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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 243**

**The Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015**

**Citation and commencement**

1. These Regulations may be cited as the Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 and come into force on 1st October 2015.

**Application**

- 2.—(1) Subject to paragraph (3), these Regulations apply to—
- (a) applications for listed building consent;
  - (b) applications for conservation area consent; and
  - (c) applications for variation or discharge of conditions,
- made on or after 1st October 2015.
- (2) Regulation 16 applies in respect of an order under section 21 of the Act (revocation and modification of listed building consent by planning authority) made on or after 1st October 2015.
- (3) These Regulations do not apply to applications for consent under section 73B of the Act<sup>(1)</sup> (urgent works relating to Crown land: application).

**Interpretation**

3. In these Regulations—
- “the Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997;
- “application for variation or discharge of conditions” means an application under section 17 of the Act (application for variation or discharge of conditions) (or that section as applied by section 66 of the Act (control of demolition in conservation areas)) for the variation or discharge of conditions subject to which listed building consent or conservation area consent, as the case may be, has been granted; and
- “Crown land” has the same meaning as in section 73C of the Act<sup>(2)</sup> (expressions relating to Crown land).

**Applications for listed building consent and conservation area consent**

- 4.—(1) An application for listed building consent or for conservation area consent must, in addition to the particulars and documents to be contained by virtue of section 9(2) of the Act<sup>(3)</sup> (making of applications for listed building consent), include—
- (a) the name and address of the applicant; and

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(1) Section 73B was inserted by section 93(1) of the Planning and Compulsory Purchase Act 2004 (c.5).

(2) Section 73C was inserted by paragraph 7 of schedule 5 to the Planning and Compulsory Purchase Act 2004 (c.5).

(3) Section 9 was amended by section 7(3) of the Planning etc. (Scotland) Act 2006 (asp 17) and paragraph 9 of schedule 3 to the Historic Environment Scotland Act 2014 (asp 19).

- (b) where an agent is acting on behalf of the applicant, the name and address of that agent.
- (2) An application must be accompanied by—
  - (a) two copies of the application and of any related plans and drawings;
  - (b) where required by regulation 6, an access statement; and
  - (c) where—
    - (i) the application relates to Crown land, a statement that the application is made in respect of Crown land; or
    - (ii) the application does not relate to Crown land, one or other of the certificates required under regulation 9(2).

#### **Applications to vary or discharge conditions attached to listed building consent and conservation area consent**

- 5.—(1) An application for the variation or discharge of conditions attached must, in addition to the particulars and documents to be contained by virtue of section 9(2) of the Act, include—
- (a) particulars of the applicant’s interest in the building; and
  - (b) the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent.
- (2) An application must be accompanied by—
- (a) two copies of the application and of any related plans and drawings; and
  - (b) where—
    - (i) the application relates to Crown land, a statement that the application is made in respect of Crown land; or
    - (ii) the application does not relate to Crown land, one or other of the certificates required under regulation 9(2).

#### **Access statements**

- 6.—(1) An application for listed building consent must be accompanied by an access statement.
- (2) An access statement is a document containing a written statement about how issues relating to access to the building for disabled people have been dealt with and which—
- (a) explains the policy or approach adopted as to such access and how any specific issues arising from the proposed works which might affect such access have been addressed;
  - (b) describes how features which ensure access to the building for disabled people will be maintained; and
  - (c) states what, if any, consultation has been undertaken on issues relating to access to the building for disabled people and what account has been taken of the outcome of any such consultation.
- (3) This regulation does not apply to an application for listed building consent where the works which are the subject of the application do not alter the means of access to the listed building.

#### **Consultation by the planning authority with Historic Environment Scotland**

- 7.—(1) The planning authority must consult Historic Environment Scotland before granting or refusing—
- (a) applications for listed building consent by a planning authority;
  - (b) applications for listed building consent in respect of—

- (i) works for the demolition of a listed building;
  - (ii) works to a category A listed building; or
  - (iii) works to a category B listed building; and
- (c) applications for conservation area consent.
- (2) In this regulation—

“category A listed building” means a listed building specified as being category A in a list of buildings compiled or approved under section 1 of the Act<sup>(4)</sup> (listing of buildings of special architectural or historic interest); and

“category B listed building” means a listed building specified as being category B in a list of buildings compiled or approved under section 1 of the Act.

