



# Historic Environment (Amendment) (Scotland) Act 2011 2011 asp 3

## PART 3

### MODIFICATIONS OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997

#### *Certificate that building not intended to be listed*

#### **18 Certificate that building not intended to be listed**

(1) After section 5 of the 1997 Act insert—

##### **“5A Certificate that building not intended to be listed**

- (1) The Scottish Ministers may, on the application of any person, issue a certificate stating that they do not intend to include a building in a list compiled or approved under section 1.
- (2) Where the Scottish Ministers issue a certificate under subsection (1) in respect of a building—
  - (a) they may not for a period of 5 years from the date of issue exercise in relation to the building any of the powers conferred on them by section 1, and
  - (b) a planning authority may not for that period—
    - (i) serve a building preservation notice in relation to the building, or
    - (ii) affix such a notice under section 4(1).
- (3) A person submitting an application to the Scottish Ministers under subsection (1) must, at the same time as submitting it, give notice of the application to the planning authority within whose district the building is situated.”.

*Status: Point in time view as at 01/12/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011, Part 3. (See end of Document for details)*

- (2) In section 76 of that Act (rights of entry), in subsection (1), at the end add “ or in connection with an application under section 5A(1) ”.

**Commencement Information**

**I1** S. 18 in force at 1.12.2011 by [S.S.I. 2011/372](#), art. 2, [Sch.](#)

*Offences under section 8: fines*

**19 Offences in relation to unauthorised works and listed building consent: increase in fines**

In subsection (4)(a) of section 8 of the 1997 Act (offences), for “£20,000” substitute “ £50,000 ”.

**Commencement Information**

**I2** S. 19 in force at 1.12.2011 by [S.S.I. 2011/372](#), art. 2, [Sch.](#)

*Declining to determine applications for listed building consent*

**20 Declining to determine an application for listed building consent**

- (1) After section 10 of the 1997 Act, insert—

**“10A Declining to determine an application**

- (1) A planning authority may decline to determine an application (in this subsection referred to as the “current application”) for listed building consent—
- (a) if—
- (i) in the period of two years ending with the date on which the current application is received, the Scottish Ministers have refused a similar application referred to them under section 11 or have dismissed an appeal against the refusal of, or an appeal under section 18(2) in respect of, a similar application, and
- (ii) in the opinion of the authority there has not, since the Scottish Ministers refused the similar application or dismissed the appeal, been any significant change in any material considerations,
- (b) if—
- (i) in that period of two years the planning authority have refused more than one similar application,
- (ii) there has been no appeal to the Scottish Ministers against either (or as the case may be any) of those refusals, and

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- (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in any material considerations,
  - (c) if—
    - (i) in that period of two years the planning authority have refused more than one similar application,
    - (ii) there has been an appeal to the Scottish Ministers against either (or as the case may be any) of those refusals but as at the time the current application is received no such appeal has yet been determined, and
    - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in any material considerations,
  - (d) if—
    - (i) in that period of two years there have been appeals under section 18(2) in respect of more than one similar application but as at the time the current application is received no such appeal has yet been determined, and
    - (ii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the appeals was made, been any significant change in any material considerations, or
  - (e) if—
    - (i) in that period of two years two similar applications have been made to the planning authority,
    - (ii) the planning authority have refused one of those applications and there has been an appeal under section 18(2) in respect of the other but as at the time the current application is received the appeal under that section has yet to be determined as has the appeal (if any) against the refusal, and
    - (iii) in the opinion of the authority there has not, since the refusal or since the appeal was made (whichever was the more recent), been any significant change in any material considerations.
- (2) For the purposes of this section an application for listed building consent is to be taken to be similar to another such application only if the listed building and the works to which the applications relate are in the opinion of the planning authority the same or substantially the same.”
- (2) In section 18(2) of that Act (right to appeal against decision or failure to take decision)
- (a) for the word “neither” substitute “ not ”,
  - (b) the word “nor” after paragraph (a) is repealed,
  - (c) after that paragraph, insert—
    - “(aa) given notice to the applicant that they have exercised their power under section 10A to decline to determine the application, or”.

#### Commencement Information

I3 S. 20 in force for specified purposes at 30.6.2011 by S.S.I. 2011/174, art. 2, Sch.

