



Planning (Listed Buildings and Conservation Areas) Act 1990

1990 CHAPTER 9

PART I

LISTED BUILDINGS

CHAPTER IV

ENFORCEMENT

Modifications etc. (not altering text)

C1 Chs. I, II (ss. 1-26) and IV (ss. 38-44) of Pt. I, ss. 54-56, 59-61, 66, 68-72, 74-76 and 88: power to apply conferred (10.11.1993) by [1993 c. 28, s. 171\(4\)\(b\)](#); [S.I. 1993/2762, art.3](#).

38 Power to issue listed building enforcement notice.

- (1) Where it appears to the local planning authority—
 - (a) that any works have been or are being executed to a listed building in their area; and
 - (b) that the works are such as to involve a contravention of section 9(1) or (2), they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice under this section (in this Act referred to as a “listed building enforcement notice”).
- (2) A listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken^{F1} . . .—
 - (a) for restoring the building to its former state; or

Status: Point in time view as at 21/05/2016.

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- (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or
- (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.

^{F2}[(3) A listed building enforcement notice—

- (a) shall specify the date on which it is to take effect and, subject to sections 39(3) and 65(3A), shall take effect on that date, and
- (b) shall specify the period within which any steps are required to be taken and may specify different periods for different steps,

and, where different periods apply to different steps, references in this Part to the period for compliance with a listed building enforcement notice, in relation to any step, are to the period within which the step is required to be taken.]

(4) A copy of a listed building enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the [^{F3}date specified in it as the date on which it is to take effect]—

- (a) on the owner and on the occupier of the building to which it relates; and
- (b) on any other person having an interest in that building which in the opinion of the authority is materially affected by the notice.

^{F4}[^{F4}(5) The local planning authority may—

- (a) withdraw a listed building enforcement notice (without prejudice to their power to issue another); or
- (b) waive or relax any requirement of such a notice and, in particular, may extend the period specified in accordance with section 38(3),

and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.

^{F4}(6) The local planning authority shall, immediately after exercising the powers conferred by subsection (5), give notice of the exercise to every person who has been served with a copy of the listed building enforcement notice or would, if the notice were re-issued, be served with a copy of it]

(7) Where a listed building enforcement notice imposes any such requirement as is mentioned in subsection (2)(b), listed building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

Textual Amendments

- F1** Words in s. 38(2) repealed (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 25, 84(6), [Schs. 3 Pt. II para. 19\(a\)](#), [19 Pt.I](#); [S. I. 1991/2905](#), [art.3](#) and [Sch. 2](#)
- F2** S. 38(3) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. II para. 19\(b\)](#); [S.I. 1991/2905](#), [art.3](#)
- F3** Words in s. 38(4) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. II para. 19\(c\)](#); [S.I. 1991/2905](#), [art.3](#)
- F4** S. 38(5)(6) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para.2](#); [S.I. 1991/2905](#), [art.3](#)

Status: Point in time view as at 21/05/2016.

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Modifications etc. (not altering text)

- C2** S. 38 modified by [S.I. 1990/1519, reg. 13\(1\)](#); applied (with modifications) by [S.I. 1990/1519, reg. 12, Sch. 3](#)
- C3** S. 38: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853, reg. 2\(1\), Sch. 1](#) Table A24
- C4** S. 38 modified (W.) (30.4.2012) by [The Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012 \(No. 793\), regs. 1, 16, Sch. 3](#)
- C5** Ss. 32-50 applied in part (Isles of Scilly) (with modifications) (2.10.2013) by [The Town and Country Planning \(Isles of Scilly\) Order 2013 \(S.I. 2013/2148\), arts. 1\(1\), 3, Sch. 1](#) (with art. 1(2))

39 Appeal against listed building enforcement notice.

(1) A person having an interest in the building to which a listed building enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice on any of the following grounds—

- (a) that the building is not of special architectural or historic interest;
- ^{F5}[(b) that the matters alleged to constitute a contravention of section 9(1) or (2) have not occurred;
- (c) that those matters (if they occurred) do not constitute such a contravention]
- (d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- (f) that copies of the notice were not served as required by section 38(4);
- (g) except in relation to such a requirement as is mentioned in section 38(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
- (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
- (j) that steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;
- (k) that steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.