### **Advertisement of applications**

**8.—**(1) The planning authority must give notice of—

- (a) an application for listed building consent;
- (b) an application for conservation area consent; or
- (c) an application for variation or discharge of conditions,

in accordance with this regulation.

(2) Notice under paragraph (1) must—

- (a) be published in—
  - (i) the Edinburgh Gazette; and
  - (ii) a local newspaper circulating in the locality in which the building to which the application relates is situated; and
- (b) be displayed on or near the building for not less than 7 days.

(3) Notice under paragraph (1) must—

- (a) state—
  - (i) in the case of an application for listed building consent or conservation area consent, the nature of the works to which the application relates; and
  - (ii) in the case of an application for variation or discharge of conditions, the nature of the variation or discharge to which the application relates;
- (b) describe the location of the building to which the application relates including, where applicable, a postal address;
- (c) include the reference number (if any) given to the application by the planning authority;
- (d) state how the application, plans or drawings related to it and other documents submitted in connection with it may be inspected;
- (e) state that representations may be made to the planning authority and include information as to how any representations may be made and by which date they must be made (being a date not earlier than 21 days after the date of publication of the notice); and
- (f) include a statement as to how to obtain information explaining the procedures which are followed in relation to applications for listed building consent, applications for conservation area consent or applications for variation or discharge of conditions, as the case may be.

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(4) Section 1 is amended by paragraph 2 of schedule 3 to the Historic Environment Scotland Act 2014 (asp 19).

### Notices to owners

9.—(1) Subject to paragraph (4), the applicant is to give notice in the form set out in Schedule 1 to any person (other than the applicant) who at the beginning of the prescribed period is the owner of the building to which the application relates.

- (2) The applicant must issue a certificate stating, as appropriate—
  - (a) that at the beginning of the prescribed period no person (other than the applicant) was the owner of any of the building to which the application relates;
  - (b) that the applicant has given notice to every person (other than the applicant) who at the beginning of the prescribed period was the owner of the building to which the application relates; or
  - (c) that the applicant is unable to give notice to every such person.
- (3) A certificate issued—
  - (a) under paragraph (2)(b) or (c) must set out the name of every person to whom notice was given and the address at and date on which such notice was given;
  - (b) under paragraph (2)(c) must certify that the applicant has taken reasonable steps (specifying them) to ascertain the names and addresses of those persons to whom the applicant has been unable to give notice.
- (4) This regulation does not apply to an application relating to Crown land.
- (5) In this regulation “prescribed period” means the period of 21 days ending with the date of the application.

### Duty to decline to entertain application

- 10.—(1) Subject to paragraph (2), a planning authority shall not entertain—
- (a) an application for listed building consent;
  - (b) an application for conservation area consent; or
  - (c) an application for variation or discharge of conditions,
- unless the application is accompanied by a certificate issued under regulation 9(2).
- (2) Paragraph (1) does not apply to an application relating to Crown land.

### Application — national security

11. The validity of an application shall not be affected by failure to disclose information as to—
- (a) national security; and
  - (b) the measures taken or to be taken to ensure the security of any premises or property,
- where the application is accompanied by a written statement from the applicant that, in the opinion of the applicant, the information relates to the matters mentioned in (a) or (b) above, and that public disclosure of that information would be contrary to the national interest.

