

Enterprise and Regulatory Reform Act

Government Response to the Consultation on the Secondary Legislation to accompany the Heritage Provisions

March 2014

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1. Executive Summary

1.1 In December 2013 the Government consulted on the draft secondary legislation to accompany the heritage provisions in the Enterprise and Regulatory Reform Act 2013. The intention of the provisions is to simplify the listed building consent system.

1.2 The consultation sought views on the draft regulations for:

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

It also sought views on the principles and approach in taking forward:

* National Listed Building Consent Orders

1.3 A total of 109 responses were received, although some respondents did not comment on every question. The table below shows a breakdown of respondents by type of organisation.

|  |  |
| --- | --- |
| **Response categories** | **Number of responses** |
| Local planning authority | 52 |
| Professional bodies | 8 |
| Developers | 1 |
| Owners | 10 |
| Others\* | 38 |

\* 9 national bodies, 7 local groups, 6 individual professionals, 8 private individuals, 8 anonymous.

1.4 Responses were received from a range of national heritage and conservation bodies including English Heritage, Heritage Alliance, National Trust, the Campaign to Protect Rural England and the Council for British Archaeology. There was a good response from professional bodies including the Institute of Historic Building Conservation, Institute for Archaeologists, Royal Institute of British Architects, Royal Town Planning Institute and the Law Society. Developers were represented by the British Property Federation and owners of listed buildings included the Country Land and Business Association, Historic Houses Association, Canal and River Trust, and Network Rail. Local authorities accounted for nearly half of the consultation responses.

1.5 Summary of quantifiable responses:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | **%** | | |
|  |  | **Yes** | **No** | **Do not know** |
| **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? | 70 | 29 | 1 |
| **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? | 55 | 43 | 2 |
| **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? | 63 | 30 | 7 |
| **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? | 58 | 38 | 4 |
| **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? | 65 | 31 | 4 |
| **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? | 65 | 32 | 3 |
| **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? | 49 | 44 | 7 |
| **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’? | 56 | 28 | 16 |
| **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? | 38 | 38 | 24 |
| **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 | 64 | 7 | 29 |

1.6 There was support for the majority of the questions put forward in the public consultation and having carefully reviewed all the responses, we propose to finalise the regulations in line with the consultation proposals, subject to four minor amendments, which are outlined below:

|  |  |
| --- | --- |
| **Listed Building Heritage Partnership Agreements** | |
| Proposed change | Justification |
| **1.** To require English Heritage is consulted on all Listed Building Heritage Partnership Agreements being proposed by local authorities for their own listed property | To respond to concerns that there needed to be effective and transparent external scrutiny of proposals by local authorities in relation to any permitted works to their own listed building stock |
| **2.** To ensure that the publicity and consultation for draft Listed Building Heritage Partnership Agreements includes information about any conditions to which the listed building consent is subject | This will ensure the full effect of Listed Building Heritage Partnership Agreements is understood at the time of the publicity and consultation |
| **Local Listed Building Consent Orders** | |
| Proposed change | Justification |
| **3.** To require English Heritage is consulted on all Local Listed Building Consent Orders being proposed by local authorities for their own listed property | To respond to concerns that there needed to be effective and transparent external scrutiny of proposals by local authorities in relation to any permitted works to their own listed building stock |
| **Certificates of Lawfulness of Proposed Works** | |
| Proposed change | Justification |
| **4.** To simplify the requirements for local planning authorities to notify applicants that they have received and validated an application for a Certificate of Lawfulness of Proposed Works | To avoid unnecessary duplication of correspondence with the applicant |

1.7 The detailed replies to the consultation questions together with the Government response are considered in the following chapters. This response document has been jointly prepared by the Department for Culture, Media and Sport, and the Department for Communities and Local Government.

1. Listed Building Heritage Partnership Agreements

2.1 **Question 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?

If no, should the maximum duration of the Agreement be set at three, five or ten years?

2.2 There were 104 responses to this question and 70% agreed that the duration of Listed Building Heritage Partnership Agreements should be left to the discretion of individual local planning authorities. This was supported in almost all response categories and was favoured by 82% of local authorities. Of all respondents, 29% disagreed, 1% did not know and 45 respondents provided comments.

2.3 Of the 28 who wanted Agreements to be time limited, the suggested duration ranged from three to a maximum of 25 years. Of those who picked from the options presented to them, five preferred three years, twelve five years and eight advocated ten years. Some felt it would be prudent to allow for a renewal or review after five years.

**Government response**

2.4 The responses show clear support for leaving the duration of a Listed Building Heritage Partnership Agreement to the discretion of individual local planning authorities and where a maximum duration was favoured there was no consensus on the alternative time limits presented. The Departments consider that local planning authorities are best placed to consider this matter on the basis of their local knowledge and duration will not be specified in the regulations. However, further advice on the need to consider duration is to be given in guidance.

