

EXECUTIVE NOTE

THE PLANNING ETC. (SCOTLAND) ACT 2006 (COMMENCEMENT NO. 12) ORDER 2011

SSI 2011/382 (C. 36)

AND

THE PLANNING ETC. (SCOTLAND) ACT 2006 (LISTED BUILDINGS) (SAVING PROVISIONS) ORDER 2011

SSI 2011/381

1. The above commencement order was made in exercise of powers conferred by section 59(2) of the Planning etc. (Scotland) Act 2006. This instrument is not subject to any procedure. The Planning etc. (Scotland) Act 2006 (Listed Buildings) (Saving Provisions) Order 2011 was made in exercise of powers conferred by section 58(1) of the Planning etc. (Scotland) Act 2006 ('the 2006 Act') and is subject to the negative resolution procedure.

Policy Objectives

2. This commencement order contains provisions in relation to the duration of listed building consent and to the conduct of appeals to the Scottish Ministers in relation to listed building consent and listed building enforcement notices. The Savings Provisions Order merely preserves the current versions of the provisions for cases where consent was granted (regarding duration of consent) or where an appeal was made before the changes come into force (1 December 2011).

Duration of Consent

3. Section 20(3) of the 2006 Act amends section 16 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ('the Listed Buildings Act') to reduce the default duration of listed building consent from 5 years to 3 years. Planning authorities will still be able to specify a longer or shorter period in individual cases as they see fit, otherwise 3 years will apply. If works are not begun within the period specified the consent lapses. This change matches the duration of planning permission and is intended to reduce the uncertainty around unimplemented permissions. Article 2 of the Savings Provisions Order preserves the current section 16 for listed building consent granted before 1st December 2011.

Procedure on Appeals and Called-in Cases

5. The intention is to bring procedures for considering appeals and applications called in for Ministerial decision in relation to listed building consent and conservation area consent into line with those for planning permission. In particular, the automatic right of the planning authority or the applicant to appear before and to be heard by a person appointed by Scottish Ministers in relation to such cases is to be removed. Article 3 of the Savings Provisions Order preserves the right to be heard contained in sections 20(2) and 36(2) of the Listed Buildings Act for appeals made to the Scottish Ministers before 1st December 2011.

6. The provisions removing the automatic right to be heard are contained in section 56 of, and the Schedule to, the Planning etc. (Scotland) Act 2006 (the 2006 Act) and section 21 of the Historic Environment (Amendment) (Scotland) Act 2011 ('the 2011 Act'). This commencement order commences provisions in the 2006 Act, while a separate commencement order for the 2011 Act (see annex) commences section 21 of the 2011 Act.

7. The current Town and Country Planning (Appeals) (Scotland) Regulations 2008 ('the 2008 Appeals Regulations') in relation to planning permission cases specify that the decision on how an appeal or called-in case is processed (i.e. whether to hold a public local inquiry, hearing, written submissions, site visit or some combination of these) is a matter for the Scottish Government reporter considering the case. The applicant or appellant and the planning authority can indicate their preferences as to the procedure to be followed. The intention is that the policy supports the objectives of increasing the efficiency of the planning appeal system whilst retaining the high quality of determination. The appeal process is also intended to become less adversarial with the person appointed by the Scottish Ministers being able to decide the most effective means of examining each case.

8. These changes regarding appeals and called-in cases require amendments to existing statutory instruments on these procedures. A list of related statutory instruments is contained in the annex to this note.

Consultation

9. The provisions of the 2006 Act have been subject to consultation through the Bill process. The saving provisions in relation to this and to the new procedures regarding procedures on appeals and called-in cases are a technical measure just to smooth the transition to the new system and were not subject to public consultation.

10. The Scottish Government consulted on the proposed approach to modernising planning appeals in the 2005 White Paper *Modernising the Planning System*. In February 2008 a public consultation was carried out on a draft of what was to become the 2008 Appeals Regulations. The analysis of consultation responses subsequently published

<http://www.scotland.gov.uk/Publications/2008/12/02095250/1>

12. The following link is to the Executive note for the 2008 Appeal Regulations which contain more information in this regard:

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

Impact Assessments

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

Financial Effects

15. 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 public local inquiry. The main aim is to have a consistent approach across listed building and conservation area consent cases and those for planning permission. With the reporter able to decide the most appropriate approach to considering appeals and

called-in cases there may be some reduction in the number of public local inquiries, 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 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 repealed provisions for cases called-in or appeals started before the changes come into force.

The Town and Country Planning (Appeal) (Scotland) Amendment Regulations 2011 – This amends the current 2008 Appeals Regulations for planning permission cases to include listed building and conservation area consent cases.

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

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 Appeal (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 (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.