the proposed categories of development for which notices would be required to be displayed, and if not, why not?

Yes – whilst it might be desirable to inform the public by including all development, we consider this pragmatic approach to be more sensible.

Q8. Do you consider this sufficient, or would you like to suggest other criteria for the siting, display, size, etc of these notices?

It is not clear whether the intention is to have only one, or more, notices per development. In the vast majority of cases a single notice will suffice but a particularly large development, or one spanning both sides of a river might need two, or more, such notices. In such cases it would be unreasonable to expect the public to be aware of the likely location of a single notice.

Temporary Stop Notice

RSPB Scotland welcomes the introduction of this measure which planning authorities may use when they consider that immediate stoppage of a breach of planning control is necessary as the advantages of this process, as listed in paragraph 35, are persuasive.

Q9. Are you content with the proposed draft Regulations and if not, why not?

RSPB Scotland is content that the exclusion of a caravan as a main residence from the provisions of Temporary Stop Notice powers is justified, with the proviso as stated that this may be invalidated where the planning authority consider that the risk of harm to a compelling public interest may outweigh the benefit to the caravan occupier.¹

Q10. Are there any other situations where you believe use of a Temporary Stop Notice should not be permitted?

We are not aware of other circumstances where a Temporary Stop Notice should not be available as a mechanism to secure enforcement action where a local planning authority considers it necessary to prevent disturbance or loss of amenity occasioned by development which is unauthorised or in breach of conditions.

Q11. Do you wish to comment on the draft Regulations, the Regulatory Impact Assessment or the Equalities Impact assessment or other issues in respect of this consultation?

RSPB Scotland has no further comment to make at this stage.

¹ Although we are not aware of any examples, it is conceivable that this situation – where a temporary stop notice could be applied to a caravan dweller – where harm may be done to very important nature conservation interests may arise, for instance, where a caravan is positioned so close to the nest of rare bird that failure is likely. Whilst alternative sanctions are available for species listed under Schedule 1 of the Wildlife and Countryside Act 1981, as amended by the Nature Conservation (Scotland) Act 2004, birds breeding for the first time are less effectively covered.