

Enterprise and Regulatory Reform Act

Secondary Legislation to accompany the Heritage Provisions: A Consultation

December 2013

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1. Introduction

1.1 This consultation seeks views on the draft secondary legislation that has been prepared to accompany the heritage elements of the Enterprise and Regulatory Reform Act 2013. For the purposes of this consultation they are set out in Part 5 paragraphs 60 and 61, and Schedule 16 of the Act, and relate to listed buildings. The consultation document has been jointly prepared by the Department for Culture Media and Sport and the Department for Communities and Local Government.

1.2 The intention of the heritage provisions in the Act is to simplify the listed building consent system. Improvements to the listing system already in force allow greater clarity over special architectural and historic interest of certain assets. The measures which are the subject of this consultation are intended to reduce the instances in which applications for listed building consent will be required. The package of changes will, overall, reduce burdens on owners and developers, and allow local planning authorities which administer these consents to deliver a more efficient and effective service.

1.3 The heritage elements within the Enterprise and Regulatory Reform Act were subject to extensive public consultation prior to inclusion in the Act. In line with the deregulatory thrust of the Act, the proposed regulations seek to minimise regulatory requirements while ensuring there are appropriate levels of publicity and consultation on the draft proposals when it is appropriate to do so.

1.4 This consultation is seeking views on the draft secondary legislation that relates to:

* Listed Building Heritage Partnership Agreements
* Local Listed Building Consent Orders
* Certificates of Lawfulness of Proposed Works

The consultation also tests views on the principles and approach in taking forward National Listed Building Consent Orders.

1.5 It should be noted that the measures set out in the primary legislation are now fixed. This consultation is concerned with details of process for using these new measures and respondents are asked to concentrate on the procedural matters which are set out in the draft regulations and the proposed process for National Listed Building Consent Orders.

1.6 The secondary legislation is needed to underpin the heritage elements of the Act when they are commenced on 06 April 2014.

1.7 Alongside these proposals the Department for Communities and Local Government intends to consult on the requirements for local planning authorities to consult English Heritage on planning and listed building consent applications. Details of this consultation will be available on the Department for Communities and Local Government’s website -<https://www.gov.uk/government/publications?publication_filter_option=consultations>

1. Purpose of this consultation and next steps

2.1 This consultation seeks your views on the draft secondary legislation that has been prepared to accompany the heritage provisions of the Enterprise and Regulatory Reform Act 2013. They include:

* Listed Building Heritage Partnership Agreements
* Local Listed Building Consent Orders
* Certificates of Lawfulness of Proposed Works
* Consideration is also given to the approach to be taken in setting up National Listed Building Consent Orders

2.2 The geographic scope of this consultation is England.

2.3 This is a public consultation. We particularly seek views from those engaged in the system of listed building consent including local planning authorities, past or prospective applicants and developers, or heritage and/or planning expert practitioners.

2.4 **The consultation period will run for six weeks from 16 December and will close on 27 January 2014.**

2.5 Our preference is for responses to the consultation to be provided on-line by clicking on the on-line consultation survey –

<https://dcms.eu.qualtrics.com/SE/?SID=SV_0wiSRaElag0vYtD>

Alternatively, respondents may wish to complete the survey form which can be down loaded from the consultation web page and send this by email or post to:

[errconsultation@culture.gsi.gov.uk](mailto:errconsultation@culture.gsi.gov.uk)

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2.6 For enquiries about this document or the handling of the consultation please contact the Culture Team at the above address.

2.7 The consultation responses will be analysed and a summary, together with the Government response, published.

2.8 There is no intention to enter into correspondence with individual respondents, but all responses will be read and considered. Responses to the consultation will be made available on request unless you indicate you wish your response to be kept confidential. However, under the Freedom of Information Act 2000 all information in responses, including personal information, may be subject to publication or disclosure. If any correspondent requests confidentiality this cannot be guaranteed, and will only be possible if considered appropriate under legislation. Confidentiality disclaimers generated by your IT system in e-mail responses will not be treated as a request not to release information.

1. Listed Building Heritage Partnership Agreements

3.1 Heritage Partnership Agreements were introduced by section 60 of the Enterprise and Regulatory Reform Act 2013. These Agreements have the potential, particularly when used as the basis for a management agreement, to act as a focus for owners, local planning authorities and other partners in reaching a consensus view on the medium-long term management and maintenance of the listed building(s) covered, to increase certainty over the aspirations and requirements of all parties, and to save time and resource for the partners. It is not proposed to prescribe regulations for the preparation of Heritage Partnership Agreements other than where they grant listed building consent.

3.2 Those Agreements which grant listed building consent are referred to as Listed Building Heritage Partnership Agreements. They allow for listed building consent to be granted for specified works relating to the alteration or extension (but not demolition) of identified listed buildings in advance and for the duration of the Agreement. This allows works which would otherwise require a series of applications for listed building consent to be dealt with by a single consent mechanism, potentially covering a much longer period.

3.3 It is anticipated that the application of Listed Building Heritage Partnership Agreements will be to specific types or complexes of listed buildings, where predictable and repetitive works are commonly carried out, based on a realistic assessment of what is likely to be necessary during the life of the Agreement.

3.4 The draft regulations are set out in Appendix A and are broadly based on the procedures for listed building consent applications adapted as appropriate to meet the requirements of Listed Building Heritage Partnership Agreements. As they are based on agreement and may be initiated by any potential party there are no statutory application procedures for Listed Building Heritage Partnership Agreements. All the necessary information in relation to the proposed works will be included in the Agreement.

**Key proposals**

***Preparation of a statement of reasons***

3.5 Where a local planning authority proposes to make a Listed Building Heritage Partnership Agreement they must prepare a statement of reasons for the proposed grant of listed building consent.

***Consultation***

3.6 It is proposed that there should be a specific requirement for local planning authorities to consult English Heritage on the proposed grant of listed building consent included in draft Listed Building Heritage Partnership Agreements where they cover Grade I and II\* listed buildings. This is in line with the proposals for consultation with English Heritage on applications for listed building consent and planning permission which will be subject to a separate consultation (see paragraph 1.7).

***Publicity***

3.7 If a local planning authority wishes to enter into a Listed Building Heritage Partnership Agreement it must make the details of the listed building consent included in the draft Agreement and the statement of reasons for granting the consent available for inspection at a place in the locality, publish the details on its website and display a notice on or near the listed building(s) to which the Agreement relates for not less than 28 days. They shall also serve a copy of the notice on every person not party to the proposed Agreement whom the authority knows to be the owner of that building whose name and address is known to the authority. This would be a minimum requirement and local planning authorities would be able to go further and notify others as they see fit.

***Duration***

3.8 The draft regulations do not place any restrictions on the duration of a Listed Building Heritage Partnership Agreement. This is obviously something local planning authorities will wish to consider when entering into an Agreement but it is considered this is a matter best left to their discretion.

***Revocation***

3.9 All Listed Building Heritage Partnership Agreements must make provision for its termination and variation. It will also be possible for the Secretary of State by order to terminate those parts of the Agreement that grant listed building consent.

