



Enterprise and Regulatory Reform Act 2013

2013 CHAPTER 24

PART 5

REDUCTION OF LEGISLATIVE BURDENS

Heritage planning etc

60 Listed buildings in England: agreements and orders granting listed building consent

- (1) The Planning (Listed Buildings and Conservation Areas) Act 1990 is amended as follows.
- (2) In Chapter 2 of Part 1, after section 26 insert—

“Buildings in England: heritage partnership agreements

26A Heritage partnership agreements

- (1) A relevant local planning authority may make an agreement under this section (a “heritage partnership agreement”) with any owner of a listed building, or a part of such a building, situated in England.
- (2) Any of the following may also be a party to a heritage partnership agreement in addition to an owner and the relevant local planning authority—
 - (a) any other relevant local planning authority;
 - (b) the Secretary of State;
 - (c) the Commission;
 - (d) any person who has an interest in the listed building;
 - (e) any occupier of the listed building;

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Changes to legislation: There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, Cross Heading: Heritage planning etc. (See end of Document for details)

- (f) any person involved in the management of the listed building;
 - (g) any other person who appears to the relevant local planning authority appropriate as having special knowledge of, or interest in, the listed building, or in buildings of architectural or historic interest more generally.
- (3) A heritage partnership agreement may contain provision—
- (a) granting listed building consent under section 8(1) in respect of specified works for the alteration or extension of the listed building to which the agreement relates, and
 - (b) specifying any conditions to which the consent is subject.
- (4) The conditions to which listed building consent may be subject under subsection (3)(b) in respect of specified works are those that could be attached to listed building consent in respect of the works if consent were to be granted under section 16.
- (5) If a heritage partnership agreement contains provision under subsection (3), nothing in sections 10 to 26 and 28 applies in relation to listed building consent for the specified works, subject to any regulations under section 26B(2)(f).
- (6) A heritage partnership agreement may also—
- (a) specify or describe works that would or would not, in the view of the parties to the agreement, affect the character of the listed building as a building of special architectural or historic interest;
 - (b) make provision about the maintenance and preservation of the listed building;
 - (c) make provision about the carrying out of specified work, or the doing of any specified thing, in relation to the listed building;
 - (d) provide for public access to the listed building and the provision to the public of associated facilities, information or services;
 - (e) restrict access to, or use of, the listed building;
 - (f) prohibit the doing of any specified thing in relation to the listed building;
 - (g) provide for a relevant public authority to make payments of specified amounts and on specified terms—
 - (i) for, or towards, the costs of any works provided for under the agreement; or
 - (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.
- (7) For the purposes of subsection (6)(g), each of the following, if a party to the agreement, is a relevant public authority—
- (a) the Secretary of State;
 - (b) the Commission;
 - (c) a relevant local planning authority.
- (8) In this section “specified” means specified or described in the heritage partnership agreement.
- (9) In this section and section 26B—

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“owner”, in relation to a listed building or a part of such a building, means a person who is for the time being —

- (a) the estate owner in respect of the fee simple in the building or part; or
- (b) entitled to a tenancy of the building or part granted or extended for a term of years certain of which not less than seven years remain unexpired;

“relevant local planning authority”, in relation to a listed building, means a local planning authority in whose area the building or any part of the building is situated.

26B Heritage partnership agreements: supplemental

- (1) A heritage partnership agreement—
 - (a) must be in writing;
 - (b) must make provision for the parties to review its terms at intervals specified in the agreement;
 - (c) must make provision for its termination and variation;
 - (d) may relate to more than one listed building or part, provided that in each case a relevant local planning authority and an owner are parties to the agreement; and
 - (e) may contain incidental and consequential provisions.
- (2) The Secretary of State may by regulations make provision—
 - (a) about any consultation that must take place before heritage partnership agreements are made or varied;
 - (b) about the publicity that must be given to heritage partnership agreements before or after they are made or varied;
 - (c) specifying terms that must be included in heritage partnership agreements;
 - (d) enabling the Secretary of State or any other person specified in the regulations to terminate by order a heritage partnership agreement or any provision of such an agreement;
 - (e) about the provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision;
 - (f) applying or reproducing, with or without modifications, any provision of sections 10 to 26 and 28 for the purposes of heritage partnership agreements;
 - (g) providing for any of the following, as they apply for the purposes of provisions mentioned in paragraph (f), to apply with any modifications consequential on provision made under that paragraph—
 - (i) sections 30 to 37;
 - (ii) sections 62 and 63;
 - (iii) Parts 3 and 4;
 - (iv) Schedule 3.

