

2015 No. 233

TOWN AND COUNTRY PLANNING

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

Made - - - - - *2nd June 2015*

Laid before the Scottish Parliament *4th June 2015*

Coming into force - - - *1st October 2015*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997(a) and section 5D of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(b) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning (Appeals) (Scotland) Amendment Regulations 2015 and come into force on 1st October 2015.

Amendment of the Town and Country Planning (Appeals) (Scotland) Regulations 2013

2.—(1) The Town and Country Planning (Appeals) (Scotland) Regulations 2013(c) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 1 (citation, commencement and application) after paragraph (9) insert—

“(9A) These Regulations apply in accordance with regulation 18A(7) to an appeal under section 5B (appeal against listing of buildings) of the Listed Buildings Act(d).”

(3) In regulation 2 (interpretation)—

(a) in the definition of “appellant” for “19” substitute “5B, 19”; and

(b) in the definition of “interested party” after paragraph (d) insert—

“(da) in the case of an appeal under section 5B of the Listed Buildings Act any person from whom Historic Environment Scotland received representations (which were not subsequently withdrawn) in connection with the decision to which the appeal relates;”.

(a) 1997 c.8. Section 275A was inserted by section 52 of the Planning etc. (Scotland) Act 2006 (asp 17) (“the 2006 Act”). Sections 267 and 275 were amended by sections 19(5) and (6) and 54(16) respectively of the 2006 Act. Sections 267 and 275A are applied for the purposes of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 by section 79 of that Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 1997 c.9. Section 5D was inserted by paragraph 18 of schedule 3 to the Historic Environment Scotland Act 2014 (asp 19) (“the 2014 Act”). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(c) S.S.I. 2013/156.

(d) Section 5B was inserted by paragraph 18 of schedule 3 to the 2014 Act.

(4) After regulation 18 insert—

“PART 5A

Appeals under section 5B of the Listed Buildings Act

Appeals under section 5B of the Listed Buildings Act

18A.—(1) An appeal to the Scottish Ministers under section 5B of the Listed Buildings Act is to be made by giving notice in writing in accordance with this regulation.

(2) The notice of appeal must be served on the Scottish Ministers within the period of three months beginning with the date of the notice given under section 1A(2) of the Listed Buildings Act of the inclusion of a building in the list compiled or approved under section 1 of the Listed Buildings Act or the amendment of an entry in that list, as the case may be.

(3) The notice of appeal (on a form obtained from the Scottish Ministers) must include—

- (a) the name and address of the appellant;
- (b) the name and address of the representative of the appellant (if any) and whether any notice or other correspondence which is required by these Regulations to be sent to the appellant should be sent to the representative instead of the appellant;
- (c) a statement setting out full particulars of the appeal including a note of the matters which the appellant considers require to be taken into account in determining the appeal and by what, if any, procedure (or combination of procedures) mentioned in regulation 9(4) the appellant considers the appeal should be conducted; and
- (d) a copy of the notice given under section 1A(2) of the Listed Buildings Act.

(4) The notice of appeal may include as the ground or one of the grounds of appeal a claim that the building is not of special architectural or historic interest and ought to be removed from the list compiled or approved under section 1 of the Listed Buildings Act.

(5) Subject to paragraph (6)—

- (a) all matters which the appellant intends to raise in the appeal must be set out in the notice of appeal or in the documents which accompany the notice of appeal; and
- (b) all documents, materials and evidence which the appellant intends to rely on in the appeal must accompany the notice of appeal.

(6) In addition to matters set out in the notice of appeal and documents which accompany the notice of appeal, the appellant may raise matters and submit further documents, materials or evidence only in accordance with and to the extent permitted by regulations 11, 18B and 18C, the Hearing Session Rules and the Inquiry Session Rules.

(7) In relation to an appeal made under section 5B of the Listed Buildings Act this Part applies and Parts 1, 3 and 9 (other than regulation 29), the Hearing Session Rules and the Inquiry Session Rules apply with the modification that references to the planning authority are to be treated as if they are references to Historic Environment Scotland.

