



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

## 1997 CHAPTER 9

### PART I

#### LISTED BUILDINGS

#### CHAPTER I

##### LISTING OF SPECIAL BUILDINGS

### **1 Listing of buildings of special architectural or historic interest**

- (1) For the purposes of this Act and with a view to the guidance of planning authorities in the performance of their functions under this Act in relation to buildings of special architectural or historic interest, the Secretary of State shall compile lists of such buildings or approve, with or without modifications, such lists compiled by other persons or bodies of persons, and may amend any list so compiled or approved.
- (2) In considering whether to include a building in a list compiled or approved under this section, the Secretary of State may take into account not only the building itself but also—
  - (a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part, and
  - (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.
- (3) Before compiling or approving, with or without modifications, any list under this section or amending any such list the Secretary of State shall consult such persons or bodies of persons as appear to him appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.

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- (4) In this Act “listed building” means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and, for the purposes of this Act, the following shall be treated as part of the building—
- (a) any object or structure fixed to the building, and
  - (b) any object or structure within the curtilage of the building which, though not fixed to the building, forms part of the land and has done so since before 1st July 1948.
- (5) Schedule 1 (which makes provision as to the treatment as listed buildings of certain buildings formerly subject to building preservation orders) shall have effect.

## **2 Publication of lists**

- (1) As soon as possible after any list has been compiled or approved under section 1, or any amendments of such a list have been made, a copy of so much of the list as relates to the district of any planning authority or the area of the local authority for the purposes of the Housing (Scotland) Act 1987, or of so much of the amendments as so relates, certified by or on behalf of the Secretary of State to be a true copy, shall be deposited with the clerk of that authority.
- (2) As soon as possible after the inclusion of any building in a list under section 1, whether on the compilation or approval of the list or by amendment, or as soon as possible after any such list has been amended by the exclusion of any building from it—
- (a) the Secretary of State shall inform the planning authority in whose district the building is situated of the inclusion or exclusion, and
  - (b) the planning authority shall serve a notice in the prescribed form on every owner, lessee and occupier of the building, stating that the building has been included in, or excluded from, the list.
- (3) The Secretary of State shall keep available for public inspection, free of charge, at reasonable hours and at a convenient place, copies of all lists and amendments of lists compiled, approved or made by him under section 1.
- (4) Every authority with whose clerk copies of any list or amendments are deposited under this section shall similarly keep available copies of so much of any such list or amendment as relates to buildings within their district or area.

## **3 Temporary listing: building preservation notices**

- (1) If it appears to a planning authority that a building in their district which is not a listed building—
- (a) is of special architectural or historic interest, and
  - (b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest,
- they may serve on the owner, lessee and occupier of the building a notice (in this Act referred to as a “building preservation notice”).
- (2) A building preservation notice shall—
- (a) state that the building appears to the planning authority to be of special architectural or historic interest and that they have requested the Secretary of State to consider including it in a list compiled or approved under section 1, and

- (b) explain the effect of subsections (3) to (5) and Schedule 2.
- (3) A building preservation notice—
- (a) shall come into force as soon as it has been served on the owner, lessee and occupier of the building to which it relates, and
  - (b) subject to subsection (4), shall remain in force for 6 months from the date when it is served or, as the case may be, last served.
- (4) A building preservation notice shall cease to be in force if the Secretary of State—
- (a) includes the building in a list compiled or approved under section 1, or
  - (b) notifies the planning authority in writing that he does not intend to do so.
- (5) While a building preservation notice is in force with respect to a building, the provisions of this Act (other than section 53) and the principal Act shall have effect in relation to the building as if it were a listed building.
- (6) If, following the service of a building preservation notice, the Secretary of State notifies the planning authority that he does not propose to include the building in a list compiled or approved under section 1, the authority—
- (a) shall immediately give notice of the Secretary of State's decision to the owner, lessee and occupier of the building, and
  - (b) shall not, within the period of 12 months beginning with the date of the Secretary of State's notification, serve another building preservation notice in respect of the building.

#### **4 Temporary listing in urgent cases**

- (1) If it appears to the planning authority to be urgent that a building preservation notice should come into force, they may, instead of serving the notice on the owner, lessee and occupier of the building to which it relates, affix the notice conspicuously to some object on the building.
- (2) The affixing of a notice under subsection (1) shall be treated for all the purposes of section 3, this section, sections 9 to 24 and Schedule 2 as service of the notice.
- (3) A notice which is so affixed must explain that by virtue of being so affixed it is treated as being served for those purposes.

#### **5 Provisions applicable on lapse of building preservation notice**

Schedule 2 (which makes provision as respects the lapse of building reservation notices) shall have effect.

