

POLICY NOTE

THE PLANNING (LISTED BUILDING CONSENT AND CONSERVATION AREA CONSENT PROCEDURE) (SCOTLAND) REGULATIONS 2015

SSI 2015/243

The above instrument is made in exercise of the powers conferred by sections 9(3) to (6), 10, 17, 23(2), 25(2), 26(2), 28(1), 41D(5), 41I, 66(3) and 82(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the 1997 Act”).

Policy Objectives

The purpose of these Regulations is to provide for the procedures to be followed by all parties in relation to applications for listed building consent, applications for conservation area consent and applications for variation and discharge of conditions. These Regulations replace the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987.

The effective date for these regulations is 1 October 2015, the date on which Historic Environment Scotland (HES) takes over its full responsibilities under the Historic Environment Act 2014 (“the 2014 Act”).

HES is a new NDPB established by the 2014 Act. It will act as the lead body for the historic environment. HES will act as a consultation body in relation to listed building and conservation area consent.

Regulation 4 sets out the information content required in applications for listed building consent or conservation area consent in addition to that already required under section 9(2) of the 1997 Act.

Regulation 5 makes similar provision for applications for the variation and discharge of conditions attached to an existing listed building consent or conservation area consent.

Regulation 6 sets out a requirement that applications for listed building consent are to be accompanied by an access statement, which is a statement setting out how any issues relating to access to the building for disabled people have been dealt with. This requirement is limited to proposals which impact upon the means of access to the building. (There is no specified length for such a statement, but proportionality to the scale and nature of the proposed changes is expected to be the guiding principle.)

Regulation 7 requires the planning authority to consult with HES before granting or refusing applications for listed building consent by a planning authority; applications for listed building consent in respect of works for the demolition of a listed building, works to a category A listed building, works to a category B listed building, and applications for conservation area consent (that is, applications to demolish a building within a conservation area).

Regulation 8 requires the planning authority to advertise applications by notices inserted in newspapers and site notices, and sets out the information which must be in such notices.

Regulation 9 lays out certification requirements, whereby applicants for consent who are not the sole owner of the building must certify what measures they have taken to inform others with an ownership interest. Provision is made for situations where applicants do not have complete information.

Regulation 10 specifies that planning authorities shall not entertain applications which do not contain the appropriate certificate under Regulation 9.

Regulation 11 provides that applications will not be invalid if they withhold information relating to national security or to measures taken to ensure the security of any premises or property, provided the applicant gives a written statement addressing these matters.

Regulation 12 specifies time limit within which the planning authority must issue a decision notice and inform other parties of its decision. It allows for that time limit not to apply where an application has been called in by the Scottish Ministers for their determination. It further requires the planning authority not to determine an application until the period specified for consultation with HES (14 days) or representations (21 days) has ended. It lays out the minimum content for decision notices, which must include information on how applicants may appeal to the Scottish Ministers.

Regulation 13 requires the planning authority, when an application has been referred to the Scottish Ministers following a direction under section 11 of the 1997 Act, to serve a notice on the applicant to that effect, and specifies the content of such a notice.

Regulation 14 specifies the circumstances in which electronic communication may be used to send documentation.

Regulation 15 and Schedule 3 provide that the provisions of the 1997 Act in relation to conservation area consent apply, with some modification, as they apply in relation to listed building consents.

Regulation 16 sets out advertisement requirements for the planning authority where unopposed revocation or modification orders relating to consents are made under section 21 of the 1997 Act.

Regulation 17 sets out how various claims for compensation are to be made and that these must be made within 6 months of dates which are specified for each circumstance.

Regulation 18 sets out that a listed building purchase order must be served in writing on a planning authority, prescribing a time limit of one year for such action following the date of the relevant decision of that authority.

Regulation 19 revokes the current regulations, which are the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987, with the saving provision that applications made before 1 October 2015, and orders made under section 21 before that date, will continue to be governed by the 1987 Regulations.

Consultation

The policy approach adopted in these regulations was informed by discussions with key stakeholders prior to finalisation of draft regulations. The draft regulations were then the subject of a formal public consultation between 19 December 2014 and 27 March 2015. Representations were received in relation to the requirement to consult HES in relation to Category B listed, as well as Category A listed, buildings, but after discussion the approach set out in these Regulations was broadly accepted.

Impact Assessments

An Equalities Impact Assessment (EQIA) has been carried out for these regulations, in combination with several other regulations being laid at this time. It is not considered that this particular regulation will have any impact as distinct from the matters already considered as part of the original EQIA carried out prior to introduction of the Bill for the 2014 Act.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed for these regulations, in combination with several other regulations being laid at this time. While these regulations do not in themselves give rise to significant impacts, the provisions of the 2104 Act to which they give effect may, and a note is included below for completeness.

Note: It is considered that there is potential for some temporary negative impact on planning authorities until familiarity is established with the new consultation arrangements with HES, but that this is more than offset by the positive impact on applicants, arising from potential time savings now that HES will operate as a consultation body in contrast with the current position of the Scottish Ministers (through Historic Scotland) operating as a notification body at the end of the planning authorities deliberations.

Scottish Government
Culture, Europe and External Affairs Directorate
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