

EXECUTIVE NOTE

THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS (APPLICATIONS FOR SCHEDULED MONUMENT CONSENT) (SCOTLAND) REGULATIONS 2011

S.S.I. 2011/375

1. The above instrument was made in exercise of the powers conferred by section 2 of, and paragraphs 1(1) and 2(2), (2A) and (3) of Schedule 1 to the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”). The instrument is subject to the negative procedure.

Policy Objectives

2. Section 15 of the Historic Environment (Amendment) (Scotland) Act 2011 amends the regulation making powers available to Scottish Ministers in relation to the scheduled monument consent (SMC) regime. The regulation making powers available relate to the administrative process relating to SMC and will allow for the scheduled monument application process to be brought into line with the model used in the listed building and planning legislation. This approach will ensure that the scheduled monument consent application form and process are and remain up to date.

3. The purpose of the instrument therefore is to make provision in respect of applications for scheduled monument consent. They also make provision as to the certificates which must accompany an application and prescribe the form of notice of application which must be given by the applicant to owners of the monument to which the application relates.

4. In addition the Regulations make provision as to the person who is to be treated as the owner of the monument for the purposes of such notices and certificates. The instrument also provides that the application is to be on the form provided by the Scottish Ministers and not in a form set out in the regulations. This will help ensure that the application forms for scheduled monument consent continue to be fit for purpose.

Summary of each Regulation

5. Regulation 1(1) sets out the title of the Regulations and provides that they will come into force on 1 December 2011.

6. Regulation 1(2) states that the Regulations extend to Scotland only.

7. Regulation 1(3) clarifies that the regulations apply to applications for scheduled monument consent made on or after 1 December 2011.

8. Regulation 2 makes provision for applications for scheduled monument consent and prescribes, for example, that an application must contain a written description of the work to which it relates, the name or location of the scheduled

monument to which the works relate, and, the name and address of the applicant or agent. Regulation 2(3) also prescribes that the application must be accompanied by a plan or drawing, sufficient to identify the land to which the works relate and such other plans and drawings as are necessary to describe the works to which it relates.

9. Regulation 3 makes provision as to the certificates which must accompany an application and prescribes the form of notice of application which must be given by the applicant to owners of the monument to which the application relates. Regulation 3(4) also makes provision as to the person who is to be treated as the owner of the monument for the purposes of such notices and certificates.

10. Regulation 4 makes provision for the scheduled monument consent application process to be carried out via electronic communication.

11. Regulation 5 revokes the Ancient Monuments and Archaeological Areas (Application for Scheduled Monument Consent) (Scotland) Regulations 1981 (SI 1981/1467) for applications made on or after 1st December. The 1981 Regulations continue to have effect in relation to applications made before that date.

Consultation

12. A public consultation on the draft Regulations ran from 21 March to 14 June 2011. The draft Regulations were one of a suite of 4 draft Scottish Statutory Instruments that were subject to consultation. The consultation document was sent to 359 organisations and individuals. Twenty eight organisations responded. The responses indicated generally strong support for the draft Statutory Instruments although some respondents suggested minor technical amendments to the Regulations, while others queried how some aspects of the Scottish Statutory Instruments would work in practice as well as seeking guidance on aspects of the processes governed by the Regulations.

13. A full list of those consulted and who agreed to the release of this information is attached to the consultation Analysis Report which can be viewed here:

<http://www.historic-scotland.gov.uk/index/about/consultations/closedconsultations.htm##21>

14. Respondents include:

- Eleven local authorities
- Two National Parks
- Built Environment Forum Scotland
- Institute of Historic Building Conservation
- National Trust for Scotland
- The Royal Incorporation of Architects in Scotland

15. While consultation on the draft Regulations was not required by statute the Scottish Government took the view that, in this case, and in line with the open and inclusive engagement that had characterised the legislative process underpinning the development of the 2011 Act, it was best practice to consult various interested bodies

and individuals on those draft Regulations that had a significant or practical policy dimension.

Impact Assessments

Equalities Impact Assessment

16. The Regulations are not discriminatory on the basis of gender, race, disability, marital status, religion or sexual orientation. The public consultation on the draft Regulations noted that it was the Scottish Government's view that it was "unlikely that the Regulations would have significant equalities impacts" and invited views on the draft Regulations in that regard. The consultation document was sent to all the key equalities agencies in Scotland and none offered an alternative view on this issue. The Scottish Government is satisfied therefore that the Regulations will have no equalities impacts.

Strategic Environmental Assessment (SEA)

17. Historic Scotland has applied the criteria specified in Schedule 2 of the Environmental Assessment (Scotland) 2005 Act to the proposed Regulations and have determined that they are exempt from Strategic Environmental Assessment under Section 7(1). A copy of the Agency's determination can be viewed via the Scottish Government's SEA database at the following website:

www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/SEAG

Financial Effects

18. The Cabinet Secretary for Culture and External Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

19. While the new provisions do not introduce significant changes into the scheduled monument application process, the opportunity has been taken to modernise and simplify forms, and this may generate some efficiency savings for users of the system and in Historic Scotland: however, these cannot be reliably estimated.