*Status: Point in time view as at 01/12/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011, Part 3. (See end of Document for details)*

**I4** S. 20 in force in so far as not already in force at 1.12.2011 by [S.S.I. 2011/372](#), [art. 2](#), [Sch.](#)

*Applications and appeals: hearings*

**21**     **Hearings in connection with applications for listed building consent and appeals**

In the 1997 Act—

- (a) subsection (4) of section 11 (reference of certain applications to the Scottish Ministers) is repealed,
- (b) in Schedule 3 (determination of certain appeals by person appointed by the Scottish Ministers), the following are repealed—
  - (i) in paragraph 2, sub-paragraphs (2) to (4),
  - (ii) in paragraph 3, sub-paragraphs (4) and (5),
  - (iii) in paragraph 6(2)(a), the words “by virtue of paragraph 2(4)”.

**Commencement Information**

**I5** S. 21 in force at 1.12.2011 by [S.S.I. 2011/372](#), [art. 2](#), [Sch.](#)

*Enforcement notices, stop notices and temporary stop notices*

**22**     **Enforcement notice: requirement to cease works**

- (1) The 1997 Act is amended in accordance with this section.
- (2) In section 34 (power to issue listed building enforcement notice)—
  - (a) after subsection (1) insert—
    - “(1A) A listed building enforcement notice shall specify the alleged contravention and shall (either or both)—
      - (a) specify any works falling within subsection (1) which the authority requires to cease,
      - (b) require steps falling within subsection (2) and specified in the notice to be taken.”,
    - (b) in subsection (2), for the words from the beginning to “taken”, substitute “Those steps are ”,
    - (c) in subsection (5), for the words from “any”, where it first occurs, to the end of that subsection, substitute “—
      - (i) any works required to cease must cease,
      - (ii) any steps required to be taken must be taken,
 and may specify different periods for different works or steps. ”,
    - (d) after that subsection insert—
      - “(5A) Where different periods apply to different works or steps, references in this Act to the period for compliance with a listed building enforcement notice, in relation to any works or step, are to the period

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within which the works are required to cease or the step is required to be taken.

(5B) The date specified in the notice under subsection (5)(a) must be at least 28 days after the date on which the notice is served.”.

(3) In section 35 (appeal against listed building enforcement notice), after subsection (1) (i) insert—

“(ia) that the cessation of any works required by the notice exceeds what is necessary to remedy the contravention of section 8(1) or (2),”.

(4) In section 39 (offence where listed building enforcement notice not complied with)—

(a) in subsection (1), after “taken” where it second occurs, insert “ or any works required by the notice to cease have not ceased ”,

(b) at the end of paragraph (a) of subsection (4), insert “ or that all works required by the notice to cease were ceased, ”.

(5) In section 40(1) (effect of listed building consent on listed building enforcement notice), after “as”, where it first occurs, insert “ such work is or such works are required by the notice to cease, or in so far as ”.

#### Commencement Information

I6 S. 22 in force at 1.12.2011 by S.S.I. 2011/372, art. 2, Sch.

## 23 Stop notices and temporary stop notices

(1) After section 41 of the 1997 Act insert—

*“Stop notices*

### 41A Stop notices

(1) Subsection (2) applies where the planning authority consider it expedient that any relevant works should cease before the expiry of the period for compliance with a listed building enforcement notice.

(2) The authority may, when they serve the copy of the listed building enforcement notice or afterwards, serve a notice (in this Act referred to as a “stop notice”) prohibiting the execution of the relevant works to the listed building to which the enforcement notice relates, or to any part of that building specified in the stop notice.

(3) In this section and sections 41B and 41D, “relevant works” means any works specified in the listed building enforcement notice as works which the planning authority require to cease and any works carried out as part of, or associated with, such works.

(4) A stop notice may not be served if the listed building enforcement notice has taken effect.

(5) A stop notice must specify the date when it is to come into effect, and that date—

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- (a) must not be earlier than 3 days after the date when the notice is served, unless the planning authority consider that there are special reasons for specifying an earlier date and a statement of those reasons is served with the stop notice, and
  - (b) must not be later than 28 days from the date when the notice is first served on any person.
- (6) A stop notice may be served by the planning authority on any person who appears to them to have an interest in the building or who is executing, or causing to be executed, the relevant works specified in the listed building enforcement notice.
- (7) The planning authority may at any time withdraw a stop notice (without prejudice to their power to serve another) by notice which must be—
- (a) served on all persons who were served with the stop notice, and
  - (b) publicised by displaying it for 7 days in place of all or any site notices (within the meaning of section 41B(4)).

