

EXECUTIVE NOTE
THE PLANNING (LISTED BUILDINGS) (AMOUNT OF FIXED PENALTY)
(SCOTLAND) REGULATIONS 2011

S.S.I. 2011/424

1. The above instrument was made in exercise of the powers conferred by section 39A(5) and (13) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the 1997 Act”). The instrument will require affirmative resolution of the Parliament.

Policy Objectives

2. The purpose of the instrument (hereafter referred to as “the Fixed Penalty Regulations”) is to prescribe the amount of the penalty payable under a fixed penalty notice served under section 39A of the Planning (Listed Buildings and Conservation Areas) Act 1997 inserted by section 24 of the Historic Environment (Amendment) (Scotland) Act 2011 (“the 2011 Act”).

3. Section 24 of the 2011 Act introduces a new power into the 1997 Act that will enable planning authorities to issue fixed penalty notices as an alternative to prosecution in cases where a person is in breach of a listed building enforcement notice.

4. The power parallels that introduced into the planning regime by section 25 of the Planning etc. (Scotland) Act 2006. It offers a quick, practical and viable alternative which will give local authorities an additional tool to deal with those who break the law, as well as safeguarding listed buildings.

5. The provisions of the 2011 Act also allow for the amount of fixed penalty to escalate in the event that the breach of the enforcement notice continues. It is intended that a further enforcement notice will be issued followed by a subsequent Fixed Penalty Notice for an increased amount. This escalation of the penalty differs from Planning legislation.

6. In the Fixed Penalty Regulations there are only 3 specified amounts – the initial £2,000 increasing to £3,500 in respect of a breach of the second listed building enforcement notice and then £5,000 in respect of the breach of a subsequent notice. As it is unlikely that there will be numerous fixed penalty notices issued the Scottish Government took the view that there was little need for numerous levels of small increments.

7. Section 22 of the 2011 Act (which will be brought into force on 1st December 2011 by a commencement order to be brought forward) amends sections 34, 35, 39 and 40 of the 1997 Act. These provisions relate to listed building enforcement notices and the enforcement process to allow a notice to specify any works which the planning authority or the Scottish Ministers require to cease. The existing provisions already provide for a planning authority or the Scottish Ministers to serve a listed building enforcement notice to require specified steps to be taken. Under section 39A(1) of the 1997, it is open to the planning authority, where they believe a person

to be in breach of a listed building enforcement notice, to serve a fixed penalty notice on that person.

Summary of each article in the draft Regulations

8. Article 1(1) sets out the title of the regulations and prescribes that they will come into force on 1 December 2011.

9. Article 1(2) clarifies that any reference to a listed building enforcement notice does not include a listed building enforcement notice withdrawn by the planning authority.

10. Article 2(1) prescribes a fixed penalty of £2,000 as respects a breach of a listed building enforcement notice.

11. Article 2(2) prescribes a fixed penalty of £3,500 as respects a breach of a second listed building enforcement notice relating to the same steps or works as an earlier notice.

12. Article 2(3) prescribes a fixed penalty of £5,000 as respects a subsequent listed building enforcement notice relating to the same steps or works as an earlier notice.

Consultation

13. 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.

14. 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>

15. 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

16. 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

17. The Regulation's 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)

18. 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

19. The fixed penalty powers in the 2011 Act are discretionary and relate to the existing offence of a breach of a listed building enforcement notice which can attract a fine of up to £20,000.

20. 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.

Historic Scotland