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- (3) Regulations made under subsection (2)(a) may, in particular, include provision as to—
- (a) the circumstances in which consultation must take place;
 - (b) the types of listed building in respect of which consultation must take place;
 - (c) who must carry out the consultation;
 - (d) who must be consulted (including provision enabling the Commission to direct who is to be consulted in particular cases); and
 - (e) how the consultation must be carried out.
- (4) Listed building consent granted by a heritage partnership agreement (except so far as the agreement or regulations under subsection (2) otherwise provide) enures for the benefit of the building and of all persons for the time being interested in it.
- (5) Subject to subsection (4), a heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not party to the agreement.
- (6) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenant) does not apply to a heritage partnership agreement.”
- (3) After section 26B insert—

“Buildings in England: orders granting listed building consent

26C Listed building consent orders

- (1) The Secretary of State may by order (a “listed building consent order”) grant listed building consent under section 8(1) in respect of works of any description for the alteration or extension of listed buildings of any description in England.
- (2) The consent may be granted subject to conditions specified in the order.
- (3) Without prejudice to the generality of subsection (2), the conditions that may be specified include any conditions subject to which listed building consent may be granted under section 16.
- (4) A listed building consent order may (without prejudice to section 17(2)) give the local planning authority power to require details of works to be approved by them, and may grant consent subject to conditions with respect to—
 - (a) the making of an application to the authority for a determination as to whether such approval is required, and
 - (b) the outcome of such an application or the way it is dealt with.
- (5) A listed building consent order may enable the Secretary of State or the local planning authority to direct that consent granted by the order does not apply—
 - (a) to a listed building specified in the direction;
 - (b) to listed buildings of a description specified in the direction;
 - (c) to listed buildings in an area specified in the direction.

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- (6) An order may in particular make provision about the making, coming into force, variation and revocation of such a direction, including provision conferring powers on the Secretary of State in relation to directions by a local planning authority.
- (7) Nothing in sections 10 to 26 applies in relation to listed building consent granted by a listed building consent order; but that does not affect the application of sections 20, 21 and 22 in relation to an application for approval required by a condition to which consent is subject.

26D Local listed building consent orders

- (1) A local planning authority for any area in England may by order (a “local listed building consent order”) grant listed building consent under section 8(1) in respect of works of any description for the alteration or extension of listed buildings.
- (2) Regulations under this Act may provide that subsection (1) does not apply to listed buildings of any description or in any area.
- (3) The consent granted by a local listed building consent order may relate—
 - (a) to all listed buildings in the area of the authority or any part of that area;
 - (b) to listed buildings of any description in that area or any part of that area.
- (4) The consent may be granted subject to conditions specified in the order.
- (5) Without prejudice to the generality of subsection (4), the conditions that may be specified include any subject to which listed building consent may be granted under section 16.
- (6) A local listed building consent order may enable the local planning authority to direct that the consent granted by the order in respect of works of any description does not apply—
 - (a) to a listed building specified in the direction;
 - (b) to listed buildings of a description specified in the direction;
 - (c) to listed buildings in an area specified in the direction.
- (7) An order may in particular make provision about the making, coming into force, variation and revocation of such a direction, including provision conferring powers on the Secretary of State.
- (8) Nothing in sections 10 to 26 applies in relation to listed building consent granted by a local listed building consent order; but that does not affect the application of sections 20, 21 and 22 in relation to an application for approval required by a condition to which consent is subject.
- (9) Schedule 2A makes provision in connection with local listed building consent orders.

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26E Powers of Secretary of State in relation to local orders

- (1) At any time before a local listed building consent order is adopted by a local planning authority the Secretary of State may direct that the order (or any part of it) is not to be adopted without the Secretary of State's approval.
- (2) If the Secretary of State gives a direction under subsection (1)—
 - (a) the authority must not take any step in connection with the adoption of the order until they have submitted the order or the part to the Secretary of State and the Secretary of State has decided whether to approve it;
 - (b) the order has no effect unless it (or the part) has been approved by the Secretary of State.
- (3) In considering an order or part submitted under subsection (2)(a) the Secretary of State may take account of any matter the Secretary of State thinks relevant.
- (4) It is immaterial whether any such matter was taken account of by the local planning authority.
- (5) The Secretary of State—
 - (a) may approve or reject an order or part of an order submitted under subsection (2)(a);
 - (b) must give reasons for that decision.
- (6) The Secretary of State—
 - (a) may at any time before a local listed building consent order is adopted by the local planning authority, direct them to modify it in accordance with the direction;
 - (b) must give reasons for any such direction.
- (7) The local planning authority—
 - (a) must comply with a direction under subsection (6);
 - (b) must not adopt the order unless the Secretary of State gives notice of being satisfied that they have complied with the direction.
- (8) The Secretary of State—
 - (a) may at any time by order revoke a local listed building consent order if of the opinion that it is expedient to do so;
 - (b) must give reasons for doing so.
- (9) The Secretary of State—
 - (a) must not make an order under subsection (8) without consulting the local planning authority;
 - (b) if proposing to make such an order, must serve notice on the local planning authority.
- (10) A notice under subsection (9)(b) must specify the period (which must not be less than 28 days from the date of its service) within which the authority may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

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- (11) The Secretary of State must give the authority such an opportunity if they require it within the period specified in the notice.

