



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

## 1997 CHAPTER 9

### PART I

#### LISTED BUILDINGS

#### CHAPTER V

##### PREVENTION OF DETERIORATION AND DAMAGE

##### *Compulsory acquisition of listed building in need of repair*

#### **42 Compulsory acquisition of listed building in need of repair**

- (1) If it appears to the Secretary of State that reasonable steps are not being taken for properly preserving a listed building, he—
  - (a) may authorise the planning authority for the district in which the building is situated to acquire compulsorily under this section the building and any relevant land, or
  - (b) may himself compulsorily acquire them under this section.
- (2) The Secretary of State shall not make or confirm a compulsory purchase order for the acquisition of any building by virtue of this section unless he is satisfied that it is expedient to make provision for the preservation of the building and to authorise its compulsory acquisition for that purpose.
- (3) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to the compulsory acquisition of land under this section and accordingly shall have effect—
  - (a) as if this section had been in force immediately before the commencement of that Act, and

- (b) as if references in it to the Minister of Transport and to the enactments specified in section 1(1)(b) of that Act included respectively references to the Secretary of State and to this section.
- (4) Any person having an interest in a building which it is proposed to acquire compulsorily under this section may, within 28 days after the service of the notice required to be served under paragraph 3(b) of Schedule 1 to that Act of 1947, apply to the sheriff for an order prohibiting further proceedings on the compulsory purchase order.
- (5) If on an application under subsection (4) the sheriff is satisfied that reasonable steps have been taken for properly preserving the building, he shall make an order accordingly.
- (6) Any person aggrieved by the decision of the sheriff on an application under subsection (4) may appeal against the decision to the Court of Session, but only on a question of law.
- (7) In this section “relevant land”, in relation to any building, means the land comprising or contiguous or adjacent to it which appears to the Secretary of State to be required for preserving the building or its amenities, or for affording access to it, or for its proper control or management.

#### **43 Repairs notice as preliminary to acquisition under section 42**

- (1) The compulsory purchase of a building under section 42 shall not be started by the planning authority or by the Secretary of State unless at least 2 months previously the authority or, as the case may be, the Secretary of State has served on the owner of the building a notice under this section (in this section referred to as a “repairs notice”)—
  - (a) specifying the works which the authority or, as the case may be, the Secretary of State considers reasonably necessary for the proper preservation of the building, and
  - (b) explaining the effect of sections 42 to 45,
 and the repairs notice has not been withdrawn.
- (2) Where—
  - (a) a building is demolished after a repairs notice has been served in respect of it by a planning authority or the Secretary of State, but
  - (b) the Secretary of State is satisfied that he would have confirmed or, as the case may be, would have made a compulsory purchase order in respect of the building had it not been demolished,
 the demolition of the building shall not prevent the authority or the Secretary of State from being authorised under section 42 to acquire compulsorily the site of the building.
- (3) A planning authority or the Secretary of State may at any time withdraw a repairs notice served by them or him on any person and shall, in that event, immediately give him notice of the withdrawal.
- (4) Where a repairs notice has been served on a person in respect of a building, he shall not be entitled to serve a listed building purchase notice in respect of it until the expiration of 3 months beginning with the date of the service of the repairs notice or, if during that period the compulsory acquisition of the building is begun under section 42, unless and until the compulsory acquisition is discontinued.

- (5) For the purposes of this section a compulsory acquisition—
- (a) is started when the planning authority or the Secretary of State, as the case may be, serves the notice required by paragraph 3(b) of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, and
  - (b) is discontinued—
    - (i) in the case of acquisition by the Secretary of State, when he decides not to make the compulsory purchase order, and
    - (ii) in any other case, where the order is withdrawn or the Secretary of State decides not to confirm it.

#### **44 Compensation on compulsory acquisition of listed building**

Subject to section 45, for the purpose of assessing compensation in respect of any compulsory acquisition of land including a building which immediately before the date of the compulsory purchase order was listed, it shall be assumed that listed building consent would be granted—

- (a) for any works for the alteration or extension of the building, or
- (b) for the demolition of the building for the purpose of development of any class specified in Schedule 11 to the principal Act (development not constituting new development).

