POLICY NOTE

THE TOWN AND COUNTRY PLANNING (HISTORIC ENVIRONMENT SCOTLAND) AMENDMENT REGULATIONS 2015

SSI 2015/237

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 23D, 30, 32, 40, 43 and 275 of the Town and Country Planning (Scotland) Act 1997 and makes amendments to the Environmental Impact Assessment (Scotland) Regulations 1999, the Town and Country Planning (Development Planning) (Scotland) Regulations 2008, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 and the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. The changes come into force on 1st October 2015. The instrument is subject to the negative procedure.

Policy Objectives

The purpose of this instrument is to accommodate the role of Historic Environment Scotland (HES) in relation to certain processes of development planning and management and environmental assessment.

HES is a new NDPB for the historic environment established by the Historic Environment Scotland Act 2014 ("the 2014 Act"). From 1 October 2015 HES will take on a range of functions currently carried out by the Scottish Ministers through Historic Scotland.

Regulation 2 amends the Environmental Impact Assessment (Scotland) Regulations 1999 to make HES a consultation body in respect of land drainage proposals, alongside analogous public bodies such as Scottish Natural Heritage and the Scottish Environment Protection Agency.

Regulation 3 amends the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 to add HES to the list of "key agencies" for the purpose of development planning.

Regulation 4 amends the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 at regulation 2 (interpretation) to add HES as a consultation body in respect of planning applications requiring assessment under those Regulations. It also removes the Scottish Ministers as a body requiring to be consulted, requiring instead that copy of environmental statements be supplied to Ministers. The reason for these changes is that, once HES takes up its new responsibilities, all necessary consultation functions currently serviced by Scottish Government officials will be dealt with by named consultation bodies. The sole exception to this is in relation to applications for marine fish farming, so in making the general change, these Regulations specifically maintain the current requirement to consult the Scottish Ministers on such applications. Provision is made for these requirements not to apply where the planning authority has already consulted the Scottish Ministers in relation to a scoping opinion, or supplied a copy of an environmental statement, before 1 October 2015. Where the Scottish Ministers have been notified in relation to gathering information to assist in the preparation of environmental statements, the Regulations provide for that to be treated as notification of HES, so that there is no need for a fresh request for information to be made.

Regulation 5 amends the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 to add HES to the list of bodies which must be consulted by a planning authority in respect of planning applications for development which might impact upon: Royal Palaces or Parks (or their amenity); World Heritage Sites; historic gardens or designed landscapes; the site or setting of scheduled monuments; category A listed buildings, and also development (other than householder development) which might affect a historic battlefield. Provision is made for these requirements not to apply where planning applications haves been notified to Ministers before 1 October 2015.

Regulation 5 also amends the definition of "category A listed building" used in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 to accommodate the fact that the list of buildings referred to above will no longer be maintained by the Scottish Ministers but by HES

Consultation

A public consultation on the Historic Environment Scotland Bill took place in the summer of 2013, and a second consultation focussing more closely on changes to regulatory arrangements took place in the winter of 2014-2015

Both consultations made clear the intention that HES would, wherever appropriate, take over consultation and other functions which are currently conducted in the name of the Scottish Ministers by Historic Scotland. It was made clear at the same time that HES would inherit the staff of Historic Scotland (and of RCAHMS), which constitute the primary resource required to undertake these functions.

There were no objections to this approach in either consultation exercise, with respondents generally welcoming the commitment to continuity thus provided.

The more recent consultation sought views on the most efficient transitional arrangements. There was general support for the position (reflected in these regulations) that, where Scottish Ministers have been involved in a process through Historic Scotland before 1st October then there is no need to duplicate that involvement with HES once it comes into operation, while that where possible HES should take over processes begun by Scottish Ministers, subject only to this causing no cost, delay or other inconvenience to applicants.

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 regulations being laid at this time. It is not

considered that these particular regulations will have 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, given that there are already requirements to consult and the only significant change is that these will be handled by HES rather than by the Scottish Ministers, and that provision has been made to secure continuity of process where cases are in hand at the changeover date.

Scottish Government
Culture, Europe and External Affairs Directorate
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