POLICY NOTE

THE SCHEDULED MONUMENTS (DETERMINATION OF APPEALS BY APPOINTED PERSONS) (PRESCRIBED CLASSES) (SCOTLAND) REGULATIONS 2015

SSI 2015/232

The above instrument was made in exercise of the powers conferred by paragraph 1 of Schedule 1A to the Ancient Monuments and Archaeological Areas Act 1979 ("the 1979 Act"). This instrument is subject to negative procedure.

Policy Objectives

The purpose of these Regulations is to provide that appeals to the Scottish Ministers against decisions by Historic Environment Scotland (HES) under sections 1C, 4B and 9C of the 1979 Act may be determined by persons appointed for the purpose by the Scottish Ministers instead of being determined by the Scottish Ministers.

HES is a new NDPB established by the Historic Environment Scotland Act 2014 ("the 2014 Act"). It will act as the lead body for the historic environment. It will take on the functions currently carried out by Historic Scotland for Scottish Ministers and the Royal Commission on the Ancient and Historical Monuments of Scotland including the function of maintaining the Schedule of monuments protected under the 1979 Act, previously carried out by the Scottish Ministers through Historic Scotland. HES will be able to include any monument in the Schedule which appears to it to be of national importance. HES will also be able to exclude a monument from the Schedule or amend the entry in the Schedule relating to any monument.

Sections 1C, 4B(2), 4B(3) and 9C of the 1979 Act are inserted by the 2014 Act. They introduce the following new rights of appeal to the Scottish Ministers -

> Section 1C allows an appeal against the decision of HES to include a monument in the Schedule compiled under section 1 of the 1979 Act or to amend an entry in the Schedule. (Such an appeal may be made by an owner, tenant or occupier of a monument.)
>
> Section 4B allows an appeal against refusal of, or conditional consent to, applications for scheduled monument consent or against refusal of approval required by a condition. (Such appeals may be made by the applicant for, or holder of, a scheduled monument consent.)
>
> Section 4B(3) allows an appeal in default of a decision on application for scheduled monument consent or for approval required by a condition. (Such appeals may be made by the applicant for, or holder of, a scheduled monument consent, where HES has failed to reach a decision.)
>
> Section 9C allows an appeal against a scheduled monument enforcement notice. (Such appeals may be made by a person on whom such a notice has been served.)

Schedule 1A of the 1979 Act is inserted by the 2014 Act. It makes provision for these appeals to be determined by persons appointed by the Scottish Ministers. Paragraph 1(1) enables Ministers to set out in regulations the classes of such appeals which are to be determined by such appointed persons. Paragraph 1(2)(a) allows regulations to except, for the time being, classes of case from being so determined.

Regulation 2 of these Regulations provides that appeals under section 1C, 4B(2), 4B(3) and 9C of the 1979 Act are to be determined by persons appointed for the purpose by the Scottish Ministers, instead of being determined by the Scottish Ministers.

Regulation 3 prescribes that appeals under sections 4B and 9C of the 1979 Act by persons who are, or are deemed to be, statutory undertakers for the purposes of that Act are to continue to be determined by the Scottish Ministers.

Regulation 4 requires the Scottish Ministers to send to HES a copy of any direction they make under paragraph 1(2)(b) of Schedule 1A to the 1979 Act specifying classes of case within the prescribed classes which are to be determined by Scottish Ministers. It also provides for publication by HES of any such directions received.

These regulations come into force on 1 October 2015, the date on which HES takes over its full responsibilities under the 2014 Act.

Consultation

The principle of appeal against decisions by HES in relation to scheduling and related consent and enforcement notices was widely welcomed when it was proposed as part of the Bill which became the Historic Environment Scotland Act 2014.

The policy approach adopted in these Regulations, which is to allow appeals against scheduling decisions and appeals in respect of decisions by HES relating to scheduled monument consent and scheduled monument enforcement notices to be determined by appointed persons, was informed by discussions with key stakeholders prior to finalisation of draft regulations. The arrangements are now similar to those applied in relation to listed building consent, representing a harmonisation of procedures, something which was also sought by many stakeholders.

The draft regulations were then the subject of a formal public consultation between 19 December 2014 and 27 March 2015. No representations were received suggesting any modifications in respect of these specific regulations.

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.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed for these Regulations, in combination with several other instruments being laid at this time. It is not considered that there is 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, while the provision for appointed persons to determine the specified classes of appeal may offer the positive benefit of a more rapid process.

Scottish Government
Culture, Europe and External Affairs Directorate
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