#### **45 Minimum compensation in case of listed building deliberately left derelict**

- (1) If a planning authority—
- (a) propose to acquire a building compulsorily under section 42, and
  - (b) are satisfied that the building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development or redevelopment of the site or any adjoining site,
- they may make a direction for minimum compensation.
- (2) Subject to the provisions of this section, if the Secretary of State acquires a building compulsorily under section 42 he may, if he is satisfied as mentioned in subsection (1) (b), include a direction for minimum compensation in the compulsory purchase order.
- (3) Without prejudice to so much of paragraph 3(b) of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (notices stating effect of compulsory purchase order or, as the case may be, draft order) as requires the notice to state the effect of the order, the notice required to be served in accordance with that provision shall—
- (a) include a statement that the authority have made a direction for minimum compensation or, as the case may be, that the Secretary of State has included such a direction in the draft order prepared by him in accordance with paragraph 7 of that Schedule, and
  - (b) explain the meaning of the expression “direction for minimum compensation”.
- (4) A direction for minimum compensation in relation to a building compulsorily acquired is a direction that for the purpose of assessing compensation it is to be assumed, notwithstanding anything to the contrary in the Land Compensation (Scotland) Act 1963, the principal Act or this Act—

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- (a) that planning permission would not be granted for any development or redevelopment of the site of the building, and
  - (b) that listed building consent would not be granted for any works for the demolition, alteration or extension of the building other than development or works necessary for restoring it to, and maintaining it in, a proper state of repair.
- (5) If—
- (a) a planning authority have made a direction for minimum compensation and the Secretary of State confirms the compulsory purchase order relating to the acquisition of the building in question, or
  - (b) the Secretary of State, under subsection (2) above, includes such a direction in a compulsory purchase order made by him,
- the compensation in respect of the compulsory acquisition shall be assessed in accordance with the direction.
- (6) Where a planning authority make a direction for minimum compensation, or the Secretary of State includes such a direction in a draft compulsory purchase order prepared by him, any person having an interest in the building may, within 28 days after the service of the notice mentioned in subsection (3), apply to the sheriff for an order that the planning authority's direction for minimum compensation be reversed or, as the case may be, that such a direction be not included in the compulsory purchase order as made by the Secretary of State.
- (7) If the sheriff is satisfied that the building has not been deliberately allowed to fall into disrepair for the purpose mentioned in subsection (1), he shall make the order applied for.
- (8) A person aggrieved by the decision of the sheriff on an application under subsection (6) may appeal against the decision to the Court of Session, but only on a question of law.
- (9) The rights conferred by subsections (6) and (8) shall not prejudice those conferred by section 42(4) and (6).

#### **46 Ending of rights over land compulsorily acquired**

- (1) Subject to the provisions of this section, upon the completion by the acquiring authority of a compulsory acquisition of land under section 42—
- (a) all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land and all other rights or servitudes in or relating to that land shall be extinguished, and
  - (b) any such apparatus shall vest in the acquiring authority.
- (2) Subsection (1) shall not apply to—
- (a) any right vested in, or apparatus belonging to, statutory undertakers for the purpose of the carrying on of their undertaking,
  - (b) any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system, or
  - (c) any telecommunications apparatus kept installed for the purposes of any such system.
- (3) In respect of any right or apparatus not falling within subsection (2), subsection (1) shall have effect subject to—

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- (a) any direction given by the acquiring authority before the completion of the acquisition that subsection (1) shall not apply to any right or apparatus specified in the direction, and
  - (b) any agreement which may be made (whether before or after the completion of the acquisition) between the acquiring authority and the person in or to whom the right or apparatus in question is vested or belongs.
- (4) Any person who suffers loss by the extinguishment of a right or servitude or the vesting of any apparatus under this section shall be entitled to compensation from the acquiring authority.
- (5) Any compensation payable under this section shall be determined in accordance with the Land Compensation (Scotland) Act 1963.

#### *Acquisition by agreement*

### **47 Acquisition of land by agreement**

- (1) A planning authority may acquire by agreement—
- (a) any building appearing to them to be of special architectural or historic interest, and
  - (b) any land comprising or contiguous or adjacent to such a building which appears to them to be required—
    - (i) for preserving the building or its amenities,
    - (ii) for affording access to it, or
    - (iii) for its proper control or management.
- (2) The enactments mentioned in subsection (3) shall apply in relation to the acquisition of land under subsection (1).
- (3) Those enactments are—
- (a) the Lands Clauses Acts (except the provisions relating to the purchase of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845), and
  - (b) sections 6 and 70 of the Railways Clauses Consolidation (Scotland) Act 1845, and sections 71 to 78 of that Act, as originally enacted and not as amended for certain purposes by section 15 of the Mines (Working Facilities and Support) Act 1923.
- (4) For the purposes of the application of those enactments—
- (a) this section shall be deemed to be the special Act, and
  - (b) references to the promoters of the undertaking or to the company shall be construed as references to the authority authorised to acquire the land under this section.

*Management of acquired buildings***48 Management of listed buildings acquired under this Act**

- (1) Where a planning authority acquire any building or other land under section 42(1) or 47(1)(a) or (b), they may make such arrangements as to its management, use or disposal as they consider appropriate for the purpose of its preservation.
- (2) Where the Secretary of State acquires any building or other land under section 42(1), he may—
  - (a) make such arrangements as he thinks fit as to the management, custody or use of the building or land, and
  - (b) dispose of or otherwise deal with any such building or land as he may from time to time determine.

