



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

## 1997 CHAPTER 9

### PART III

#### GENERAL

#### *Special cases*

#### **73 Application of Act to land and works of planning authorities.**

- (1) In relation to land of planning authorities, sections 1(1) and (3) and 2 shall have effect subject to such exceptions and modifications as may be prescribed by regulations.
- (2) The provisions mentioned in subsection (3) shall have effect for the purpose of applications by planning authorities relating to the execution of works for the demolition, alteration or extension of listed buildings, subject to such exceptions and modifications as may be prescribed by regulations.
- (3) Those provisions are—
  - section 1(2), (4) and (5),
  - sections 3 to 26,
  - sections 28 to 45,
  - sections 56 to 58,
  - section 59(1),
  - section 60(2)(b), (3) and (4),
  - section 65(2)(b), (3) and (4),
  - Schedules 1 and 2, and
  - sections 54(1) to (4) and 55 as they apply with respect to the foregoing provisions.
- (4) The regulations may in particular provide—

*Status: Point in time view as at 18/03/2011.*

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- (a) for the making of applications for listed building consent to the Secretary of State, and
- (b) for the service by him of notices under section 2(2) and the provisions mentioned in subsection (3) of this section.

### [<sup>F1</sup>73A Application to the Crown

- (1) This Act (except the provisions specified in subsection (2)) binds the Crown.
- (2) These are the provisions—
  - (a) section 8,
  - (b) section 10(3),
  - (c) section 19(7),
  - (d) section 38(1) and (8),
  - (e) section 39,
  - (f) section 49,
  - (g) section 50,
  - (h) section 53,
  - (i) section 77.
- (3) But subsection (2)(a) does not have effect to prohibit the doing of anything by or on behalf of the Crown which falls within the circumstances described in section 8(3)(a) to (d) and the doing of that thing does not contravene section 6.]

#### Textual Amendments

**F1** S. 73A inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), ss. **90(2)**, 121(4) (with s. 111); S.S.I. 2006/268, art. 3(a)

### [<sup>F2</sup>73B Urgent works relating to Crown land: application

- (1) This section applies to any works proposed to be executed in connection with any building which is on Crown land if the appropriate authority certifies—
  - (a) that the works are of national importance, and
  - (b) that it is necessary that the works are carried out as a matter of urgency.
- (2) The appropriate authority may, instead of making an application for consent to the planning authority in accordance with this Act, make an application for consent to the Scottish Ministers under this section.
- (3) If the appropriate authority proposes to make the application to the Scottish Ministers it must publish in one or more newspapers circulating in the locality of the building a notice—
  - (a) describing the proposed works, and
  - (b) stating that the authority proposes to make the application to the Scottish Ministers.
- (4) For the purposes of an application under this section the appropriate authority must provide to the Scottish Ministers a statement of the authority's grounds for making the application.

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- (5) If the appropriate authority makes an application under this section subsections (6) to (11) below apply.
- (6) The Scottish Ministers may require the authority to provide them with such further information as they think necessary to enable them to determine the application.
- (7) As soon as practicable after they are provided with any document or other matter in pursuance of subsection (4) or (6) the Scottish Ministers must make a copy of the document or other matter available for inspection by the public in the locality of the proposed development.
- (8) The Scottish Ministers must in accordance with such requirements as may be prescribed publish notice of the application and of the fact that such documents and other material are available for inspection.
- (9) Subsection (7) above does not apply to the extent that the document or other matter is subject to any direction given under section 265A(3) of the principal Act.
- (10) The Scottish Ministers must consult—
  - (a) the planning authority, and
  - (b) such other persons as may be prescribed,about the application.
- (11) Subsections (4) and (5) of section 11 apply to an application under this section as they apply to an application in respect of which a direction under section 11 has effect.]