***Reporting***

3.10 Local planning authorities will be required to send a copy of all Listed Building Heritage Partnership Agreements once made to English Heritage.

***Other matters***

3.11 The regulations also apply and modify those provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 which are necessary to make Listed Building Heritage Partnership Agreements work effectively. For example, the power of the Secretary of State to direct that a proposal to grant listed building consent in a Listed Building Heritage Partnership Agreement is referred to him/her instead of being dealt with by a local planning authority and the application of compensation provisions where listed building consent is revoked by the local planning authority or Secretary of State. The drafting of these provisions may undergo some further technical and minor changes, but they are not expected to raise any significant issues.

3.12 **Questions**

1. Do you agree that the duration of a Listed Building Heritage Partnership Agreement should be left to the discretion of individual local planning authorities?

* Yes
* No
* Don’t Know

If no, should the maximum duration of the Agreement be set at three, five or ten years? Can you briefly summarise the reasons for your answer.

2. Do you agree that local planning authorities should only consult English Heritage on the proposed grant of listed building consent included in draft Listed Building Heritage Partnership Agreements where they cover Grade I and II\* listed buildings?

* Yes
* No
* Don’t Know

If no, what do you think would be appropriate and why?

3. Do you agree that local planning authorities should only be required to specifically notify known owners of the listed building who are not party to the draft Agreement of the proposed listed building consent, with any further notification being left at the local authority’s discretion?

Note: owners also include any tenants with not less than seven years of a term certain remaining unexpired.

* Yes
* No
* Don’t Know

If no, please explain why?

4. Do you have any other comments on the draft regulations for Listed Building Heritage Partnership Agreements?

1. Local Listed Building Consent Orders

4.1 Provisions in the Enterprise and Regulatory Reform Act 2013 (section 60 and schedule 16) allow local planning authorities to make Local Listed Building Consent Orders granting general listed building consent for certain works of alteration or extension (but not demolition) of certain listed buildings in their area. This means that owners and developers will be able to carry out the works specified in the Order without having to submit a listed building consent application each time.

4.2 The Act allows the Secretary of State to make regulations to apply general exclusions to the scope of Local Listed Building Consent Orders and to set out the procedures for preparing and making the Orders. It also gives the Secretary of State the power to direct that a draft Order should not be adopted and to revoke an Order once made. This consultation seeks views on the proposals in this respect.

4.3 The draft regulations are set out in Appendix B. They are broadly based on those for Local Development Orders (a similar system already operating in the planning system which allows local authorities to grant a general planning permission for certain types of development in their area) adapted as necessary to meet the differing requirements of the listed building consent regime.

**Key proposals**

***General exclusions***

4.4 The powers in the Act allow the Secretary of State to make regulations to provide that Local Listed Building Consent Orders do not apply to certain listed buildings or particular areas. It is considered the scope of an Order is best decided locally by local planning authorities, in consultation with their communities, and therefore, no general exclusions are proposed.

***Preparation of draft Order***

4.5 Local planning authorities considering making a Local Listed Building Consent Order will be required to prepare a draft Order together with a statement setting out their reasons and justification for making such an Order.

***Consultation***

4.6 It is proposed that there should be a specific requirement for local planning authorities to consult English Heritage on draft Orders where they cover Grade I and II\* listed buildings. This is in line with the proposals for consultation with English Heritage on applications for listed building consent and planning permission which will be subject to separate consultation (see paragraph 1.7). It is considered that English Heritage’s resources and expertise are best targeted at the most important heritage assets, but it would be open to individual authorities to consult English Heritage on other draft Orders should they consider this necessary.

***Publicity***

4.7 It is proposed that local planning authorities should be required to publicise the draft Order and statement of reasons, for a period of not less than 28 days, by means of site notice(s) and by making the documents available for inspection at an appropriate place within their area and on their website. In addition, it is proposed that there should be a specific requirement for local planning authorities to notify all known owners of listed buildings in the area covered by the draft Order. This would be a minimum requirement and local planning authorities would be able to go further and notify others as they see fit.

***Duration***

4.8 The draft regulations do not place any restrictions on the duration of a Local Listed Building Consent Order. This is obviously something local planning authorities will wish to consider in preparing an Order but it is considered this is a matter best left to their discretion.

***Compensation***

4.9 It is a core principle of the planning system that where permission or consent has been granted and is subsequently withdrawn without notice there is a right to compensation. In this case the following compensation arrangements are proposed:

* Where a local planning authority gives six months’ notice, in the manner set out in the draft regulations, of its intention to withdraw a listed building consent granted through a Local Listed Building Consent Order, there should be no liability to pay compensation. This will also be the case where the Secretary of State intends to exercise his power of revocation.
* Where such notice is not given, the compensation liability would only arise where an application for listed building consent was subsequently submitted and consent refused or granted subject to conditions not imposed by the Order. The application would need to be submitted within six months of the withdrawal of the listed building consent and the claim for compensation made within six months of the decision on the application.

***Revocation***

4.10 Where exceptionally the local planning authority or the Secretary of State revoke a Local Listed Building Consent Order, the local planning authority will be required to notify owners of the listed buildings in the area covered by the Order and English Heritage. They will also be required to publish a statement that the Order has been revoked on their website and to display a notice containing a statement that the Order has been revoked at or near to the site which the Order relates.

***Reporting***

4.11 Local planning authorities will be required to send a copy of all Local Listed Building Consent Orders once made to English Heritage.

**Questions**

5. Do you agree that local planning authorities should only consult English Heritage on draft Local Listed Building Consent Orders where they cover Grade I and II\* listed buildings?

* Yes
* No
* Don’t Know

If no, what do you think would be appropriate and why?

6. Should local planning authorities only be required to notify known owners of listed buildings of the draft Local Listed Building Consent Order? The need for any further notification would be at the local authority’s discretion.

Note: owners also include any tenants with not less than seven years of a term certain remaining unexpired.

* Yes
* No
* Don’t Know

If no, who else should be notified as a minimum requirement and why?

7. Do you agree that the duration of a Local Listed Building Consent Order should be left to the discretion of individual local planning authorities?

* Yes
* No
* Don’t Know

If no, should the maximum duration of an Order be set at three, five or ten years? Can you briefly summarise the reasons for your answer.

8. Do you have any other comments on the draft regulations for Local Listed Building Consent Orders?

1. Certificates of Lawfulness of Proposed Works

5.1 Section 61 of the Enterprise and Regulatory Reform Act 2013 introduces a system of Certificates of Lawfulness of Proposed Works to listed buildings. This will allow owners and developers to obtain formal confirmation that works of alteration or extension (but not demolition) of a listed building which they wish to undertake do not require listed building consent because they do not affect the special architectural or historic interest of the building.

