

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Reduction of Legislative Burdens

Heritage planning etc.

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

Heritage partnership agreements

412. *Subsection (2)* of section 60 inserts new section 26A into the Planning (Listed Buildings and Conservation Areas) Act 1990 (“P(LBCA)A 1990”), which makes provision for heritage partnership agreements. A relevant local planning authority may make such an agreement with an owner of a listed building, or part of a listed building, in England and any of the persons mentioned in new section 26A(2) may be an additional party to the agreement. A heritage partnership agreement may contain provision granting listed building consent (“LBC”) under section 8(1) of the P(LBCA)A 1990 for the execution of specified works for the alteration or extension of the building to which it relates, and setting out any conditions attached to that consent. The specified works will still require any other relevant permission, such as planning permission. A heritage partnership agreement cannot be used to grant LBC for demolition. Subsection (6) of new section 26A sets out the range of additional matters that may be covered in a heritage partnership agreement, including which works the parties consider would not, affect the character of the listed building.
413. Subsection (2) also inserts new section 26B into the P(LBCA)A 1990, which makes supplemental provision in relation to heritage partnership agreements. Section 26B(1) provides that such agreements must make provision for review, termination and variation by the parties. Section 26B(1) also makes it clear that more than one listed building or part can be the subject of an agreement, provided that in each case a relevant local planning authority and an owner are parties to the agreement. Section 26B(2) sets out a range of further matters on which the Secretary of State may make regulations, including:
- any consultation that must take place before a heritage partnership agreement is made or varied;
 - any publicity requirements;
 - any particular terms that must be included in an agreement;
 - the termination of an agreement, or of any provision in an agreement, by order of the Secretary of State or any other person specified in the regulations;

- the application or reproduction of sections 10 to 26 and 28 of the P(LBCA)A 1990, which set out certain procedures for listed building consent, for the purposes of heritage partnership agreements; and
 - the application, with any modifications consequential on the application or reproduction of sections 10 to 26 and 28, of other specified sections and parts of the P(LBCA)A 1990 for the purposes of heritage partnership agreements.
414. Section 26B(4) provides that, if a heritage partnership agreement grants LBC for specified works, the benefit of such consent is conferred on the listed building and any person interested in it (whether or not that person is a party to the agreement). Section 26B(5) ensures that persons who are not party to the agreement are not subject to any burdens, and do not enjoy any other rights, under the agreement.

Listed building consent orders

415. Currently, works affecting the special architectural or historic interest of a listed building must be authorised through written consent, listed building consent, granted by the local planning authority or the Secretary of State, and must be executed in accordance with the terms of the consent and of any conditions attached to it. Section 60 amends the P(LBCA)A 1990 to allow the Secretary of State or a local planning authority to make an order granting LBC applying (subject to any restrictions) to all works falling within categories specified in the order, known as a “listed building consent order” or “local listed building consent order” respectively. These provisions are broadly based on the provisions set out in sections 59 to 61D of the Town and Country Planning Act 1990 (“TCPA 1990”) in respect of development orders and local development orders.
416. *Subsection (3)* of section 60 inserts new section 26C into the P(LBCA)A 1990 to allow the Secretary of State to make a listed building consent order which grants LBC for works of any description for the alteration or extension, but not the demolition, of listed buildings of any description in England. Such orders will be subject to the affirmative resolution procedure. It will be possible to apply conditions to any LBC granted by a listed building consent order, which may include any conditions subject to which LBC may be granted under section 16 of the P(LBCA)A. Section 26C(4) provides that the order may grant consent subject to conditions about the making of an application to the local planning authority to determine whether prior approval is required for certain details of works and the outcome of that application or the way it is dealt with. Under section 26C(5), a listed building consent order may contain provision allowing the Secretary of State or the local planning authority to direct that the order does not apply to a specified building, or to buildings of a specified type or in a specified area: this will allow the order to be disapplied, for instance, within the area of a local planning authority where the order is not suitable for the character of the buildings in that area. This reflects the mechanism provided under section 60(3) of the TCPA 1990, which allows the Secretary of State or local planning authorities to direct that planning permission granted by a development order shall not apply in certain circumstances.
417. New section 26D of the P(LBCA)A 1990 allows a local planning authority to make a local listed building consent order which grants LBC for works of any description for the alteration or extension, but not the demolition, of listed buildings of a specified description or in a specified part of their area. The order will be able to specify the conditions that apply to any LBC granted by the order, which may include any of the conditions subject to which LBC may be granted under section 16 of the P(LBCA)A 1990. Section 26D(6) provides that the order may contain provision allowing the local planning authority to direct that the order does not apply to a specified building, or to buildings of a specified type or in a specified area. Under section 26D(2) regulations may provide that the power to make a local listed building consent order does not apply to listed buildings of any description or in any area.

*These notes refer to the Enterprise and Regulatory Reform Act
2013 (c.24) which received Royal Assent on 25 April 2013*

418. New section 26E of the P(LBCA)A 1990 gives the Secretary of State the power to direct that a local listed building consent order, or any part of it, is submitted to the Secretary of State for approval before it is adopted. These provisions reflect the 'call in' procedures provided for in section 61B of the TCPA 1990, in respect of local development orders. Under section 26E(2), if the Secretary of State directs that an order is submitted for approval, the order may not be adopted by the local planning authority and it will not have any effect until it has been approved by the Secretary of State. The Secretary of State may approve or reject any order or part of it, or may direct the local planning authority to modify the order, giving reasons for any decision. Under section 26E(7), the local planning authority must comply with a direction from the Secretary of State to modify the order, and may not adopt the order unless the Secretary of State is satisfied that the direction has been complied with. Section 26E(8) allows the Secretary of State at any time, by order, to revoke a local listed building consent order, if of the opinion that it is expedient to do so. The Secretary of State must give reasons for revoking the order. The Secretary of State must also, if proposing to revoke an order, serve notice on the local planning authority giving them at least 28 days, within which time they may request an oral hearing, which the Secretary of State must provide.
419. New section 26F reflects section 16 of the P(LBCA)A 1990 so that 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 the listed buildings to which the order applies, as well as their setting and any features of special architectural or historic interest of such buildings. Section 26F(2) requires the Secretary of State to consult English Heritage before making a listed building consent order.
420. New section 26G reflects the provisions set out in section 61D of the TPCA 1990 in providing that a listed building consent order or local listed building consent order may allow for works to be completed when an order is revoked or varied or revised so that it ceases to grant LBC, or if a specified building or building of a specified type or in a specified area is excluded from the order, and as a result the consent granted by the order is withdrawn.
421. *Subsection (4)* of section 60 inserts new section 28A into the P(LBCA)A 1990 to allow compensation to be paid, as set out in section 28 of the P(LBCA)A 1990, where LBC 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 exclusion by direction of a specified building or building of a specified type or in a specified area. Section 28 will have effect only where: an application for LBC is made, within a time period to be set out in regulations, after the withdrawal of the order; and consent for works formerly authorised by the order is refused or is granted subject to conditions that were not included in the order. The provision for compensation will not apply however where: works have started before consent granted by order is withdrawn and the order included provision to permit the works to be completed after the withdrawal; or the works were not started before the notice of withdrawal was published and notice of the withdrawal was published in the prescribed manner and within the prescribed period.