



# Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

## 1997 CHAPTER 9

### PART I

#### LISTED BUILDINGS

### CHAPTER II

#### AUTHORISATION OF WORKS AFFECTING LISTED BUILDINGS

##### *Control of works in respect of listed buildings*

#### **6 Restriction on works affecting listed buildings.**

Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.

#### **7 Authorisation of works: listed building consent.**

- (1) Works for the alteration or extension of a listed building are authorised if—
  - (a) the planning authority or the Secretary of State has granted written consent for the execution of the works, and
  - (b) the works are executed in accordance with the terms of the consent and of any conditions attached to it.
- (2) Works for the demolition of a listed building are authorised if—
  - (a) such consent has been granted for their execution,
  - (b) notice of the proposal to execute the works has been given to the Royal Commission,

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- (c) after such notice has been given either—
    - (i) for a period of at least 3 months following the grant of listed building consent, and before the commencement of the works, reasonable access to the building has been made available to members or officers of the Commission for the purpose of recording it, or
    - (ii) the Secretary of the Commission or other officer of theirs with authority to act on their behalf for the purposes of this section has stated in writing that they have completed their recording of the building or that they do not wish to record it, and
  - (d) the works are executed in accordance with the terms of the consent and of any conditions attached to it.
- (3) Where—
- (a) works for the alteration, extension or demolition of a listed building have been executed without such consent, and
  - (b) written consent is granted by the planning authority or the Secretary of State for the retention of the works,
- the works are authorised from the grant of that consent.
- (4) In this section “the Royal Commission” means the Royal Commission on the Ancient and Historical Monuments of Scotland.
- (5) The Secretary of State may by order provide that subsection (2) shall have effect with the substitution for the reference to the Royal Commission of a reference to such other body as may be so specified.
- (6) Such an order shall apply in the case of works executed or to be executed on or after such date as may be specified in the order.
- (7) Consent under subsection (1), (2) or (3) is referred to in this Act as “listed building consent”.

## **8 Offences.**

- (1) If a person contravenes section 6 he shall be guilty of an offence.
- (2) Without prejudice to subsection (1), if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, he shall be guilty of an offence.
- (3) In proceedings for an offence under this section it shall be a defence to prove the following matters—
  - (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 planning authority as soon as reasonably practicable.
- (4) A person guilty of an offence under this section shall be liable—

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- (a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding £20,000, or both, or
  - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine, or both.
- (5) 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.

### *Applications for listed building consent*

## **9 Making of applications for listed building consent.**

- (1) Except as provided in sections 11 to 14, an application for listed building consent shall be made to and dealt with by the planning authority.
- (2) Such an application shall be made in such form as the planning authority may require and shall contain—
  - (a) sufficient particulars to identify the building to which it relates, including a plan,
  - (b) such other plans and drawings as are necessary to describe the works which are the subject of the application, and
  - (c) such other particulars as may be required by the planning authority.
- (3) Provision may be made by regulations with respect to—
  - (a) the manner in which applications for listed building consent are to be made,
  - (b) the manner in which such applications are to be advertised, and
  - (c) the time within which they are to be dealt with by planning authorities or, as the case may be, by the Secretary of State.

## **10 Certificates as to interests in listed building etc.**

- (1) Regulations may provide that an application for listed building consent shall not be entertained unless it is accompanied by a certificate in the prescribed form as to the interests in the building to which the application relates.
- (2) Any such regulations may—
  - (a) include requirements corresponding to those mentioned in sections 35 and 38(2) of the principal Act,
  - (b) make provision as to who, in the case of any building, is to be treated as the owner for the purposes of any provision of the regulations, and
  - (c) make different provision for different cases or classes of case.
- (3) If any person—
  - (a) issues a certificate which purports to comply with the requirements of regulations made by virtue of this section and which contains a statement which he knows to be false or misleading in a material particular, or
  - (b) recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular,

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he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## 11 Reference of certain applications to Secretary of State.

