EXPLANATORY MEMORANDUM TO

THE PLANNING (LISTED BUILDING AND CONSERVATION AREAS) (HERITAGE PARTNERSHIP AGREEMENTS) REGULATIONS 2014

2014 No. 550

THE PLANNING (LOCAL LISTED BUILDING CONSENT ORDERS) (PROCEDURE) REGULATIONS 2014

2014 No. 551

THE PLANNING (LISTED BUILDINGS) (CERTIFICATES OF LAWFULNESS OF PROPOSED WORKS) REGULATIONS 2014

2014 No. 552

THE ENTERPRISE AND REGULATORY REFORM ACT 2013 (LISTED BUILDINGS CERTIFICATES OF LAWFULNESS) (HEARINGS AND INQUIRIES PROCEDURES) (CONSEQUENTIAL AMENDMENTS) (ENGLAND) ORDER 2014

2014 No. 553

1. This explanatory memorandum has been prepared jointly by the Department for Culture, Media and Sport and the Department for Communities and Local Government, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

2.1 The Planning (Listed Buildings and Conservation Areas) (Heritage Partnership Agreements) Regulations 2014 ("the Heritage Partnership Agreement Regulations"), the Planning (Local Listed Building Consent Orders) (Procedure) Regulations 2014 ("the Local Listed Building Consent Order Regulations") and the Planning (Listed Buildings) (Certificates of Lawfulness of Proposed Works) Regulations 2014 ("the Certificates of Lawfulness of Proposed Works Regulations") respectively set out the procedures to be followed when making a listed building heritage partnership agreement, local listed building consent order and an application for a certificate of lawfulness of proposed works under the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the 1990 Act").

2.2 The Enterprise and Regulatory Reform Act 2013 (Listed Buildings Certificates of Lawfulness) (Hearings and Inquiries Procedures) (Consequential Amendments) (England) Order 2014 ("the Order") makes consequential amendments to instruments so as to apply existing procedures in connection with hearings and inquiries held for the purposes of appeals against the refusal/non-determination of certain planning applications to appeals brought in connection with certificates of lawfulness of proposed works.

2.3 These statutory instruments have been prepared to support the heritage provisions within the Enterprise and Regulatory Reform Act 2013 where secondary legislation is needed. The measures are intended to simplify the listed building consent system by reducing the circumstances in which applications are needed. They will not result in any reduction to existing levels of heritage protection.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is the first exercise of the powers in sections 26B(2), 26I, 26K and 28A of, and Schedule 2A to, the 1990 Act.

4. Legislative Context

4.1 These four instruments support the implementation of sections 60 and 61 of and Schedule 16 to the Enterprise and Regulatory Reform Act 2013 ("the 2013 Act") which insert sections 26A – 26K, 28A and Schedule 2A into the 1990 Act.

4.2 Section 26A of the 1990 Act provides that a local planning authority may make a heritage partnership agreement with any owner of a listed building in England. The Heritage Partnership Agreement Regulations are made under the power in section 26B(2) in respect of those agreements which grant listed building consent for the alteration or extension of the listed building to which the agreement relates.

4.3 Section 26D of the 1990 Act allows a local planning authority to make a local listed building consent order granting listed building consent for alteration or extension works to listed buildings of a specified description or in a specified part of their area, provisions which are broadly based on those in sections 59 to 61D of the Town and Country Planning Act 1990 in respect of local development orders. The Local Listed Building Consent Order Regulations are made under the power in Schedule 2A (which replicates that in Schedule 4A to the Town and Country Planning Act 1990 for local development orders) to prescribe the procedure for such orders and also make compensation provision under section 28A of the 1990 Act.

4.4 Works to a listed building which would affect its character as a building of special architectural or historic interest require listed building consent under section 8(1) of the 1990 Act. Section 26H allows a person formally to ascertain whether proposed alteration/extension works to a listed building require listed building consent. The certificates of lawfulness provisions are broadly based on those in sections 191 to 195 of the Town and Country Planning Act 1990 in respect of lawful development certificates and the Certificates of Lawfulness of Proposed Works Regulations set out the application and appeal process.