5.2 The intention is to provide a simpler and faster mechanism which gives clarity on when listed building consent is not required without the need to submit a full application for listed building consent. There will be no requirement on owners and developers to submit such an application. It will still be possible, where the relevant parties are happy to do so, for such requests to be dealt with through an informal exchange of correspondence instead or, where the owner/developer is satisfied the proposed works do not require listed building consent, for them to proceed with works.

5.3 The Act provides that Certificates will only be available in respect of prospective works and will be valid for a period of ten years from the date of issue. Applicants will have a right of appeal where a local planning authority refuses an application or fails to determine it within the required time period.

5.4 The proposed procedures for making and processing applications and appeals for Certificates of Lawfulness are set out in the draft regulations in Appendix C. These are broadly based on the procedures for Certificates of Lawfulness of Proposed Use or Development (Lawful Development Certificates) in the planning system, adapted as appropriate to meet the differing requirements of the listed building consent regime.

**Key proposals**

***Application form and requirements***

5.5 A standard application form is to be published which applicants will be able to submit in the same way as a listed building consent application. The level of information requested with the application is intended to ensure local planning authorities have sufficient information to reach a decision on whether the special architectural or historic interest of the listed building is affected while recognising the need to deliver a faster, simpler application process if this new system is to be used.

***Consultation and publicity***

5.6 It is not proposed to prescribe any specific requirements for publicity or consultation on these applications. This is in line with the approach taken on Lawful Development Certificates in the planning system and is considered justified as the works in question will, by definition, be relatively minor. This will speed up the application process and in doing so, encourage applicants to go down this route rather than through the full application process to establish whether or not there is an impact on special architectural or historic interest.

***Determination period for applications***

5.7 The time limit for determining applications for listed building consent is eight weeks. The aim in introducing Certificates of Lawfulness is to provide a simpler and faster alternative to submitting a full listed building consent application. It is therefore proposed that the determination period in this case should be six weeks.

***Time limit to submit appeals***

5.8 The draft regulations set a time limit of six months from the decision on the application for applicants to submit an appeal. This is in line with the appeal time limit for listed building consent applications.

***Appeals procedures***

5.9 There are standard procedures for how Lawful Development Certificate appeals are dealt with when submitted to the Planning Inspectorate. The Rules governing those procedures will be amended so that they apply to Certificates of Lawfulness appeals.

**Questions**

9. It is proposed that Certificates of Lawfulness of Proposed Works should be determined by the local planning authority within six weeks. Do you agree?

* Yes
* No
* Don’t Know

If no, what alternative timescale would you propose and why?

10. The procedures that are being proposed for Certificates of Lawfulness of Proposed Works are intended to be ‘light touch’ to avoid creating any unnecessary burdens while still ensuring an appropriate level of protection for listed buildings. Do you agree that the draft regulations are sufficiently ‘light touch’?

* Yes
* No
* Don’t Know

If not, how and why should they be amended?

11. Do you have any other comments on the draft regulations for Certificates of Lawfulness of Proposed Works?

12. Do you consider that this new system of Certificates of Lawfulness of Proposed Works will encourage applications from people who would otherwise have, correctly, not applied for listed building consent and gone ahead with the proposed works?

* Yes
* No
* Don’t Know

If yes, what steps might be taken to address this point and how might they be helpful?

13. Are there any other steps that could be taken to provide greater certainty about when listed building consent is or is not required. For example, improved guidance?

1. National Listed Building Consent Orders

6.1 The Enterprise and Regulatory Reform Act 2013 (section 60) also enables the Secretary of State to grant a general listed building consent for works for the alteration and extension (but not demolition) of listed buildings by making a National Listed Building Consent Order.

6.2 The consent may be granted subject to conditions and before making a National Listed Building Consent Order the Secretary of State must consult English Heritage. Each draft Order will be debated and voted on in Parliament. The Act also provides that the Secretary of State can prescribe, through regulations, certain limited matters in relation to when compensation is payable where consent granted through an Order is withdrawn.

6.3 A pilot National Listed Building Consent Order is being developed with the Canal and River Trust. The pilot will be used to test the methodology for developing future Orders. Views are invited however, on the proposed general approach to making National Listed Building Consent Orders set out below.

**Key proposals**

***Development of initial ideas***

6.4 Initial ideas on what could be included in a prospective Order should be discussed between key interested parties including the owner or manager of the group of nationally distributed listed buildings to be covered by the proposals, English Heritage, and relevant local planning authorities.

***Early engagement with Government***

6.5 At an early stage in the process and certainly before any public consultation, there should be engagement with Government to ensure that the proposals being developed fall within the scope of the legislation.

***Development of proposals***

6.6 In developing proposals consideration should be given to such matters as:

* The scope for the prospective Order. What works and listed buildings would it be appropriate to include, is there the need for any conditions on the listed building consent to be granted, etc.
* Justification for the prospective Order including assessment of the likely impact on the special architectural or historic interest of the listed buildings.
* Consultation plan which sets out who should be consulted and how their views are taken into account. In developing advice on the consultation plan, views would be welcome on what approach should be taken to ensure an effective but proportionate approach to consultation and the most effective point in the process to undertake this consultation.

***Formal submission to Government***

6.7 Once the proposals are sufficiently developed they should be formally submitted to Government for detailed consideration. Government will decide whether the proposals are acceptable in principle and, if they are, what further steps beyond consultation with English Heritage are required before a draft Order is laid in Parliament.

***Compensation***

6.8 The intention is to mirror procedures which are proposed for Local Listed Building Consent Orders (see paragraph 4.9). The necessary regulations to achieve this will be prepared separately at a later date.

**Questions**

14. Do you have any comments on the proposed approach for making National Listed Building Consent Orders?

15. Do you agree that the compensation procedures which there are powers to prescribe through regulations for National Listed Building Consent Orders should mirror those put in place for Local Listed Building Consent Orders?

* Yes
* No
* Don’t Know

If no, please briefly explain why.

1. Summary of questions

1. Do you agree that the duration of a Listed Building Heritage Partnership Agreement should be left to the discretion of individual local planning authorities?

* Yes
* No
* Don’t Know

If no, should the maximum duration of the Agreement be set at three, five or ten years? Can you briefly summarise the reasons for your answer.

2. Do you agree that local planning authorities should only consult English Heritage on the proposed grant of listed building consent included in draft Listed Building Heritage Partnership Agreements where they cover Grade I and II\* listed buildings?

* Yes
* No
* Don’t Know

If no, what do you think would be appropriate and why?

3. Do you agree that local planning authorities should only be required to specifically notify known owners of the listed building who are not party to the draft Agreement of the proposed listed building consent, with any further notification being left at the local authority’s discretion?

Note: owners also include any tenants with not less than seven years of a term certain remaining unexpired.

* Yes
* No
* Don’t Know

If no, please explain why?

4. Do you have any other comments on the draft regulations for Listed Building Heritage Partnership Agreements?

5. Do you agree that local planning authorities should only consult English Heritage on draft Local Listed Building Consent Orders where they cover Grade I and II\* listed buildings?

* Yes
* No
* Don’t Know

If no, what do you think would be appropriate and why?

