

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (EMERGENCY PERIOD AND EXTENDED PERIOD) (CORONAVIRUS) (SCOTLAND) REGULATIONS 2021

SSI 2021/100

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 58(3D), 59(8D) and 275 of the Town and Country Planning (Scotland) Act 1997(1), section 16(7) of the Planning (Listed Buildings and Conservation Areas) (Scotland) 1997 (2), section 12(9) of the Coronavirus (Scotland) Act 2020(), section 9(9) of the Coronavirus (Scotland) (No. 2) Act 2020 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument.

- The Coronavirus (Scotland) Act 2020 includes provisions to extend the duration of planning permission and the Coronavirus (Scotland) (No.2) Act 2020 includes provisions to extend the duration of listed building consent and conservation area consent. Those permissions or consents which are due to lapse during the defined “emergency period” would under the provisions lapse at the end of “extended period” if works have not been begun.
- The “emergency period” was defined by both Acts, as the period from the day the respective Act was commenced and expiring 6 months later. For planning permissions this period is from 7 April 2020 to 6 October 2020 and for listed building and conservation area consent it is from 27 May 2020 to 6 October 2020.
- The “extended period” ” was defined by both Acts, as the period from the day the respective Act was commenced and expiring 12 months later. For planning permissions this period was from 7 April 2020 to 6 April 2021 and for listed building and conservation area consent it was from 27 May 2020 to 6 April 2021
- The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2020 amended the expiry of the “emergency period” to 31 March 2021 and the “extended period” to 30 September 2021.
- The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021 amend the expiry of the “emergency period” to 30 September 2021 and the “extended period” to 31 March 2022.
- The regulations include savings provisions as the Coronavirus Acts are due to expire on 30 September, however, the “extended” period is to be extended to 31 March 2022.

Policy Objectives

1. The coronavirus outbreak has affected the ability of both planning authorities and applicants to deal with planning permissions, listed building consents and conservation area consents which are due to expire.

(1) c.8. Sections 58(3D) and 59(8D) have effect by virtue of paragraphs 8 to 10 of schedule 7 of the Coronavirus (Scotland) Act 2020 (asp 7).

(2) c.9. Section 16(7) has effect by virtue of paragraph 2 of schedule 4 of the Coronavirus (Scotland) Act 2020 (asp 7).

2. When planning permission, listed building consent or conservation area consent is granted, applicants have a period of 3 years to commence development (authorities can provide for a longer period). If development is not commenced then that permission or consent lapses and a new application is required. Planning permission in principle also requires the approval of conditions before development can proceed.

3. The restrictions on movement and of social distancing and self-isolation has meant that applicants have been unable to satisfy the conditions attached to their planning permission or to commence development due to the shutdown of non-essential construction. This also means that a backlog of development has occurred.

4. The aim of these provisions is to ensure that where a full planning permission, planning permission in principle, listed building consent or conservation area consent would expire before the end of September 2021 then that permission or consent should not lapse until 31 March 2022. The permission would only lapse if development has not commenced after that time.

5. In relation to applications for approval of conditions, if the last date for making an application for an approval is within the emergency period (up to 30 September 2021) then the time limit for making such an application is to 31 March 2022.

6. The UK Business and Planning Act 2020 came into effect on 22nd July which includes similar provisions to extend the duration of planning permission and Listed Building Consent with the emergency period designated up to 31st December 2020 and the Extended Period up to 1st May 2021.

7. Extending the Coronavirus Act provisions to extend the duration of planning permission, Listed Building Consent and Conservation Area Consent will support the construction sector in its recovery from the Covid-19 restrictions, reduce the burden on authorities needing to reconsider applications and provide consistency to businesses operating across the UK.

Consultation

As this is an emergency measure, and intended to be temporary, no formal public consultation was undertaken for the provisions in the Act. In deciding whether to extend the duration of these provisions we sought feedback from Heads of Planning Scotland (HOPS), Scottish Property Federation (SPF) and Homes for Scotland (HfS). As the construction sector has recently been subjected to further restrictions and with no insight into when work will be restarted we believe that it will take some time to get back to pre-covid work levels and to work through any backlog of development.

SPF

“The SPF believes it is vitally important that the emergency provisions for extending planning permissions are continued. Without this flexibility, we fear several major development projects may fail to be delivered due to being timed out of permissions, potentially risking both the projects and the businesses investing in those projects. The real

estate sector is a key catalyst for jobs, investment and creating places and the SPF is therefore firmly of the view that extending this provision in the Coronavirus (Scotland Act) 2020 could assist with the recovery from COVID-19, and contribute to rebuilding the economy”.

“Planning related knock-on effects of the development industry having been locked down, and working under the COVID restrictions, will last far longer than just the emergency period. Development delays could be so extensive that they are not factored into the measures brought forward to deal with planning permissions/deadlines. Given the current uncertainty and restricted council services, while offices are still closed, our members are concerned about permissions that are due to expire in the near future. They have suggested extending the provision to cover all permissions expiring in 2021 at the very least. More specifically they have suggested adding 12 months to each expiring consent”.

Homes for Scotland

“Homes for Scotland supports the further extension of the emergency provision extending the duration of planning consents. This will ensure sustainable, supported housing delivery opportunities are not lost during the ongoing pandemic. Home builders and planning authorities are working to ensure services function and homes continue to be delivered. The duration of consents provision helps ensure housing delivery is not compromised simply because additional time may currently be needed to complete and then act upon a consent”.

Heads of Planning Scotland

HOPS commented that it would be sensible to extend the provisions.

Financial Effects

There will be no financial costs imposed on business or Local Authorities as a result of these changes. In fact there should be a saving for both in that applications will not need to be submitted and reconsidered, meaning that authorities can continue to focus on responding to Covid-19 and determining new applications to ensure there is a pipeline of developments for developers to progress.

Assessments

8. The Scottish Government has assessed the potential impact of the proposed measure on equal opportunities and has determined it does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly.

9. The Scottish Government has assessed the potential impact of the proposed measure on human rights. The Coronavirus Act avoids planning permission (full planning permission or a planning permission in principle), Listed Building Consent or Conservation Area Consent from lapsing because developers are not able to get on site to begin development. It also extends the period within which applications can be made for approvals required by conditions. This is to avoid time limits expiring, and so permission in effect expiring as they can no longer be implemented, just because there is a delay in being able to make applications due to the current situation. Any changes to the way that planning legislation currently may interfere with

property rights by regulating development is by way of a relaxation of the current provisions and it is considered that the provisions are compatible with the ECHR.

10. The Scottish Ministers are aware of the duty to consult island communities before making a material change to any policy, strategy or service which, in the Scottish Ministers' opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities. The Scottish Government has assessed the potential impact of the proposed measure on island communities and has determined it will have no significantly different impact on island communities. No detrimental effects are anticipated.

11. The Scottish Government has assessed the potential impact of the proposed measure on local government and has determined that extending the duration of planning permission for does not raise any impacts other than those highlighted in the policy memorandum which indicates that this will potentially allow developers and applicants to progress developments swiftly once current restrictions are reduced and lifted entirely. There may be a saving for local government in reducing the number of applications which are submitted seeking to extend the duration of planning permission.

12. The Scottish Government has assessed the potential impact of the proposed measure on sustainable development and no detrimental effects are anticipated.

DLGC: Planning Division
Scottish Government
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