#### Textual Amendments

- F2** S. 73B inserted (20.3.2006 for specified purposes, 11.5.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 93(1), 121(4)** (with s. 111); [S.S.I. 2006/101](#), art. 2, sch.; [S.S.I. 2006/243](#), art. 3

### [<sup>F3</sup>73C Expressions relating to the Crown

- (1) Expressions relating to the Crown must be construed in accordance with this section.
- (2) Crown land is land in which there is a Crown interest.
- (3) A Crown interest is any of the following—
  - (a) an interest belonging to Her Majesty in right of the Crown or in right of Her private estates,
  - (b) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department,
  - (c) such other interest as the Scottish Ministers specify by order.
- (4) A private interest is an interest which is not a Crown interest.
- (5) The appropriate authority in relation to any land is—
  - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners,
  - (b) in relation to any other land belonging to Her Majesty in right of the Crown, the government department having the management of the land,

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- (c) in relation to land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
  - (d) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, the department.
- (6) If any question arises as to what authority is the appropriate authority in relation to any land it must be referred to the Scottish Ministers, whose decision is final.
- (7) For the purpose of an application for listed building consent made by or on behalf of the Crown in respect of land which does not belong to the Crown or in respect of which the Crown has no interest, a reference to the appropriate authority must be construed as a reference to the person who makes the application.
- (8) The reference to Her Majesty's private estates must be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c. 37).
- (9) An order made for the purposes of paragraph (c) of subsection (3) must be made by statutory instrument.
- (10) But no such order may be made unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.
- (11) This section applies for the purposes of this Act.]

#### Textual Amendments

- F3** S. 73C inserted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 7](#) (with s. 111); [S.S.I. 2006/101](#), art. 2, sch.; [S.S.I. 2006/268](#), art. 3(f)

#### [<sup>F4</sup>73D Enforcement in relation to the Crown

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act; but the Court of Session may on the application of a public authority or office-holder responsible for the enforcement of anything required to be done, or prohibited, by or under this Act, declare unlawful any act or omission so done or suffered.
- (2) A planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
- (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
- (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
- (5) A step taken for the purposes of enforcement includes—
  - (a) entering land,
  - (b) initiating proceedings,
  - (c) the making of an application.
- (6) A step taken for the purposes of enforcement does not include—

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- (a) service of a notice,
- (b) the making of an order (other than a court order).

**Textual Amendments**

**F4** Ss. 73D, 73E inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 94(4), 121(4)** (with s. 111); [S.S.I. 2006/243](#), art. 3

**73E Reference to an interest in land**

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest.
- (2) Anything which requires or is permitted to be done by or in relation to the owner of the interest in land must be done by or in relation to the appropriate authority.
- (3) An interest in land includes an interest only as occupier of the land.]

**Textual Amendments**

**F4** Ss. 73D, 73E inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 94(4), 121(4)** (with s. 111); [S.S.I. 2006/243](#), art. 3

**[<sup>F5</sup>73F Applications for listed building or conservation area consent by Crown**

- (1) This section applies to an application for—
  - (a) listed building consent, or
  - (b) conservation area consent,made by or on behalf of the Crown.
- (2) The Scottish Ministers may by regulations modify or exclude any statutory provision relating to the making and determination of such applications.
- (3) A statutory provision is a provision contained in or having effect under any enactment (including any enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament).]

**Textual Amendments**

**F5** S. 73F inserted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), **Sch. 5 para. 11** (with s. 111); [S.S.I. 2006/101](#), art. 2, sch.; [S.S.I. 2006/268](#), art. 3(f)

**<sup>F6</sup>74 Exercise of powers in relation to Crown land.**

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#### Textual Amendments

- F6** S. 74 repealed (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 19](#), [Sch. 9](#) (with s. 111); S.S.I. 2006/268, art. 3(e)(f)

### <sup>F7</sup>75 **Application for listed building or conservation area consent in anticipation of disposal of Crown land.**

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#### Textual Amendments

- F7** S. 75 repealed (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 19\(1\)](#), [Sch. 9](#) (with s. 111, [Sch. 5 para. 19\(2\)](#)); S.S.I. 2006/268, art. 3(e)(f)