6. Should local planning authorities only be required to notify known owners of listed buildings of the draft Local Listed Building Consent Order? The need for any further notification would be at the local authority’s discretion.

Note: owners also include any tenants with not less than seven years of a term certain remaining unexpired.

* Yes
* No
* Don’t Know

If no, who else should be notified as a minimum requirement and why?

7. Do you agree that the duration of a Local Listed Building Consent Order should be left to the discretion of individual local planning authorities?

* Yes
* No
* Don’t Know

If no, should the maximum duration of an Order be set at three, five or ten years? Can you briefly summarise the reasons for your answer.

8. Do you have any other comments on the draft regulations for Local Listed Building Consent Orders?

9. It is proposed that Certificates of Lawfulness of Proposed Works should be determined by the local planning authority within six weeks. Do you agree?

* Yes
* No
* Don’t Know

If no, what alternative timescale would you propose and why?

10. The procedures that are being proposed for Certificates of Lawfulness of Proposed Works are intended to be ‘light touch’ to avoid creating any unnecessary burdens while still ensuring an appropriate level of protection for listed buildings. Do you agree that the draft regulations are sufficiently ‘light touch’?

* Yes
* No
* Don’t Know

If not, how and why should they be amended?

11. Do you have any other comments on the draft regulations for Certificates of Lawfulness of Proposed Works?

12. Do you consider that this new system of Certificates of Lawfulness of Proposed Works will encourage applications from people who would otherwise have, correctly, not applied for listed building consent and gone ahead with the proposed works?

* Yes
* No
* Don’t Know

If yes, what steps might be taken to address this point and how might they be helpful?

13. Are there any other steps that could be taken to provide greater certainty about when listed building consent is or is not required. For example, improved guidance?

14. Do you have any comments on the proposed approach for making National Listed Building Consent Orders?

15. Do you agree that the compensation procedures which there are powers to prescribe through regulations for National Listed Building Consent Orders should mirror those put in place for Local Listed Building Consent Orders?

* Yes
* No
* Don’t Know

If no, please briefly explain why.

16. Please provide:

Your name

Your contact details

Whether your views are personal or represent a body, organisation or authority. In the case of the latter please provide their name and your position within the organisation

Whether you wish your response to remain confidential

**The consultation will close on 27 January 2014.**

Our preference is for responses to the consultation to be provided on-line by clicking on the on-line consultation survey -

<https://dcms.eu.qualtrics.com/SE/?SID=SV_0wiSRaElag0vYtD>

Alternatively, respondents may wish to complete the survey form which can be down loaded from the consultation web page and send this by email or post to:

[errconsultation@culture.gsi.gov.uk](mailto:errconsultation@culture.gsi.gov.uk)

Shane Gould

The Culture Team (ERR Implementation)

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1. Regulations – Listed Building Heritage Partnership Agreements

STATUTORY INSTRUMENTS

**2014 No.**

**TOWN AND COUNTRY PLANNING, ENGLAND**

Planning (Listed Buildings and Conservation Areas) (Heritage Partnership Agreements) (England) Regulations 2014

*Made - - - - \*\*\**

*Laid before Parliament \*\*\**

*Coming into force - - [6th April 2014]*

The Secretary of State, in exercise of the powers conferred by sections 26B(2) and 93 of the Planning (Listed Buildings and Conservation Areas) Act 1990(**a**), makes the following Regulations:

**Citation, commencement and application**

**1.**— These Regulations may be cited as the Planning (Listed Buildings and Conservation Areas) (Heritage Partnership Agreements) (England) Regulations 2014 and shall come into force on [6th April 2014].

(2) These Regulations apply in relation to England only.

**Interpretation**

**2.**—(1) In these Regulations —

“the Act” means the Planning (Listed Buildings and Conservation Areas) Act 1990;

“listed building heritage partnership agreement” means a heritage partnership agreement which grants listed building consent as provided for by section 26A(3) of the Act(**b**);

“local planning authority” means a relevant local planning authority as defined in section 26A(9) of the Act;

(2) In these Regulations and in relation to the use of electronic communications or electronic storage for any purpose of these Regulations which is capable of being carried out electronically—

(a) the expression “address” includes any number or address used for the purpose of such communications or storage;

(b) references to documents, plans, maps or other documents, or to copies of such things, include references to such documents or copies of them in electronic form; and

(c) “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)(**c**).

(3) Paragraphs (4) to (7) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any notice or other document to any other person (“the recipient”).

(4) The requirement is not taken to be fulfilled, unless the notice or document transmitted by the electronic communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(5) In paragraph (4), “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received by the recipient outside the recipient’s business hours, it is taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

(7) A requirement in these Regulations that any notice or other document should be in writing is fulfilled where the notice or document meets the criteria in paragraph (4), and “written” and cognate expressions are to be construed accordingly.

**Preparation of a statement of reasons**

**3.** Where a local planning authority propose to make a listed building heritage partnership agreement they must prepare a statement of reasons for the proposed grant of listed building consent containing—

(a) an assessment of the likely effect of the proposed works on the special architectural or historic interest of the listed building to which the agreement would relate; and

(b) a reasoned justification for the proposed works.

**Consultation for Grade I or II\* listed building heritage partnership agreements**

**4.**—(1) Before making a listed building heritage partnership agreement in respect of any building of special architectural or historic interest, which when last notified to the authority, was classified as a Grade I or II\* listed building, the local planning authority must consult the Commission.

(2) In consulting in accordance with paragraph (1) the local planning authority must—

(a) send a copy of the notice specified in regulation 5(1)(c), all plans and other documents detailing the proposed works and the statement of reasons (prepared in accordance with regulation 3) to the Commission;

(b) specify a consultation period of not less than 28 days; and

(c) take account of all representations received from the Commission during the period specified.

**Publicity for listed building heritage partnership agreements**

**5.**—(1) Where a local planning authority propose to make a listed building heritage partnership agreement they must—

(a) make the details of the proposed works to the listed building to which the draft agreement relates, all plans and other documents detailing the proposed works and the statement of reasons (prepared in accordance with regulation 3) available for inspection by the public at a place in the locality in which the building is situated and at all reasonable hours for a period of not less than 28 days;

(b) publish on their website for not less than 28 days—

(i) the address or location of the listed building to which the draft agreement relates, details of the nature of the proposed works and the statement of reasons;

(ii) a statement that documents detailing the proposed works are available for inspection and the place where and times when they can be inspected;

(iii) the date by which representations about the proposed works must be received, which must be not less than 28 days after the date of first publication on the website;

(iv) details of how representations may be made about the proposed works;

(c) display a notice in the appropriate form set out in the Schedule (or in a form substantially to the like effect) on or near the listed building to which the proposed agreement relates for not less than 28 days (subject to paragraph (4)); and

(d) serve a copy of that notice on every person not a party to the proposed agreement whom the authority knows to be an owner of that building, or a part of the building and whose name and address are known to the authority.