2.5 **Question 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?

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

2.6 This proposal generated 105 responses with 51 respondents providing further comments. 55% agreed, 43% disagreed and 2% did not know. The question was interpreted in two different ways: what should be the extent of consultation with English Heritage, and which bodies other than English Heritage should be consulted where draft Agreements cover Grade I and II\* listed buildings.

2.7 Local authorities were mostly in favour of the proposal, whilst professional bodies and a number of others suggested including Grade II listed buildings. Such an extension was not supported by owners, or by developers, who wanted English Heritage to concentrate its resources on the most significant assets. Some felt English Heritage should be consulted on those Agreements affecting local authority owned listed buildings and a number pointed out the proposed consultation arrangements do not reflect current practice for listed building consent applications, especially in London.

2.8 In considering what other bodies should be consulted most of the additional comments favoured the involvement of the national amenity societies.

**Government response**

2.9 Having considered the comments the regulations are to be amended so English Heritage is also consulted on all Agreements proposed by local authorities for their own listed property. This is in response to concerns that there needed to be effective and transparent external scrutiny of proposals by local authorities in relation to any permitted works to their own listed building stock.

2.10 The proposed consultation arrangements are in line with the Departments key objective to make the new arrangements as light touch as possible and we have sought to identify the minimum level of statutory consultation commensurate with the importance of the building. This does not prevent a local planning authority consulting other parties where it is appropriate to do so and this could involve the national amenity societies. The arrangements in London differ from those in the rest of England and the Department for Communities and Local Government intend to review all existing statutory consultation arrangements for heritage applications as part of its wider work to streamline the planning application process.

2.11 **Question 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

If no, please explain why?

2.12 There were 102 responses to this question and 34 respondents made comments. 63% agreed, 30% disagreed and 7% did not know. Of the local authority respondents 80% said yes to this question. Many of those who provided additional comments suggested other parties who should be notified.

**Government response**

2.13 Having considered the comments received, the Departments propose to take forward the proposals without modification. It should be noted these are the minimum requirements necessary and local planning authorities can notify other bodies as they see fit.

2.14 **Question 4**

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

2.15 This question generated 53 responses. Several respondents welcomed the idea of Listed Building Heritage Partnership Agreements and two local authorities suggested individual buildings which could benefit from such Agreements. Conversely three local authorities could not see a use for them in their own area.

2.16 Other issues raised included the need for training and guidance, publicity on any conditions that will form part of an Agreement, the variation of Listed Building Heritage Partnership Agreements, the ability for local authorities to use these measures for their own listed property, about the range of Agreements that would be subject to the statutory consultation requirements (including that English Heritage should be consulted on some of those involving Grade II listed buildings) and charging fees.

**Government response**

2.17 The Departments consider that a number of the issues raised, whilst valid, can be more appropriately dealt with in guidance rather than by regulation. For example, templates and good practice exemplars regarding the content of Listed Building Heritage Partnership Agreements, circumstances when additional consultation may be desirable and highlighting the potential role of the national amenity societies, the procedures for review and amendment of Agreements including further publicity and consultation, and the recording of information. A training programme is also being delivered.

2.18 Save for the change to include all Listed Building Heritage Partnership Agreements which involve the local authorities own listed buildings (see Question 2 above), it is not proposed to extend the statutory consultation arrangements to Agreements involving extensions and alterations of Grade II listed buildings. As outlined above, it is proposed that guidance will address a number of the points in detail in relation to preparing a Listed Building Heritage Partnership Agreement.

2.19 It was also suggested that information about any conditions to which proposed listed building consent is subject should also be publicised and consulted on to help to ensure the full effect of the proposed Listed Building Heritage Partnership Agreement is understood. The Departments agree and the regulations have been amended to this effect.

2.20 Some of the other responses related to matters outside the scope of the consultation such as fees.

1. Local Listed Building Consent Orders

3.1 **Question 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?

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

3.2 Of the 100 responses to this question 58% agreed, 38% disagreed and 4% did not know. 44 comments were also provided which were very similar to those given in response to Question 2, and generally for the same reasons. Some respondents felt English Heritage should be consulted on Grade II listed buildings especially where they include local authority owned listed property and the divergence from the current consultation arrangements in London was again highlighted. A number suggested the national amenity societies should be included.

**Government response**

3.3 Having considered the comments and as with Question 2 above the regulations will be amended so English Heritage is also consulted on all Orders proposed by local authorities which include their own listed properties. This is in response to concerns that there needed to be effective and transparent external scrutiny of proposals by local authorities in relation to any permitted works to their own listed building stock.