^{F6}[(2) An appeal under this section shall be made ^{F7} . . . —

- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the listed building enforcement notice as the date on which it is to take effect; or
- (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date^{F8}; or

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- (c) by sending such notice to him using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to him before that date.]]
- (3) Where such an appeal is brought the listed building enforcement notice shall [F9]subject to any order under section 65(3A)] be of no effect pending the final determination or the withdrawal of the appeal.
- (4) A person who gives notice of appeal under this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed, a statement in writing—
- (a) specifying the grounds on which he is appealing against the listed building enforcement notice; and
- (b) giving such further information as may be prescribed.
- (5) If, where more than one ground is specified in the statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.
- (6) Where any person has appealed to the Secretary of State under this section against a notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.
- (7) In this section “relevant occupier” means a person who—
- (a) on the date on which the listed building enforcement notice is issued occupies the building to which the notice relates by virtue of a licence F10 . . . ; and
- (b) continues so to occupy the building when the appeal is brought.

Textual Amendments

- F5** S. 39(1)(b)(c) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para. 3\(2\)](#); S.I. 1991/2905, [art.3](#)
- F6** S. 39(2) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para. 3\(3\)](#); S.I. 1991/2905, [art.3](#)
- F7** Word in s. 39(2) repealed (E.) (31.3.2003) by [The Town and Country Planning \(Electronic Communications\) \(England\) Order 2003 \(S.I. 2003/956\)](#), [art. 7](#); and that same word repealed (W.) (1.1.2005) by [The Town and Country Planning \(Electronic Communications\) \(Wales\) \(No. 1\) Order 2004 \(S.I. 2004/3156\)](#), [art. 7](#)
- F8** S. 39(2)(c) and preceding word inserted (E.) (31.3.2003) by [The Town and Country Planning \(Electronic Communications\) \(England\) Order 2003 \(S.I. 2003/956\)](#), [art. 7](#); and that same insertion made (W.) (1.1.2005) by [The Town and Country Planning \(Electronic Communications\) \(Wales\) \(No. 1\) Order 2004 \(S.I. 2004/3156\)](#), [art. 7](#)
- F9** Words in s. 39(3) inserted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para. 3\(4\)](#); S.I. 1991/2905, [art.3](#)
- F10** Words in s. 39(7) repealed (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 25, 84(6), [Schs. 3 Pt. II para. 20](#), [19 Pt.I](#); S.I. 1991/2905, [art.3](#), [sch. 2](#)

Modifications etc. (not altering text)

- C5** Ss. 32-50 applied in part (Isles of Scilly) (with modifications) (2.10.2013) by [The Town and Country Planning \(Isles of Scilly\) Order 2013 \(S.I. 2013/2148\)](#), arts. 1(1), 3, [Sch. 1](#) (with art. 1(2))
- C6** S. 39 applied (with modifications) by S.I. 1990/1519, [reg. 12](#), [Sch. 3](#)

Status: Point in time view as at 21/05/2016.

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- C7** S. 39 modified (W.) (30.4.2012) by [The Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012 \(No. 793\)](#), regs. 1, 16, **Sch. 3**
- C8** S. 39(1)–(5)(7) modified by [S.I. 1990/1519](#), **reg. 13(1)**

40 Appeals: supplementary provisions.

(1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 39, and in particular, but without prejudice to the generality of this subsection may—

- (a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
- (b) specify the matters to be included in such a statement;
- (c) require the authority or the appellant to give such notice of such an appeal as may be prescribed, being notice which in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the building in question is situated;
- (d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) Subject to section 41(4), the Secretary of State shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

[^{F11}(2B) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in Wales.]

(3) Schedule 3 applies to appeals under section 39.

Textual Amendments

- F11** S. 40(2B) inserted (11.11.2014) by [The Town and Country Planning \(Determination of Procedure\) \(Wales\) Order 2014 \(S.I. 2014/2773\)](#), art. 1(2), **Sch. 1 para. 18**

Modifications etc. (not altering text)

- C5** Ss. 32-50 applied in part (Isles of Scilly) (with modifications) (2.10.2013) by [The Town and Country Planning \(Isles of Scilly\) Order 2013 \(S.I. 2013/2148\)](#), arts. 1(1), 3, **Sch. 1** (with art. 1(2))
- C9** S. 40 modified by [S.I. 1990/1519](#), **reg. 13(1)**; applied (with modifications) by [S.I. 1990/1519](#), **reg. 12, Sch. 3**
- C10** S. 40 modified (W.) (30.4.2012) by [The Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012 \(No. 793\)](#), regs. 1, 16, **Sch. 3**

41 Determination of appeals under s. 39.

[^{F12}(1) On an appeal under section 39 the Secretary of State may—

- (a) correct any defect, error or misdescription in the listed building enforcement notice; or
- (b) vary the terms of the listed building enforcement notice,

if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.