### Decision notice

- 12.—(1) The planning authority must within a period of 2 months beginning with the date of receipt of the application by the planning authority—
- (a) give to the applicant (or where an agent is acting for the applicant, that agent) notice of their decision (“a decision notice”); and

- (b) inform every authority, person or body who made written representations in respect of the application (and provided an address) of their decision on the application and where a copy of the decision notice is available for inspection.
- (2) Paragraph (1) does not apply where the application has been referred to the Scottish Ministers by virtue of a direction given under section 11 of the Act<sup>(5)</sup> (reference of certain applications to Scottish Ministers).
- (3) An application is not to be determined by the planning authority until the later of—
- (a) where consultation is required in respect of the application under regulation 7, the expiry of the period of 14 days after the date on which the planning authority consulted Historic Environment Scotland; or
  - (b) the date, or latest date, of the expiry of the period allowed for making representations in respect of the application specified in notice of the application given in accordance with regulation 8.
- (4) Where an application is refused or is granted subject to conditions the decision notice must include—
- (a) a statement of—
    - (i) the terms of the planning authority’s decision;
    - (ii) any conditions to which that decision is subject; and
    - (iii) the reasons on which the authority based that decision;
  - (b) a description of—
    - (i) in the case of an application for listed building consent or conservation area consent, the works (including identification of the plans and drawings showing the proposed works); or
    - (ii) in the case of an application for variation or discharge of conditions, the nature of the variation or discharge,  
for which consent has been granted, or as the case may be, refused;
  - (c) a description of the location of the building to which the application relates including, where applicable, a postal address; and
  - (d) the reference number of the application.
- (5) Where the application is granted the decision notice must include a statement as to the effect of section 16(1) of the Act (limit of duration of listed building consent).
- (6) Where an application is refused or is granted subject to conditions the decision notice must be accompanied by—
- (a) notification in the terms set out in Schedule 2; and
  - (b) a statement explaining how the applicant may obtain information on how to appeal to the Scottish Ministers under section 18 of the Act<sup>(6)</sup> (right of appeal against decision).
- (7) Where representations in respect of the application are made by three or more persons in the same document, it is sufficient for the purposes of paragraph (1)(b) that the planning authority notify—
- (a) only the person who sent that document to the planning authority, where it is possible for the planning authority to identify that person; or

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<sup>(5)</sup> Section 11 was amended by section 21 of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3) (“the 2011 Act”).

<sup>(6)</sup> Section 18 was amended by section 20(2) of the 2011 Act.

- (b) where it is not possible to do so, only the first named person on the document for whom an address is provided.

### **Notification of referral of the application**

**13.** On referring any application to the Scottish Ministers following a direction under section 11 of the Act, a planning authority are to serve on the applicant notice—

- (a) of the terms of the direction;
- (b) of any reasons given by the Scottish Ministers for requiring the application to be referred to them;
- (c) that the application has been referred to the Scottish Ministers; and
- (d) that the decision of the Scottish Ministers on the application will be final.

### **Electronic communications**

**14.—(1)** Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (b) that document transmitted by the electronic communication is—
  - (i) capable of being accessed by the recipient;
  - (ii) legible in all material respects; and
  - (iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically; and
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.

(4) Deemed agreement under paragraph (3) subsists until that person gives notice to revoke the agreement.

(5) Notice of withdrawal of consent to the use of electronic communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(6) Regulation 4(2)(a) or regulation 5(2)(a), as the case may be, does not apply in respect of an application, or in respect of any related plan or drawing which accompany that application, to the extent that the application or a plan or drawing, is submitted to the planning authority by means of electronic communication in accordance with this regulation.

(7) In this regulation—

“address” includes any number or address used for the purpose of such communications or storage;

“document” includes any notice, consent, decision, representation, statement, list, report, form, plan, certificate or other information or communication; and

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(7);

“legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and

“sent” includes served, submitted or given and cognate expressions are to be construed accordingly.

### **Application of listed building control to buildings in conservation areas**

**15.**—(1) The provisions of the Act specified in section 66(3) of the Act have effect in relation to buildings in conservation areas subject to the modifications specified in paragraph (2).

(2) The modifications are—

- (a) references to listed building consent are to be treated as references to conservation area consent;
- (b) references to a listed building are to be treated as references to a building in a conservation area; and
- (c) in respect of a provision of the Act specified in column 1 of Schedule 3, the provision is to be treated as if modified as specified in the corresponding entry contained in column 2 of that Schedule.