#### *Miscellaneous provisions*

### 76 **Rights of entry.**

- (1) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter upon any land for the purpose of surveying any building on that or any other land in connection with a proposal to include the building in, or exclude it from, a list compiled or approved under section 1.
- (2) Any person duly authorised in writing by the Secretary of State or the planning authority may at any reasonable time enter upon any land for any of the following purposes—
  - (a) surveying it in connection with any proposal by the authority or the Secretary of State to make or serve any order or notice under or by virtue of any provision of this Act other than sections 25 to 33, 42, 44 to 48, 51, 52, 57, 58, 59(2) and (3), 61 to 67, 69 to 75, 79 to 83 and Schedule 3,
  - (b) ascertaining whether an offence has been, or is being, committed with respect to any building on that or any other land, under section 8, 10, 39 or 53,
  - (c) ascertaining whether any such building is being maintained in a proper state of repair,
  - (d) ascertaining whether any of the functions conferred by section 49 should or may be exercised in connection with the land, or
  - (e) exercising any of those functions in connection with the land.
- (3) Any person who is an officer of the Valuation Office or a person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation payable under this Act in respect of any land.
- (4) Any person who is an officer of the Valuation Office or a person duly authorised in writing by a planning authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation payable under section 25 or 26 in respect of any land.

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- (5) Any person who is an officer of the Valuation Office or is duly authorised in writing by a planning authority having power to acquire land under sections 42 to 47 may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that land or any other land, or in connection with any claim for compensation in respect of any such acquisition.
- (6) Subject to sections 77 and 78, any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals in it.

## **77 Power to issue warrant.**

- (1) If in relation to rights of entry exercised under section 76 the sheriff is satisfied—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in that section, and
  - (b) that—
    - (i) admission to the land has been refused, or a refusal is reasonably apprehended, or
    - (ii) the case is one of urgency,he may issue a warrant authorising any person duly authorised in writing to enter the land.
- (2) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (3) A warrant authorises entry on one occasion only and that entry must be—
  - (a) within one month from the date of the issue of the warrant, and
  - (b) at a reasonable hour, unless the case is one of urgency.

## **78 Rights of entry: supplementary provisions.**

- (1) Subject to subsection (2), a person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 76 or 77 (referred to in this section as “a right of entry”)—
  - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering,
  - (b) may take with him such other persons as may be necessary, and
  - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
- (2) Admission to any land which is occupied shall not be demanded as of right by virtue of section 76 or of this section unless 24 hours’ notice of the intended entry has been given to the occupier of the land.
- (3) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If any damage is caused to land or moveable property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the

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Secretary of State; and subsections (4) and (5) of section 27 shall apply in relation to compensation under this subsection as they apply in relation to compensation under sections 25 to 27.

- (5) If any person who enters any land in exercise of a right of entry discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.
- (6) Subsection (5) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.
- (7) A person who is guilty of an offence under subsection (5) shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.
- (8) No person shall carry out any works in exercise of a power conferred under section 49 unless notice of his intention to do so was included in the notice required by subsection (2) of this section.
- (9) The authority of the [<sup>F8</sup>Scottish Ministers] shall be required for the carrying out of works in exercise of a power conferred under section 49 if—
  - (a) the land in question is held by statutory undertakers, and
  - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking.

<sup>F9</sup>(10) .....

#### Textual Amendments

- F8** Words in s. 78(9) substituted (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 128(3); S.I. 1998/3178, art. 3
- F9** S. 78(10) repealed (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 128(3), Pt. IV; S.I. 1998/3178, art. 3

#### [<sup>F10</sup>78A Rights of entry: Crown land

- (1) Section 76 applies to Crown land subject to the following modifications.
- (2) A person must not enter Crown land unless he has the relevant permission.
- (3) Relevant permission is the permission of—
  - (a) a person appearing to the person seeking entry to the land to be entitled to give it, or
  - (b) the appropriate authority.
- (4) In subsection (6) the words “and 78” must be ignored.
- (5) Section 78 does not apply to anything done by virtue of this section.
- (6) “Appropriate authority” must be construed in accordance with section 73C.]



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#### Textual Amendments

- F10** S. 78A inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 15](#) (with s. 111); S.S.I. 2006/268, art. 3(f)

### 79 Application of certain general provisions of principal Act.

- (1) Subject to <sup>F11</sup>subsections (1A) and] (2), the following provisions of the principal Act shall apply for the purposes of this Act as they apply for the purposes of that Act—
- section 85 (power to make provision for determination of claims),
  - section 146 (interdicts restraining breaches of planning control),
  - section 195 (general vesting declarations),
  - section 265 (local inquiries),
  - <sup>F12</sup>section 265A (planning inquiries to be held in public subject to certain exceptions),]
  - section 266 (orders as to expenses of parties where no local inquiry held),
  - section 267 (procedure on certain appeals and applications),
  - section 271 (service of notices),
  - <sup>F13</sup>section 271A(1) and (2) (service of notices on the Crown),]
  - section 272 (power to require information as to interests in land),
  - <sup>F14</sup>section 272A(1) to (4) (information as to interests in Crown land),]
  - section 273 (offences by corporations), and
  - section 276 (Act not excluded by special enactments).

