

2014 No. 552

TOWN AND COUNTRY PLANNING, ENGLAND

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

<i>Made</i> - - - -	<i>10th March 2014</i>
<i>Laid before Parliament</i>	<i>13th March 2014</i>
<i>Coming into force</i> - -	<i>6th April 2014</i>

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) 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 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, 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) a reference to a document or a copy of a document includes a version of that document or copy 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

(a) 1990 c. 9. Sections 26I and 26K were inserted into the Act by section 61 of the Enterprise and Regulatory Reform Act 2013 (c. 24) (“the 2013 Act”). Subsection 6A of section 93 was inserted by section 118(1) of, and paragraph 26 of Schedule 6 to, the Planning and Compulsory Purchase Act 2004 (c. 5).

(b) 2000 c. 7; section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

(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^(a), 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) 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).

- (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—
- (a) notification confirming that the application has been received and that it is a valid application, or
 - (b) if the local planning authority consider that the application is not a valid application, notification that the application is invalid.
- (4) 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.
- (5) 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.
- (6) 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).
- (7) 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.
- (8) 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 in paragraph (1), 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), together with a copy of the documents specified in paragraph (2), within six months of the date of the notice of the decision or of the expiry of the appropriate period allowed under regulation 2(5), as the case may be, or such longer period as the Secretary of State may at any time allow.
- (2) For the purposes of paragraph (1) the specified documents are—
- (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(a), 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

10th March 2014

Nick Boles
Parliamentary Under Secretary of State
Department for Communities and Local Government

(a) 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(7)

Certificate of Lawfulness of Proposed Works

The Planning (Listed Buildings) (Certificates of Lawfulness of Proposed Works) 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 are materially different from those described or which relate 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.

A full impact assessment has not been prepared for this instrument, as impacts of the measures to which the Regulations relate were considered as part of the impact assessments prepared for the *Consultation on Improvements to the system of Listed Building Consents* (published in August 2012). The consultation impact assessments are available at: <https://www.gov.uk/government/consultations/consultation-on-improvements-to-the-system-of-listed-building-consents>.

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