EXECUTIVE NOTE

THE TOWN AND COUNTRY PLANNING (LISTED BUILDINGS AND BUILDINGS IN CONSERVATION AREAS) (SCOTLAND) AMENDMENT REGULATIONS 2011

S.S.I. 2011/376

1. The above instrument was made in exercise of the powers conferred by sections 18, 19, 41D(5) and 82 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ("the 1997 Act"). These Regulations are subject to the negative procedure. .

Policy Objectives

2. The purpose of the instrument is to amend the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987 ("the 1987 Regulations") following of the amendment of the 1997 Act by the Historic Environment (Amendment) (Scotland) Act 2011 ("the 2011 Act"). They remove provisions on applications for appeal against decisions relating to listed building consent. The procedure for such appeals will in the future by governed by the same procedures as for planning appeals under the Town and Country Planning (Appeals) (Scotland) Regulations 2008. The Regulations also make changes to procedures for making claims for compensation following the introduction of new sections 41D and 41I by section 23 of the 2011 Act.

3. Regulation 2 amends or removes regulations 6 and 8 of, and Schedules 1 and 2 to, the 1987 Regulations following changes made by section 21 of the 2011 Act to removes the automatic right to be heard in connection with listed building applications and appeals under the 1997 Act. This is in line with new provisions introduced by the Planning etc. (Scotland) Act 2006, which enable Scottish Ministers to determine the most suitable means of determining each application or appeal, through written submissions, a hearing or an inquiry or any combination of these. This will ensure that the process for considering applications and appeals is appropriate and proportionate in relation to the case in question.

4. Regulation 2 also takes account of the compensation provisions relating to the new enforcement provisions (i.e. stop notices and temporary stop notices) in relation to unauthorised works to listed buildings introduced into the 1997 Act by sections 22 and 23 of the 2011 Act.

5. These provisions contribute directly to the Scottish Government's simplification agenda by harmonising listed building legislation with the planning regime.

6. Regulation 3 contains saving provisions which ensure that the 1987 Regulations will continue to apply as they did before the changes are made in relation to appeals or claims for compensation made, or listed buildings purchase notices served, before 1st December 2011..

Consultation

7. No consultation was undertaken on this instrument. As noted above the purpose of this instrument is to make saving, transitional and consequential provisions in relation to the commencement of various provisions of the 2011 Act.

8. The provisions of the Act were subject to consultation in 2009 when a draft Bill was subject to full public consultation. The provisions of the Act were also subject to detailed scrutiny during the passage of the Bill through Parliament between 4 May 2010 and 20 January 2011. It was not thought appropriate or proportionate therefore to consult on an instrument which simply provided for minor technical consequential changes required by the commencement of various provisions in a tightly focused technical amending Act.

9. The public consultation on the draft Bill under its previous name (The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill) ran from 20 May to 14 August 2009. The responses to the draft Bill indicated generally strong support for the provisions and the underlying aims of the Bill. In particular, respondees welcomed the twin aims of harmonising, where practicable, the Ancient monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and aligning historic environment legislation with the planning regime when appropriate.

10. A full list of those consulted and who agreed to the release of this information is attached to the consultation Analysis Report which can be viewed here:

Impact Assessments

Equalities Impact Assessment

11. The Regulation's are not discriminatory on the basis of gender, race, disability, marital status, religion or sexual orientation. The public consultation on the draft Bill noted that is was the Scottish Government's view that it was "unlikely that the provisions of the Bill would have significant equalities impacts" and invited views on the proposed amendments in that regard. The consultation document was sent to all the key equalities agencies in Scotland and none offered an alternative view on this issue. The Scottish Government is satisfied therefore that the Regulations will have no equalities impacts.

Strategic Environmental Assessment (SEA)

12. Historic Scotland has applied the criteria specified in Schedule 2 of the Environmental Assessment (Scotland) 2005 Act to the provisions of the Bill and have determined that they are exempt from Strategic Environmental Assessment under Section 7(1). A copy of the Agency's determination can be viewed via the Scottish Government's SEA database at the following website:

www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/SEAG

Financial Effects

13. The Cabinet Secretary for Culture and External Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

14. 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 inquiries, with related reductions in cost for the appellant or applicant, the planning authority and the Scottish Government.