- <sup>F15</sup>(1A) Subsection (1)(cc) of section 271 of the principal Act shall not apply to—
- (a) serving a building preservation notice;
  - (b) serving a copy of a listed building enforcement notice by a planning authority;
  - (c) giving notice under section 34 of this Act of the exercise of powers conferred by subsection (7) of that section;
  - (d) serving a listed building enforcement notice issued by the Scottish Ministers; and
  - (e) giving notice to parties who must be notified of applications for listed building consent and other matters in accordance with regulations made under section 10 of that Act.]

- (2) Section 273 of that Act shall not apply to offences under section 53 of this Act.

- <sup>F16</sup>(3) In the application of section 265A of the principal Act for the purposes of this Act, the provisions mentioned in subsection (1) of the section shall be construed as including any inquiry held by virtue of this section.]

#### Textual Amendments

- F11** Words in s. 79(1) substituted (28.7.2004) by [The Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), [10\(1\)\(2\)](#)
- F12** Words in s. 79(1) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 20\(2\)\(a\)](#) (with s. 111); S.S.I. 2006/268, art. 3(f)
- F13** Words in s. 79(1) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 20\(2\)\(b\)](#) (with s. 111); S.S.I. 2006/268, art. 3(f)

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- F14** Words in s. 79(1) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 20\(2\)\(c\)](#) (with s. 111); S.S.I. 2006/268, art. 3(f)
- F15** S. 79(1A) inserted (28.7.2004) by [The Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), [10\(1\)\(3\)](#)
- F16** S. 79(3) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 20\(3\)](#) (with s. 111); S.S.I. 2006/268, art. 3(f)

## 80 Financial provisions.

- (1) Where—
- (a) compensation is payable by a planning authority under this Act in consequence of any decision or order given or made under any provision of this Act other than sections 25 to 27, 42, 43(1) to (3), 44 to 52, 57, 58, 59(2) and (3), 61 to 64, 66, 67(1) to (4), (10) and (11) and 68 to 83, and
  - (b) that decision or order was given or made wholly or partly in the interest of a service which is provided by a government department and the cost of which is defrayed out of money provided by Parliament,
- the Minister responsible for the administration of that service may pay that authority a contribution of such amount as he may with the consent of the Treasury determine.
- (2) Any local authority and any statutory undertakers may contribute towards any expenses incurred by a planning authority in or in connection with the performance of any of their functions under the provisions of sections 1 to 24, 28 to 47, 50, 53, 54, 56, 59, 77 and 78 and Schedules 1 and 2.
- (3) In the application of subsection (2) to a local authority, “planning authority” means a planning authority other than that local authority.
- (4) Any expenses incurred by a planning authority under sections 28 to 30 and 42 to 47 in pursuance of a listed building purchase notice or in the acquisition of land under this Act for the purposes of any function of that authority shall be defrayed in the same manner as other expenses incurred by that authority for the purposes of that function.
- (5) Subsections (3) and (4) of section 261 of the principal Act (borrowing by authorities for purposes of the principal Act) shall apply for the purposes of this Act as they apply for the purposes of that Act.
- (6) There shall be paid out of money provided by Parliament—
- (a) any sums necessary to enable the Secretary of State to make any payments becoming payable by him under sections 25 and 26,
  - (b) any expenses incurred by any government department including the Secretary of State in the acquisition of land under sections 42 to 47 or in the payment of compensation under section 46(4) or 78(4) or under subsection (1),
  - (c) any sums necessary to enable the Secretary of State to make grants or loans under sections 69 and 72, and
  - (d) any administrative expenses incurred by the Secretary of State for the purposes of this Act.
- (7) Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.

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**Changes to legislation:**

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