(2) A listed building heritage partnership agreement must not be made by the local planning authority before the expiry of the latest period referred to in paragraph (1), and if applicable, regulation 4(2)(b).

(3) A local planning authority must take into account any representations received during any period specified in this regulation and regulation 4(2)(b) (if applicable), in considering whether to make the proposed listed building heritage partnership agreement (with or without modifications).

(4) Where the notice referred to in sub-paragraph (1)(c) is, without any fault or intention of the authority, removed, obscured or defaced before the period referred to in that paragraph has elapsed, the authority is treated as having complied with the requirements of that paragraph if they have taken reasonable steps for the protection of the notice, and, if necessary, its replacement.

**Requirement to notify the Commission of listed building heritage partnership agreements made**

**6.** Where a listed building heritage partnership agreement is made by a local planning authority, that authority must submit a copy of the agreement to the Commission as soon after the agreement is made as is reasonably practicable.

**Application and modification of the Act**

**7.**—(1) Subject to the modifications specified in this regulation, the following provisions of the Act apply in respect of a listed building heritage partnership agreement.

(2) The provisions of the Act are—

(a) sections 12, 16(1) and (2), 17(1) and (2), 26 and 28; and

(b) sections 30, 31, 62, 63 and Parts 3 and 4, as they apply for the purposes of any of the provisions specified in paragraph (a).

(3) The modifications are—

(a) That references to an application for listed building consent or listed building consent are to be read as if they were references to a proposed grant of a listed building heritage partnership agreement; and

(b) the specific modifications set out below.

(4) In section 16 (Decision on application) disregard the reference to “the local planning authority” in subsection (1);

(5) In section 26 (Revocation and modification of listed building consent by the Secretary of State) disregard references to “modifying” in subsection (1) and “modify” and “modification” in subsection (7).

(6) Section 28 (Compensation where listed building consent revoked or modified) shall have effect where listed building consent is revoked or modified by an order under section 26 or under the provisions of the agreement, and in subsection (2)—

(a) reference to the “prescribed time” means 6 months from the date on which the listed building consent was withdrawn or modified; and

(b) reference to the “prescribed manner” means a claim made in writing and served on that authority by delivering it at the offices of the authority, or by sending it so addressed by pre-paid post;

Signed by authority of the Secretary of State for Culture, Media and Sport

*Name*

Parliamentary Under Secretary of State

Date Department for Culture, Media and Sport

1. 1990 c.9. Section 26B was inserted by section 60(2) of the Enterprise and Regulatory Reform Act 2013 (c.24).
2. Section 26A(3) of the Act provides for a heritage partnership agreement to contain provision granting listed building consent under section 8(1) of the Act in respect of specified works for the alteration or extension of the listed building to which the agreement relates, and specifying any conditions to which the consent is subject.
3. 2000 c.7. Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

SCHEDULE

Planning (Listed Buildings and Conservation Areas) (Heritage Partnership Agreements) (England) Regulations 2014: Regulation 5(1)(c)

|  |
| --- |
| NOTICE UNDER REGULATION 5 OF PROPOSAL TO MAKE A LISTED BUILDING HERITAGE PARTNERSHIP AGREEMENT |
| *(to be displayed on or near the building to which the proposed agreement relates and to be served on an owner\*not a party to the proposed agreement)* |
| Proposed works at (a) ………………………………………………………………………..  **Notice is given that** (b) ……………………………………………………………………………….. proposes to make a heritage partnership agreement granting listed building consent to  (c) ………………………………………………………………………  Plans and other documents detailing the proposed works are available for inspection at…………………………………………….(d) and are published on the Council’s website at ………………………………………………….(e)  Any person who wishes to make representations about the draft order should write to the Council at (f) ………………………………………………………………………………………………  by ……………………….(g)  \* “owner” means a person having a freehold interest or a leasehold interest the unexpired term of which is not less than 7 years.  Signed………………………………………......(Council’s authorised officer)  On behalf of …………………………….............Council  Date …………………………………………......  *Statement of owners’ rights*  The grant of listed building consent by a heritage partnership agreement does not affect owners’ rights to retain or dispose of their property, unless there is some provision to the contrary in an agreement or in a lease. |
| Insert:  (a) the address or location of the listed building to which the draft agreement relates  (b) name of local planning authority  (c) description of the proposed works for which listed building consent would be granted by the agreement  (d) address of the local planning authority  (e) website address where the documents are published  (f) address of the Council  (g) date giving a period of 28 days beginning with the date of service. |

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 26A of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Act”) provides that a local planning authority may make a heritage partnership agreement with any owner of a listed building situated in England.

These Regulations set out the procedures for heritage partnership agreements which grant listed building consent under section 8(1) of the Act in respect of specified works for the alteration or extension (but not demolition) of the listed building to which the agreement relates. In particular, the Regulations make provision for the consultation and publicity required before a heritage partnership agreement granting listed building consent is made.

Regulation 7 applies and modifies the sections of the Act which are required to make listed building heritage partnership agreements work effectively. This includes applying sections 26 of the Act which provides for the Secretary of State to revoke listed building consent and section 28 of the Act which makes provision for compensation where listed building consent is revoked or modified.

A full impact assessment has not been prepared for this instrument, as impacts were considered as part of the impact assessment for the Enterprise and Regulatory Reform Act 2013.This can be found at [www.legislation.gov.uk/ukpga/2013/24/impacts/2013/1065](http://www.legislation.gov.uk/ukpga/2013/24/impacts/2013/1065), and is published with the Explanatory Memorandum alongside these Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk).

1. Regulations - Local Listed Building Consent Orders

STATUTORY INSTRUMENTS

2014 No.

town and country planning, england

The Planning (Local Listed Building Consent Orders) (Procedure) (England) Regulations 2014

Made - - - - \*\*\*

Laid before Parliament \*\*\*

Coming into force - - 6th April 2014

The Secretary of State, in exercise of the powers conferred by sections 28A and 93 of, and Schedule 2A to, the Planning (Listed Buildings and Conservation Areas) Act 1990(**a**) makes the following Regulations:

Citation, commencement, application and interpretation

**1.**—(1) These Regulations may be cited as the Planning (Local Listed Building Consent Orders) (Procedure) (England) Regulations 2014 and come into force on 6th April 2014.

1. These Regulations apply in relation to England only.
2. In these Regulations—

“the Act” means the Planning (Listed Buildings and Conservation Areas) Act 1990;

“owner”, in relation to a listed building, means a person who is for the time being—

(a) the estate owner in respect of the fee simple in the building, or

(b) entitled to a tenancy of the building granted or extended for a term of years certain of which not less than seven years remain unexpired.

(4) In these Regulations and in relation to the use of electronic communications or electronic storage for any purpose of these Regulations which is capable of being carried out electronically—

(a) the expression “address” includes any number or address used for the purpose of such communications or storage; and

1. references to documents, plans, maps or other documents, or to copies of such things, include references to such documents or copies of them in electronic form; and

(c) “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)(**b**);

(5) Paragraphs (6) to (9) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any notice or other document to any other person (“the recipient”).