#### **41B Stop notices: supplementary provisions**

- (1) A stop notice ceases to have effect when—
- (a) the listed building enforcement notice to which it relates is withdrawn or quashed,
  - (b) the period for compliance expires, or
  - (c) notice of the withdrawal of the stop notice is served under section 41A(7),
- whichever occurs first.
- (2) Where the listed building enforcement notice to which a stop notice relates is varied so that it no longer relates to any relevant works, the stop notice ceases to have effect in relation to those works.
- (3) The reference in subsection (2) to a listed building enforcement notice being varied includes a reference to—
- (a) a requirement of such a notice being waived or relaxed by virtue of section 34(7),
  - (b) the terms of such a notice being varied on appeal by virtue of section 37(2)(a).
- (4) Where a stop notice has been served in respect of any listed building the planning authority may publicise it by displaying on the building a notice (in this section and in sections 41E and 76 referred to as a “site notice”)—
- (a) stating that a stop notice has been served on a particular person or persons,
  - (b) indicating its requirements, and
  - (c) stating that any person contravening it may be prosecuted for an offence under section 41E.
- (5) A stop notice is not invalid by reason that a copy of the listed building enforcement notice to which it relates was not served as required by section 34 if it is shown that the planning authority took all such steps as were reasonably practicable to effect proper service.

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#### **41C Power of the Scottish Ministers to serve stop notice**

- (1) If it appears to the Scottish Ministers that it is expedient that a stop notice should be served in respect of any building they may themselves serve such a notice under section 41A.
- (2) A stop notice served by the Scottish Ministers has the same effect as if it had been served by the planning authority.
- (3) The Scottish Ministers must not serve such a notice without consulting the planning authority.
- (4) The provisions of this Act relating to stop notices apply, so far as relevant, to a stop notice served by the Scottish Ministers as they apply to a stop notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Scottish Ministers, and any other necessary modifications.

#### **41D Compensation for loss due to stop notice**

- (1) Where a stop notice ceases to have effect a person who, when the notice is first served, has an interest (whether as owner or occupier or otherwise) in the building to which the notice relates is entitled to be compensated by the planning authority in respect of any loss or damage falling within subsection (2).
- (2) That is loss or damage directly attributable to—
  - (a) the prohibition contained in the stop notice or,
  - (b) in a case within subsection (3)(b), the prohibition of such of the works prohibited by the stop notice as cease to be relevant works.
- (3) For the purposes of this section, a stop notice ceases to have effect when—
  - (a) the listed building enforcement notice is quashed on grounds other than those mentioned in paragraph (e) of section 35(1),
  - (b) the listed building enforcement notice is varied (otherwise than on the grounds mentioned in that paragraph) so that any works the execution of which are prohibited by the stop notice cease to be relevant works,
  - (c) the listed building enforcement notice is withdrawn by the planning authority otherwise than in consequence of the grant by them of listed building consent for the works to which the notice relates, or
  - (d) the stop notice is withdrawn.
- (4) The reference in subsection (3)(b) to a listed building enforcement notice being varied includes a reference to—
  - (a) a requirement of such a notice being waived or relaxed by virtue of section 34(7),
  - (b) the terms of such a notice being varied on appeal by virtue of section 37(2)(a).
- (5) A claim for compensation under this section must be made to the planning authority within the prescribed time and in the prescribed manner.