*Urgent preservation***49 Urgent works to preserve unoccupied listed buildings**

- (1) A planning authority may execute any works which appear to them to be urgently necessary for the preservation of a listed building in their district.
- (2) The Secretary of State may execute any works which appear to him to be urgently necessary for the preservation of a listed building.
- (3) The works which may be executed under this section may consist of or include works for affording temporary support or shelter for the building.
- (4) If the building is occupied works may be carried out only to those parts which are not in use.
- (5) The owner of the building shall be given not less than 7 days' notice in writing of the intention to carry out the works.
- (6) The notice shall describe the works proposed to be carried out.

**50 Recovery of expenses of works under section 49**

- (1) This section has effect for enabling the expenses of works executed under section 49 to be recovered.
- (2) The planning authority or, as the case may be, the Secretary of State may give notice to the owner of the building requiring him to pay the expenses of the works.
- (3) Where the works consist of or include works for affording temporary support or shelter for the building—
  - (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used, and
  - (b) notices under subsection (2) in respect of any such continuing expenses may be given from time to time.
- (4) The owner may within 28 days of the service of the notice represent to the Secretary of State—

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- (a) that some or all of the works were unnecessary for the preservation of the building,
  - (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time, or
  - (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause him hardship,
- and the Secretary of State shall determine to what extent the representations are justified.
- (5) The Secretary of State shall give notice of his determination, the reasons for it and the amount recoverable—
- (a) to the owner of the building, and
  - (b) to the planning authority, if they carried out the works.

#### *Grants for repair and maintenance*

### **51 Power of local authority to contribute to preservation of listed buildings etc**

- (1) A local authority may contribute towards the expenses incurred or to be incurred in the repair or maintenance—
- (a) of a listed building which is situated in or in the vicinity of their area, or
  - (b) of a building in their area which is not listed but appears to them to be of architectural or historic interest.
- (2) At the time of making such a contribution the local authority may also contribute towards the expenses incurred, or to be incurred, in the upkeep of any garden occupied with the building and contiguous or adjacent to it.
- (3) A contribution under this section may be made by grant or loan.
- (4) A contribution by way of loan may be made upon such terms and conditions as the local authority may determine including (but without prejudice to the foregoing) a term that the loan shall be free of interest.
- (5) A local authority—
- (a) may renounce their right to repayment of such a loan or any interest for the time being outstanding, and
  - (b) by agreement with the borrower may otherwise vary any of the terms and conditions on which such a loan is made.
- (6) A local authority may require as a condition of the making by them of a contribution under this section by way of grant towards the expenses of the repair or maintenance or upkeep of any property that the person to whom the grant is made shall enter into an agreement with them for the purpose of enabling the public to have access to the property or part of it during such period and at such times as the agreement may provide.

### **52 Recovery of grants under section 51**

- (1) If, during the period of 3 years beginning with the day on which a grant is made under section 51 towards the repair or maintenance or upkeep of any property (“the grant property”), the grantee disposes of the interest held by him in the property on that day

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or any part of that interest, by way of sale or excambion or lease for a term of not less than 21 years, the local authority may recover the amount of the grant, or such part of it as they think fit, from the grantee.

- (2) If the grantee gives the whole of that interest to any person (whether directly or indirectly, but otherwise than by will) subsection (1) shall have effect as if the donee were the grantee.
- (3) If the grantee gives part of that interest to any person (whether directly or indirectly, but otherwise than by will) subsection (1) shall have effect as if any disposal or part disposal of that interest by the donee were a disposal by the grantee.
- (4) If any condition imposed on the making of a grant to which this section applies is contravened or not complied with, the local authority may recover the amount of the grant, or such part of it as they think fit, from the grantee.
- (5) Nothing in this section entitles a local authority to recover amounts in the aggregate exceeding the amount of the grant (for example by virtue of a breach of more than one condition or disposals of several parts of an interest in the grant property).

#### *Damage to listed buildings*

### **53 Acts causing or likely to result in damage to listed buildings**

- (1) If, with the intention of causing damage to a listed building, any relevant person does or permits the doing of any act which causes or is likely to result in damage to the building, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) A person is a relevant person for the purpose of subsection (1) if apart from that subsection he would be entitled to do or permit the act in question.
- (3) Subsection (1) does not apply to an act for the execution of works—
  - (a) authorised by planning permission granted or deemed to be granted in pursuance of an application under the principal Act, or
  - (b) for which listed building consent has been given under this Act.
- (4) If a person convicted of an offence under this section fails to take such reasonable steps as may be necessary to prevent any damage or further damage resulting from the offence, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which the failure continues.