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- (2) Where the Secretary of State determines to allow the appeal, he may quash the notice.
- (2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.]
- (3) The Secretary of State—
- (a) may dismiss such an appeal if the appellant fails to comply with section 39(4) within the prescribed time; and
 - (b) may allow such an appeal and quash the listed building enforcement notice if the local planning authority fail to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 40(1)(a), (b) or (d).
- (4) If [^{F13}section 40(2) would otherwise apply and] the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) [^{F14}of this section] or to allow an appeal and quash the listed building enforcement notice under paragraph (b) of that subsection he need not comply with section 40(2).
- (5) Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required to be served with a copy of the listed building enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
- (6) On the determination of an appeal the Secretary of State may—
- (a) grant listed building consent for the works to which the listed building enforcement notice relates or for part only of those works;
 - (b) discharge any condition or limitation subject to which listed building consent was granted and substitute any other condition, whether more or less onerous;
 - (c) if he thinks fit, exercise his power under section 1 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.
- (7) Any listed building consent granted by the Secretary of State under subsection (6) shall be treated as granted on an application for the same consent under section 10 and the Secretary of State's decision in relation to the grant shall be final.
- [^{F15}(8) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings [^{F16}in England] before the Secretary of State on an appeal under section 39 as if those proceedings were an inquiry held by the Secretary of State under section 250.]

Textual Amendments

- F12** S. 41(1)(2)(2A) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para.4](#); [S.I. 1991/2905, art.3](#)
- F13** Words in s. 41(4) inserted (11.11.2014) by [The Town and Country Planning \(Determination of Procedure\) \(Wales\) Order 2014 \(S.I. 2014/2773\)](#), art. 1(2), [Sch. 1 para. 19\(a\)](#)
- F14** Words in s. 41(4) inserted (11.11.2014) by [The Town and Country Planning \(Determination of Procedure\) \(Wales\) Order 2014 \(S.I. 2014/2773\)](#), art. 1(2), [Sch. 1 para. 19\(b\)](#)
- F15** S. 41(8) inserted (*temp.*) by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 6, [Sch. 4 paras. 1, 9](#) (which temp. insertion ceases to have effect (2.1.1992 for specified purposes and

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6.4.2009 for further specified purposes) by virtue of S.I. 1991/2698, **art. 3** (with art. 4); S.I. 2009/849, **art. 2** (with art. 3))

F16 Words in s. 41(8) inserted (6.9.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Planning (Wales) Act 2015 (anaw 4), s. 58(2)(b)(4)(b), **Sch. 5 para. 20**; S.I. 2016/52, art. 4(e) (with art. 17)

Modifications etc. (not altering text)

C5 Ss. 32-50 applied in part (Isles of Scilly) (with modifications) (2.10.2013) by The Town and Country Planning (Isles of Scilly) Order 2013 (S.I. 2013/2148), arts. 1(1), 3, **Sch. 1** (with art. 1(2))

C11 S. 41 modified by S.I. 1990/1519, **reg. 13(1)**; applied (with modifications) by S.I. 1990/1519, **reg. 12, Sch. 3**

C12 S. 41 modified (W.) (30.4.2012) by The Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (No. 793), regs. 1, 16, **Sch. 3**

42 Execution of works required by listed building enforcement notice.

(1) If any of the steps specified in the listed building enforcement notice have not been taken within the [^{F17}period for compliance with the notice], the authority may—

- (a) enter the land and take those steps, and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

(2) Where a listed building enforcement notice has been served in respect of a building—

- (a) any expenses incurred by the owner or occupier of the building for the purpose of complying with it, and
- (b) any sums paid by the owner of the building under subsection (1) in respect of expenses incurred by the local planning authority in taking steps required by it,

shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.