## 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,
  - (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—
  - (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,
- 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.

## **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.
- (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
    - (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
  - (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

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- (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.

## **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.
- (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—

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- (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).

## **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.

### CHAPTER III

#### RIGHTS OF OWNERS ETC.

##### *Compensation*

#### **25 Compensation where listed building consent revoked or modified**

- (1) This section shall have effect where listed building consent is revoked or modified by an order under section 21 (other than an order which takes effect by virtue of section 23).
- (2) If, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the building—
  - (a) has incurred expenditure in carrying out works which are rendered abortive by the revocation or modification, or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,the authority shall pay to that person compensation in respect of that expenditure, loss or damage.
- (3) Subject to subsection (4), no compensation shall be paid under this section in respect of—
  - (a) any works carried out before the grant of the listed building consent which is revoked or modified, or
  - (b) any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.
- (4) For the purposes of this section, expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory to any works, shall be taken to be included in the expenditure incurred in carrying out those works.

**26 Compensation for loss or damage caused by service of building preservation notice**

- (1) This section applies where a building preservation notice ceases to have effect without the building having been included in a list compiled or approved by the Secretary of State under section 1.
- (2) Any person who at the time when the notice was served had an interest in the building shall, on making a claim to the planning authority within the prescribed time and in the prescribed manner, be entitled to be paid compensation by the authority in respect of any loss or damage directly attributable to the effect of the notice.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) shall include a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.

**27 General provisions as to compensation for depreciation under this Part**

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 12 of the Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (2) This section applies to any compensation which is payable under section 25 or 26 in respect of depreciation of the value of an interest in land.
- (3) Where an interest in land is subject to a heritable security—
  - (a) any compensation to which this section applies which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the security,
  - (b) a claim for any such compensation may be made by any creditor in a heritable security over the interest, but without prejudice to the making of a claim by the person entitled to the interest,
  - (c) no compensation to which this section applies shall be payable in respect of the interest of the creditor in the heritable security (as distinct from the interest which is subject to the security), and
  - (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the heritable security shall be paid to the creditor in the security or, if there is more than one such creditor, to the creditor whose security ranks first, and shall in either case be applied by him as if it were proceeds of sale by him under the powers competent to creditors in heritable securities.
- (4) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under section 25 or 26 shall be referred to and determined by the Lands Tribunal.
- (5) In relation to the determination of any such question, the provisions of sections 9 and 11 of the Land Compensation (Scotland) Act 1963 shall apply, subject to any necessary modifications and to the provisions of any regulations made under this Act.

### *Listed building purchase notices*

## **28 Purchase notice on refusal or conditional grant of listed building consent**

- (1) Where—
- (a) listed building consent in respect of a building is refused or is granted subject to conditions, or is revoked or modified by an order under section 21 or 24, and
  - (b) any owner or lessee of the building claims that—
    - (i) the conditions mentioned in subsection (2) are satisfied with respect to it and any land comprising the building, or contiguous or adjacent to it, and owned or occupied with it, and
    - (ii) the conditions mentioned in subsection (3) are satisfied with respect to that land,he may, within the prescribed time and in the prescribed manner, serve on the planning authority in whose district the building and land is situated a notice (in this Act referred to as a “listed building purchase notice”) requiring that authority to purchase his interest in the building and the land in accordance with sections 29 to 33.
- (2) The conditions mentioned in subsection (1)(b)(i) are—
- (a) that the building and land in respect of which the notice is served have become incapable of reasonably beneficial use in their existing state,
  - (b) in a case where listed building consent has been granted subject to conditions with respect to the execution of the works or has been modified by the imposition of such conditions, that the building and land cannot be rendered capable of such use by the carrying out of the works in accordance with those conditions, and
  - (c) in any case, that the building and land cannot be rendered capable of such use by the carrying out of any other works for which listed building consent has been granted or for which the planning authority or the Secretary of State has undertaken to grant such consent.
- (3) The conditions mentioned in subsection (1)(b)(ii) are that the use of the land is substantially inseparable from that of the building and that it ought to be treated, together with the building, as a single holding.
- (4) Where, for the purpose of determining whether the conditions mentioned in subsection (2) are satisfied in relation to any building and land, any question arises as to what is or would in any particular circumstances be a reasonably beneficial use of the building and land, no account shall be taken of any prospective use which would involve the carrying out of development (other than any development specified in paragraph 1 or 2 of Schedule 11 to the principal Act) or of any works requiring listed building consent which might be executed to the building, other than works for which the planning authority or the Secretary of State has undertaken to grant such consent.