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- (6) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition includes any sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.
- (7) No compensation is payable under this section—
- (a) in respect of the prohibition in a stop notice of any works which, at any time when the notice is in force, are such as to involve a contravention of section 8(1) or (2), or
  - (b) in the case of a claimant who was required to provide information under section 272 of the principal Act (power to require information as to interests in land) in respect of any loss or damage suffered by the claimant which could have been avoided if the claimant had provided the information or had otherwise co-operated with the planning authority when responding to the notice.
- (8) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under this section is to be referred to and determined by the Lands Tribunal for Scotland.
- (9) In relation to the determination of any such question, the provisions of sections 9 (procedure on references under section 8) and 11 (expenses) of the Land Compensation (Scotland) Act 1963 (c.51) apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

#### **41E Penalties for contravention of stop notice**

- (1) A person who contravenes a stop notice after a site notice has been displayed, or after the stop notice has been served on the person, is guilty of an offence.
- (2) Contravention of a stop notice includes causing or permitting its contravention.
- (3) An offence under this section may be charged by reference to any day or longer period of time.
- (4) A person may, in relation to the same stop notice, be convicted of more than one offence under this section by reference to different days or different periods.
- (5) It is a defence in any proceedings under this section that—
  - (a) the stop notice was not served on the accused, and
  - (b) the accused had no reasonable cause to believe that the works were prohibited by the stop notice.
- (6) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding £20,000, and
  - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of the fine, the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.



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### *Temporary stop notices*

#### **41F Temporary stop notices**

- (1) Where it appears to the planning authority that—
  - (a) any works have been, or are being, executed to a listed building in their district,
  - (b) the works are such as to involve a contravention of section 8(1) or (2), and
  - (c) it is expedient that the works are (or any part of the works is) stopped immediately,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, issue a temporary stop notice.
- (2) The notice must be given in writing and must—
  - (a) specify the works in question,
  - (b) prohibit execution of the works (or so much of the works as is specified in the notice), and
  - (c) set out the authority's reasons for issuing the notice.
- (3) A temporary stop notice may be served on any of the following—
  - (a) a person who appears to the authority to be executing, or causing to be executed, the works,
  - (b) a person who appears to the authority to have an interest in the building (whether as owner or occupier or otherwise).
- (4) The authority must display on the building—
  - (a) a copy of the notice, and
  - (b) a statement as to the effect of section 41H.
- (5) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of subsection (4).
- (6) A temporary stop notice ceases to have effect at the end of the period of 28 days starting on the day the copy notice is so displayed.
- (7) But if a shorter period starting on that day is specified in the notice, the notice instead ceases to have effect at the end of that shorter period.
- (8) And if the notice is withdrawn by the authority before that period of 28 days (or, as the case may be, that shorter period) expires, the notice ceases to have effect on being so withdrawn.

#### **41G Temporary stop notices: restrictions**

- (1) A temporary stop notice does not prohibit the execution of works (either or both)—
  - (a) of such description,
  - (b) in such circumstances,as may be prescribed.

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- (2) A second or subsequent temporary stop notice must not be issued in respect of the same works unless the planning authority have in the meantime taken some other enforcement action in relation to the contravention of section 8(1) or (2) which is constituted by the works.
- (3) In subsection (2), “enforcement action” includes obtaining the grant of an interdict under section 146(2) of the principal Act (interdicts restraining breaches of planning control).

#### **41H Temporary stop notices: offences**

- (1) A person who contravenes a temporary stop notice—
  - (a) which has been served on the person, or
  - (b) a copy of which has been displayed in pursuance of section 41F(4),
 is guilty of an offence.
- (2) Contravention of a temporary stop notice includes causing or permitting its contravention.
- (3) An offence under this section may be charged by reference to a day or to a longer period of time.
- (4) A person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different days or different periods.
- (5) It is a defence in any proceedings under this section that—
  - (a) the temporary stop notice was not served on the accused, and
  - (b) the accused did not know, and could not reasonably have been expected to know, of its existence.
- (6) A person convicted of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding £20,000,
  - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of the fine, the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the execution of the works which constituted the offence.

#### **41I Temporary stop notices: compensation**

- (1) A person who, at the date on which a temporary stop notice is first displayed in pursuance of section 41F(4), has an interest (whether as owner or occupier or otherwise) in the building to which the notice relates is entitled to be compensated by the planning authority in respect of any loss or damage directly attributable to the prohibition effected by that notice.
- (2) But subsection (1) applies only if the circumstances are as set out in one or both of the following paragraphs—
  - (a) the works specified in the notice are authorised by listed building consent granted on or before the date mentioned in that subsection,

