

EXECUTIVE NOTE

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) AMENDMENT REGULATIONS 2011

SSI 2011/378

1. The above instrument was made in exercise of powers conferred by sections 267, 275, and 275A of the Town and Country Planning (Scotland) Act 1997 and Sections 18, 19, 35, 36 and 82 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and all other powers enabling the instrument to be made. This instrument is subject to negative procedure. A list of the other statutory instruments linked to this legislation can be found in the annex to this document. Separate executive notes have been prepared for these.

Policy Objectives

2. This is one of a number of statutory instruments associated with removal of the automatic right to appear before and to be heard by a person appointed by Scottish Ministers in appeals relating to listed building cases. The cases include appeals against refusal of listed building consent or conservation area consent, applications for consent that are called-in for determination by Ministers and appeals against listed building enforcement notices. The provisions removing this automatic right are contained in the Planning etc. (Scotland) Act 2006 and the Historic Environment (Scotland) Act 2011. This is not a change of policy only a move to ensure parity across consent regimes.

3. This change brings the procedures in these cases into line with those for planning appeals. The latter are subject to the Town and Country Planning (Appeals) (Scotland) Regulations 2008 ('the 2008 Appeals Regulations'), which provide the framework for a more efficient and proportionate procedure for dealing with appeals and called in applications. All relevant documentation must be submitted at the outset of an appeal and the person appointed to hear the case ('the reporter') is given wide ranging case management powers to limit procedures to those which are necessary to decide the case and where the issues to be examined by further procedure are clearly defined. The procedures are designed to make the appeal process more proportionate and less adversarial and to provide savings to the parties in terms of cost and time. The policy supports the objectives of increasing the efficiency of the planning appeal system whilst retaining the high quality of decision making.

4. This particular statutory instrument extends the application of the 2008 Appeal Regulations to appeals under section 18 (appeals against refusal of or conditional consent to applications for listed building consent or against refusal of approval required by a condition) and 35 (appeals against listed building enforcement notices) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ('the Listed Buildings Act') and to the consideration of applications called-in by Scottish Ministers under Section 11 of that Act. They also apply to appeals in default of a decision on the part of the planning authority, appeals in relation to the variation and discharge of conditions, and appeals relating to conservation area consent and enforcement. The 2008 Appeal Regulations will apply to appeals made on or after 1st December 2011 and to applications called in on or after that date.

6. The period for making appeals in listed building and conservation area consent cases is reduced from 6 months to 3 months to bring it into line with appeals in relation to planning permission (the intention is to reduce the period of uncertainty as to whether an appeal will or will not be made). A transitional provision contained in regulation 11 retains the 6 month period where the right of appeal arises prior to the amendments coming into force.

7. Regulation 3 makes changes to the 2008 Appeals Regulations which set out how those Regulations apply to listed buildings cases. The new Part 4A introduced by regulation 8 sets out the procedure for appeals under section 18 of the Listed Buildings Act. These closely follow the procedure for planning appeals and retain the existing requirement for notices to owners (in the new regulation 15B). Changes to regulation 13 of the 2008 Appeals Regulations made by regulation 6 apply the same procedures to appeals against listed building enforcement notices as apply to appeals against planning enforcement notices. Regulation 4 together with regulations 5, 7, 9 and 10 amend definitions so that they apply to the new classes of appeals and referred (called-in) cases and make some changes to regulations 3 and 16 of the 2008 Appeals Regulations following the definitional changes to adopt a consistent drafting approach.

Consultation

8. As indicated, the changes made by this instrument are technical changes following the commencement of the provisions in the Planning etc. (Scotland) Act 2006 and the Historic Environment (Scotland) Act 2011, and have not themselves been the subject of consultation. The following link is to the Executive note for the 2008 appeal regulations which describe the consultation undertaken in relation to the new approach to appeals and called-in applications:

<http://www.legislation.gov.uk/ssi/2008/434/executive-note/contents>

Impact Assessments

9. These changes will have no impact with regard to issues covered by equalities impact assessments or strategic environmental assessment.

Financial Effects

10. The numbers of cases affected by these changes is minimal. In the year 2010-11 approximately 3,500 listed building and conservation area consents were determined in Scotland, of these 39 listed building appeals were made to Scottish Ministers and 5 were determined through a hearing. Therefore, for example, with the reporter able to decide the most appropriate approach to considering appeals and called-in cases in this regard there may be some reduction in the number of hearings, with related reductions in costs for the appellant or applicant, the planning authority and the Scottish Government.

Scottish Government
Directorate for the Built Environment
October 2011

ANNEX

The Historic Environment (Amendment) (Scotland) Act 2011 (Commencement No. 2) Order 2011 – This commences, amongst other things, provisions in the 2011 Act repealing provisions in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (1997 Act) containing the automatic right to be heard in relation to applications for listed building consent and conservation area consent called-in for determination by the Scottish Ministers and in certain appeal provisions.

The Historic Environment (Amendment) (Scotland) Act 2011 (Saving, Transitional and Consequential Provisions) Order 2011 – This preserves the effect of the provisions of the 1997 Act which are repealed for the purposes of cases called-in or where notice of appeal was made prior to the repeal.

The Planning etc. (Scotland) Act 2006 (Commencement No. 12) Order 2011 – This commences provisions in the 2006 Act which remove the automatic right to be heard in relation to appeals in listed building and conservation area consent cases specified in the 1997 Act

Planning etc. (Scotland) Act 2006 (Listed Buildings) (Saving Provisions) Order 2011 – This preserves the provisions repealed and amended as a result of the above commencement order for the purposes of those appeals made prior to repeal.

The Town and Country Planning (Inquiries Procedure) (Scotland) Amendment Rules 2011 - The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997 and The Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997 are amended so that they no longer apply to listed building and conservation area consent cases

The Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Revocation Regulations 2011 – As listed building cases are the only ones to which the Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990 currently apply, these 1990 regulations will be revoked.

The Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Amendment Regulations 2011 – This (along with other changes) removes the current references to appeals in the Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987.

The Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Amendment Regulations 2011 - This amends the Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Regulations 1992 to remove references to enforcement notice appeals in relation to listed buildings and conservation areas. It also amends the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009 to remove amendments to the 1992 Regulations in relation to such appeals. There are also savings provisions to preserve the effect of the 1992 Regulations for appeals started prior to the 2011 and 2009 amendments.