4.5 The Order further supports the implementation of the heritage provisions of the 2013 Act by extending existing appeals procedures to appeals in respect of certificates of lawfulness of proposed works.

5. Territorial Extent and Application

5.1 The statutory instruments apply to England only.

6. European Convention on Human Rights

6.1 As the instruments are subject to the negative resolution procedure and do not amend primary legislation no statement is required.

7. Policy background

• ***What is being done and why***

7.1 The policy is intended to simplify the listed building consent system by reducing the circumstances in which applications are needed and by providing greater clarity and certainty on when consent is not required. This package of measures will reduce burdens on owners and developers, and allow local planning authorities who administer these consents to deliver a more effective service.

7.2 The statutory instruments are procedural in nature and implement the measures set out in the 2013 Act. They will not result in any reduction to existing levels of heritage protection.

Listed Building Heritage Partnership Agreements

7.3 Heritage partnership agreements provide owners and local planning authorities with the means of agreeing various matters concerning the management of listed buildings. It is anticipated that the most important function of the agreements will be to agree in advance what works of alteration and extension (but not demolition) are to have listed building consent. This allows works which would otherwise require a series of applications for listed building consent to be dealt with by a single consent mechanism, potentially covering a much longer period.

7.4 The Heritage Partnership Agreement Regulations set out procedures that must be followed by local planning authorities in making a listed building heritage partnership agreement[1], in particular the consultation and publicity arrangements.

7.5 It is expected that listed building heritage partnership agreements will be particularly relevant for specific types and complexes of listed buildings, where predictable and repetitive works are commonly carried out.

7.6 These agreements have the potential to act as a focus for owners, local planning authorities and other partners in reaching a consensus view on the medium-long term management and maintenance of the listed buildings covered, to increase certainty and to save time and resource for the parties.

Local Listed Building Consent Orders

7.7 These give local planning authorities the ability to grant a general listed building consent order for certain works for the alteration or extension (but not demolition) of certain listed buildings in their area. This means that for those identified properties

[1] "Listed building heritage partnership agreement" means a heritage partnership agreement which grants listed building consent as provided for by section 26A(3) of the 1990 Act in respect of specified works for the alteration or extension of the listed building to which the agreement relates.

owners and developers will be able to carry out the works specified in the order without having to submit applications for listed building consent.

7.8 It will be for individual local planning authorities to decide what works and buildings are included in an order. By responding to well understood local characteristics this approach will allow a light touch for a range of works which have minor or acceptable impacts on the special interest of known categories of listed building. It will also reduce regulation and lift burdens by removing altogether any requirement to consider, make or process an application.

7.9 The Local Listed Building Consent Order Regulations set out procedures which must be followed by local planning authorities in making or revoking an order, for example, around publicity and consultation arrangements.

Certificates of Lawfulness of Proposed Works

7.10 By applying for a certificate of lawfulness of proposed works, owners and developers will be able to obtain formal confirmation from the local planning authority that the works for the alteration or extension (but not demolition) they are proposing do not require listed building consent because they do not affect the special architectural and historic interest of the building.

7.11 The Certificates of Lawfulness of Proposed Works Regulations set out the processes to be followed by owners and developers and local planning authorities in making and processing applications and appeals. The processes have been designed to be as light touch as possible and will have the benefit of reducing the number of unnecessary applications for listed building consent. There will be no requirement on owners or developers to submit such applications. It will still be possible, where the relevant parties are happy to do so, for these requests to be dealt with through an informal exchange of correspondence or where the owner or developer is satisfied that listed building consent is not required for them to proceed with the works.

Consolidation

7.12 These are new instruments and as such there is no need to consolidate them.

8. Consultation outcome

8.1 Statutory management agreements in the form of listed building heritage partnership agreements were previously consulted on as part of the draft Heritage Protection Bill (2008) which did not proceed due to lack of Parliamentary time. The matter was considered again in the context of the 'Penfold Review of Non-Planning Consents' (Department of Business, Innovation and Skills July 2010). The Government commitment to take forward this measure was confirmed in 'Implementation of the Penfold Review' (Department of Business, Innovation and Skills, November 2011).