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- (b) the authority withdraws the notice other than following such grant of listed building consent as is mentioned in paragraph (a).
- (3) Subsections (5) to (9) of section 41D apply to compensation payable under this section as they apply to compensation payable under that section; and for the purpose of that application the reference in section 41D(7) to a stop notice is to be taken to be a reference to a temporary stop notice.”
- (2) In subsection (3) of section 66 of the 1997 Act (control of demolition in conservation areas), for “41” substitute “ 41I ”.
- (3) In section 76 of that Act (rights of entry)—
- (a) after subsection (1) insert—
- “(1A) Any person duly authorised in writing by the planning authority may, at any reasonable time, enter upon land—
- (a) for the purposes of displaying—
- (i) a site notice,
- (ii) a notice under section 41A(7) in place of a site notice, or
- (iii) a copy of a temporary stop notice, and a statement as to the effect of section 41H, under section 41F(4),
- (b) to ascertain whether a listed building enforcement notice, a stop notice or a temporary stop notice has been complied with.”,
- (b) in subsection (2)(b), after “39” insert “ , 41E, 41H ”.
- (4) In subsection (1) of section 81 of that Act (interpretation), after the definition of “prescribed” insert—
- ““site notice” has the meaning given in section 41B(4),
- “stop notice” has the meaning given in section 41A(2),
- “temporary stop notice” means a notice issued under section 41F(1),”.

#### Commencement Information

- I7** S. 23 in force for specified purposes at 30.6.2011 by S.S.I. 2011/174, art. 2, Sch.
- I8** S. 23 in force in so far as not already in force at 1.12.2011 by S.S.I. 2011/372, art. 2, Sch.

#### *Fixed penalty notices*

### **24 Non-compliance with listed building enforcement notice: fixed penalty notice**

After section 39 of the 1997 Act insert—

#### **“39A Fixed penalty notice where listed building enforcement notice not complied with**

- (1) Where a planning authority have reason to believe that, by virtue of subsection (1) of section 39, a person is in breach of a listed building

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enforcement notice they may, if the conditions in subsection (9) are satisfied, serve on the person a fixed penalty notice as respects that breach.

- (2) The fixed penalty notice is to specify (either or both)—
  - (a) the works specified, under subsection (1A) of section 34, in the listed building enforcement notice which have not ceased,
  - (b) the step specified, under that subsection, in the listed building enforcement notice which has not been taken.
- (3) No more than one fixed penalty notice may be served on a person as respects a breach by the person of a listed building enforcement notice.
- (4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging any liability to conviction for an offence under section 39 as respects the breach of the listed building enforcement notice.
- (5) The person discharges any such liability by paying to the planning authority, within the relevant period, a penalty of a prescribed amount specified in the fixed penalty notice.
- (6) The relevant period mentioned in subsection (5) is the period of 30 days immediately following the day on which the fixed penalty notice is served.
- (7) But if payment is made within the first 15 days of the period mentioned in subsection (6) the amount payable is reduced by 25%.
- (8) The fixed penalty notice is to identify the period mentioned in subsection (6) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
- (9) The conditions are that the fixed penalty notice—
  - (a) is served within the period of 6 months which immediately follows the period for compliance with the listed building enforcement notice,
  - (b) is not served after the person has been charged with an offence under section 39 as respects the breach of the listed building enforcement notice.
- (10) During the period mentioned in subsection (6) it is not competent to commence proceedings against the person for an offence under section 39 as respects that breach.
- (11) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 39 as respects that breach.
- (12) A penalty received by a planning authority by virtue of subsection (5) is to accrue to that authority.
- (13) In prescribing an amount for the purposes of subsection (5), the Scottish Ministers may make different provision for different cases or different classes of case, including provision for different amounts by reference to previous breaches of listed building enforcement notices relating to the same steps or works.”.

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*Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011, Part 3. (See end of Document for details)*

#### Commencement Information

- I9** S. 24 in force for specified purposes at 30.6.2011 by S.S.I. 2011/174, art. 2, Sch.  
**I10** S. 24 in force in so far as not already in force at 1.12.2011 by S.S.I. 2011/372, art. 2, Sch.

#### *Urgent preservation*

### **25 Urgent works to preserve unoccupied listed buildings**

In section 49 of the 1997 Act (urgent works to preserve unoccupied listed buildings), in subsection (3), at the end add “ and preventative works necessary to limit any deterioration of the building ”.