26F Considerations in making orders

- (1) In considering whether to make a listed building consent order or local listed building consent order the Secretary of State or local planning authority must have special regard to the desirability of preserving—
- (a) listed buildings of a description to which the order applies,
 - (b) their setting, or
 - (c) any features of special architectural or historic interest which they possess.
- (2) Before making a listed building consent order the Secretary of State must consult the Commission.

26G Effect of revision or revocation of order on incomplete works

- (1) A listed building consent order or local listed building consent order may include provision permitting the completion of works if—
- (a) listed building consent is granted by the order in respect of the works, and
 - (b) the listed building consent is withdrawn after the works are started but before they are completed.
- (2) Listed building consent granted by an order is withdrawn—
- (a) if the order is revoked;
 - (b) if the order is varied or (in the case of a local listed building consent order) revised so that it ceases to grant listed building consent in respect of the works or materially changes any condition or limitation to which the grant of listed building consent is subject;
 - (c) if a direction applying to the listed building is issued under powers conferred under section 26C(5) or 26D(6).”
- (4) After section 28 insert—

“28A Compensation where consent formerly granted by order is granted conditionally or refused

- (1) Section 28 also has effect (subject to subsections (2) and (3)) where—
- (a) listed building consent granted by a listed building consent order or a local listed building consent order is withdrawn (whether by the revocation or amendment of the order or by the issue of a direction), and
 - (b) on an application for listed building consent made within the prescribed period after the withdrawal, consent for works formerly authorised by the order is refused or is granted subject to conditions other than those imposed by the order.
- (2) Section 28 does not have effect by virtue of subsection (1) if—

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- (a) the works authorised by the order were started before the withdrawal, and
 - (b) the order included provision in pursuance of section 26G permitting the works to be completed after the withdrawal.
- (3) Section 28 does not have effect by virtue of subsection (1) if—
- (a) notice of the withdrawal was published in the prescribed manner and within the prescribed period before the withdrawal, and
 - (b) the works authorised by the order were not started before the notice was published.
- (4) Where section 28 has effect by virtue of subsection (1), references in section 28(2) and (3) to the revocation or modification of listed building consent are references to the withdrawal of the listed building consent by revocation or amendment of the order or by issue of the direction.”
- (5) Schedule 16 (which inserts Schedule 2A to the Planning (Listed Buildings and Conservation Areas) Act 1990) has effect.

Commencement Information

- I1** S. 60 partly in force; s. 60 in force for specified purposes at Royal Assent, see s. 103(1)(i)
- I2** S. 60 in force at 6.4.2014 in so far as not already in force by S.I. 2014/416, art. 3(a)

61 Listed buildings in England: certificates of lawfulness

In the Planning (Listed Buildings and Conservation Areas) Act 1990 after section 26G insert—

“Buildings in England: certificates of lawfulness

26H Certificate of lawfulness of proposed works

- (1) A person who wishes to ascertain whether proposed works for the alteration or extension of a listed building in England would be lawful may make an application to the local planning authority specifying the building and describing the works.
- (2) For the purposes of this section works would be lawful if they would not affect the character of the listed building as a building of special architectural or historic interest.
- (3) If on an application under this section the local planning authority are provided with information satisfying them that the works described in the application would be lawful at the time of the application, they must issue a certificate to that effect; and in any other case they must refuse the application.
- (4) A certificate under this section must—
 - (a) specify the building to which it relates;
 - (b) describe the works concerned;
 - (c) give the reasons for determining that the works would be lawful; and
 - (d) specify the date of issue of the certificate.

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- (5) Works for which a certificate is issued under this section are to be conclusively presumed to be lawful, provided that—
- (a) they are carried out within 10 years beginning with the date of issue of the certificate, and
 - (b) the certificate is not revoked under section 26I.

