EXECUTIVE NOTE

THE PLANNING (LISTED BUILDINGS) (PRESCRIBED FORM OF NOTICES) (SCOTLAND) REGULATIONS 2011

S.S.I. 2011/374

1. The above instrument was made in exercise of the powers conferred by section 50G of The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ("the 1997 Act"). This instrument is subject to the negative procedure.

Policy Objectives

2. Section 49 of the 1997 Act provides for Scottish Ministers and planning authorities to execute any works which appear to them to be urgently necessary for the preservation of a listed building. Section 50 of the 1997 Act provides enabling powers for the recovery of expenses incurred by the regulatory authorities in carrying out the works in question. Under existing powers the regulatory authorities are restricted to pursuing recovery of expenses from the owner of the property at the time notification under section 50(2) of the 1997 Act was served. This can be difficult when the property changes hands or when dealing with an absentee owner. Section 26(3) of the Historic Environment (Amendment) (Scotland) Act 2011 ("the 2011" Act")(which inserts new sections 50A to 50G of the 1997 Act) introduces new powers that enable Scottish Ministers and local authorities to register a *notice of liability for expenses* in the appropriate property register against the building in question in relation to costs incurred by them in carrying out any works necessary for the preservation of a listed building. This means that the costs can be recovered if the building is sold. This additional power provides local authorities with added security in terms of debt recovery in relation to work carried out by them under the terms of section 49 of the 1997 Act. Provision is also made by section 26(3) (by registration of a *notice of determination*) to cover the situation where the Scottish Ministers make a determination of the amount recoverable following representations under section 50 of the 1997 Act against the notice received requiring expenses of the works to be paid. Provision is also made for the discharge of a notice of liability for expenses and a notice of renewal. Inserted sections 50A to 50E of the 1997 Act introduce various notices to be registered in the property registers to allow this process. Section 50G of the 1997 Act sets out that the forms of the various notices that are required for this new process are to be prescribed in regulations.

3. The purpose of the instrument, therefore, is to prescribe the form of the following notices: a notice of liability for expenses; a notice of renewal; a notice of determination; and, a notice of discharge. These are summarised below.

Notice of Liability for Expenses

4. Inserted section 50A of the 1997 Act enables Scottish Ministers or planning authorities to register a *notice of liability for expenses* so incurred in the relevant property register against the building in question.

Notice of Renewal

5. A notice of liability for expenses will expire after 5 years, although provision is made in section 50C to renew the notice by registration of a *notice of renewal* which also expires after 5 years. This section sets out that a notice of renewal may be registered only when a notice of liability for expenses has been registered and has not expired. Subsection (2) of new inserted section 50C provides Scottish Ministers and planning authorities with the power to register a notice of renewal.

Notice of Determination

6. Where a notice of liability for expenses or a notice of renewal has been registered and the owner or the new owner (under certain circumstances) has made representations to the Scottish Ministers under the terms of section 50(4) of the 1997 Act or section 50(6) of the 1997 Act as inserted by section 25(2) of the 2011 Act, and the Scottish Ministers have determined (a) to what extent the representations are justified and (b) an amount recoverable then a "notice of determination" must be registered in the appropriate property register. Where the amount recoverable as set out in the notice of determination is less than the amount set out in the notice of liability for expenses the amount recoverable is that set out in the notice of determination.

Notice of Discharge

7. New inserted section 50E provides that when any liability for expenses has been fully discharged either the Scottish Ministers or the planning authority, as the case may be, must apply to register a "notice of discharge".

<u>Summary of each Regulation</u>

8. Regulation 1 sets out the title of the Regulations and provides that they will come into force on 1 December 2011.

9. Regulations 2, 3, 4, and 5 provide that a notice of liability, a notice of renewal, a notice of determination and a notice of discharge are to be in , or as near as may be in, the form set out the Schedule to the Regulations.

10. Part 1 of the Schedule prescribes the form of Notice of Liability for Expenses under section 50A of the 1997 Act.

11. Part 2 of the Schedule prescribes the form of Notice of Renewal under section 50C of the 1997 Act.

12. Part 3 of the Schedule prescribes the form of Notice of Determination under section 50(5) of the 1997 Act.

13. Part 4 of the Schedule prescribes the form of Notice f Discharge under section 50E of the 1997 Act.

Consultation

14. A public consultation on the draft Regulations ran from 21 March to 14 June 2011. The draft Regulations were one of a suite of 4 draft Scottish Statutory Instruments that were subject to consultation. The consultation document was sent to 359 organisations and individuals. Twenty eight organisations responded. The responses indicated generally strong support for the draft Statutory Instruments although some respondents suggested minor technical amendments to the Regulations, while others queried how some aspects of the Scottish Statutory Instruments would work in practice as well as seeking guidance on aspects of the processes governed by the Regulations.

15. A full list of those consulted and who agreed to the release of this information is attached to the consultation Analysis Report which can be viewed here:

http://www.historic-scotland.gov.uk/index/about/consultations/closedconsultations.htm##21

16. Respondents include:

Eleven local authorities
Two National Parks
Built Environment Forum Scotland
Institute of Historic Building Conservation
National Trust for Scotland
The Royal Incorporation of Architects in Scotland

17. While consultation on the draft Regulations was not required by statute the Scottish Government took the view that, in this case, and in line with the open and inclusive engagement that had characterised the legislative process underpinning the development of the 2011 Act, it was best practice to consult various interested bodies and individuals on those draft Regulations that had a significant or practical policy dimension.

18. The forms of the notices prescribed under this instrument were discussed, in considerable detail, with colleagues in the Registers of Scotland. The discussions focused on minor points of detail in relation to the drafting of the forms and there were no disagreement on points of principle.

Impact Assessments

Equalities Impact Assessment

19. The Regulation's are not discriminatory on the basis of gender, race, disability, marital status, religion or sexual orientation. The public consultation on the draft Regulations noted that is was the Scottish Government's view that it was "unlikely that the Regulations would have significant equalities impacts" and invited views on the draft Regulations in that regard. The consultation document was sent to all the key equalities agencies in Scotland and none offered an alternative view on this issue. The Scottish Government is satisfied therefore that the Regulations will have no equalities impacts.

Strategic Environmental Assessment (SEA)

20. Historic Scotland has applied the criteria specified in Schedule 2 of the Environmental Assessment (Scotland) 2005 Act to the proposed Regulations and have determined that they are exempt from Strategic Environmental Assessment under Section 7(1). A copy of the Agency's determination can be viewed via the Scottish Government's SEA database at the following website:

www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/SEAG

Financial Effects

21. The Cabinet Secretary for Culture and External Affairs confirms that no Business Regulation Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

22. The cost of preparing an urgent works notice is estimated at around £300 and the estimated cost of a registration with the Keeper of Registers will be £30 per title. Costs to local authorities will depend on the frequency of use. Data is not held centrally on the frequency of use of urgent repairs powers. However, all local authority expenses are recoverable from owners and so any costs are expected to be fully offset, while an improved ability to recover these costs should generate overall savings. It is not, however, possible to provide a reliable figure for the savings that may arise. Owners who keep their building in good order will not be affected and any new owner will be properly informed about any outstanding liabilities at a point when he can take that into account in his transaction with the seller.