#### Commencement Information

- I11** S. 25 in force at 1.12.2011 by S.S.I. 2011/372, art. 2, Sch.

#### *Liability of owner and successors for expenses of urgent works*

### **26 Liability of owner and successors for expenses of urgent works**

- (1) The 1997 Act is amended in accordance with subsections (2) and (3) of this section.
- (2) In section 50 (recovery of expenses of works under section 49), after subsection (5) add—
  - “(6) Where a person to whom notice has been given under subsection (2) ceases, during the 28 day period mentioned in subsection (4), to be the owner of the building, a person may within 28 days of becoming the new owner of the building represent to the Scottish Ministers a matter mentioned in any of paragraphs (a) to (c) of subsection (4); and the Scottish Ministers shall determine to what extent the representations are justified.
  - (7) Subsection (5) applies to a determination under subsection (6) as it applies to a determination under subsection (4).”.
- (3) After that section insert—

*“Liability of owner and successors for expenses of works executed under section 49*

#### **50A Liability of owner and successors for expenses of works executed under section 49**

- (1) An owner of a listed building who is liable for expenses under section 50(2) does not, by virtue only of ceasing to be such an owner, cease to be liable for those expenses.
- (2) Subject to subsection (3), where a person becomes an owner of a listed building (any such person being referred to in this section as a “new owner”)

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that person is severally liable with any former owner of the building for any expenses for which the former owner is liable under section 50(2).

- (3) A new owner is liable as mentioned in subsection (2) only if the condition mentioned in subsection (4) or subsection (5) is met.
- (4) The condition is that—
  - (a) a notice (a “notice of liability for expenses”) in the form prescribed under section 50G is registered in relation to the building,
  - (b) the notice was registered at least 14 days before the acquisition date, and
  - (c) the notice has not expired before the acquisition date.
- (5) The condition is that—
  - (a) a notice of renewal (within the meaning of section 50C) in relation to the building is registered, and
  - (b) that notice has not expired before the acquisition date
- (6) A notice of liability for expenses is to specify—
  - (a) the expenses mentioned in subsection (2), and
  - (b) the works to which the expenses relate.
- (7) In this section, “acquisition date” means the date on which the new owner acquired right to the listed building.
- (8) Where a new owner of a listed building pays any expenses for which a former owner of the building is liable, the new owner may recover the amount so paid from the former owner.
- (9) A person who is entitled to recover an amount under subsection (8) does not, by virtue only of ceasing to be the owner of the listed building, cease to be entitled to recover that amount.
- (10) This section applies as respects any expenses for which an owner of a listed building becomes liable on or after the day on which this section comes into force.

#### **50B Notice of liability for expenses: further provision**

- (1) A notice of liability for expenses—
  - (a) may be registered only on the application of the Scottish Ministers or a planning authority,
  - (b) may be registered in respect of expenses of different works executed on a listed building,
  - (c) expires at the end of the period of 5 years beginning with the date of its registration.
- (2) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in any notice of liability for expenses submitted for registration is accurate.

#### **50C Notices of renewal**

- (1) Subsection (2) applies where—

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- (a) a notice of liability for expenses in relation to a listed building is registered, and
  - (b) that notice has not expired.
- (2) A notice (a “notice of renewal”) in the form prescribed by section 50G specifying the same expenses and works as those specified in the notice of liability for expenses may be registered.
- (3) A second or subsequent notice of renewal in respect of the same expenses and works specified in the notice of liability for expenses mentioned in subsection (1) may be registered.
- (4) A second or subsequent notice of renewal may not be registered if an earlier notice of renewal has expired.
- (5) Where the notice of liability for expenses mentioned in subsection (1) was registered on the application of—
  - (a) the Scottish Ministers, a notice of renewal may be registered only on the application of the Scottish Ministers,
  - (b) a planning authority, a notice of renewal may be registered only on the application of that authority.
- (6) A notice of renewal expires at the end of the period of 5 years beginning with the date of its registration.
- (7) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in any notice of renewal submitted for registration is accurate.

