

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) AMENDMENT REGULATIONS 2015

SSI 2015/233

The above instrument was made in exercise of the powers conferred by sections 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997 and section 5D of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. This instrument is subject to the negative procedure.

Policy Objectives

The purpose of these regulations is to set out the detail of procedures for appeals against decisions made by Historic Environment Scotland (HES) on the listing of buildings. The procedures for this new class of appeal are established with reference to the procedures for existing classes of appeal, set out in the Town and Country Planning (Appeals) (Scotland) Regulations 2013 (“the 2013 Regulations”) with are accordingly amended.

HES is a new NDPB for the historic environment established by the Historic Environment Scotland Act 2014. From 1 October 2015 HES will take on the function of maintaining the list of buildings protected under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the Listed Buildings 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 class of appeal added by these amending regulations is an appeal under section 5B of the Listed Buildings Act against the inclusion of a building in the list compiled under section 1 of that Act or against the amendment of an entry in the list relating to a building. It should be noted that there is no provision for appeal against the exclusion of a building from the list (often referred to as “de-listing”) or against a decision not to list a building.

Regulation 2 inserts this new class of appeal to the list of appeals covered by the 2013 Regulation. This regulation also sets out a definition of “interested party”, being any person who has made representations to HES which have not subsequently been withdrawn. Such persons do not have a right of appeal, but have a right to participate in the appeal process.

Regulation 2(4) introduces a new Part 5A into the 2013 Regulation. Part 5A makes provision for the manner of making an appeal. It includes requirements relating to the content of the notice of appeal and for informing HES of appeals and giving HES an opportunity to respond and the appellant an opportunity to consider that response and comment further; the means by which interested parties are to be notified of proceedings and the methods by which documents relating to the appeal are to be published. Time limits are given for all key actions. These provisions essentially mirror the provisions in the 2013 Regulations relating to appeals against decisions of planning authorities.

Consultation

The provision of this new right 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 a right of appeal to Ministers, rather than to the Courts, 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
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