3.4 The Government response given in Question 2 is also of relevance here with regard to proposed consultation arrangements and the potential role of the national amenity societies (paragraph 2.10).

3.5 **Question 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.

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

3.6 There were 99 responses to this question with 65% in agreement, 31% disagreed and 4% did not know. Local authorities were strongly in favour of the proposal (75%). Of the 34 respondents who provided additional comments many suggested other parties who should be notified.

**Government response**

3.7 Having considered the comments received, the Departments propose to take forward the proposal without modification. It should be noted these are the minimum requirements necessary and local planning authorities can notify other bodies as they see fit.

3.8 **Question 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?

If no, should the maximum duration of an Order be set at three, five or ten years?

3.9 100 responses were given to this question and 65% agreed that the duration of a Local Listed Building Consent Order should be left to the discretion of individual local planning authorities. This proposal was supported by 72% of local authorities. Of all respondents, 32% disagreed and 3% did not know, whilst 38 respondents provided comments.

3.10 Responses were similar to those given for Question 1 and where a maximum duration was favoured there was again no consensus on the alternative time limits presented.

**Government response**

3.11 The responses show clear support for leaving the duration of a Local Listed Building Consent Order to the discretion of individual local planning authorities. The Departments consider local planning authorities are best placed to consider this matter on the basis of their local knowledge and duration will not be specified in the regulations. However, further advice on the need to consider duration will be given in guidance.

3.12 **Question 8**

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

3.13 This question generated 55 responses and most of the comments focussed on the need for additional guidance on the preparation of Orders, content, duration, what constitutes a ‘reasoned’ justification and revocation.

3.14 Other issues raised included the use of conditions, the variation and review of Local Listed Building Consent Orders, the ability to monitor work, recording of information and charging fees.

**Government response**

3.15 It is considered by the Departments that a number of the issues raised, whilst valid, can be dealt with in guidance rather than by regulation. For example templates and good practice exemplars regarding the content of Local Listed Building Consent Orders, additional consultation highlighting the potential role of the national amenity societies, duration, the procedures for review and amendment, the notification and reporting of works, and the recording of information. A training programme is also being delivered.

3.16 Some of the other responses related to matters outside the scope of the consultation such as fees.

1. Certificates of Lawfulness of Proposed Works

4.1 **Question 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?

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

4.2 Of the 100 responses to this question, 49% agreed with the six week determination period, 44% disagreed and 7% did not know. 51% of local authorities were against the proposal, amongst professional bodies it was evenly split, whilst owners were in favour. 55 respondents provided comments.

4.3 For those who disagreed there was a difference of opinion as to whether the time limit should be longer or shorter. Eight respondents preferred a determination period of four or two weeks, but 31 recommended a longer length of time with the majority favouring eight weeks. It was argued that eight weeks would be consistent with the existing procedures for listed building consent.

**Government response**

4.4 The Departments intend to proceed with a six week determination period for Certificates of Lawfulness of Proposed Works. Typically the issues to be addressed for a Certificate will not be as complex as those raised in relation to applications for listed building consent.

4.5 **Question 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’?

If not, how and why should they be amended?

4.6 There were 96 responses to this question and 35 respondents made comments. 56% agreed, 28% disagreed and 16% did not know.

4.7 Some considered the procedures were too light touch for the applicant, but not for the local planning authority, whilst others thought the existing system worked sufficiently well and this process was unnecessarily heavy-handed. The significant number of ‘don’t knows’ suggests uncertainty over how Certificates might work in practice. A specific procedural point highlighted by two local authorities was that the requirement for both an acknowledgement and subsequent validation letter creates additional bureaucracy.

**Government response**

4.8 The majority of respondents agreed that the procedures being developed for Certificates of Lawfulness for Proposed Works are sufficiently ‘light touch’. It should be noted that there will be no requirement on owners or developers to submit such applications. It will still be possible where the relevant parties are happy to do so, for these requests to be dealt with through an informal exchange of correspondence instead, or where the owner/developer is satisfied that the proposed works do not require listed building consent, for them to proceed with the works. This will be explained in guidance.

4.9 To eliminate the unnecessary duplication of correspondence between applicants and local planning authorities the regulations have been amended so local planning authorities send only one response to applicants notifying them that their application for a Certificate of Lawfulness of Proposed Works has been received and is valid (or, if applicable, is invalid).

4.10 **Question 11**

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

4.11 Many of the comments related to points raised elsewhere in the consultation. Those that were new included the need for further guidance on the process, whether Certificates could be issued retrospectively and fees. It was also suggested that where a Certificate had been refused, it should be possible to convert it automatically into an application for listed building consent.

