

## **POLICY NOTE**

### **THE SCHEDULED MONUMENTS (APPEALS) (SCOTLAND) REGULATIONS 2015**

#### **SSI 2015/231**

The above instrument was made in exercise of the powers conferred by sections 1E, 3C, 4B(3), 4D, 9C(3A), 9CB and 23B of the Ancient Monuments and Archaeological Areas Act 1979, as amended by the Historic Environment Scotland Act 2014. This instrument is subject to negative procedure.

#### **Policy Objectives**

The purpose of these Regulations is to set out the detail of procedures in relation to appeals against decisions made by Historic Environment Scotland (“HES”) and called-in applications.

HES is a new NDPB for the historic environment established by the 2014 Act. From 1 October 2015 HES will take on the function of maintaining the Schedule of monuments protected under the 1979 Act, previously carried out by the Scottish Ministers through Historic Scotland.

The effective date for these Regulations is 1 October 2015, the date on which HES takes over its full responsibilities under the 2014 Act.

The types of appeal covered by these regulations are as follows:

- appeal under section 1C against inclusion of a monument in Schedule of monuments, or amendment of entries in the Schedule in respect of monuments;
- appeal under section 4B(2) against refusal of, or conditional consent to, applications for Scheduled Monument Consent or against refusal of approval required by a condition;
- appeal under section 4B(3) in default of decision on application for Scheduled Monument Consent or for approval required by a condition; and
- appeal under section 9C against a scheduled monument enforcement notice.

The Regulation also make provision for the procedure for handling of applications for scheduled monument consent which are called-in by the Scottish Ministers by a direction under section 3B of the 1979 Act.

Part 1 of the Regulations sets out how the Regulations apply to these various appeals and applications, including general definitions and interpretation.

Part 2 of the Regulations, in regulation 3, sets out the time periods and procedures for an appeal under section 4B against refusal of consent, conditional consent or refusal of an approval required by a conditional consent. Regulation 4 sets out the requirements for the form and content of notices to the owner of the monument and related certificates.. Regulation 5 provides for notification and publication of the appeal to HES and regulation 6 requires interested parties to be notified and gives interested parties an opportunity to make representations on the case to the Scottish Ministers. The appellant and HES are given the right to respond to any such representations. Regulation 7 requires Historic Environment

Scotland to make the documents relating to the appeal available for inspection and, where practicable, to allow copies to be made of such documents.

Part 3 of the Regulations relates to the process of determination of the appeal. Regulation 8 provides that, where the appointed person considers that adequate information is available to determine the appeal they may do so without any further procedure. Under regulation 9 the appointed person may establish of interested parties as to whether they wish to be involved in any further process. The appointed person may under Regulation 10 determine that further procedure is needed to provide further information or representations, and. The procedures available are described in regulation 10(4) and may include further written submission in accordance with regulation 12, a hearing session held under the Hearing Session Rules in Schedule 1, an inquiry session held under the Inquiry Session Rules in Schedule 2 and a site visit in accordance with regulation 13. Regulation 11 makes provision for the holding of pre-examination meetings to consider how the appeal may be conducted. Regulation 14 requires the appointed person to afford the appellant and other parties a further opportunity to make representations in respect of any new and material evidence which the appointed person proposes to take into account in determining the appeal.

Part 4 of the Regulations relates to how an appeal is to be made under sections 9C against a scheduled monument enforcement notice. Regulation 15 specifies what information must be included in a statement of appeal. Regulation 16 requires the appellant to give a copy of the notice of appeal and supporting documents to HES when making an appeal and allows HES to respond to the appeal and the appellant to make comments on their response. Regulation 16 provides for the notification to be given to other parties on whom a notice which is the subject of the appeal was served and allows such persons to make representations.

Part 5 of the Regulations sets out how an appeal is to be made under section 1C of the Act, against the addition of a monument to the Schedule or amendment of an entry in the Schedule.

Part 6 of the Regulations sets out the procedures in relation to applications called-in by the Scottish Ministers for determination by a direction under section 3B of the Act. In these situations the determination is made by the Scottish Ministers rather than by a person appointed to do so. Regulation 19 applies specified provisions of the Regulations with modifications to take account of this distinction in both cases and, in the case of called-in applications to refer to an application and applicant rather than an appeal and appellant.

Part 7 of the Regulations contains general provisions. Regulation 20 sets out how the Regulations apply in relation to non-delegated appeals, since the provisions of the Regulations are generally framed in the context of delegated appeals. (An appeal is a delegated appeal where it is to be determined by a person appointed for that purpose under Schedule 1A to the Act. The prescribed classes of appeals which are to be determined by an appointed person are specified in the Scheduled Monuments (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2015 which are laid at the same time as these Regulations, and which also set out classes of appeal which are reserved for determination by the Scottish Ministers. Part 7 also makes provision for national security issues (regulation 21), the provision of further copies of documents (regulation 22), the appointment of an assessor to advise the appointed person (regulation 23) and the use of electronic communications (regulation 25).. Regulation 24 makes provision for the content and publication of the decision on the appeal or application.

## **Consultation**

The provision of these new rights of appeal was widely welcomed during the passage of the HES Act 2014. The policy approach adopted in these regulations was informed by discussions with key stakeholders prior to finalisation of draft regulations. The draft regulations were then subject to a formal public consultation between 19 December 2014 and 27 March 2015. No representations were received suggesting any modifications to matters covered by these regulations, other than the general sentiment that timescales and procedures should be set out as fully and clearly as possible.

## **Impact Assessments**

An Equalities Impact Assessment (EQIA) has been carried out for these regulations, in combination with several other regulations being laid at this time. It is not considered that these particular regulations will have any impact as distinct from the matters already considered as part of the original EQIA carried out prior to introduction of the Bill for the 2014 Act. The provision of rights of appeal to Ministers, rather than as currently to Sheriff, offers a positive benefit by making formal appeal available at lower cost.

## **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed for these regulations, in combination with several other regulations being laid at this time. It is not considered that these particular regulations will have any negative impact as distinct from the matters already considered as part of the original BRIA carried out prior to the introduction of the Bill for the 2014 Act.

Scottish Government  
Culture, Europe and External Affairs Directorate  
2 June 2015