

Planning Committee

Thursday 26 February 2015

Consultation on the Historic Environment Scotland Act 2014 etcetera, Secondary Legislation.

Item number	9.1
Report number	
Executive/routine	Executive
Wards	City Wide

Executive summary

The purpose of this report is to inform Committee of the proposed draft Regulations which follow on from the Historic Environment Scotland Act 2014 and to seek approval of the Council's response to the Scottish Government's consultation on the Regulations.

Links

Coalition pledges	P40
Council outcomes	CO19, CO23, CO26
Single Outcome Agreement	SO4

Consultation on the Historic Environment Scotland Act 2014, etcetera, Secondary Legislation.

Recommendations

- 1.1 It is recommended that Committee approves this report as the Council's response to the consultation.

Background

- 2.1 The Historic Environment Scotland Act 2014 establishes Historic Environment Scotland (HES) as the new Non-Departmental Public Body which will take over the functions of Historic Scotland and the Royal Commission on the Historic and Ancient Monuments of Scotland (RCAHMS).
- 2.2 In addition to changes to legislation reflecting HES' role and legal status, the Act changes procedures for the scheduling of ancient monuments, designation of listed building and listed building and conservation area consents. It also introduces new rights of appeal against certain HES decisions. In particular, HES will become a statutory consultee in relation to listed building and conservation area consents and for Environmental Impact Assessments.

Main report

Introduction

- 3.1 Following on from the Historic Environment Scotland Act 2014 and to set out the detail of these new processes, a set of draft Regulations have been produced. Scottish Government is currently consulting on these draft Regulations. The deadline for submitting responses is 27 March 2015.
- 3.2 Once finalised, the Regulations will be laid before Parliament during the early summer, with a view to them coming into force on 1 October 2015 when HES will take up its full responsibilities.

Consultation

- 3.3 The consultation document contains 22 questions which address the following subjects:
 - Listing and Scheduling;
 - Consent;
 - Appeals;
 - Other changes;
 - Impact Assessments; and
 - Guidance and further comments.

- 3.4 The following outlines the relevant processes, scheduled to operate from 1 October 2015, how the changes will impact on Planning and details the key response.

Listed and Scheduling

- 3.5 It is proposed that, instead of the local authority, HES will notify the owner, occupier and relevant local authority when a building is included or excluded from the list or the entry is amended. The removal of the local authority responsibility to undertake this work raises no concerns.

Consent

- 3.6 The most significant change relates to applications for listed building consent (LBC) and conservation area consent (CAC). Under the present system, planning authorities must notify Scottish Ministers when they are minded to grant consent unless there is a Removal of Duty to Notify in Place (RDN). Under the new system, planning authorities would consult with HES before it determines relevant LBC and CAC consents. Ministers retain their powers to call-in applications where planning authorities are minded to grant consent in cases where HES has objected.
- 3.7 This new arrangement will require procedural changes for the relevant LBC and CAC applications and, although there will be a larger of number of applications involved, the procedures will match with those of Scottish Natural Heritage (SNH) and Scottish Environment Protection Agency (SEPA). The new approach is supported in principle, however further clarification on how the process will work will be required. The main concern will be HES' response time for consultation and subsequent amendments. However, this detail is not contained within the consultation document or the draft Regulations.
- 3.8 Similar to the RDN, HES will be able to agree with planning authorities that it will not generally comment on applications for LBC on certain categories of work where certain conditions are met. These conditions will include consideration of the available capacity and expertise within the planning authority. Such measures will seek to ensure that performance for the LBC applications is maintained and this approach is welcomed.

Appeals

- 3.9 The 2014 Act introduces a new right of appeal to the Scottish Ministers against decisions of HES which lead to the inclusion of a building in the list or an amendment of an entry in the list. It is suggested that the grounds of appeal would be that the building is not of special architectural or historic interest. The input of the local authority in any such appeal is not clear and clarification is also required as to whether this relates to existing list entries or only to new listings and amendments.

Other Changes

- 3.10 HES will carry out the statutory consultee function in its own name from 1 October 2015. This will cover, for example, Environmental Impact Assessments (EIA), Strategic Environmental Assessment (SEA) and development planning. There are no concerns with this.
- 3.11 There will be a number of LBC applications in progress on 1 October 2015 and the consultation paper puts forward two options for transition:
- Option 1: Only apply new regulations to new applications entering the system on or after 1 October 2015 and allow the handling of applications already in the system to be governed by the existing regulations.
- Option 2: Migrate all applications in the system to the new regulations.
- 3.12 The proposed consultation response favours option 1 due to concerns about HES' resources to handle such a large number of consultations under option 2 and the performance implications of this.

Consultation Response

- 3.13 The recommended Council responses are set out in Appendix 1. The approach outlined in the Regulations is generally supported.

Measures of success

- 4.1 The views of the Council are taken on board by the Scottish Government and reflected in the finalised regulations.

Financial impact

- 5.1 The work will be undertaken within existing staff resources. There are no immediate financial implications for the Council arising from this report.