(3) Regulations under this Act may provide that all or any of the following sections of the ^{M1}Public Health Act 1936, namely—

- (a) section 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);
- (b) section 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises);
- (c) section 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),

shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a listed building enforcement notice.

(4) Regulations under subsection (3) applying all or any of section 289 of that Act may include adaptations and modifications for the purpose of giving the owner of land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice.

(5) Regulations under subsection (3) may also provide for the charging on the land on which the building stands of any expenses recoverable by a local planning authority under subsection (1).

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^{F18}[(6) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

^{F19}(7)

Textual Amendments

- F17** Words in s. 42(1) substituted (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. II para. 21(a)**; S.I. 1991/2905, **art. 3**
- F18** S. 42(6) substituted (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. I para. 5**; S.I. 1991/2905, **art. 3**
- F19** S. 42(7) repealed (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 25, 84(6), **Schs. 3 Pt. II para. 21(b), 19 Pt. I**; S.I. 1991/2905, **art. 3 sch 2**

Modifications etc. (not altering text)

- C5** Ss. 32-50 applied in part (Isles of Scilly) (with modifications) (2.10.2013) by The Town and Country Planning (Isles of Scilly) Order 2013 (S.I. 2013/2148), arts. 1(1), 3, **Sch. 1** (with art. 1(2))
- C13** S. 42 applied (with modifications) by S.I. 1990/1519, reg. 12, **Sch. 3**
- C14** Ss. 42-44 modified (W.) (30.4.2012) by The Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (No. 793), regs. 1, 16, **Sch. 3**
- C15** S. 42 (1)–(5) modified by S.I. 1990/1519, **reg. 13(1)**
- C16** S. 42(1) restricted (18.12.1996) by 1996 c. 61, s. 12, Sch. 7 paras. 1(1)(3), **2(1)(c)**
- C17** S. 42(1) restricted (22.7.2008) by Crossrail Act 2008 (c. 18), s. 16(1), Sch. 9 paras. 1(1)(c)(3), **2(1)(c)**
- C18** S. 42(6) applied (Isles of Scilly) (with modifications) (2.10.2013) by The Town and Country Planning (Isles of Scilly) Order 2013 (S.I. 2013/2148), arts. 1(1), 3, **Sch. 1** (with art. 1(2))

Marginal Citations

- M1** 1936 c. 49.

[43 ^{F20}**Offence where listed building enforcement notice not complied with.**

- (1) Where, at any time after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been taken, the person who is then owner of the land is in breach of the notice.
- (2) If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence.
- (3) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.
- (4) In proceedings against any person for an offence under this section, it shall be a defence for him to show—
 - (a) that he did everything he could be expected to do to secure that all the steps required by the notice were taken; or
 - (b) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence.

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- (5) A person guilty of an offence under this section shall be liable [^{F21}on summary conviction, or on conviction on indictment, to a fine].
- (6) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.]

Textual Amendments

- F20** S. 43 substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, **Sch. 3 Pt. 1 para.6**; [S.I. 1991/2905](#), **art.3**
- F21** Words in s. 43(5) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 19(3)** (with reg. 5(1))

Modifications etc. (not altering text)

- C5** Ss. 32-50 applied in part (Isles of Scilly) (with modifications) (2.10.2013) by [The Town and Country Planning \(Isles of Scilly\) Order 2013 \(S.I. 2013/2148\)](#), arts. 1(1), 3, **Sch. 1** (with art. 1(2))
- C14** Ss. 42-44 modified (W.) (30.4.2012) by [The Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012 \(No. 793\)](#), regs. 1, 16, **Sch. 3**

44 Effect of listed building consent on listed building enforcement notice.

- (1) If, after the issue of a listed building enforcement notice, consent is granted under section 8(3)—
- for the retention of any work to which the notice relates; or
 - permitting the retention of works without compliance with some condition subject to which a previous listed building consent was granted,
- the notice shall cease to have effect in so far as it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition.
- (2) The fact that such a notice has wholly or partly ceased to have effect under subsection (1) shall not affect the liability of any person for an offence in respect of a previous failure to comply with that notice.

