

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (EMERGENCY PERIOD AND EXTENDED PERIOD) (CORONAVIRUS) (SCOTLAND) REGULATIONS 2020

SSI 2020/254

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 58(3D), 59(8D) and 275 of the Town and Country Planning (Scotland) Act 1997(1), section 16(7) of the Planning (Listed Buildings and Conservation Areas) (Scotland) 1997(2) and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument.

- The Coronavirus (Scotland) Act 2020 includes provisions to extend the duration of planning permission and the Coronavirus (Scotland) (No.2) Act 2020 includes provisions to extend the duration of listed building consent and conservation area consent. Those permissions or consents which are due to lapse during the defined “emergency period” would under the provisions lapse at the end of “extended period” if works have not been begun.
- The “emergency period” is, as defined in both Acts, the period from the day the respective Act was commenced and expiring 6 months later. For planning permissions this period is from 7 April 2020 to 6 October 2020 and for listed building and conservation area consent it is from 27 May 2020 to 6 October 2020.
- The “extended period” is, as defined in both Acts, the period from the day the respective Act was commenced and expiring 12 months later. For planning permissions this period is from 7 April 2020 to 6 April 2021 and for listed building and conservation area consent it is from 27 May 2020 to 6 April 2021
- These regulations amend the expiry of the “emergency period” to 31 March 2021 and the “extended period” to 30 September 2021.

Policy Objectives

1. The coronavirus outbreak has affected the ability of both planning authorities and applicants to deal with planning permissions, listed building consents and conservation area consents which are due to expire.
2. When planning permission, listed building consent or conservation area consent is granted, applicants have a period of 3 years to commence development (authorities can provide for a longer period). If development is not commenced then that permission or consent lapses and a new application is required. Planning permission in principle also requires the approval of conditions before development can proceed.
3. The restrictions on movement and of social distancing and self-isolation has meant that applicants have been unable to satisfy the conditions attached to their planning permission

(1) 1997 c. 8. Sections 58(3D) and 59(8D) have effect by virtue of paragraphs 8 to 10 of schedule 7 of the Coronavirus (Scotland) Act 2020 (asp 7).

(2) 1997 c. 9. Section 16(7) has effect by virtue of paragraph 2 of schedule 4 of the Coronavirus (Scotland) Act 2020 (asp 7).

or to commence development due to the shutdown of non-essential construction. This also means that a backlog of development has occurred.

4. The aim of these provisions is to ensure that where a full planning permission, planning permission in principle, listed building consent or conservation area consent would expire before the end of March 2021 then that permission or consent should not lapse until 30 September 2021. The permission would only lapse if development has not commenced after that time.

5. In relation to applications for approval of conditions, if the last date for making an application for an approval is within the emergency period (up to 31st March 2020) then the time limit for making such an application is to the end of the 30 September 2021.

6. The UK Business and Planning Act 2020 came into effect on 22nd July which includes similar provisions to extend the duration of planning permission and Listed Building Consent with the emergency period designated up to 31st December 2020 and the Extended Period up to 1st May 2021.

7. Extending the Coronavirus Act provisions to extend the duration of planning permission, Listed Building Consent and Conservation Area Consent will support the construction sector in its recovery from the Covid-19 restrictions, reduce the burden on authorities needing to reconsider applications and provide consistency to businesses operating across the UK.

Consultation

As this is an emergency measure, and intended to be temporary, no formal public consultation was undertaken for the provisions in the Act. In deciding whether to extend the duration of these provisions we sought feedback from Heads of Planning Scotland (HOPS), Scottish Property Federation (SPF) and Homes for Scotland (HfS). As the construction sector has only recently restarted we believe that it will take some time to get back to pre-covid work levels and to work through any backlog of development.

Both SPF and HfS members have provided positive feedback on the use of the provisions to date. They believe it is vitally important that the emergency provisions for extending planning permissions are continued. Without this flexibility there is concern that several major development projects may fail to be delivered due to being timed out of permissions, potentially risking both the projects and the businesses investing in those projects.

HOPS commented that “It would be expected that by this stage agents and developers knew to progress permissions. However, authorities may not be aware of all who are utilising the provision. Therefore it would do no harm to grant limited further extension (one suggestion was to the end of December 2020). This would also allow local authorities an opportunity to update their systems”.

Financial Effects

There will be no financial costs imposed on business or Local Authorities as a result of these changes. In fact there should be a saving for both in that applications will not need to

submitted and reconsidered, meaning that authorities can continue to focus on responding to Covid-19 and determining new applications to ensure there is a pipeline of developments for developers to progress.

Assessments

8. The Scottish Government has assessed the potential impact of the proposed measure on equal opportunities and has determined it does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly.

9. The Scottish Government has assessed the potential impact of the proposed measure on human rights. The Coronavirus Act avoids planning permission (full planning permission or a planning permission in principle), Listed Building Consent or Conservation Area Consent from lapsing because developers are not able to get on site to begin development. It also extends the period within which applications can be made for approvals required by conditions. This is to avoid time limits expiring, and so permission in effect expiring as they can no longer be implemented, just because there is a delay in being able to make applications due to the current situation. Any changes to the way that planning legislation currently may interfere with property rights by regulating development is by way of a relaxation of the current provisions and it is considered that the provisions are compatible with the ECHR.

10. The Scottish Ministers are aware of the duty to consult island communities before making a material change to any policy, strategy or service which, in the Scottish Ministers' opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities. The Scottish Government has assessed the potential impact of the proposed measure on island communities and has determined it will have no significantly different impact on island communities. No detrimental effects are anticipated.

11. The Scottish Government has assessed the potential impact of the proposed measure on local government and has determined that extending the duration of planning permission for does not raise any impacts other than those highlighted in the policy memorandum which indicates that this will potentially allow developers and applicants to progress developments swiftly once current restrictions are reduced and lifted entirely. There may be a saving for local government in reducing the number of applications which are submitted seeking to extend the duration of planning permission.

12. The Scottish Government has assessed the potential impact of the proposed measure on sustainable development and no detrimental effects are anticipated.