



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

1997 CHAPTER 9

PART I

LISTED BUILDINGS

CHAPTER VI

MISCELLANEOUS AND SUPPLEMENTAL

Exceptions for church buildings and ancient monuments

54 Exceptions for ecclesiastical buildings

- (1) The provisions mentioned in subsection (2) shall not apply to any ecclesiastical building which is for the time being used for ecclesiastical purposes.
- (2) Those provisions are sections 3, 4, 6 to 8, 42, 49 and 53.
- (3) For the purposes of subsection (1), a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office shall be treated as not being an ecclesiastical building.
- (4) For the purposes of sections 6 to 8 a building shall be taken to be used for the time being for ecclesiastical purposes if it would be so used but for the works in question.
- (5) The Secretary of State may by order provide for restricting or excluding the operation of subsections (1) to (3) in such cases as may be specified in the order.
- (6) An order under subsection (5) may—
 - (a) make provision for buildings generally, for descriptions of building or for particular buildings;

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- (b) make different provision for buildings in different areas, for buildings of different religious faiths or denominations or according to the use made of the building;
- (c) make such provision in relation to a part of a building (including, in particular, an object or structure falling to be treated as part of the building by virtue of section 1(4)) as may be made in relation to a building and make different provision for different parts of the same building;
- (d) make different provision with respect to works of different descriptions or according to the extent of the works;
- (e) make such consequential adaptations or modifications of the operation of any other provision of this Act or the principal Act, or of any instrument made under either of those Acts, as appear to the Secretary of State to be appropriate.

(7) Subsections (5) and (6) are without prejudice to the Church of Scotland Act 1921.

55 Exceptions for ancient monuments etc

- (1) The provisions mentioned in subsection (2) shall not apply to any building for the time being included in the Schedule of monuments compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979.
- (2) Those provisions are sections 3, 4, 6 to 8, 42, 49 and 53.

Local authority notices and works affecting listed buildings

56 Intimation of local authority notices etc. affecting listed buildings

- (1) Where, as respects a listed building owned, leased or occupied by a local authority, the authority—
 - (a) have, under or by virtue of any enactment, served a notice requiring any person to show why the building should not conform to the building regulations,
 - (b) have, under or by virtue of any enactment, served a notice or made an order requiring the demolition of, or the carrying out of works affecting, the building, or
 - (c) propose (whether under or by virtue of any enactment or otherwise) to carry out emergency works or demolitions affecting the building,
 they shall forthwith give written intimation of the notice, order or proposal to the Secretary of State.
- (2) Where the safety of the public requires that any demolition or works be carried out without such delay as would result from compliance with subsection (1), the intimation (which may, in such a case, initially be oral) shall be given as long before the commencement of the demolition or works as is consistent with that requirement.

Validity of instruments, decisions and proceedings

57 Validity of certain orders and decisions

- (1) Except as provided by section 58, the validity of—
 - (a) any order under section 21, whether before or after it has been confirmed,
 - (b) any order under section 24, or

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- (c) any such decision on the part of the Secretary of State as is mentioned in subsection (2),
shall not be questioned in any legal proceedings whatsoever.
- (2) Those decisions are—
 - (a) any decision on an application referred to the Secretary of State under section 11 or on an appeal under section 18,
 - (b) any decision of the Secretary of State to confirm or not to confirm a listed building purchase notice including—
 - (i) any decision not to confirm such a notice in respect of part of the land to which it relates, and
 - (ii) any decision to grant any consent, or give any direction, in lieu of confirming such a notice, either wholly or in part, and
 - (c) any decision of the Secretary of State on an appeal under section 35.
- (3) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such action as is mentioned in subsection (2).

58 Proceedings for questioning validity of other orders, decisions and directions

- (1) If any person is aggrieved by any such order or decision as is mentioned in section 57(1) and wishes to question its validity on the grounds—
 - (a) that it is not within the powers of this Act, or
 - (b) that any of the relevant requirements have not been complied with in relation to it,he may make an application to the Court of Session under this section.
- (2) Without prejudice to subsection (1), if the authority directly concerned with any such order or decision wish to question its validity on any of those grounds, the authority may make an application to the Court of Session under this section.
- (3) An application under this section must be made within 6 weeks from the date on which the order is confirmed (or, in the case of an order under section 21 which takes effect under section 23 without confirmation, the date on which it takes effect) or, as the case may be, the date on which the decision is made.
- (4) On any application under this section the Court of Session—
 - (a) may by interim order suspend the operation of the order or decision the validity of which is questioned by the application, until the final determination of the proceedings, and
 - (b) if satisfied—
 - (i) that the order or decision is not within the powers of this Act, or
 - (ii) that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it,may quash that order or decision.
- (5) References in this section to the confirmation of an order include the confirmation of an order subject to modifications as well as the confirmation of an order in the form in which it was made.

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- (6) In this section “the relevant requirements”, in relation to any order or decision, means any requirements of this Act or of the Tribunals and Inquiries Act 1992, or of any order, regulations or rules made under either of those Acts, which are applicable to that order or decision.
- (7) For the purposes of subsection (2) the authority directly concerned with any order or decision is—
- (a) the planning authority, and
 - (b) in relation to any such decision as is mentioned in section 57(2)(b) where the Secretary of State has modified the notice wholly or in part by substituting another planning authority or statutory undertakers for the planning authority, also that authority or those statutory undertakers.

Special considerations affecting planning functions

59 General duty as respects listed buildings in exercise of planning functions

- (1) In considering whether to grant planning permission for development which affects a listed building or its setting, a 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.
- (2) Without prejudice to section 64, in the exercise of the powers of disposal and development conferred by the provisions of sections 191 and 193 of the principal Act, a planning authority shall have regard to the desirability of preserving features of special architectural or historic interest and, in particular, listed buildings.
- (3) In this section, “preserving”, in relation to a building, means preserving it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character, and “development” includes redevelopment.

60 Publicity for applications affecting setting of listed buildings

- (1) This section applies where an application for planning permission for any development of land is made to a planning authority and the development would, in the opinion of the authority, affect the setting of a listed building.
- (2) The planning authority shall—
 - (a) publish in a local newspaper circulating in the locality in which the land is situated, and
 - (b) for not less than 7 days display on or near the land,
 a notice indicating the nature of the development in question and naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice under paragraph (a).
- (3) The application shall not be determined by the planning authority before both the following periods have elapsed, namely—
 - (a) the period of 21 days referred to in subsection (2), and
 - (b) the period of 21 days beginning with the date on which the notice required by that subsection to be displayed was first displayed.

- (4) In determining any application for planning permission to which this section applies, the planning authority shall take into account any representations relating to the application which are received by them before the periods mentioned in subsection (3) have elapsed.
- (5) In this section references to planning permission do not include references to planning permission falling within section 33(1) of the principal Act.