EXECUTIVE NOTE

THE TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (SCOTLAND) AMENDMENT RULES 2011

SSI 2011/379

1. The above instrument was made in exercise of powers conferred by section 9 of the Tribunals and Inquiries Act 1992 and all of the other powers enabling such an 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, applications in this regard called-in for determination by Ministers and listed building enforcement notice appeals. 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). A list of the other statutory instruments linked to this legislation can be found in the annex to this document. Separate executive notes have been prepared for these.

3. This change brings the procedures for appeal and called-in cases in these areas into line with those for applications for planning permission. The latter are currently subject to the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the 2008 Appeals Regulations) which 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 applicant 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. This is not a change of policy only a move to ensure parity across consent regimes.

4. The effect of the Town and Country Planning (Appeals)(Scotland) Amendment Regulations 2011 is to bring listed building and conservation area consent appeals, and applications for listed building or conservation area consent called in by Scottish Ministers, and listed building enforcement notice appeals within the scope of the 2008 Appeals Regulations with effect from 1 December 2011. Where an inquiry is to be held in relation to such a case the procedure is provided by the 2008 Appeals Regulations and in particular the Inquiry Session Rules contained in Schedule 2 to those Regulations. To avoid there being two sets of procedures applying to an inquiry these Amendment Rules amend the existing rules to provide that they will not in future apply to cases dealt with by the 2008 Appeals Regulations. These Amendment Rules make a consequential amendment which excludes those appeals and called in applications from the scope of 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.

Consultation

5. In accordance with section 9 of the Tribunals and Inquiries Act 1992 we have consulted with the Administrative Justice and Tribunals Council on the proposed changes. In their response the AJTC reiterated their concerns about the underlying policy changes made by the 2006 Act, however they had no substantive comments about the specific changes these amendment rules make about the right to appear before and be heard by a person appointed on behalf of Scottish Ministers. However as indicated, the changes made by this instrument are technical changes as a consequence of commencement of the provisions in the Planning etc. (Scotland) Act 2006 and the Historic Environment (Scotland) Act 2011, and have not themselves been the subject to public 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

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

Financial Effects

7. 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 hearing. Therefore, for example, 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 hearings, 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 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (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 provisions of the 1997 Act which are repealed for the purposes of cases called-in or where notice of appeal was made prior to the repeal.

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 specified in the 1997 Act

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 made prior to repeal.

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

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.

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.