

ABERDEEN CITY COUNCIL

COMMITTEE	Planning Development Management Committee
DATE	19 March 2015
DIRECTOR	Pete Leonard
TITLE OF REPORT	Historic Environment Scotland Act 2014: Secondary Legislation

1 PURPOSE OF REPORT

- 1.1 This report proposes a consultation response to secondary legislation underpinning the new Historic Environment Scotland Act 2014 <http://www.gov.scot/Resource/0046/00466699.pdf>.

2 RECOMMENDATION(S)

- 2.1 It is recommended that the Committee:
- (a) Approve the consultation response on the Historic Environment Scotland Act 2014: Secondary Legislation as set out in Appendix 1

3 FINANCIAL IMPLICATIONS

- 3.1 There are no direct financial implications arising from this report.

4 OTHER IMPLICATIONS

- 4.1 There are no known legal, resource, personnel, property, equipment, sustainability and environmental, health and safety policy implications arising from this report.

5 BACKGROUND / MAIN ISSUES

- 5.1 The Historic Environment Scotland Act gained Royal Assent on 9 December 2014 and establishes Historic Environment Scotland (HES) as a new Non Departmental Public Body (NDPB). HES will take over the functions of Historic Scotland (HS) and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) on 1 October 2015. In addition to changes to legislation reflecting HES' role and legal status, the Act changes processes for the designation of sites and buildings (by scheduling and listing) and for scheduled monuments, listed buildings and conservation area consent. It also creates new rights of appeal against HES decisions on listing.

HES will be a statutory consultee in relation to Environmental Impact Assessments, listed building and conservation area consents.

5.2 The new Regulations come into force when HES comes into operation on 1 October 2015. In practice, the new procedural changes are unlikely to have a significant impact on the planning service. Applications for all category A and B listed buildings; Conservation Area Consents and Council's own development will need to be referred to HES. Many planning authorities that have conservation expertise, such as Aberdeen, currently have delegated authority to make decisions on minor applications affecting category B listed buildings without referring the case to HS. This is known as the Removal of Duty to Notify (RDN) and will no longer exist after 1 October. Historic Scotland has invited planning authorities that currently have RDN to discuss revised Working Partnership Agreements in advance of the 1 October change over. It is fully anticipated that we will maintain our delegated authority given our in-house expertise.

5.3 There are a number of differences to note:

Listing

- Planning authorities will no longer be responsible for notifying owners/occupiers of listed building additions, deletions or amendments;
- HES will notify the planning authority and owners/occupiers of all changes to listed building entries. There will be no notification of owners/occupiers in the event of deleting a demolished building from the list however HS will inform the planning authority;
- New right of appeal to Scottish Ministers against HES decisions to list a building/structure or to make amendments to an existing listed entry. An amendment could be as minor as an address change, which could trigger an appeal against the whole listing. An objection to this is in the response to Q10 in Appendix 1.

We are carrying out a review of listed buildings in Aberdeen to ensure accuracy of location and address, with the intention to complete as much as possible before 1 October.

Planning application process

- There is a duty to consult HES when an application is received. This is welcomed as HES' views will be known much earlier on in the application process. It should improve processing time and reduce an applicant's potential expense, time and frustration by flagging any issues of concern up much earlier in the process than at present. In some instances it could lead to a cost reduction in processing LBC applications for which no fee is payable.
- Changes made to (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in 2006 provided for regulations to be made requiring access statements to be submitted with applications for LBC.

To date such regulations have not been made. Given that applicants normally consider access requirements in any event, it is proposed that freestanding access statements should only be required by regulations in exceptional circumstances. This seems entirely reasonable.

Scheduled Ancient Monuments

- HS is currently responsible for processing and determining all applications for Scheduled Monument Consent. HES will continue this function, but with greater transparency. HES will publish applications and decisions online and there will be a new right of appeal.

6 IMPACT

- 6.1 The proposal contributes to the Single Outcome Priorities 10: *We live in well-designed, sustainable places where we are able to access the amenities and services we need* and 12: *We value and enjoy our built and natural environment and protect it and enhance it for future generations.*
- 6.2 The proposal contributes to the EP & I Directorate Priority 3: *Protect and enhance our high quality natural and built environment* and to the Planning and Sustainable Development Operational Priority PSD3: *Protect and enhance our heritage and high quality built environment.*

7 BACKGROUND PAPERS

- 7.1 Scottish Government - Historic Environment Scotland Act: Secondary Legislation Consultation Paper
<http://www.gov.scot/Resource/0046/00466699.pdf>

8 REPORT AUTHOR DETAILS

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CONSULTATION ON HISTORIC ENVIRONMENT SCOTLAND ACT 2014, ETCETERA, SECONDARY LEGISLATION



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Aberdeen City Council

Title Mr Ms Mrs Miss Dr x Please tick as appropriate

Surname

Bochel

Forename

Margaret

2. Postal Address

Head of Planning & Sustainable Development		
Marischal College		
Broad Street		
Aberdeen		
AB10 1TB	01224 523133	Email mbochel@aberdeencity.gov.uk

3. Permissions - I am responding as...

Individual OR Group/Organisation
Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site). Are you content for your **response** to be made available?

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Please tick as appropriate

Yes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

Consultation Questions

* New: Did you know you can fill this form in online, please see https://consult.scotland.gov.uk/consultation_finder

Chapter 1 – No Questions

Chapter 2 – Listing and Scheduling

Q1. Do you agree with the approach taken in the Regulations covering the notification of listing and Scheduling?

Yes

Comments We welcome HES being responsible for notification as this will be more efficient and save double handling.