## **29 Action by planning authority on whom listed building purchase notice served**

- (1) The planning authority on whom a listed building purchase notice is served under section 28 shall serve on the owner or lessee by whom the notice was served a notice stating—
- (a) that the authority are willing to comply with the purchase notice,

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- (b) that another planning authority or statutory undertakers specified in the notice under this subsection have agreed to comply with it in their place, or
  - (c) that for reasons specified in the notice under this subsection the authority are not willing to comply with the purchase notice and have not found any other planning authority or statutory undertakers who will agree to comply with it in their place, and that they have sent to the Secretary of State a copy of the purchase notice and of the notice under this subsection.
- (2) A notice under subsection (1) must be served before the end of the period of 3 months beginning with the date of service of the listed building purchase notice.
- (3) Where the planning authority on whom a listed building purchase notice is served by an owner or lessee have served on him a notice in accordance with subsection (1)(a) or (b) the authority, or the other planning authority or statutory undertakers specified in the notice, as the case may be, shall be deemed—
- (a) to be authorised to acquire the interest of the owner or lessee compulsorily in accordance with the provisions of section 42, and
  - (b) to have served a notice to treat in respect of it on the date of service of the notice under that subsection.
- (4) Where the planning authority propose to serve such a notice as is mentioned in subsection (1)(c), they shall first send to the Secretary of State a copy of—
- (a) the proposed notice, and
  - (b) the listed building purchase notice which was served on them.

### **30 Procedure on reference of listed building purchase notice to Secretary of State**

- (1) Where a copy of a listed building purchase notice is sent to the Secretary of State under section 29(4), he shall consider whether to confirm the notice or to take other action under section 31 in respect of it.
- (2) Before confirming such a notice or taking such other action, the Secretary of State shall give notice of his proposed action—
- (a) to the person who served the notice,
  - (b) to the planning authority on whom it was served, and
  - (c) if the Secretary of State proposes to substitute any other planning authority or statutory undertakers for the planning authority on whom the notice was served, to them.
- (3) A notice under subsection (2) shall specify the period (which must not be less than 28 days from its service) within which any of the persons, authorities or statutory undertakers on whom it is served may require the Secretary of State to give them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) If within that period any of those persons, authorities or statutory undertakers so requires, the Secretary of State shall, before he confirms the listed building purchase notice or takes any other action under section 31 in respect of it, give each of them such an opportunity.
- (5) If, after any of those persons, authorities or statutory undertakers have appeared before and been heard by the appointed person, or the persons, authorities and statutory undertakers concerned have agreed to dispense with such a hearing, it appears to the



Secretary of State to be expedient to take action under section 31 otherwise than in accordance with the notice given by him, the Secretary of State may take that action accordingly.

- (6) In this section and sections 31 to 33, “land” means the building and the land in respect of which the notice under section 28(1) is served.

### **31 Action by Secretary of State in relation to listed building purchase notice**

- (1) Subject to the following provisions of this section, if the Secretary of State is satisfied that the conditions specified in section 28(2)(a) to (c) are satisfied in the case of any listed building purchase notice, he shall confirm the notice.
- (2) If the Secretary of State is satisfied that those conditions are fulfilled only in respect of part of the land, he shall confirm the notice only in respect of that part and the notice shall have effect accordingly.
- (3) The Secretary of State shall not confirm the notice unless he is satisfied that the land comprises such land contiguous or adjacent to the building as is in his opinion required—
- (a) for preserving the building or its amenities,
  - (b) for affording access to it, or
  - (c) for its proper control or management.
- (4) If it appears to the Secretary of State to be expedient to do so he may, instead of confirming the notice—
- (a) in the case of a notice served on account of the refusal of listed building consent for any works, grant such consent for those works,
  - (b) in the case of a notice served on account of such consent being granted subject to conditions, revoke or amend those conditions so far as it appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of those works,
  - (c) in the case of a notice served on account of such consent being revoked by an order under section 21 or 24, cancel the order revoking the consent, or
  - (d) in the case of a notice served on account of such consent being modified by such an order by the imposition of conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of the works in respect of which the consent was granted.
- (5) If it appears to the Secretary of State that the land, or any part of it, could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out—
- (a) of any other works for which listed building consent ought to be granted, or
  - (b) of any development for which planning permission ought to be granted,
- he may, instead of confirming the listed building purchase notice (or confirming it so far as it relates to that part), direct that if an application is made for such consent for those works, or as the case may be for planning permission for that development, it shall be granted.
- (6) If it appears to the Secretary of State, having regard to the probable ultimate use of the building or its site, that it is expedient to do so he may, if he confirms the notice, modify it in relation to either the whole or any part of the land, by substituting another

planning authority or statutory undertakers for the authority on whom the notice was served.