(6) The requirement is not taken to be fulfilled, unless the notice or document transmitted by the electronic communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(7) In paragraph (6), “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(8) Where the electronic communication is received by the recipient outside the recipient’s business hours, it is taken to have been received on the next working day, and for this purpose “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

(9) A requirement in these Regulations that any notice or other document should be in writing is fulfilled where the notice or document meets the criteria in paragraph (6), and “written” and cognate expressions are to be construed accordingly.

Preparation of a local listed building consent order

**2.**—(1) Where a local planning authority propose to make a local listed building consent order they must first prepare—

(a) a draft of the order which must include—

(i) a plan or statement clearly identifying the land and the listed building or buildings to which the order would relate; and

(ii) a description of the works for which the order would grant consent, including any plans or drawings or other information necessary to describe the works which are the subject of the order; and

(b) a statement of their reasons for making the order.

(2) The statement of reasons must contain—

(a) an assessment of the likely effect of the proposed works on the special architectural or historic interest of the listed building or buildings to which the order would relate; and

(b) a reasoned justification for making the order.

(3) Where a plan is provided under paragraph (1)(a)(i) that plan must be drawn to an identified scale and show the direction of North.

Consultation

**3.**—(1) Where a local planning authority have prepared a draft local listed building consent order which would grant listed building consent in respect of any building of special architectural or historic interest which, when last notified to the authority, was classified as a grade I or II\* listed building they must consult the Commission.

(2) In consulting in accordance with paragraph (1) the local planning authority must—

(a) send a copy of the draft order and the statement of reasons (prepared in accordance with regulation 2) to the Commission;

(b) specify a consultation period of not less than 28 days; and

(c) take account of all representations received from the Commission during the period specified.

Publicity

**4**.—(1) Where a local planning authority have prepared a draft local listed building consent order they must—

(a) make a copy of the draft local listed building consent order and statement of reasons (prepared in accordance with regulation 2) available for inspection by the public at such place within their area as they consider appropriate and at all reasonable hours for a period of not less than 28 days;

1. publish on their website—

(i) the draft local listed building consent order and the statement of reasons;

(ii) a statement that those documents are available for inspection and the place where and times when they can be inspected;

(iii) the date by which representations on the draft local listed building consent order must be received, which must be not less than 28 days after the date of first publication on the website;

(iv) details of how representations may be made about the draft local listed building consent order;

(c) display a notice in the appropriate form set out in the Schedule (or in a form substantially to the like effect) on or near to the site to which the order would relate or (where display on or near to the site is not practicable) in at least one place within the area to which the order would relate for, (subject to paragraph (4)), not less than 28 days; and

(d) serve a copy of that notice on every person whom the authority knows to be the owner of a listed building in the area to which the order would relate and whose name and address is known to the authority.

(2) A draft local listed building consent order must not be made by the local planning authority before the expiry of the latest period referred to in paragraph (1), and if applicable, regulation 3(2)(b), has or have elapsed.

(3) A local planning authority must, in considering what modifications (if any) should be made to the draft local listed building consent order or whether such an order should be adopted, take into account any representations received during any period specified in this regulation and regulation 3(2)(b) (if applicable).

(4) Where the notice referred to in paragraph (1)(c) is, without any fault or intention of the authority, removed, obscured or defaced before the period referred to in that paragraph has elapsed, the authority is treated as having complied with the requirements of that paragraph if they have taken reasonable steps for the protection of the notice, and, if necessary, its replacement.

Requirement to notify the Commission of local listed building consent orders made

**5.** Where a local listed building consent order is made by a local planning authority, that authority must send a copy of the order to the Commission as soon after the order is made as is reasonably practicable.

Revocation of a local listed building consent order

**6.** Where a local planning authority revoke, or on receipt of notice from the Secretary of State of revocation of, a local listed building consent order the authority to which the order relates must—

(a) publish on their website a statement that the local listed building consent order has been revoked;

(b) display, in the manner described in regulation 4(1)(c) a notice containing a statement that the listed building consent order has been revoked; and

(c) give written notice of the revocation to—

(i) the Commission; and

(ii) every person on whom a notice was served in accordance with regulation 4(1)(d).

Compensation in respect of local listed building consent orders

**7.**—(1) For the purposes of section 28A of the Act as it applies to local listed building consent orders, the following matters are prescribed(**c**).

(2) For the purposes of section 28A(1)(b) the prescribed period is 6 months.

(3) For the purposes of section 28A(3)(a)—

(a) notice of withdrawal is published in the prescribed manner if it is published by the local planning authority—

(i) in the manner described in regulation 4(1)(b), (c) and (d) and 6(c)(i); or

(ii) where a local listed building consent order grants listed building consent for a limited period, or provides that listed building consent is withdrawn after a date specified in that order, by publishing in the manner described in regulation 4(1)(b); and

(b) the prescribed period is 6 months.

Signed by authority of the Secretary of State for Communities and Local Government

Name

Parliamentary Under Secretary of State

Date Department for Communities and Local Government

1. 1990 c. 9. Section 28A was inserted into the Planning (Listed Building and Conservation Area) Act 1990 (“the Act”) by section 60(4) of the Enterprise and Regulatory Reform Act 2013 (c. 24) (“the 2013 Act”). Schedule 2A to the Act was inserted by section 60(5) of, and Schedule 16 to, the 2013 Act.
2. 2000 c. 7; section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).
3. See section 91 of the Act for the definition of “prescribed”.

SCHEDULE

Planning (Local Listed Building Consent Orders) (Procedure) (England) Regulations 2014: Regulation 4(1)(c)

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| --- |
| NOTICE UNDER REGULATION 4 OF PROPOSAL TO MAKE LOCAL LISTED BUILDING CONSENT ORDER |
| *(to be displayed on or near the site, or in at least one place within the area, to which the order relates and to be served on an owner\*)* |
| Proposed works at (a) ………………………………………………………………………..  **Notice is given that** (b) ……………………………………………………………………………….. proposes to make a local listed building consent order granting listed building consent to  (c) ………………………………………………………………………  A copy of the draft order and a statement of the Council’s reasons for making the order are available for inspection at…………………………………………….(d) and are published on the Council’s website at ………………………………………………….(e)  Any person who wishes to make representations about the draft order should write to the Council at (f) ………………………………………………………………………………………………  by ……………………….(g)  \* “owner” means a person having a freehold interest or a leasehold interest the unexpired term of which is not less than 7 years.  Signed………………………………………......(Council’s authorised officer)  On behalf of …………………………….............Council  Date …………………………………………......  *Statement of owners’ rights*  The grant of listed building consent by a local listed building consent order does not affect owners’ rights to retain or dispose of their property, unless there is some provision to the contrary in an agreement or in a lease. |
| Insert:  (a) address or location of the proposed works or description of area covered by proposed works  (b) name of local planning authority  (c) description of the proposed works for which listed building consent would be granted by the order  (d) address of the local planning authority  (e) website address where the documents are published  (f) address of the Council  (g) date giving a period of not less than 28 days beginning with the date of service. |

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 26D of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Act”) provides that a local planning authority may make a local listed building consent order which grants listed building consent for works of any description for the alteration or extension (but not demolition) of listed buildings of a specified description or in a specified part of the authority’s area. Section 26F provides that, in considering whether to make a local listed building consent order, the local planning authority must have special regard to the desirability of preserving listed buildings of a description to which the order applies, their setting or any features of special architectural or historic interest which they possess.