**Government response**

4.12 The Departments are of the view that a number of the issues raised, whilst valid, can be more appropriately dealt with in guidance rather than by regulation. A training programme is also being delivered. A number of the other responses related to matters outside the scope of the consultation such as fees whereas retrospective applications were considered but rejected in the ‘Government response to the Consultation on Improving Listed Consent’ (Department for Culture, Media and Sport, October 2012).

4.13 Because we have deliberately opted for a lighter touch and different approach to Certificates it would not be possible to convert them into an application for listed building consent without adding considerable complexity to the regulations to deal with the different times when it became apparent the Certificate option was not viable. And adding to this extra regulation runs a considerable risk of confusion for both the applicant and any third parties. A much cleaner option and one which will be explained in guidance is to encourage applicants who believe that a listed building consent might well be needed is to test the views of the local planning authority using the informal process which is still available.

4.14 **Question 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?

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

4.15 There were 97 responses to this question and 43 respondents made comments. 38% said yes, 38% no and 24% did not know.

4.16 The responses indicate neither agreement nor disagreement and whilst 33% of local authority respondents said yes, 51% said no. Among those who provided comments 12 believed Certificates would be routinely sought for as part of the property conveyancing process on the advice of solicitors and agents. Others suggested unnecessary applications could be prevented by charging fees for Certificates and some recommended improved guidance on the need for listed building consent and more informative list descriptions as another solution (see Question 13 below).

**Government response**

4.17 Only a minority of respondents thought that the new Certificates of Lawfulness of Proposed Works would encourage applications where in fact one was not necessary. This response is not surprising in that a key motivation for many who will use this new option will be to obtain a document which provides legal certainty about the status of prospective works. Such certainty can be important in particular circumstances, for example at the time of sale of a property. To address those concerns about unnecessary applications, guidance will be used to make it clear that the existing, informal option for owners/applicants to write to the local planning authority about the need for listed building consent remains available.

4.18 **Question 13**

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

4.19 53 of the 91 responses to this question favoured new or improved guidance. Whilst not rejecting the idea 17 felt it would be difficult to produce because of the variability both within the listed building stock and the works to be covered. A further six opposed new guidance on the basis it would be too general to be helpful or the existing information was adequate.

4.20 In its submission English Heritage pointed out work is currently underway to update the information from chapter six of ‘PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide (Communities and Local Government, English Heritage, Department for Culture Media and Sport March 2010)’. This guidance will include more detailed consideration of how to assess whether or not listed building consent will be required.

4.21 A number of respondents including local authorities, owners, private sector practitioners and professional bodies suggested better list descriptions as a possible solution.

**Government response**

4.22 The Departments are of the opinion that it would be difficult to prepare definitive guidance because of the range and variability in the listed building stock, but very much welcome the further advice being produced by English Heritage in this area.

4.23 Measures have already been introduced as part of the Enterprise and Regulatory Reform Act 2013 to provide for enhanced list descriptions to better understand the special architectural or historic interest of the building. Those parts or features of a listed building that are not of special interest can be identified, and it is also possible to exclude attached or curtilage structures from protection.

1. National Listed Building Consent Orders

5.1 **Question 14**

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

5.2 This question generated 47 responses. Further clarity was sought on the potential scope of National Listed Building Consent Orders, which bodies would be able to enter into them, the procedures for making an Order and the consultation arrangements.

5.3 Several respondents remained sceptical about the usefulness of National Listed Building Consent Orders suggesting this should be dealt with at a local level, whilst others expressed support if they were based on specific works to specific buildings by a specific body.

**Government response**

5.4 A number of the comments put forward on the proposed approach for developing National Listed Building Consent Orders including those on the consultation process and the engagement with local planning authorities and national amenity societies will be helpful in taking them forward. These and other points such as the notification, reporting and recording of works can be dealt with in guidance, where appropriate.

5.5 Some of the respondents raised concerns about the scope and effectiveness of National Listed Building Consent Orders, and others felt it was too early to comment without further information on the results from the pilot Order which is being developed with the Canal and River Trust. Whilst acknowledging these concerns the Departments remain of the view that National Listed Building Consent Orders will be beneficial and that sufficient safeguards are in place to ensure they do not harm the significance of the listed buildings concerned.

5.6 **Question 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?

If no, please briefly explain why.

5.7 There were 94 responses to this question and 11 respondents made comments. 64% agreed, 7% disagreed and 29% did not know. Where comments were provided these focussed on the length of time set aside for compensation procedures or were outside the scope of the consultation.

**Government response**

5.8 The Departments propose to base the compensation procedures for National Listed Building Consent Orders on those for Local Listed Building Consent Orders.



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