- (1) The Secretary of State may give directions requiring applications for listed building consent to be referred to him instead of being dealt with by the planning authority.
- (2) A direction under this section may relate either to a particular application or to applications in respect of such buildings as may be specified in the direction.
- (3) An application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.
- (4) Before determining an application referred to him under this section, the Secretary of State shall, if either the applicant or the authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State.
- (5) The decision of the Secretary of State on any application referred to him under this section shall be final.

### Modifications etc. (not altering text)

- C1** S. 11 applied (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(7)(b)**
- C2** S. 11(1)-(3) modified (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(3)(b)** (with art. 3(4)(5)(6))

## 12 Duty to notify Secretary of State of applications.

- (1) If a planning authority to whom application is made for listed building consent intend to grant such consent they shall first notify the Secretary of State of the application giving particulars of the works for which the consent is required.
- (2) The Secretary of State may within the period of 28 days beginning with the date of the notification—
  - (a) direct the reference of the application to him under section 11, or
  - (b) give notice to the authority that he requires further time in which to consider whether to require such a reference.
- (3) The planning authority shall not grant listed building consent until—
  - (a) the period mentioned in subsection (2) has expired without the Secretary of State directing the reference of the application to him or giving them notice under paragraph (b) of that subsection, or
  - (b) the Secretary of State has notified them that he does not intend to require the reference of the application.

## 13 Directions concerning notification of applications etc.

- (1) The Secretary of State may give directions that, in the case of such descriptions of applications for listed building consent as he may specify, other than such consent for the demolition of a building, section 12 shall not apply.

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- (2) Where a direction is in force under subsection (1) in respect of any description of application, planning authorities may determine applications of that description in any manner they think fit, without notifying the Secretary of State.
- (3) Without prejudice to sections 9 to 12, the Secretary of State may give directions to planning authorities requiring them, in such cases or classes of case as may be specified in the directions, to notify to him and to such other persons as may be so specified—
  - (a) any applications made to them for listed building consent, and
  - (b) the decisions taken by the authorities on those applications.

#### **14 Decision on application.**

- (1) Subject to the previous provisions of this Part, the planning authority or, as the case may be, the Secretary of State may grant or refuse an application for listed building consent and, if granting consent, may grant it subject to conditions.
- (2) In considering whether to grant listed building consent for any works, the planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- (3) Any listed building consent shall (except in so far as it otherwise provides) enure for the benefit of the building and of all persons for the time being interested in it.

*Grant of consent subject to conditions*

#### **15 Power to impose conditions on grant of listed building consent.**

- (1) Without prejudice to the generality of section 14(1), the conditions subject to which listed building consent may be granted may include conditions with respect to—
  - (a) the preservation of particular features of the building, either as part of it or after severance from it;
  - (b) the making good, after the works are completed, of any damage caused to the building by the works;
  - (c) the reconstruction of the building or any part of it following the execution of any works, with the use of original materials so far as practicable and with such alterations of the interior of the building as may be specified in the conditions.
- (2) Listed building consent may also be granted subject to a condition reserving specified details of the works (whether or not set out in the application) for subsequent approval by the planning authority or, in the case of consent granted by the Secretary of State, specifying whether the reserved details are to be approved by the planning authority or by him.
- (3) In granting a listed building consent a planning authority may attach to the consent a condition that no demolition of the listed building shall take place until either or both of the following requirements have been met—
  - (a) an agreement for the regulation of the development of the site of the listed building in accordance with a current planning permission has been made and recorded under section 75 of the principal Act;
  - (b) the planning authority are satisfied that contracts have been placed either—
    - (i) for the redevelopment of the site, or

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(ii) for its conversion to an acceptable open space,  
in accordance with a current planning permission.

## **16 Limit of duration of listed building consent.**

- (1) Any listed building consent shall be granted subject to a condition that works permitted by that consent shall be commenced within such period as the planning authority may specify in the consent.
- (2) If no time limit is specified in any grant of listed building consent under subsection (1), the grant shall be deemed to have been made subject to a condition that works in terms of the consent shall be commenced within 5 years from the date of the grant.
- (3) Nothing in this section applies to any consent to the retention of works granted under section 7(3).
- (4) The date of the granting or of the refusal of an application for listed building consent shall be the date on which the notice of the planning authority's decision bears to have been signed on behalf of the authority.