- (7) Any reference in section 30 to the taking of action by the Secretary of State under this section includes a reference to the taking by him of a decision not to confirm the purchase notice on the grounds that any of the conditions referred to in subsection (1) of this section are not satisfied.

### **32 Effect of Secretary of State’s action in relation to listed building purchase notice**

- (1) Where the Secretary of State confirms a listed building purchase notice, the authority on whom the notice was served shall be deemed—

- (a) to be authorised to acquire the owner’s or lessee’s interest in the land compulsorily in accordance with the provisions of section 42, and
- (b) to have served a notice to treat in respect of it on such date as the Secretary of State may direct.

- (2) If before the end of the relevant period the Secretary of State has neither—

- (a) confirmed the listed building purchase notice, nor
- (b) notified the owner or lessee by whom it was served that he does not propose to confirm it, nor
- (c) taken any such action in respect of it as is mentioned in subsection (4) or (5) of section 31,

the notice shall be deemed to be confirmed at the end of that period and the authority on whom the notice was served shall be deemed to have been authorised as is mentioned in subsection (1)(a) and to have served a notice to treat in respect of the owner’s or lessee’s interest at the end of that period.

- (3) Where a listed building purchase notice is confirmed in respect of only part of the land, references in this section to the owner’s or lessee’s interest in the land are references to the owner’s or lessee’s interest in that part.

- (4) Where a listed building purchase notice is modified under section 31(6) by the substitution of another planning authority or statutory undertakers for the authority on whom the notice was served, the reference in subsection (1) to that authority is to that other planning authority or those statutory undertakers.

- (5) In this section “the relevant period” means, subject to subsection (6)—

- (a) the period of 9 months beginning with the date of the service of the listed building purchase notice, or
- (b) if it ends earlier, the period of 6 months beginning with the date on which a copy of the purchase notice was sent to the Secretary of State.

- (6) The relevant period does not run if the Secretary of State has before him at the same time both—

- (a) a copy of the listed building purchase notice sent to him under section 29(4), and
- (b) a notice of appeal under section 18 or 35 relating to any of the land to which the purchase notice relates.

- (7) Where any decision by the Secretary of State to confirm or not to confirm a listed building purchase notice (including any decision to confirm the notice only in respect of part of the land, or to give any direction as to the granting of listed building consent

or planning permission) is quashed under section 58, the notice shall be treated as cancelled, but the owner or lessee may serve a further notice in its place.

- (8) For the purposes of determining whether such a further notice has been served within the period prescribed for the service of listed building purchase notices, the decision concerning listed building consent on account of which the notice has been served shall be treated as having been made on the date on which the decision of the Secretary of State was quashed.

### **33 Reduction of compensation on acquisition where section 25 compensation payable**

Where compensation is payable under section 25 in respect of expenditure incurred in carrying out any works to a building, any compensation which then becomes payable in respect of the acquisition of an interest in the land in pursuance of a listed building purchase notice shall be reduced by an amount equal to the value of those works.

## **CHAPTER IV**

### **ENFORCEMENT**

### **34 Power to issue listed building enforcement notice**

- (1) Where it appears to the planning authority—
- (a) that any works have been, or are being, executed to a listed building in their district, and
  - (b) that the works are such as to involve a contravention of section 8(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, serve 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—
- (a) for restoring the building to its former state,
  - (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 are required to alleviate in a manner acceptable to them the effect of the works which were carried out without listed building consent, or
  - (c) for bringing the building to the state it would have been in if the terms and conditions of any listed building consent for the works had been complied with.
- (3) In considering whether such restoration is undesirable under subsection (2)(b), the authority shall have regard to the desirability of preserving—
- (a) the character of the building, or
  - (b) its features of architectural or historical interest.

- (4) Where such further works as are mentioned in subsection (2)(b) have been carried out on a building, listed building consent shall be deemed to have been granted in respect of the works carried out on that building.
- (5) A listed building enforcement notice—
- (a) shall specify the date upon which it is to take effect and, subject to section 35(3), shall take effect on that date, and
  - (b) shall specify the period (the “period for compliance”) 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 Act 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.
- (6) A copy of a listed building enforcement notice shall be served—
- (a) on the owner, on the lessee and on the occupier of the building to which it relates, and
  - (b) on any other person having an interest in the building, being an interest which in the opinion of the authority is materially affected by the notice.
- (7) The 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, extend the period specified in accordance with subsection (5),
- and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.
- (8) The planning authority shall, immediately after exercising the powers conferred by subsection (7), 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 reissued, be served with a copy of it.
- (9) Every planning authority shall keep available for public inspection free of charge at reasonable hours and at a convenient place a list containing particulars of any building in their district in respect of which a listed building enforcement notice has been served.