Chapter 3 – Consent

3.1 Scheduled Monument Consent

Q2. Do you agree with the general approach taken in the Regulations covering applications for SMC?

Yes

Please give details

Comments none

3.2 Listed Building Consent and Conservation Area Consent (LBC and CAC)

Q3. As an NDPB Historic Environment Scotland will be treated in the same way as an external applicant when they are carrying out works at the properties in care (the 345 historic properties conserved and opened to the public by HES on behalf of the Scottish Ministers).

All applications and decisions including HES' will be published. This means that the system will be transparent and the public will be able to compare the approach to internal and external applications. Do you agree with the approach to publish all applications and decisions?

Yes

Please give details

Comments none

Q4. The current administrative arrangement whereby applicants are given a provisional view on whether or not they are likely to be granted SMC will cease once these Regulations take effect. This extra step in the process was useful in the absence of a right of appeal to give applicants the chance to challenge the decision or any conditions attached before the decision was issued. However discussions with stakeholders suggest that they saw pre-application engagement as a more important tool for ensuring a dialogue between HES and the applicant, and the new right of appeal gives applicants a more formal way to appeal the decision to Ministers. Do you agree with the decision to no longer issue a provisional view?

Yes

Please give details

Comments none

Q5. The draft Regulations do not include the circumstances in which HES, where they intend to grant consent, will be required to notify Ministers about an application for SMC. These circumstances will be set out subsequently in directions and may include cases where the decision is likely to represent a significant departure from established policy or where there are other related consent applications, for example planning consent. Please give details of what you think such criteria might be?

Comments no comment

Q6. Do you agree with the approach taken in the Regulations covering applications for LBC/CAC?

Yes

Please give details

Comments We welcome the early notification of HES as this will improve processing time and reduce an applicant's potential expense, time and frustration by flagging any issues of concern up much earlier in the process than at present. In many instances it will lead to a cost reduction in processing LBC applications for which no fee is payable.

In instances where HES has objected to an application and the planning authority considers that it has addressed the issues raised, re-consultation with HES should be built into the Regulations. This would ensure that only applications where HES has maintained its objection are referred to Ministers. In practice, this is what would probably happen, as statutory consultees are normally re-consulted in light of material amendments to an application. It would avoid ambiguity if this was specified in the Regulations.

Q7. Do you agree with this administrative approach?

Yes

Please give details

Comments The YES is qualified by there still being a Working Partnership Agreement in place with authorities that have access to competent conservation expertise to replace the RDN, which has worked well and speeds up application response times. We welcome early discussions with HS on this.

Q8. Do you agree that a freestanding access statement should be the exception rather than the rule?

Yes

Q9. Would you like to offer any comments, for example in relation to thresholds for such a requirement?

Please give details

Comments no comment

Chapter 4 Appeals

4.1 Appeals against Listing and Scheduling

Q10. The draft regulations for appeals against listing and scheduling set out the procedural details for making an appeal. Do you agree with the approach taken in the regulations?

No

Please give details

Comments In general we do not object to the proposed appeal system, but with one exception. In the case of a minor amendment to the listing, eg change of address, it seems disproportionate to allow a right of appeal on the listing itself. A right to appeal the details of the amendment is understandable, but not the whole principle of listing that structure or building.

4.2 Grounds for Appeal

Q11. Do you agree that this approach will provide a suitable basis for grounds of appeal against scheduling and listing? Are there further areas/ grounds for appeal which should be considered?

Yes

Comments "...special or historic interest" should read "...special architectural or historic interest"

4.3 Scheduled Monument Consent

Q 12. The draft Regulations for appeals in relation to scheduled monument consent set out the procedural details for making an appeal. Do you agree with the approach taken in the Regulations?

Yes

Do you have any further comments?

Comments none

4.4 Scheduled Monument Enforcement Notices Appeal

Q 13. The draft Regulations for appeals in relation to Scheduled Monument Enforcement Notices set out the procedural details for making an appeal. Do you agree with the approach taken in the Regulations?

Yes

Do you have any further comments?

Comments none

Chapter 5 – Other changes and further information

5.2 Environmental Impact Assessment & the Planning system

Q14. Do you agree with the removal of the requirement to consult the Scottish ministers on EIA's and the new requirement to send a copy of the environmental statement to minister for information?

Yes No Undecided

Do you have any further comments?

Comments

5.4 Scheme of Delegation

Q15. Do you have any comments on this approach?

No

Do you have any further comments?

Comments none

5.5 Transitional arrangements

Q 16. Do you have a preference for which option should be taken forward?

Please select one

Undecided

Q 17. Are there any particular issues in relation to ongoing cases during the transition phase which you feel might particularly affect you or your organisation?

Comments none

Chapter 6 Impact Assessments

6.1 Equalities Impact

Q18. Do you think that the proposals presented might impact on people differently depending on characteristics such as age, disability, gender, race, religion or belief, sexual orientation, gender identity, or marriage and civil partnership status? Could the proposals enhance equality or good relations? If so, please tell us more.

No

Comments

6.2 Business Regulatory Impact

Q 19. Do you think that the proposals presented might impact on businesses, the third (voluntary) sector or have any other impact of concern?

No

Comments

6.3 Privacy Impact

Q 20. Do you think that the Privacy Impact Assessment has identified the key issues associated with Privacy in the draft regulations?

No

Comments

Chapter 7 Guidance and further Comments

Q 21. What level and types of information in particular would you like to see in new and revised guidance?

Comments temporary buildings; recording

Q 22. Please add any other comments you have on any aspect of the Regulations, or expand on any points that you wish too.

Comments none