## **17 Application for variation or discharge of conditions.**

- (1) Any person interested in a listed building with respect to which listed building consent has been granted subject to conditions may apply to the planning authority for the variation or discharge of the conditions.
- (2) The application shall indicate what variation or discharge of conditions is applied for and the provisions of sections 9 to 13, 14(3) and 18 to 20 apply to such an application as they apply to an application for listed building consent.
- (3) On such an application the planning authority or, as the case may be, the Secretary of State may vary or discharge the conditions attached to the consent, and may add new conditions consequential upon the variation or discharge, as they or he think fit.

### *Appeals*

## **18 Right to appeal against decision or failure to take decision.**

- (1) Where a planning authority—
  - (a) refuse an application for listed building consent or grant it subject to conditions,
  - (b) refuse an application for variation or discharge of conditions subject to which such consent has been granted or grant it and add new conditions, or
  - (c) refuse an application for approval required by a condition imposed on the granting of listed building consent with respect to details of works or grant it subject to conditions,
 the applicant, if he is aggrieved by the decision, may appeal to the Secretary of State.
- (2) A person who has made such an application may also appeal to the Secretary of State if the planning authority have neither—
  - (a) given notice to the applicant of their decision on the application, nor

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- (b) in the case of such an application as is mentioned in subsection (1)(a) or (b), given notice to the applicant that the application has been referred to the Secretary of State in accordance with directions given under section 11, within the relevant period from the date of the receipt of the application or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.
- (3) In this section “the relevant period” means—
  - (a) in the case of such an application as is mentioned in subsection (1)(a) or (b), such period as may be prescribed, and
  - (b) in the case of such an application for approval as is mentioned in subsection (1)(c), the period of two months from the date of the receipt of the application.
- (4) For the purposes of the application of sections 20(1) and 58(7)(a) in relation to an appeal under subsection (2), the authority shall be treated as having refused the application in question.

## **19 Appeals: supplementary provisions.**

- (1) An appeal under section 18 must be made by notice served in the prescribed manner within such period as may be prescribed.
- (2) The period which may be prescribed under subsection (1) must not be less than—
  - (a) in the case of an appeal under section 18(1), 28 days from the receipt by the applicant of notification of the decision, or
  - (b) in the case of an appeal under section 18(2), 28 days from the end of the relevant period within the meaning of that section or, as the case may be, the extended period there mentioned.
- (3) The notice of appeal may include as the ground or one of the grounds of the appeal a claim that the building is not of special architectural or historic interest and ought to be removed from any list compiled or approved by the Secretary of State under section 1.
- (4) In the case of a building in respect of which a building preservation notice is in force, the notice may include a claim that the building should not be included in such a list.
- (5) Regulations may provide that an appeal in respect of an application for listed building consent, or for the variation or discharge of conditions subject to which such consent has been granted, shall not be entertained unless it is accompanied by a certificate in the prescribed form as to the interests in the building to which the appeal relates.
- (6) Any such regulations may include provisions corresponding to those which may be included in regulations under section 10 by virtue of section 10(2).
- (7) If any person—
  - (a) issues a certificate which purports to comply with the requirements of regulations made by virtue of subsection (5) or (6) and which contains a statement which he knows to be false or misleading in a material particular, or
  - (b) recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular,
 he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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## **20 Determination of appeals.**

- (1) The Secretary of State may allow or dismiss an appeal under section 18, or may reverse or vary any part of the decision of the authority, whether or not the appeal relates to that part, and—
  - (a) may deal with the application as if it had been made to him in the first instance, and
  - (b) may 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.
- (2) Before determining the appeal the Secretary of State shall, if either the appellant or the 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.
- (3) The decision of the Secretary of State on the appeal shall be final.
- (4) Schedule 3 (which makes provision regarding the determination of certain appeals by a person appointed by the Secretary of State) applies to appeals under section 18.