### **35 Appeal against listed building enforcement notice**

- (1) A person on whom a listed building enforcement notice is served or any other person having an interest in the building to which it relates may, at any time before the date specified in the notice as the date on which it is to take effect, 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;
  - (b) that the matters alleged to constitute a contravention of section 8(1) or (2) have not occurred;
  - (c) that those matters (if they occurred) do not constitute such a contravention;
  - (d) that—
    - (i) works to the building were urgently necessary in the interests of safety or health, or for the preservation of the building,

- (ii) 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
  - (iii) 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 34(6);
  - (g) except in relation to such a requirement as is mentioned in section 34(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 34(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 34(2)(c) exceed what may reasonably be required 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.
- (2) An appeal under this section shall be made either—
- (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 prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.
- (3) Where an appeal is brought under this section the notice shall be of no effect pending the final determination or 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) Schedule 3 (which makes provision regarding the determination of certain appeals by a person appointed by the Secretary of State) applies in relation to appeals under this section.

### **36 Appeals: supplementary provisions**

- (1) The Secretary of State may prescribe the procedure to be followed on appeals under section 35, and may in particular—

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- (a) require the 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 to such persons as may be prescribed, and
  - (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 37(3), the Secretary of State shall, if either the planning authority or the appellant so requires, give each of them an opportunity of appearing before and being heard by a person appointed by him for the purpose.

### **37 Determination of appeals under section 35**

- (1) On the determination of an appeal under section 35 the Secretary of State shall give directions for giving effect to the determination, including where appropriate directions for quashing the listed building enforcement notice.
- (2) On such an appeal the Secretary of State—
- (a) may—
    - (i) correct any defect, error or misdescription in the listed building enforcement notice, or
    - (ii) 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 planning authority, and
  - (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 34(6) to be served with a copy of the notice was not served, may disregard that fact if he is satisfied that the person has not been substantially prejudiced by the failure to serve him.
- (3) The Secretary of State may—
- (a) dismiss such an appeal if the appellant fails to comply with section 35(4) within the prescribed time;
  - (b) allow such an appeal or quash the listed building enforcement notice if the planning authority fail to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 36(1)(a), (b) or (d).
- (4) On the determination of an appeal under section 35 the Secretary of State may—
- (a) grant listed building consent for the works to which the listed building enforcement notice relates,
  - (b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or
  - (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.
- (5) Any listed building consent granted by the Secretary of State under subsection (4) shall be treated as granted on an application for the same consent under section 9.

- (6) The validity of a listed building enforcement notice shall not, except by way of appeal under section 35, be questioned in any proceedings whatsoever on the grounds specified in section 35(1)(b) and (f).

### **38 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 period for compliance with the notice, the authority may—
- (a) enter on the land and take those steps, and
  - (b) recover from the person who is then the owner or lessee 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, lessee or occupier of a building for the purpose of complying with it, and
  - (b) any sums paid by the owner or lessee of a building under subsection (1) in respect of expenses incurred by the 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) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by a listed building enforcement notice, the sheriff may by warrant authorise the owner to go on the land and carry out that work.
- (4) A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal.
- (5) After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.
- (6) Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—
- (a) he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
  - (b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
- his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.
- (7) A planning authority who by reason of subsection (6) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.
- (8) 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.

### **39 Offence where listed building enforcement notice not complied with**

- (1) Where, 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 for the time being 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.
- (5) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding £20,000, and
  - (b) 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.

### **40 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 7(3)—
  - (a) for the retention of any work to which the listed building enforcement notice relates, or
  - (b) permitting the retention of works without complying with some condition subject to which a previous listed building consent was granted,the listed building enforcement 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.

### **41 Enforcement by Secretary of State**

- (1) If it appears to the Secretary of State that it is expedient that a listed building enforcement notice should be served in respect of any land, he may himself serve such a notice under section 34.
- (2) A listed building enforcement notice served by the Secretary of State shall have the same effect as a notice served by the planning authority.



- (3) The Secretary of State shall not serve such a notice without consulting the planning authority.
- (4) The provisions of this Act relating to listed building enforcement notices apply, so far as relevant, to a listed building enforcement notice served by the Secretary of State as they apply to a listed building enforcement notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.

## 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—
  - (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—
  - (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—
  - (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 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.

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- (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.

**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;
  - (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—

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- (a) any order under section 21, whether before or after it has been confirmed,
- (b) any order under section 24, or
- (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.

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- (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.
- (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).

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- (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.