

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Reduction of Legislative Burdens

Heritage planning etc.

Section 61: Listed buildings in England: certificates of lawfulness

423. Section 7 of the P(LBCA)A 1990 requires a person to obtain LBC for the alteration or extension of a listed building in any manner which would affect its character as a building of special architectural or historic interest. Section 61 is intended to provide clarity as to whether any proposed works to a listed building fall within this broad definition by providing for a “certificate of lawfulness of proposed works”.
424. **Section 61** inserts new section 26H into the P(LBCA)A 1990, mirroring the provisions of section 191 of the TCPA 1990 in respect of certificates of lawfulness of existing use or development in the planning system. Anyone who wishes to ascertain whether proposed works for the alteration or extension of a listed building would be lawful – that is, would not affect the character of the listed building as a building of special architectural or historic interest - will be able to make a simple application to the local planning authority, describing the works, in order to receive a formal response. Under section 26H(3), if the local planning authority is satisfied the works described will be lawful, they must issue a certificate to that effect, or if not, they must refuse the application for a certificate. Section 26H(5) provides that the lawfulness of any works for which a certificate is in force will be conclusively presumed, provided that the works are carried out within 10 years beginning with the date of issue of the certificate, and the certificate is not revoked under section 26I. Reflecting the provisions of section 193 of the TCPA 1990, new section 26I enables the application process for certificates of lawfulness of proposed works to be set out by regulations. Regulations under this section may make provision about how applications for certificates are to be dealt with by the local planning authority. Section 26I(5) provides the certificate must be in a prescribed form. To enable a precise definition of which works do not require LBC it will be possible for a certificate to cover all or part of the listed building which is the subject of the application and all or part of the works described in the application. Under section 26I(6), a local planning authority may revoke a certificate if an application is made on the basis of false information, or if any material information is withheld. The manner in which certificates are revoked may be set out by regulations.
425. Section 26J is inserted into the P(LBCA)A 1990 to replicate the offence set out in section 194(1) of the TCPA 1990 in respect of certificates of lawfulness of proposed works, where false or misleading information is used or information is withheld in an application for a certificate. Section 26J(2) sets out the penalties for a person guilty of this offence, reflecting those in section 194(2) of the TCPA 1990.

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

426. Following the precedent in section 195 of the TCPA 1990, section 26K provides for a right of appeal to the Secretary of State against refusal or part refusal of a certificate, or against non-determination of an application within the time set by the Secretary of State, as provided for in section 26I, or as extended by written agreement between the applicant and the local authority. The Secretary of State may prescribe in regulations the manner in which a notice of appeal must be served, but at least 28 days must be allowed from the date of notification of the decision on the application, or the end of the period for determination of applications. The time which may be prescribed for an appeal replicates that set out in section 21(2) of the P(LBCA)A 1990 in respect of LBC on an application. In response to an appeal, the Secretary of State may grant or modify a certificate, or dismiss the appeal.