EXECUTIVE NOTE

THE HISTORIC ENVIRONMENT (AMENDMENT) (SCOTLAND) ACT 2011 (COMMENCEMENT NO. 1) ORDER 2011

SSI 2011/174 (C. 14)

1. The above instrument was made in exercise of the powers conferred by section 33(2) and (3) of the Historic Environment (Amendment) (Scotland) Act 2011. This commencement order is not subject to any parliamentary procedure.

Policy Objectives

2. The purpose of the instrument is to commence certain provisions of the Historic Environment (Amendment) (Scotland) Act 2011 ("the Act") on 30 June 2011. Under this instrument some provisions will be commenced in full while others will be partially commenced for the purposes of making regulations only.

Provisions Commenced in Full

3. Under this instrument sections 1, 5, 7 to 9, 11 to 13, 27, 29(1) and 30 of the Act are commenced on 30 June 2011 for all purposes. These relate to provisions of the Act that clarify existing practice and those provisions that will be straightforward for the regulatory authorities to implement as soon as the relevant sections of the Act have been commenced. These sections may be summarised as follows:

- Section 1: This provision will allow Scottish Ministers to specify, or to set out the terms for calculating, in a grant award letter the amount that would be recoverable when a condition of grant is either contravened or not complied with or in the event that the property is disposed of.

- Section 5: Clarifies that paragraphs (a) and (b) of section 6(1) of the Ancient Monuments and Archaeological Areas Act 1979 merely provide particular instances of how the general power to enter land (as provided under section 6 of the 1979 Act) may be used.

- Section 7: Clarifies the powers of the Scottish Ministers with regard to the control and management of monuments and land under their guardianship.

- Section 8: Clarifies the powers of the Scottish Ministers regarding the provision of facilities, etc . at ancient monuments

- Section 9: Amends section 24 of the Ancient Monuments and Archaeological Areas Act 1979 so that the power of the Scottish Ministers and local authorities to defray or contribute towards the cost of preserving, maintaining or managing an ancient monument is exercisable without the owner having requested such action.

- Section 11: Creates a new statutory duty for Scottish Ministers to compile and maintain an inventory of gardens and designed landscapes and an inventory of battlefields.

- Section 12: Provides a new power of financial assistance to the Scottish Ministers. The provision states that Scottish Ministers may make grants or loans in connection with or with a view to the promotion of the development or understanding of matters of historic architectural, traditional, artistic or archaeological interest.

- Section 13: Ensures that any regulation or order making powers conferred by the Ancient Monuments and Archaeological Areas Act 1979 include powers to make any incidental, supplemental, consequential, transitory, transitional or saving provisions that the Scottish Ministers consider necessary or expedient.

- Section 27: This provision will allow Scottish Ministers and planning authorities to specify in a grant award letter the amount that would be recoverable (or set out the terms for calculating the amount that would be recoverable) when a condition of grant is either contravened or not complied with, or in the event of the property being disposed of.

- Section 29(1): Inserts a reference to the new section 275A of the Town and Country Planning (Scotland) Act 1997 into section 79(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and so will enable regulations to be made in relation to inquiries held under the Act.

- Section 30: Ensures that the power to make regulations and orders under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 may be exercised to make different provisions for different purposes.

Provisions Commenced in Part Only

3. Sections 6, 15, 20, 23, 24 and 26 will be part commenced on 30 June 2011 for the limited purposes of enabling the Scottish Ministers to make, or to make provision by means of, subordinate legislation.

4. Section 6 of the Act inserts new sections into the Ancient Monuments and Archaeological Areas Act 1979 (the 1979 Act) and makes provision as regards compensation in relation to stop notices and temporary stop notices. New sections 9I and 9N make provision as regards compensation in relation to stop notices and temporary stop notices. The application of section 47 of the 1979 Act is extended to these provisions.

5. Section 20 of the 2011 Act extends the appeal provisions in section 18 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the 1997 Act) to include an appeal against the failure to give notice that the authority have declined to determine an application. This provides Scottish Ministers with powers to make regulations specifying the time within which such an appeal must be made.

6 Sections 23 and 24 relate to listed building stop notice and fixed penalty notices. New section 41D inserted to be inserted by section 23 allows Scottish Ministers to prescribe in regulations how claims for compensation for loss due to a stop notice must be made and the timeframe for such claims. New section 41G(1)

sets out that a temporary stop notice does not prohibit certain works as may be prescribed by regulations. New section 41I(3) applies subsections (5) to (9) of section 41D to compensation payable in relation to temporary stop notices as they apply to compensation payable in relation to stop notices under section 41D. This provision allows Scottish Ministers to prescribe in regulations how claims for compensation for loss due to a temporary stop notice must be made and the timeframe for such claims. Section 24 inserts a new section 39A into the 1997 Act which allows the Scottish Ministers to make regulations to prescribe the level of the fixed penalty amount that may be paid when there has been a breach of a listed building enforcement notice.

7. Section 26 inserts new sections (liability of owner and successors for expenses of urgent works executed under section 49) into the 1997 Act. This section gives the Scottish Ministers power to prescribe the form of notices specified in that section in secondary legislation. These are: a notice of liability for expenses, a notice of renewal, a notice of determination and a notice of discharge.

Consultation

8. No consultation was undertaken on this order. The provisions of the Act being commenced have previously been subject to consultation through the Bill process.

Financial Effects

9. The instrument has no financial effects on the Scottish Government, local government or on business.

Historic Scotland
March 2011