#### **50D Notice of determination following representations under section 50**

- (1) Subsections (2) and (3) apply where—
  - (a) a notice of liability for expenses (in this section, the “original notice”) in relation to a listed building, or a notice of renewal in relation to the original notice, is registered, and
  - (b) the owner of the listed building has made representations to the Scottish Ministers under section 50(4) or (6).
- (2) Where the original notice was registered on the application of a planning authority, the authority must, as soon as reasonably practicable after the Scottish Ministers give notice of their determination under section 50(5), apply to register a notice (a “notice of determination”) in the form prescribed under section 50G.
- (3) Where the original notice was registered on the application of the Scottish Ministers, the Scottish Ministers must, as soon as reasonably practicable after making their determination under section 50(4) or (6), apply to register a notice of determination.
- (4) A notice of determination must specify the amount given by the Scottish Ministers as the amount recoverable in connection with a notice of determination under section 50(5).

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- (5) Where the amount recoverable (“amount A”) is less than the amount specified as the expenses of the works in the original notice (“amount B”), amount B is, on registration of the notice of determination, to be treated as amount A.
- (6) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in any notice of determination submitted for registration is accurate.

#### **50E Discharge of notice of liability for expenses and notice of renewal**

- (1) Subsections (2) and (3) apply where—
  - (a) a notice of liability for expenses (in this section, the “original notice”) in relation to a listed building, or a notice of renewal in relation to the original notice, is registered, and
  - (b) any liability for expenses under section 50(2) to which the original notice relates has been fully discharged.
- (2) Where the original notice was registered on the application of a planning authority, the authority must apply to register a notice (a “notice of discharge”) in the form prescribed under section 50G stating that liability has been fully discharged.
- (3) Where the original notice was registered on the application of the Scottish Ministers, the Scottish Ministers must apply to register a notice of discharge.
- (4) On being registered, a notice of discharge—
  - (a) discharges the notice of liability for expenses, or
  - (b) where a notice of renewal in relation to the original notice is registered, discharges the notice of renewal.
- (5) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in any notice of discharge submitted for registration is accurate.

#### **50F Meaning of “register” in relation to notices**

In relation to—

- (a) a notice of liability for expenses,
- (b) a notice of renewal,
- (c) a notice of determination,
- (d) a notice of discharge,

“register” means register the information contained in the notice in question in the Land Register of Scotland or, as appropriate, record the notice in question in the Register of Sasines; and “registered” and other related expressions are to be construed accordingly.

#### **50G Power to prescribe forms**

- (1) The Scottish Ministers may prescribe—
  - (a) the form of the notices mentioned in subsection (2), and



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- (b) the information to be contained in such notices (in addition to any required to be contained in them by virtue of any other provision of this Act).
- (2) The notices are—
- (a) a notice of liability for expenses,
  - (b) a notice of renewal,
  - (c) a notice of determination,
  - (d) a notice of discharge.”.
- (4) In section 12 of the Land Registration (Scotland) Act 1979 (c.33), in subsection (3) (which specifies losses for which there is no entitlement to be indemnified by the Keeper under that section), after paragraph (s) add—
- “(t) the loss arises in consequence of an inaccuracy in any information contained in—
    - (i) a notice of liability for expenses registered in pursuance of section 50A of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9);
    - (ii) a notice of renewal registered in pursuance of section 50C of that Act;
    - (iii) a notice of determination registered in pursuance of section 50D of that Act; or
    - (iv) a notice of discharge registered in pursuance of section 50E of that Act.”.

#### **Commencement Information**

**I12** S. 26 in force for specified purposes at 30.6.2011 by S.S.I. 2011/174, art. 2, Sch.

**I13** S. 26 in force in so far as not already in force at 1.12.2011 by S.S.I. 2011/372, art. 2, Sch.

#### *Recovery of grants for preservation of listed buildings, etc.*

### **27 Recovery of grants for preservation, etc. of listed buildings and conservation areas**

- (1) The 1997 Act is amended in accordance with this section.
- (2) In section 51 (power of local authority to contribute to the preservation of listed buildings etc.)—
  - (a) after subsection (5) insert—

“(5A) A contribution under this section by way of grant may be made subject to such conditions as the local authority may determine.”,
  - (b) in subsection (6), at the beginning insert “ Without prejudice to the generality of subsection (5A), ”.
- (3) In section 52 (recovery of grants under section 51)—
  - (a) in subsection (1), at the beginning insert “ Subject to subsection (1A), ”,
  - (b) after that subsection insert—

