

Executive Note
The Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Amendment) (Scotland) Regulations 2006 SSI/2006/266

1. The above instrument was made in exercise of powers conferred by sections 73B(8) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Policy Objectives

2. These amending regulations relate to the removal of Crown immunity from planning control in Scotland. The overall aim is to subject the Crown to statutory planning provisions while recognising that the unique nature and responsibilities of the Crown mean that certain exceptions and special arrangements need to be made. These amending regulations amend the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987 to apply regulation 5 on publicity for applications for listed building consent made to the planning authority, to “urgent applications” for such consent made to the Scottish Ministers.

3. Planning is a devolved matter. However, the Town and Country Planning Acts currently do not apply to the Crown. As a result Crown bodies are not subject to planning control for development which they propose to carry out. Instead, government departments and other Crown bodies wishing to carry out development in Scotland have undertaken to comply with the non-statutory arrangements in Part IV of the Memorandum to Scottish Development Department Circular 21/84. Similar arrangements apply to such development in England and Wales.

4. The UK Government and the Scottish Executive sought to rectify this anomaly. Provisions to remove Crown immunity from planning controls were therefore included in the Planning and Compulsory Purchase Act 2004. This will mean that, once the proposed powers are brought into force, all Crown bodies will in future need to, for example, seek planning permission or listed building consent. The statutory requirements of the devolved planning regime will thereby be extended. This approach to the removal of Crown Immunity from planning control in the UK will, among other things, put the requirements of the European Directive on Environmental Impact Assessment in relation to Crown development on a statutory footing.

5. Section 92 of the 2004 Act introduces a new section 73B to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the Act”) to allow applications for listed building consent in relation to development which the appropriate authority (i.e. developing Crown body) certify is of national importance required urgently to be made directly to the Scottish Ministers rather than to the planning authority. This avoids a delay in getting the case to the Scottish Ministers in the event the planning authority were to refuse planning permission and an appeal were made or an appeal were to be made on the grounds of non-determination in relation to development of national importance required urgently.

6. The enabling power in section 73(8)(B) allows the Scottish Minister to prescribe the publicity requirements for urgent applications. The provisions, apply the existing requirements on publicity for applications for listed building consent to these urgent cases. The necessary amendments are being made by way of regulations, as section 81 of the Act

defines “prescribe” as meaning “prescribed by regulations”. The Town and Country planning (Application of Subordinate Legislation to the Crown) (Scotland) Order 2006 makes further modifications to existing procedures on listed building consent applications in relation to urgent applications made to Ministers.

Consultation

7. The question of the removal of Crown immunity from planning controls in Scotland was the subject of public consultation in the early 1990s. It is only in recent years that a suitable legislative opportunity arose to make the necessary provisions in planning legislation. While a number of Crown bodies have been consulted on aspects of the secondary legislation, we have not carried out a full public consultation on the secondary legislation. In light of the European infraction proceedings in relation to applying the requirements of the European Directive on environmental impact assessment to Crown development we have pressed ahead with the laying of Scottish Statutory Instruments.

Financial Effects

8. This instrument should not have any significant financial effects. It simply transfers the responsibility for advertising and site notices from the planning authority to the Scottish Ministers where an application for listed building consent is made under the urgent application procedures as opposed to the normal procedures for making an application to the planning authority.

The Scottish Executive Development Department
May 2006