Schedule 2A to the Act sets out the procedures for local listed building consent order which, to a large extent, replicate those in Schedule 4A to the Town and Country Planning Act 1990 for local development orders.

The Regulations provide for the procedures connected to local listed building consent orders and, in particular, make provision as to their preparation and revocation. They also cover the notice, publicity and public inspection requirements that apply to local listed building consent orders and make provision as to consultation.

The Regulations also make compensation provision in respect of local listed building consent orders: section 28A of the Act provides that compensation be paid, as set out in section 28 of that Act, where listed building consent granted by a local listed building consent order, is withdrawn. Section 28 has effect where an application for listed building consent is made, within a prescribed period after the withdrawal of the order, and consent for works formerly authorised by the order is refused or is granted subject to conditions not included in the order. Regulation 7(2) prescribes this period as 6 months.

Regulation 7(3) provides that compensation will not be payable where the local planning authority publish the notice of withdrawal in the manner specified and provided that they publish the notice within 6 months before the withdrawal.

Impacts of the proposals on changes to the listed building consent system were considered as part of the impact assessment for the Enterprise and Regulatory Reform Act 2013, and a further impact assessment has been prepared in relation to the measures in these regulations and is available at: <https://www.gov.uk/government/consultations/consultation-on-improvements-to-the-system-of-listed-building-consents>.

1. Regulations – Certificates of Lawfulness of Proposed Works

STATUTORY INSTRUMENTS

2014 No.

town and country planning, england

The Planning (Listed Buildings) (Certificates of Lawfulness of Proposed Works) (England) Regulations 2014

Made - - - - \*\*\*

Laid before Parliament \*\*\*

Coming into force - - 6th April 2014

The Secretary of State, in exercise of the powers conferred by sections 26I, 26K and 93 of, and Schedule 3 to, the Planning (Listed Buildings and Conservation Areas) Act 1990(**a**) makes the following Regulations:

Citation, commencement, application and interpretation

**1.**—(1) These Regulations may be cited as the Planning (Listed Buildings) (Certificates of Lawfulness of Proposed Works) (England) Regulations 2014 and come into force on 6th April 2014.

(2) These Regulations apply in relation to England only.

(3) In these Regulations—

“the Act” means the Planning (Listed Buildings and Conservation Areas) Act 1990;

“by site display” means by the posting of the notice by firm affixture to some object, sited and displayed in such a way as to be easily visible and legible by members of the public;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)(**b**);

(4) In these Regulations and in relation to the use of electronic communications or electronic storage for any purpose of these Regulations which is capable of being carried out electronically—

(a) the expression “address” includes any number or address used for the purpose of such communications or storage, except that where these Regulations impose any obligation on any person to provide a name and address to any other person, the obligation is not fulfilled unless the person on whom it is imposed provides a postal address; and;

(b) references to documents, maps, plans, certificates or other documents, or to copies of such things, include references to such documents or copies of them in electronic form.

(5) Paragraphs (6) to (9) apply where an electronic communication is used by a person for the purpose of—

(a) fulfilling any requirement in these Regulations to give or send any notice or other document to any other person, or

(b) lodging an application, statement or other document referred to in regulation 2 with an authority mentioned in that regulation.

(6) The requirement is fulfilled if the document transmitted by the electronic communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(7) In paragraph (6), “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(8) Where the electronic communication is received by the recipient outside the recipient’s business hours, it is taken to have been received on the next working day, and for this purpose “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

(9) A requirement in these Regulations that any application, notice or other document is in writing is fulfilled where the document satisfies the criteria in paragraph (6), and “written” and cognate expressions are to be construed accordingly.

Application for a certificate of lawfulness of proposed works

**2.**—(1) An application for a certificate under section 26H of the Act (certificate of lawfulness of proposed works) must—

(a) be made in writing to the local planning authority on a form published by the Secretary of State (or a form substantially to the like effect);

(b) include the particulars specified or referred to in the form;

(c) specify the listed building or buildings, and describe the proposed works to which the application relates; and

(d) be accompanied by—

(i) a plan identifying the listed building or buildings to which the application relates drawn to an identified scale and showing the direction of North;

(ii) such plans, drawings and information as are necessary to describe the proposed works, together with a description of the part or parts of the listed building or buildings that are likely to be affected;

(iii) a statement explaining why the applicant believes the proposed works would not affect the character of the listed building or buildings as a building or buildings of special architectural or historic interest;

(iv) such evidence verifying the information included in the application as the applicant can provide;

(v) a statement setting out the applicant’s interest in the listed building or buildings, the name and address of any other person known to the applicant to have an interest in the listed building or buildings and whether any such other person has been notified of the application; and

(vi) where the application is made in respect of Crown land and where such an application is made by a person authorised in writing by the appropriate authority(**c**), a copy of that authorisation.

(2) Where an application is made using electronic communications to transmit a form to the local planning authority, the applicant is taken to have agreed—

(a) to the use of such communications by the local planning authority for the purposes of the application;

(b) that the applicant’s address for those purposes is the address incorporated into, or otherwise logically associated with, the application; and

(c) that the applicant’s deemed agreement under this paragraph subsists until notice is given in writing of the withdrawal of the applicant’s consent to the use of electronic communications under regulation 5.

(3) When the local planning authority receive an application to which paragraph (1) applies they must, as soon as reasonably practicable, send to the applicant an acknowledgement of the application.

(4) Where, after sending an acknowledgement as required by paragraph (3), the local planning authority consider that the application is not a valid application they must, as soon as reasonably practicable, notify the applicant that the application is invalid.

(5) The local planning authority may by notice in writing require the applicant to provide such further information as may be specified to enable them to deal with the application.

(6) The local planning authority must give the applicant written notice of their decision within—

(a) the period of 6 weeks beginning with the day immediately following that on which a valid application is received; or

(b) unless the applicant has already given notice of appeal to the Secretary of State, within such extended period as may be agreed in writing between the applicant and the authority.

(7) Where an application is refused, in whole or in part (including a case in which the authority modify the description of the works or other matter in the application or substitute an alternative description for that description), the notice of decision must—

(a) state clearly and precisely the authority’s full reasons for their decision, and

(b) include a statement to the effect that if the applicant is aggrieved by the decision the applicant may appeal to the Secretary of State under section 26K of the Act (appeals against refusal or failure to give decision on application).

(8) A certificate under section 26H of the Act must be in the form set out in the Schedule to these Regulations, or in a form substantially to the like effect.

