EXECUTIVE NOTE

THE TOWN AND COUNTRY PLANNING (APPEALS) (WRITTEN SUBMISSIONS PROCEDURE) (SCOTLAND) REVOCATION REGULATIONS 2011

SSI 2011/380

1. The above instrument was made in exercise of powers conferred by sections 267 and 275 of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling the instrument to be made. This instrument is subject to negative procedure.

Policy Objectives

2. This is one of a number of statutory instruments associated with removal of the automatic right to appear before and to be heard by a person appointed by Scottish Ministers in relation to appeals for listed building and conservation area consent cases. The provisions removing this automatic right are contained in the Planning etc. (Scotland) Act 2006 (the 2006 Act) and the Historic Environment (Scotland) Act 2011 (the 2011 Act) and they amend the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the 1997 Act).

3. This change brings the procedures for appeals in these areas into line with those for appeals against refusal of planning permission, where the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the 2008 Appeals Regulations) specify that the decision on how an appeal or called-in case is processed (i.e. whether to hold a public local inquiry, hearing, written submissions, site visit or some combination of these) is a matter for the Scottish Government reporter considering the case. The appellant and planning authority can indicate their preferences as to the procedure to be followed. The intention is that the policy supports the objectives of increasing the efficiency of the planning appeal system whilst retaining the high quality of determination. The appeal process is also intended to become less adversarial with the person appointed by the Scottish Ministers being able to decide the most effective means of examining each case.

4. A list of the related statutory instruments in this regard is contained in the Annex. Executive notes have been done for them.

5. This particular statutory instrument revokes the Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990. The latter currently apply only to listed buildings cases and, as in future the 2008 Appeals Regulations as amended will apply instead, these 1990 Regulations can be revoked. A saving provision is also included so that the 1990 Regulations continue to apply to appeals in listed building and conservation area consent appeals started before 1st December 2011.

6. An amendment is also made to the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009. This simply removes an amendment previously made to the 1990 Regulations. The saving provisions contained in the 2009 Regulations are restated for planning appeals made to the Scottish Ministers before 3rd August 2009.

Consultation

7. As indicated, the changes made by this instrument are technical changes following the commencement of the provisions in the 2006 Act and the 2011 Act, and have not themselves been the subject to consultation. The following link is to the Executive note for the 2008 Appeals Regulations which describe the consultation undertaken in relation to the new approach to appeals and called-in applications:

http://www.legislation.gov.uk/ssi/2008/434/executive-note/contents

Impact Assessments

8. These changes will have no impact with regard to issues covered by equalities impact assessments or strategic environmental assessment.

Financial Effects

9. The numbers of cases affected by these changes is minimal. In the year 2010-11 approximately 3,500 listed building and conservation area consents were determined in Scotland, of these 39 listed building appeals were made to Scottish Ministers and 5 were determined through a public local inquiry. The main aim is to have a consistent approach across listed building and conservation area consent cases and those for planning permission. With the reporter able to decide the most appropriate approach to considering appeals and called-in cases in this regard there may be some reduction in the number of public local inquiries, with related reductions in costs for the appellant or applicant, the planning authority and the Scottish Government.

Scottish Government
Directorate for the Built Environment
October 2011

ANNEX

The Historic Environment (Amendment) (Scotland) Act 2011 (Commencement No. 2) Order 2011 – This commences, amongst other things, provisions in the 2011 Act repealing provisions in the 1997 Act containing the automatic right to be heard in relation to applications for listed building consent and conservation area consent called-in for determination by the Scottish Ministers and in certain appeal provisions.

The Historic Environment (Amendment) (Scotland) Act 2011 (Saving, Transitional and Consequential Provisions) Order 2011 – This preserves the effect of the repealed provisions of the 1997 Act for the purposes of cases called-in or appeals started before the changes come into force.

The Planning etc. (Scotland) Act 2006 (Commencement No. 12) Order 2011 – This commences provisions in the 2006 Act which remove the automatic right to be heard in relation to appeals in listed building and conservation area consent cases in the 1997 Act
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Planning etc. (Scotland) Act 2006 (Listed Buildings) (Saving Provisions) Order 2011 – This preserves the provisions repealed and amended as a result of the above commencement order for the purposes of those appeals started before the changes come into force.

The Town and Country Planning (Appeals) (Scotland) Amendment Regulations 2011 – This amends the current 2008 Appeals Regulations for planning permission cases to include listed building and conservation area consent cases.

The Town and Country Planning (Inquiries Procedure) (Scotland) Amendment Rules 2011 - The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997 and The Town and Country Planning Appeal (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997 are amended so that they no longer apply to listed building and conservation area consent cases

The Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Amendment Regulations 2011 – This removes the current references to appeals in the Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987.

The Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Amendment Regulations 2011 - This amends the Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Regulations 1992 to remove references to enforcement notice appeals in relation to listed buildings and conservation areas. It also amends the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009 to remove amendments to the 1992 Regulations in relation to such appeals. There are also savings provisions to preserve the effect of the 1992 Regulations for appeals started prior to the 2011 and 2009 amendments.