EXECUTIVE NOTE

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) AMENDMENT REGULATIONS 2012

SSI 2012/165

1. The above instrument was made in exercise of the powers conferred by sections 30(1) and (3), 43(1)(c) and 275 of the Town and Country Planning (Scotland) Act 1997, as amended, and all other powers enabling the instrument to be made. This instrument is subject to negative procedure.

Policy Objectives

2. The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (the 2008 Regulations) set out the detailed requirements in relation to processing applications for planning permission. This instrument amends the 2008 Regulations by introducing a requirement to consult Scottish Ministers, in practice Historic Scotland, on applications for planning permission for development affecting "historic battlefields".

3. Scottish Ministers introduced a new policy in the Scottish Historic Environment Policy (SHEP) 2009 to protect historic battlefields through an Inventory of nationally important sites. The Historic Environment (Amendment) (Scotland) Act 2011 has since introduced a new duty on Scottish Ministers in this regard. The Inventory itself was launched in March 2011 and further development is actively ongoing.

4. The Scottish Planning Policy (SPP) and SHEP (2009; updated 2011) make Inventory battlefields a material consideration in the planning process and SHEP indicates that the 2008 Regulations will be amended in due course to set out the requirement for planning authorities to consult with Scottish Ministers. This will place the Inventory of Historic Battlefields on a consistent footing with other historic environment designations, including the comparable Inventory for Gardens and Designed Landscapes.

5. Regulation 25 of the 2008 Regulations contains the requirement on the planning authority to consult various parties before determining an application for planning permission. It refers to Schedule 5 of the 2008 Regulations which lists the consultees and the criteria for triggering consultation.

6. Regulation 1(2) of the instrument includes a transitional arrangement so that the new requirement to consult applies to applications received on or after 1 August 2012. This allows planning authorities and others to prepare to implement the new requirements and avoids existing applications nearing a decision being suddenly subject to new requirements.

7. Regulation 2(2) in the instrument adds a definition of "historic battlefield" to the 2008 Regulations and refers to battlefields included in the inventory of battlefields compiled and maintained under section 32B of the Ancient Monuments and Archaeological Areas Act 1979.

8. Regulation 2(3) of the instrument adds to Schedule 5 of the 2008 Regulations the requirement to consult Scottish Ministers on development which may affect a historic battlefield. This can be development within the designated area but can also be outside it, for example, where a development would affect a key element in our understanding of the battle, such as a relationship between the core of the battle and a landscape feature in the vicinity. This amendment includes the following specific exemptions: a) development consisting of the alteration or extension of an existing building; or b) development within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of the dwellinghouse. Given the likely nature, scale and association with existing premises, these types of developments are not likely to have an impact on inventoried battlefields.

Consultation

9. In Feb-March 2011 Historic Scotland consulted on a draft guidance note, *Managing Change in the Historic Environment: Historic Battlefields.* This consultation was accompanied by an Environmental Report and included a question about amending the 2008 Regulations to take the new Inventory of Historic Battlefields into account, and options for wording. Responses were generally in favour of an amendment, with differing views on suitable wording. The responses are reflected in the post-consultation Analysis Report published on Historic Scotland's web-site: http://www.historic-scotland.gov.uk/consultation-analysis-report-on-managing-change-in-historic-battlefields.pdf.

10. Historic Scotland took the consultation responses into account in developing the wording now proposed for the 2008 Regulations, though it was not possible to adopt all recommendations as some were contradictory.

Business Regulatory Impact Assessment (BRIA)

11. A copy of the BRIA accompanying these regulations is attached to this note.

Financial Effects

12. Financial effects are covered in the BRIA.

Scottish Government
Directorate for Local Government and Communities
May 2012