Risk, policy, compliance and governance impact

- 6.1 There are no significant risks associated with approval of the document as recommended.

Equalities impact

- 7.1 No infringements of rights have been identified. No negative impacts on equality have been identified.

Sustainability impact

- 8.1 The impacts of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties have been considered, and the outcomes are summarised below. Relevant Council sustainable development policies have been taken into account.
- Conservation of the built environment has the potential to minimise the use of natural resources and reduce carbon emissions.

- The need to build resilience to climate change impacts is not relevant to the proposals in this report because the proposals are neither positively nor negatively affected by climate change.
- The proposals in this report will help achieve a sustainable Edinburgh because the conservation and management of the historic environment contributes directly to sustainability in a number of ways. These include the energy and materials invested in a building, the scope for adaptation and reuse, and the unique quality of historic environments which provide a sense of identity and continuity.

Consultation and engagement

9.1 There is no requirement for consultation.

Background reading/external references

Consultation on the Historic Environment Scotland Act 2014, etcetera, Secondary Legislation, 18 December 2014

Historic Environment Scotland Act 2014

Consultation on the Historic Environment Strategy for Scotland and the Merger of Historic Scotland and the Royal Commission on the Historic and Ancient Monuments of Scotland – Planning Committee report 8 August 2014

The Scheduled Monument (Notification and Publication) (Scotland) Regulations 2015

The Listed Buildings (Notification and Publication) (Scotland) Regulations 2015

The Scheduled Monuments (Applications for Scheduled Monument Consent) (Scotland) Regulations 2015

The Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015

The Town and Country Planning (General) (Scotland) Regulations 2015

The Scheduled Monuments (Appeal) (Scotland) Regulations 2015

The Town and Country Planning (Appeals) (Scotland) Amendment Regulations 2015

The Scheduled Monuments (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2015

The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes)(Scotland) Amendment Regulations 2015

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Links

Coalition pledges	P40. Work with Edinburgh World Heritage Trust and other stakeholders to conserve the city's built heritage.
Council outcomes	CO19. Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm. CO23. Well engaged and well informed – Communities and individuals are empowered and supported to improve local outcomes and foster a sense of community. CO26. The Council engages with stakeholders and works in partnership to improve services and deliver on agreed objectives.
Single Outcome Agreement	SO4. Edinburgh's communities are safer and have improved physical and social fabric.
Appendices	1. Consultation Response

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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

The City of Edinburgh Council

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Leslie

Forename

David

2. Postal Address

Business Centre G6

Waverley Court

4 East Market Street

Edinburgh

Postcode EH8 8BG

Phone 0131 529 3948

Email david.leslie@edinburgh.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 No

(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?

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(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 **No**

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

No

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 No Undecided

Comments

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 No Undecided

Please give details

Comments

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 No Undecided

Please give details

Comments

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

Appendix 1

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 No Undecided

Please give details

Comments

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?

N/A

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

Yes No Undecided

Please give details

The Council supports the new approach in principle, however further clarification on how the process will work will be required. The new process raises the following initial concerns:

- Certainty on the consultation response time and reassurance that HES will have the resources in place to meet that commitment;
- Issue of amendments to resolve objections and how the process for this will work in terms of re-consultation;
- Concern about the appropriateness of using conditions to resolve a problem;
- Ensuring that any specified conditions meet the statutory tests.

Q7. Do you agree with this administrative approach?

Yes No Undecided

Please give details

Early introduction of RDN equivalent would be key to maintain performance.

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

Yes No Undecided

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

Please give details

Proposals relating to public building. The issue is how this is flagged up to the applicant and whether applications are invalid without the access statement.

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?

Yes No Undecided

Please give details

The role of the local authority requires clarity; will it be able to comment on the appeal?

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 No Undecided

Clarity is required as to whether this relates to existing listing or only new listing or amendments.

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 No Undecided

Do you have any further comments?

Comments

4.4 Scheduled Monument Enforcement Notices Appeal

Appendix 1

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 No Undecided

Do you have any further comments?

Comments

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?

Yes No Undecided

Do you have any further comments?

Comments

5.5 Transitional arrangements

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

Please select one

Option 1
Option 2
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?

The concern about option 2 would be the need to consult HES on a large amount of LBC applications at the same time and the ability for HES to be able to respond without delaying the progress of applications and impacting

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on the local authority's performance figures for that period. Operating two parallel systems does not raise any difficulties for the Council. If Option 1 was chosen, is there scope to start consulting prior to 1 October 2015 to ensure that the progress of application was not delayed by the need to consult on outstanding applications?

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.

Yes No Undecided

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?

Yes No Undecided

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?

Yes No Undecided

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?

- To cover the issue of amendments where they can resolve objections and how the process for this will work in terms of re-consultation;
- To ensure the validity of any specified conditions in terms of the statutory tests.

Appendix 1

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

At present, the certification for LBC applications often gets missed because it is at the end of the forms. Is there scope to make the format of the certification more user friendly.