POLICY NOTE

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (SCOTLAND) AMENDMENT ORDER 2015

SSI 2015/235

The above instrument was made in exercise of the powers conferred by sections 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997 and adjusts matters regulated under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 and the Town and Country Planning (Application of Subordinate Legislation to the Crown) (Scotland) Order 2006. The provisions of this Order come in force on 1 October 2015. This instrument is subject to negative procedure.

Policy Objectives

This Order amends the way in which permitted development in planning is regulated, to take account of the creation of the new Non Departmental Public Body, Historic Environment Scotland ("HES") and of certain other provisions of the Historic Environment Scotland Act 2014.

Article 3(4) of the Order amends Schedule 1 to the 1992 Order to adjust the Classes of permitted development to maintain Scottish Ministers' rights to carry out, or have others carry out, maintenance, repair and reinstatement of ancient monuments or to deliver other functions under the Ancient Monuments and Archaeological Areas Act 1979. These rights are currently restricted so as not to be available in relation to the provision of facilities for the public in connection with ancient monuments and will in future also be restricted so as not to be transferred to HES or other bodies charged with the conservation, management and operation of properties in Ministers' care under the terms of section 3 of the Historic Environment Scotland Act 2014.

This change is to help secure the position that HES and other bodies who have delegated authority under section 3 of the 2014 Act for managing the Ministerial estate of historic visitor properties are treated in the same way, in relation to permitted development rights as any other body or individual operating historic visitor properties. This is part of the "level playing field" approach offered during the passage of the HES Bill.

Permitted development rights will remain available to Ministers in relation to caring for any ancient monuments which remain in Ministerial ownership or care outside these arrangements, for example in relation to any monuments in Ministers' direct management pending a formal delegation, or ancient monuments owned and managed by Forestry Commission Scotland. Rights in these circumstances will also not extend to the provision of visitor facilities, again for reasons of equity.

Article 2 provides that the changes to the 1992 Order set out above only apply to developments begun on or after 1 October 2015.

Article 3 of the Order amends the definition of "category A listed building" used in the 1992 Order to reflect the updated position.

Article 4 of the Order amends the Town and Country Planning (Application of Subordinate Legislation to the Crown)(Scotland) Order 2006 to remove references from that Order, which are no longer necessary as a result of the changes made above. Any development begun on or before 1 October 2015 is to be dealt with under the 2006 Order as it currently stands.

Consultation

The general policy approach adopted in this Order was informed by discussions with key stakeholders during the passage of the HES Act and the changes made by this order, where not addressing technical defects of older legislation, are logical consequences of the setting

up of HES. The new relationship with Ministers in relation to properties in state ownership and care was a matter of concern for several stakeholders involved in the operation of the historic properties as visitor attractions, and this order puts in place safeguards which help to deliver the "level playing field" commitment which was offered by Ministers.

Impact Assessments

A specific Equalities Impact Assessment (EQIA) has not been carried out for this Order, as it was not considered that it has the potential for 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 specific Business and Regulatory Impact Assessment (BRIA) has not been carried out for this Order, as 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.

However, the change to the definition of "category A listed building" has a theoretical impact on that it closes a loophole arising from the 1992 definition. It is possible that owners of historic buildings which were given Category A status between 1992 and the date of coming into force of this Order may have decided not to seek planning consent, or may have expended extra cost and effort in preparing applications for consent, in the mistaken belief – widely shared in the planning and development control sector – that permitted development rights did not obtain in respect of their properties. Given that all parties have been content to act as if the 1992 Order applied with rolling effect, as the present Order now secures, it is not anticipated that there is any great risk of claims for compensation against planning authorities or Ministers.

Scottish Government
Culture, Europe and External Affairs Directorate
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