EXECUTIVE NOTE

THE TOWN AND COUNTRY PLANNING (ENFORCEMENT OF CONTROL) (No. 2) (SCOTLAND) AMENDMENT REGULATIONS 2011

SSI 2011/383

1. The above instrument was made in exercise of the powers conferred by sections 35(4), 36(1) and 82 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and sections 131 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, including appeals against enforcement. 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. Amendments made to the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the 2008 Appeals Regulations) will bring the procedures for enforcement appeals relating to listed building enforcement notices into line with those for enforcement appeals in planning cases. The 2008 Appeals Regulations specify that the decision on how an appeal 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, which would come into force on 1 December, amends the Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Regulations 1992. These 1992 Regulations contain provisions on the serving of enforcement notices and the making of appeals against enforcement action, including in relation to breaches of control regarding listed building consent (LBC) and conservation area consent (CAC). In future the 2008 Appeals Regulations will apply to appeals against enforcement in relation to LBC and CAC.

6. These Regulations remove regulations 5 and 6 of the 1992 Regulations, which relate to appeals against enforcement in LBC and CAC cases. In addition it removes the references to electronic communications, which applied only to such appeals. Regulation 8 of the 1992

Regulations is also amended to remove reference to such appeals. The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009 are amended to remove the amendments to the 1992 Regulations made in 2009 in relation to LBC and CAC enforcement appeals. There are savings provisions so that the 1992 Regulations operate as they did prior to the 2009 amendments and 2011 amendments in relation to appeals made prior to 3 August 2009 and 1 December 2011 respectively.

Consultation

7. As indicated, the changes made by this instrument are technical changes as a consequence of 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 (Appeals) (Written Submissions Procedure) (Scotland) Revocation Regulations 2011 – As listed building cases are the only ones to which the Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990 currently apply, these 1990 regulations will be revoked.