Modifications etc. (not altering text)

- C5** Ss. 32-50 applied in part (Isles of Scilly) (with modifications) (2.10.2013) by [The Town and Country Planning \(Isles of Scilly\) Order 2013 \(S.I. 2013/2148\)](#), arts. 1(1), 3, **Sch. 1** (with art. 1(2))
- C14** Ss. 42-44 modified (W.) (30.4.2012) by [The Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012 \(No. 793\)](#), regs. 1, 16, **Sch. 3**
- C19** Ss. 43–46 modified by [S.I. 1990/1519](#), **reg. 13(1)**; applied (with modifications) by [S.I. 1990/1519](#), **reg. 12**, **Sch. 3**

[44A ^{F22} Injunctions.

- (1) Where a local planning authority consider it necessary or expedient for any actual or apprehended contravention of section 9(1) or (2) to be restrained by injunction, they

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may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.

- (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the contravention.
- (3) Rules of court may, in particular, provide for such an injunction to be issued against a person whose identity is unknown.
- (4) The references in subsection (1) to a local planning authority include, as respects England, the Commission.
- (5) In this section “ the court ” means the High Court or the county court.]

Textual Amendments

F22 S. 44A inserted (25.11.1991 for the purposes specified in [S.I. 1991/2728, art. 2](#)) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para.7](#); [S.I. 1991/2728, art.2](#)

Modifications etc. (not altering text)

C5 Ss. 32-50 applied in part (Isles of Scilly) (with modifications) (2.10.2013) by [The Town and Country Planning \(Isles of Scilly\) Order 2013 \(S.I. 2013/2148\)](#), arts. 1(1), 3, [Sch. 1](#) (with art. 1(2))

C20 S. 44A: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853, reg. 2\(1\)](#), [Sch. 1](#) Table A26

[^{F23}44B Temporary stop notices

- (1) This section applies where it appears to a local planning authority in Wales that—
 - (a) works have been or are being executed to a listed building in their area; and
 - (b) the works are such as to involve a contravention of section 9(1) or (2).
- (2) The authority may issue a temporary stop notice if, having regard to the effect of the works on the character of the building as one of special architectural or historic interest, they consider it is expedient that the works are stopped immediately (or that part of them is).
- (3) A temporary stop notice must be in writing and must—
 - (a) specify the works in question;
 - (b) prohibit execution of the works (or so much of them as is specified in the notice);
 - (c) set out the authority's reasons for issuing the notice; and
 - (d) include a statement of the effect of section 44C.
- (4) A temporary stop notice may be served on a person who appears to the authority—
 - (a) to be executing the works or causing them to be executed; or
 - (b) to have an interest in the building.
- (5) The authority must display a copy of the notice on the building; and the copy must specify the date on which it is first displayed.
- (6) A temporary stop notice takes effect when the copy of it is first displayed in accordance with subsection (5).
- (7) A temporary notice ceases to have effect—

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- (a) at the end of the period of 28 days beginning with the day on which the copy of it is first displayed in accordance with subsection (5); or
 - (b) if the notice specifies a shorter period beginning with that day, at the end of that period.
- (8) But if the authority withdraws the notice before the time when it would otherwise cease to have effect under subsection (7), the notice ceases to have effect on its withdrawal.
- (9) A local planning authority may not issue a subsequent temporary stop notice in relation to the same works unless the authority have, since issuing the previous notice, taken other enforcement action in relation to the contravention referred to in subsection (1) (b).
- (10) The reference in subsection (9) to taking other enforcement action includes a reference to obtaining an injunction under section 44A.
- (11) A temporary stop notice does not prohibit the execution of works of such description, or the execution of works in such circumstances, as the Welsh Ministers may by regulations prescribe.

Textual Amendments

F23 Ss. 44B-44D inserted (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 29(1), 41(2)**

44C Temporary stop notices: offence

- (1) A person is guilty of an offence if the person contravenes, or causes or permits a contravention of, a temporary stop notice—
- (a) which has been served on the person; or
 - (b) a copy of which has been displayed in accordance with section 44B(5).
- (2) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different periods.
- (3) In proceedings against a person for an offence under this section, it is a defence for the person to show that the person did not know, and could not reasonably have been expected to know, of the existence of the temporary stop notice.
- (4) In proceedings against a person for an offence under this section, it is also a defence for the person to show—
- (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
 - (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
 - (c) that the works carried out were limited to the minimum measures immediately necessary; and
 - (d) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable.