26I Certificates under section 26H: supplementary

- (1) An application for a certificate under section 26H must be made in such manner as may be prescribed by regulations under this Act.
- (2) An application must include such particulars, and be verified by such evidence, as may be required—
 - (a) by the regulations,
 - (b) by any directions given under the regulations, or
 - (c) by the local planning authority.
- (3) Regulations under this Act may make provision about how applications for a certificate under section 26H are to be dealt with by local planning authorities.
- (4) In particular, regulations may provide for requiring the authority—
 - (a) to give to any applicant within a prescribed period such notice as may be prescribed as to the manner in which the application has been dealt with; and
 - (b) to give to the Secretary of State, and to such other persons as may be prescribed, prescribed information with respect to such applications made to the authority, including information as to the manner in which any application has been dealt with.
- (5) A certificate under section 26H may be issued--
 - (a) for the whole or part of the listed building specified in the application; and
 - (b) for all or part of the works described in the application;and must be in such form as may be prescribed.
- (6) A local planning authority may revoke a certificate under section 26H if, on the application for the certificate—
 - (a) a statement was made or document used which was false in a material particular; or
 - (b) any material information was withheld.
- (7) Regulations under this section may make provision for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

26J Offences

- (1) A person is guilty of an offence if, for the purpose of procuring a particular decision on an application (whether or not by that person) for the issue of a certificate under section 26H, the person—
 - (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;

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- (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
 - (c) with intent to deceive, withholds any material information.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
- (3) Notwithstanding section 127 of the Magistrates' Courts Act 1980, a magistrates' court may try an information in respect of an offence under subsection (1) whenever laid.

26K Appeals against refusal or failure to give decision on application

- (1) Where an application is made to a local planning authority for a certificate under section 26H and—
- (a) the application is refused or is refused in part, or
 - (b) the authority do not give notice to the applicant of their decision on the application within such period as may be prescribed under section 26I or within such extended period as may at any time be agreed in writing between the applicant and the authority,
- the applicant may by notice appeal to the Secretary of State.
- (2) A notice of appeal under this section—
- (a) must be served within such time and in such manner as may be prescribed;
 - (b) must be accompanied by such information as may be prescribed.
- (3) The time prescribed for the service of a notice of appeal under this section must not be less than—
- (a) 28 days from the date of notification of the decision on the application; or
 - (b) in the case of an appeal under subsection (1)(b), 28 days from—
 - (i) the end of the period prescribed as mentioned in subsection (1)(b), or
 - (ii) as the case may be, the extended period mentioned in subsection (1)(b).
- (4) On an appeal under this section, the Secretary of State must grant the appellant a certificate under section 26H or, in the case of a refusal in part, modify the certificate granted by the authority on the application, if and so far as the Secretary of State is satisfied—
- (a) in the case of an appeal under subsection (1)(a), that the authority's refusal is not well-founded, or
 - (b) in the case of an appeal under subsection (1)(b), that if the authority had refused the application their refusal would not have been well-founded.
- (5) If and so far as the Secretary of State is satisfied that the authority's refusal is or, as the case may be, would have been well-founded, the Secretary of State must dismiss the appeal.

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- (6) Where the Secretary of State grants a certificate under section 26H on an appeal under this section, the Secretary of State must give notice to the local planning authority of that fact.
- (7) References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the works concerned.
- (8) Schedule 3 applies to an appeal under this section.”

Commencement Information

- I3** S. 61 partly in force; s. 61 in force for specified purposes at Royal Assent, see s. 103(1)(i)
I4 S. 61 in force at 6.4.2014 in so far as not already in force by S.I. 2014/416, art. 3(b)

62 Osborne estate

- (1) Section 1 of the Osborne Estate Act 1902 is amended as follows.
- (2) In subsection (3) (land to be managed in accordance with Crown Lands Act 1851) omit “as if it had been committed to their management under section twenty-two of the Crown Lands Act, 1851”.
- (3) Omit subsection (4)(b) (part of house and grounds to be used for the benefit of officers and their families).
- (4) Omit the following provisions (which relate to land no longer forming part of the Osborne estate)—
 - (a) in subsection (3) the words from “and the part” to “Barton House and grounds”;
 - (b) in subsection (4) the words from “And the Commissioners” to the end.
- (5) The Osborne Estate Act 1914 (which gives power to extend the classes of persons who may benefit under section 1(4)(b) of the Osborne Estate Act 1902) is repealed.

63 Heritage planning regulation

Schedule 17 (heritage planning regulation) has effect.

Commencement Information

- I5** S. 63 partly in force; s. 63 in force for specified purposes at 25.6.2013, see s. 103(2)(f)
I6 S. 63 in force at 25.6.2013 for specified purposes by S.I. 2013/1455, art. 2(d) (with art. 4(2))
I7 S. 63 in force at 1.10.2013 for specified purposes by S.I. 2013/2227, art. 2(m)
I8 S. 63 in force at 6.4.2014 for specified purposes by S.I. 2014/416, art. 3(e)

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, Cross Heading: Heritage planning etc.