(9) In this regulation “valid application” means an application which complies with the requirements of paragraph (1) and a valid application is taken to have been received when the application, and all of the documents or particulars referred to above, have been lodged with the local planning authority.

Appeals

**3.**—(1) An applicant who desires to appeal (“the applicant”)—

(a) against a decision of the local planning authority to refuse (in whole or in part) an application for a certificate under section 26H; or

(b) the failure of a local planning authority to give notice of their decision on the application;

must give notice of appeal to the Secretary of State (on a form published by the Secretary of State) within six months of the date of the notice of the decision or of the expiry of the appropriate period allowed under regulation 2(6), as the case may be, or such longer period as the Secretary of State may at any time allow.

(2) The applicant must also send the Secretary of State a copy of each of the following documents—

(a) the application;

(b) all relevant plans, drawings, particulars and documents submitted with the application, including a copy of the statement given in accordance with regulation 2(1)(d)(v);

(c) the notice of the decision, if any;

(d) all other relevant correspondence with the local planning authority.

(3) The applicant must also, as soon as reasonably practicable, send to the local planning authority a copy of—

(a) the completed appeal form sent to the Secretary of State pursuant to paragraph (1); and

(b) any evidence or documentation submitted with the appeal which did not form part of the application.

Revocation of a certificate of lawfulness

**4.**—(1) Where a local planning authority propose to revoke a certificate issued under section 26H of the Act in accordance with section 26I(6) (certificates under section 26H: supplementary) the authority must, before they revoke the certificate, give written notice to—

(a) the owner of the listed building or buildings affected;

(b) the occupier of the listed building or buildings affected (if different);

(c) any other person who may, in their opinion, be affected by the revocation; and

(d) in the case of a certificate issued by the Secretary of State on an appeal under section 26K, the Secretary of State.

(2) A notice issued under paragraph (1) must invite the person to whom the notice is given to make representations on the proposal to the authority within 14 days of giving the notice and the authority must not revoke the certificate until all such periods allowed for making representations have expired.

(3) An authority must give written notice of any revocation under section 26I(6) of the Act to every person to whom notice of the proposed revocation was given under paragraph (1).

Withdrawal of consent to use of electronic communications

**5.** Where a person is no longer willing to accept the use of electronic communications for any purpose of these Regulations which is capable of being carried out electronically, that person must give notice in writing—

(a) withdrawing any address notified to the Secretary of State or to a local planning authority for that purpose; or

(b) revoking any agreement entered into or deemed to have been entered into with the Secretary of State or with a local planning authority for that purpose,

and such withdrawal or revocation is final and takes effect on a date specified by the person in the notice but not less than 7 days after the date on which the notice is given.

Amendment of the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997

**6.** In regulation 3(2) of the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997(**d**), after sub-paragraph (a) insert—

(aa) appeals under section 26K of the Listed Buildings Act (certificate of lawfulness of proposed works);.

Signed by authority of the Secretary of State for Communities and Local Government

Name

Address Parliamentary Under Secretary of State

Date Department

1. 1990 c. 9. Sections 26I and 26K were inserted into the Planning (Listed Building and Conservation Areas Act 1990 (“the Act”) by section 61 of the Enterprise and Regulatory Reform Act 2013 (c. 24) (“the 2013 Act”).
2. 2000 c. 7; section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).
3. See section 82C(6) of the Act for a definition of appropriate authority. Section 82C was inserted into the Act by section 79(4) of, and paragraph 7 of Schedule 3 to, the Planning and Compulsory Purchase Act 2004 (c.5).
4. S.I. 1997/420; amended by S.I.s 2008/595 and 2013/2146. There are other amendments not relevant to these Regulations.

SCHEDULE Regulation 2(8)

Certificate of Lawfulness of Proposed Works

The Planning (Listed Buildings) (Certificates of Lawfulness of Proposed Works) (England) Regulations 2014

|  |
| --- |
| CERTIFICATE OF LAWFULNESS OF PROPOSED WORKS |
| The (a)……………………Council hereby certify that on (b)……………………the works described in the First Schedule to this certificate in respect of the listed building/s\* specified in the Second Schedule to this certificate and edged/hatched/coloured\* (c) …………….on the plan attached to this certificate, are lawful within the meaning of section 26H(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the following reason(s)\*:…………………………………………………………………...  ……………………………………………………………………………………………... |
| Signed……………………………(Council’s authorised officer)  On behalf of (a) ……………………………Council  Date…………………………………………  First Schedule  (d)  Second Schedule  (e)  **Notes**  **1.** This certificate is issued solely for the purpose of section 26H of the Planning (Listed Buildings and Conservation Areas) Act 1990.  **2.** It certifies that the works described in the First Schedule taking place to the listed building/s\* specified in the Second Schedule are lawful and, therefore, are not liable to enforcement action under section 38 of the Act.  **3.** This certificate applies only to the extent of the works described in the first Schedule and to the listed building/s\* specified in the Second Schedule and identified on the attached plan. Any works which is/are\* materially different from that/those\* described or which relate/s\* to other listed buildings may render the owner or occupier liable to enforcement action.  **4.** The effect of the certificate is also qualified by the proviso in section 26H(5)(a) of the Act, which states that the lawfulness of works for which a certificate is issued are to be conclusively presumed to be lawful provided that they are carried out within 10 years beginning with the date of the issue of the certificate.  \* delete as appropriate |
| Insert:  (a) name of Council  (b) date of application to the Council  (c) colour used on the plan  (d) full description of the works, if necessary by references to details in the application or submitted plans  (e) address of the listed building/s |

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 26H of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”) provides that anyone who wishes to ascertain whether proposed works for the alteration or extension of a listed building would be lawful (i.e. that the works would not affect the character of the listed building as a building of special architectural or historic interest) may make an application to the local planning authority, describing the works, in order to receive a formal response – a certificate of lawfulness of proposed works. Section 26H broadly mirrors the provisions of section 192 of the Town and Country Planning Act 1990 (“the 1990 Act”) in respect of certificates of lawfulness of proposed use or development in the planning system.

Regulation 2 of these Regulations prescribes the information which an application for such a certificate must contain, sets out what items must accompany an application and makes provision for the procedure, including prescribing the period within which an application for a certificate is to be determined.

Regulation 3 prescribes the procedure for appeals against refusal, or failure to give a decision on, an application for such a certificate.

Regulation 4 prescribes the procedure to be followed where a local planning authority propose to revoke such a certificate and regulation 6 amends the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 (“the 1997 Regulations”) so that appeals against refusal, or failure to give a decision on, an application for such a certificate are “prescribed” for the purposes of the 1997 Regulations – that is, they are appeals which will be determined by a person appointed by the Secretary of State instead of by the Secretary of State.

Impacts of the proposals on changes to the listed building consent system were considered as part of the impact assessment for the Enterprise and Regulatory Reform Act 2013, and a further impact assessment has been prepared in relation to the measures in these regulations and is available at: <https://www.gov.uk/government/consultations/consultation-on-improvements-to-the-system-of-listed-building-consents>.



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