### **Advertisement of unopposed revocation or modification order**

**16.** Advertisement for the purposes of section 23(2)(a) of the Act (publication of unopposed revocation or modification order) is to be by publication of notice of the fact that an order under section 21 of the Act has been made—

- (a) in the Edinburgh Gazette; and
- (b) in a local newspaper circulating in the area in which the building to which consent to be modified or revoked relates is situated.

### **Claims for compensation**

**17.**—(1) This regulation applies to a claim for compensation made to a planning authority under—

- (a) section 25 of the Act (compensation where listed building consent is revoked or modified);
- (b) section 25 of the Act as applied to buildings in conservation areas by section 66(3) of the Act;
- (c) section 26 of the Act (compensation for loss or damage caused by service of a building preservation notice); and
- (d) section 41D(8) of the Act (compensation for loss or damage due to a stop notice); and
- (e) section 41D of the Act as applied by 41I(9) of the Act (temporary stop notices: compensation).

(2) A claim to which this regulation applies must be made in writing and must be made within the period of 6 months from—

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(7) 2000 c.7. The definition of “electronic communication” in section 15(1) was amended by paragraph 158 of Schedule 17 to the Electronic Communications Act 2003 (c.21).

(8) Section 41D was inserted by section 23(1) of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3) (“the 2011 Act”).

(9) Section 41I was inserted by section 23(1) of the 2011 Act.

- (a) in the case of a claim under section 25 of the Act, the date on which the listed building consent or the conservation area consent, as the case may be, is revoked or modified;
- (b) in the case of a claim under section 26 of the Act, the date on which the building preservation notice ceases to have effect;
- (c) in the case of a claim under section 41D of the Act, the date on which the stop notice ceases to have effect; and
- (d) in the case of a claim under section 41D of the Act as applied by section 41I of the Act, arising—
  - (i) in the circumstances set out in section 41I(2)(a) of the Act, the date on which the temporary stop notice is first displayed; or
  - (ii) in the circumstances set out in section 41I(2)(b) of the Act, the date on which the temporary stop notice is withdrawn.

### Listed building purchase notices

**18.**—(1) A listed building purchase notice<sup>(10)</sup> must be in writing and must be served on the planning authority within the period of 12 months from the date on which listed building consent (or conservation area consent, as the case may be) is—

- (a) refused;
- (b) granted subject to conditions;
- (c) revoked; or
- (d) modified.

### Revocations

**19.**—(1) Subject to paragraph (2), the provisions specified in paragraph (2) are revoked.

(2) The provisions are—

- (a) the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987<sup>(11)</sup>;
- (b) the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Amendment) (Scotland) Regulations 2006<sup>(12)</sup>; and
- (c) regulation 2 of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Amendment Regulations 2011<sup>(13)</sup>.

(3) The Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987 continue to have effect as they had effect immediately before 1st October 2015 in relation to—

- (a) an application for listed building consent made before 1st October 2015;
- (b) an application for conservation area consent made before 1st October 2015;
- (c) an application for variation or discharge of conditions made before 1st October 2015; and
- (d) an order under section 21 of the Act made before 1st October 2015.

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<sup>(10)</sup> A listed building purchase notice is a notice served under section 28(1) of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 (c.9).

<sup>(11)</sup> S.I. 1987/1529.

<sup>(12)</sup> S.S.I. 2006/266.

<sup>(13)</sup> S.S.I. 2011/376.



### **Amendment of the Town and Country Planning (Appeals) (Scotland) Regulations 2013**

**20.**—(1) Subject to paragraph (3), the Town and Country Planning (Appeals) (Scotland) Regulations 2013(**14**) are amended in accordance with paragraph (2).

(2) In regulation 29(1)(b) (compliance with notification and consultation procedures)—

(a) for “regulation 5(1)” substitute “regulation 8”; and

(b) for “the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987” substitute “the Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015”.

(3) The provisions of regulation 29 of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 continue to have effect as they did immediately before 1st October 2015 in relation to an appeal in respect of an application for listed building consent or for conservation area consent, as the case may be, where the application is made before that date.

St Andrew’s House,  
Edinburgh  
2nd June 2015

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A member of the Scottish Government