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*Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011, Part 3. (See end of Document for details)*

“(1A) Where a condition imposed on the making of a grant to which this section applies specifies, or makes provision for calculating, the amount recoverable in the event of a disposal by the grantee of that interest, that amount is the amount recoverable under subsection (1) in respect of the disposal.”,

- (c) in subsection (4), at the beginning insert “ Subject to subsection (4A), ”,
- (d) after that subsection insert—

“(4A) Where a condition referred to in subsection (4) specifies, or makes provision for calculating, the amount recoverable in the event of a condition being contravened or not complied with, that amount is the amount recoverable under subsection (4) in respect of the contravention or failure to comply with the condition.”.

(4) In section 70 (recovery of grants under section 69)—

- (a) in subsection (4), at the beginning insert “ Subject to subsection (4A), ”,
- (b) after that subsection insert—

“(4A) Where a condition imposed on the making of a grant to which this section applies specifies, or makes provision for calculating, the amount recoverable in the event of a disposal by the grantee of that interest, that amount is the amount recoverable under subsection (4) in respect of the disposal.”,

- (c) in subsection (7), at the beginning insert “ Subject to subsection (7A), ”,
- (d) after that subsection insert—

“(7A) Where a condition referred to in subsection (7) specifies, or makes provision for calculating, the amount recoverable in the event of a condition being contravened or not complied with, that amount is the amount recoverable under subsection (7) in respect of the contravention or failure to comply with the condition.”.

#### **Commencement Information**

**I14** S. 27 in force at 30.6.2011 by [S.S.I. 2011/174](#), art. 2, [Sch.](#)

#### *Crown application*

### **28 Provisions that do not bind the Crown**

In section 73A(2) of the 1997 Act (application to the Crown)—

- (a) after paragraph (e) insert—
  - “(ea) section 41E;
  - (eb) section 41H;”,
- (b) after paragraph (g) insert—
  - “(ga) section 50A(2);”.

*Status: Point in time view as at 01/12/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011, Part 3. (See end of Document for details)*

#### Commencement Information

**I15** S. 28 in force at 1.12.2011 by S.S.I. 2011/372, art. 2, Sch.

#### *Regulations in connection with inquiries*

### **29 Regulations in connection with inquiries, etc.**

- (1) In section 79(1) of the 1997 Act (application of certain general provisions of the Town and Country Planning (Scotland) Act 1997), after the reference to section 273 (offences by corporations) insert— “ section 275A (further provision as regards regulations: inquiries, etc.), ”.
- (2) In subsection (5) of section 9 of the Tribunals and Inquiries Act 1992 (c.53) (procedure in connection with statutory inquiries)—
  - (a) the words from “an” to the end become paragraph (a) of that subsection,
  - (b) after that paragraph insert “; or
  - (b) an inquiry held under paragraph 6 of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).”.

#### Commencement Information

**I16** S. 29(1) in force at 30.6.2011 by S.S.I. 2011/174, art. 2, Sch.

#### *Regulations and orders*

### **30 Regulations and orders under the 1997 Act**

- (1) Section 82 of the 1997 Act (regulations and orders) is amended in accordance with this section.
- (2) In subsection (2)—
  - (a) the words “shall be exercisable by statutory instrument” become paragraph (a) of that subsection,
  - (b) after that paragraph insert—

“(b) may be exercised so as to make different provision for different purposes.”.
- (3) In subsection (3), at the beginning insert “ Subject to subsection (3A), ”.
- (4) After subsection (3) insert—

“(3A) A statutory instrument containing regulations made under section 39A(5) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.
- (5) In subsection (4)—
  - (a) the words “shall be exercisable by statutory instrument” become paragraph (a) of that subsection,

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(b) after that paragraph insert—

“(b) may be exercised so as to make different provision for different purposes.”.

(6) For subsection (6) substitute—

“(6) Any power conferred by this Act to make regulations or orders includes power to make such incidental, supplemental, consequential, transitory, transitional or saving provision as the Scottish Ministers consider necessary or expedient.”.

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**Commencement Information**

**I17** S. 30 in force at 30.6.2011 by [S.S.I. 2011/174](#), art. 2, [Sch.](#)

**Status:**

Point in time view as at 01/12/2011.

**Changes to legislation:**

There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011, Part 3.