### *Revocation and modification of consent*

## **21 Revocation and modification of listed building consent by planning authority.**

- (1) If it appears to the planning authority that it is expedient to revoke or modify listed building consent granted on an application made under this Act, the authority may revoke or modify the consent to such extent as they consider expedient.
- (2) In performing their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.
- (3) The power conferred by this section to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed, but the revocation or modification shall not affect so much of those works as has been previously carried out.

## **22 Procedure for section 21 orders: opposed cases.**

- (1) Except as provided in section 23, an order made by a planning authority under section 21 shall not take effect unless it is confirmed by the Secretary of State.
- (2) Where a planning authority submit an order to the Secretary of State for confirmation, they shall serve notice on—
  - (a) the owner of the building affected,
  - (b) the lessee of that building,
  - (c) the occupier of that building, and
  - (d) any other person who in their opinion will be affected by the order.
- (3) The notice shall specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.



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- (4) If within that period a person on whom the notice is served so requires, the Secretary of State shall, before he confirms the order, give such an opportunity both to that person and to the planning authority.
- (5) The Secretary of State may confirm any such order submitted to him either without modification or subject to such modifications as he considers expedient.

## **23 Procedure for section 21 orders: unopposed cases.**

- (1) This section shall have effect where—
  - (a) the planning authority have made an order under section 21 revoking or modifying a listed building consent granted by them, and
  - (b) the owner, lessee and occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to the order.
- (2) Where this section applies, instead of submitting the order to the Secretary of State for confirmation the authority shall—
  - (a) advertise in the prescribed manner the fact that the order has been made, and the advertisement shall specify—
    - (i) the period within which persons affected by the order may give notice to the Secretary of State that they wish an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose, and
    - (ii) the period at the end of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this section and without being confirmed by him,
  - (b) serve notice to the same effect on the persons mentioned in subsection (1)(b), and
  - (c) send a copy of any such advertisement to the Secretary of State not more than 3 days after its publication.
- (3) A notice under subsection (2)(b) shall include a statement to the effect that no compensation is payable under section 25 in respect of an order under section 21 which takes effect by virtue of subsection (4) of this section.
- (4) If—
  - (a) no person claiming to be affected by the order has given notice to the Secretary of State as mentioned in subsection (2)(a)(i) within the period referred to in that subsection, and
  - (b) the Secretary of State has not directed that the order be submitted to him for confirmation,the order shall take effect at the end of the period referred to in subsection (2)(a)(ii) without being confirmed by the Secretary of State as required by section 22(1).
- (5) The period referred to in subsection (2)(a)(i) must not be less than 28 days from the date on which the advertisement first appears.
- (6) The period referred to in subsection (2)(a)(ii) must not be less than 14 days from the end of the period referred to in subsection (2)(a)(i).

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## **24 Revocation and modification of listed building consent by Secretary of State.**

- (1) If it appears to the Secretary of State that it is expedient that an order should be made under section 21 revoking or modifying any listed building consent granted on an application under this Act, he may himself make such an order revoking or modifying the consent to such extent as he considers expedient.
- (2) In performing his functions under subsection (1) the Secretary of State shall have regard to the development plan and to any other material considerations.
- (3) The Secretary of State shall not make an order under that subsection without consulting the planning authority.
- (4) Where the Secretary of State proposes to make such an order he shall serve notice on—
  - (a) the owner of the building affected,
  - (b) the lessee of that building,
  - (c) the occupier of that building, and
  - (d) any other person who in his opinion will be affected by the order.
- (5) The notice shall specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) If within that period a person on whom the notice is served so requires, the Secretary of State shall, before he makes the order, give such an opportunity both to that person and to the planning authority.
- (7) The power conferred by this section to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed, but the revocation or modification shall not affect so much of those works as has been previously carried out.
- (8) An order under this section shall have the same effect as if it had been made by the planning authority under section 21 and confirmed by the Secretary of State under section 22.

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