Intimation to Historic Environment Scotland and Historic Environment Scotland’s response

18B.—(1) The appellant must at the same time as giving the notice of appeal to the Scottish Ministers send to Historic Environment Scotland—

- (a) a copy of the notice of appeal;
- (b) a list of all documents, materials and evidence which the appellant intends to rely on in the appeal and which accompanied the notice of appeal in accordance with regulation 18A(5)(b); and

- (c) a copy of all documents, materials and evidence specified on such list which the appellant has not already provided to Historic Environment Scotland.
- (2) Historic Environment Scotland must, not later than 21 days beginning with the date of receipt of notification of an appeal under paragraph (1), send to the Scottish Ministers and the appellant—
- (a) a note (“Historic Environment Scotland’s response”) of the matters which Historic Environment Scotland consider require to be taken into account in determining the appeal and by what, if any, procedure (or combination of procedures) mentioned in regulation 9(4) Historic Environment Scotland wish the appeal to be conducted; and
 - (b) a copy of the documents (other than those specified on the list mentioned in paragraph (1)(b)) which were before Historic Environment Scotland and which were taken into account in reaching their decision.
- (3) The appellant may, within 14 days beginning with the date of receipt of Historic Environment Scotland’s response, send to the Scottish Ministers and Historic Environment Scotland—
- (a) comments on any matters raised in Historic Environment Scotland’s response which had not been raised in the decision notice; and
 - (b) any documents, materials or evidence on which the appellant intends to rely in relation to such comments.

Notification to interested parties

18C.—(1) Historic Environment Scotland must not later than 14 days following notification of the appeal under regulation 18B(1) give notice of the appeal to each interested party.

- (2) Notice under paragraph (1) is to—
- (a) state the name of the appellant;
 - (b) include a description (including where available a postal address) of the building to which the appeal relates;
 - (c) state that copies of any representations previously made to Historic Environment Scotland, other than representations which the interested party has asked to be treated as confidential, will be sent to the Scottish Ministers and the appellant and will be taken into consideration in the determination of the appeal;
 - (d) state that further representations may be made to the Scottish Ministers and include information as to how any representations may be made and by what date they must be made; and
 - (e) state how a copy of the notice of appeal and other documents related to the appeal may be inspected.
- (3) An interested party may, within 14 days beginning with the date on which notice is given under paragraph (1), make representations in respect of the appeal to the Scottish Ministers.
- (4) The Scottish Ministers are to send a copy of any representations received under paragraph (3) to the appellant and to Historic Environment Scotland and are to inform them how and by what date (being a date not less than 14 days after the date on which such copy is sent under this paragraph) they may make comments to the Scottish Ministers on such representations.
- (5) The appellant and Historic Environment Scotland may, on or before that date, make comments on such representations to the Scottish Ministers.

Publication of appeal documents

18D.—(1) Historic Environment Scotland must, in relation to an appeal under section 5B of the Listed Buildings Act, make copies of—

- (a) the notice of appeal;
- (b) Historic Environment Scotland’s response and any comments sent under regulation 18B(3)(a);
- (c) the documents—
 - (i) specified on the list mentioned in regulation 18B(1)(b);
 - (ii) sent in accordance with regulation 18B(2)(b) and (3)(b);
- (d) any notice given under regulation 18C(1); and
- (e) any representations or comments made under regulation 18C(3) or (5),

available for inspection at an office of Historic Environment Scotland until such time as the appeal is determined.

(2) Historic Environment Scotland are until such time as the appeal is determined to afford to any person who so requests the opportunity to inspect and, where practicable, take copies of any such documents (or any part thereof).”.

(5) In Schedule 1 (hearing session rules) in paragraph (1)(b)(ii) of rule 4 after “15(4)” insert “, 18D”.

(6) In Schedule 2 (inquiry session rules) in paragraph (1)(b)(ii) of rule 4 after “15(4)” insert “, 18D”.

FIONA HYSLOP
A member of the Scottish Government

St Andrew’s House,
Edinburgh
2nd June 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Town and Country Planning (Appeals) (Scotland) Regulations 2013 to extend the application of those Regulations to appeals under section 5B of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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