8.2 The other measures were developed subsequently with their purpose explained in 'Improving Listed Building Consent: A Consultation (Department for Culture, Media and Sport, July 2012), carried out to implement the recommendations of the Penfold Review of Non-Planning Consents (Department of Business, Innovation and Skills

July 2010). The intention to proceed with local listed building consent orders and certificates of lawful works emerged as a result of this consultation, and was set out in the 'Government Response to Improving Listed Building Consent' (Department for Culture Media and Sport, October 2012).

8.3 In December 2013 there was further consultation on the draft secondary legislation setting out the procedures for listed building heritage partnership agreements, local listed building consent orders and certificates of lawfulness of proposed works ('Enterprise and Regulatory Reform Act. Secondary Legislation to accompany the Heritage Provisions: A Consultation'. Department for Culture, Media and Sport, December 2013).

8.4 Given the level of previous engagement with the public and interested parties a six week consultation period was considered appropriate. A total of 109 replies were received with nearly half (48%) from local planning authorities; 13% were from individuals; a further 9% represented owners of listed buildings; 8% were from national heritage and conservation bodies; 7% from professional bodies and 6% from local heritage groups. There was one response (1%) from the development industry and the remaining 7% were anonymous. An External Practitioner Panel representing key interested parties was established to provide comment on the initial drafts of the regulations and English Heritage arranged an event, for representatives of heritage and development sector bodies, during the public consultation period.

8.5 There was support for the majority of the proposals put forward and having carefully reviewed the responses four minor amendments were made to the regulations. They are:

<u>Listed Building Heritage Partnership Agreements</u>

1. To require English Heritage is consulted on all listed building heritage partnership agreements being proposed for local authorities own listed property
2. To ensure that the publicity and consultation for draft listed building heritage partnership agreements includes information about any conditions to which the listed building consent is subject

<u>Local Listed Building Consent Orders</u>

3. To require English Heritage is consulted on all local listed building consent orders being proposed by local authorities for their own listed property

<u>Certificates of Lawfulness of Proposed Works</u>

4. To simplify the requirements for local planning authorities to notify applicants that they have received and validated an application for a certificate of lawfulness of proposed works.

Changes (1) and (3) respond to concerns that there needed to be effective and transparent external scrutiny of proposals by local authorities in relation to any permitted works to their own listed building stock. Change (2) is designed to ensure the full effect of the listed building heritage partnership agreement is understood at the time of publicity and consultation, and change (4) is a measure to avoid any unnecessary duplication of correspondence with the applicant.

8.7 Full details of the consultation analysis and the Governments response can be found at: https://www.gov.uk/government/consultations/enterprise-and-regulatory-reform-act-secondary-legislation-to-accompany-the-heritage-provisions-a-consultation.

9. Guidance

9.1 Guidance and information on these measures will be available on the English Heritage website when the regulations commence on 6th April 2014 – http://www.english-heritage.org.uk/professional/advice/government-planning-policy/national-planning-policy-framework/

10. Impact

10.1 These instruments set out procedural matters necessary to give effect to the heritage provisions in the 2013 Act.

10.2 A separate impact assessment was not prepared for these regulations as the impacts of the measures to which the regulations relate were considered as part of the impact assessments prepared for the 2013 Act and the 2012 consultation 'Improving Listed Building Consent: A Consultation'.

10.3 Those impact assessments for listed building heritage partnership agreements can be found at http://www.legislation.gov.uk/ukpga/2013/24/impacts/2013/1065 where they are described as statutory management agreements (section 2.3).

10.4 Those impact assessments for local listed building consent orders and certificates of lawfulness of proposed works can be found at: https://www.gov.uk/government/consultations/consultation-on-improvements-to-the-system-of-listed-building-consents.

11. Regulating small business

11.1 No impacts have been identified that are specific to small businesses, or that would disproportionately affect small businesses. The reforms are deregulatory in nature and any measures that do impose a cost on business are optional.

12. Monitoring & review

12.1 The Departments will review and evaluate the success of these procedures in order to understand the sum effect of the measures.

13. Contact

13.1 Shane Gould at the Department for Culture, Media and Sport (Tel: 020 7211 2074 or email: shane.gould@culture.gsi.gov.uk) can answer any queries regarding the instruments.