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- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (6) In determining the amount of a fine to be imposed on a person convicted under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

Textual Amendments

F23 Ss. 44B-44D inserted (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 29(1), 41(2)**

44D Temporary stop notices: compensation

- (1) A person who, on the day when a temporary stop notice is first displayed in accordance with section 44B(5), has an interest in the building is, on making a claim to the local planning authority within the prescribed time and in the prescribed manner, entitled to be paid compensation by the authority in respect of any loss or damage directly attributable to the effect of the notice.
- (2) But subsection (1) applies only if—
 - (a) the works specified in the notice are not such as to involve a contravention of section 9(1) or (2); or
 - (b) the authority withdraws the notice other than following the grant of listed building consent, after the day mentioned in subsection (1), which authorises the works.
- (3) The loss or damage in respect of which compensation is payable under this section includes a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the notice.
- (4) No compensation is payable under this section in the case of loss or damage suffered by a claimant if—
 - (a) the claimant was required to provide information under a relevant provision; and
 - (b) the loss or damage could have been avoided if the claimant had provided the information or had otherwise co-operated with the planning authority when responding to the notice.
- (5) In subsection (4)(a), each of the following is a relevant provision—
 - (a) section 16 of the Local Government (Miscellaneous Provisions) Act 1976;
 - (b) section 330 of the principal Act.]

Textual Amendments

F23 Ss. 44B-44D inserted (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 29(1), 41(2)**

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45 Commission to have concurrent enforcement functions in London.

The Commission shall, as respects any London borough, have concurrently with the council of that borough the functions of a local planning authority under sections 38 to 43; and references to the local planning authority in those provisions shall be construed accordingly.

Modifications etc. (not altering text)

- C5** Ss. 32-50 applied in part (Isles of Scilly) (with modifications) (2.10.2013) by [The Town and Country Planning \(Isles of Scilly\) Order 2013 \(S.I. 2013/2148\)](#), arts. 1(1), 3, **Sch. 1** (with art. 1(2))
- C21** Ss. 43–46 modified by [S.I. 1990/1519](#), **reg. 13(1)**; applied (with modifications) by [S.I. 1990/1519](#), reg. 12, **Sch. 3**
- C22** S. 45 modified (W.) (30.4.2012) by [The Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012 \(No. 793\)](#), regs. 1, 16, **Sch. 3**

46 Enforcement by the Secretary of State.

- (1) If it appears to the Secretary of State to be expedient that a listed building enforcement notice should be issued in respect of any land, he may issue such a notice.
- (2) Before the Secretary of State serves a notice under subsection (1) he shall consult—
 - (a) the local planning authority; and
 - (b) if the land is situated in England, the Commission.
- (3) A listed building enforcement notice issued by the Secretary of State shall have the same effect as a notice issued by the local planning authority.
- (4) In relation to a listed building enforcement notice issued by the Secretary of State, [F²⁴section 42] shall apply as if for any reference in [F²⁴that section] to the local planning authority there were substituted a reference to the Secretary of State.
- (5) References in this section to the local planning authority shall in the case of an authority for an area [F²⁵in England] outside Greater London be construed as references to the district planning authority.

Textual Amendments

- F24** Words in s. 46(4) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, **Sch. 3 Pt. II para. 22**; [S.I. 1991/2905](#), **art. 3**
- F25** Words in s. 46(5) inserted (1.4.1996) by [1994 c. 19, s. 20\(4\)](#), **Sch. 6 Pt. II para. 25(5)** (with ss. 54(5) (7), 55(5), 66(7), Sch. 17 paras. 22(1), 23(2); [S.I. 1996/396](#), art. 3, **Sch. 1**)

Modifications etc. (not altering text)

- C5** Ss. 32-50 applied in part (Isles of Scilly) (with modifications) (2.10.2013) by [The Town and Country Planning \(Isles of Scilly\) Order 2013 \(S.I. 2013/2148\)](#), arts. 1(1), 3, **Sch. 1** (with art. 1(2))
- C23** Ss. 43–46 modified by [S.I. 1990/1519](#), **reg. 13(1)**; applied (with modifications) by [S.I. 1990/1519](#), reg. 12, **Sch. 3**
- C24** S. 46 modified (W.) (30.4.2012) by [The Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012 \(No. 793\)](#), regs. 1, 16, **Sch. 3**

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