

*Changes to legislation:* There are currently no known outstanding effects for the Housing and Planning Act 1986, SCHEDULE 9. (See end of Document for details)

## SCHEDULES

### SCHEDULE 9

Sections 40 and 50.

#### LISTED BUILDINGS AND CONSERVATION AREAS

##### PART I

##### ENGLAND AND WALES

1—5. .... F1

##### Textual Amendments

**F1** Sch. 9 paras. 1–5, 6(1), 7–12 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

##### *Dangerous structure orders in respect of listed buildings*

6 (1) ..... F2

(2) In sections 77 and 79 of the <sup>M1</sup>Building Act 1984 and in sections 62, 65 and 69 of the <sup>M2</sup>London Building Acts (Amendment) Act 1939 insert as the final subsection—

“( ) This section has effect subject to the provisions of the Town and Country Planning Act 1971 relating to listed buildings, buildings subject to building preservation orders and buildings in conservation areas.”.

##### Textual Amendments

**F2** Sch. 9 paras. 1–5, 6(1), 7–12 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

##### Marginal Citations

**M1** 1984 c. 55.

**M2** 1939 c. xcvi ii.

7–12 ..... F3

##### Textual Amendments

**F3** Sch. 9 paras. 1–5, 6(1), 7–12 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

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## F<sup>4</sup>PART II

### Textual Amendments

**F4** Sch. 9 paras. 13-24 (Pt. II) repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2) Sch. 1 Pt. I (with s. 5, Sch. 3)

### *Free-standing objects and structures within curtilage of listed building*

- .....
- 13 (1) In section 52(7) of the Town and Country Planning (Scotland) Act 1972 (definition of “listed building”), for the words from “and for the purposes” to the end substitute—
- “and, for the purposes of the provisions of this Act relating to listed buildings and building preservation notices, the following shall be treated as part of the building—
- (a) any object or structure fixed to the building ;
  - (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so much before 1st July 1948.”.
- (2) Where by virtue of this paragraph an object or structure ceases to be treated as part of a listed building—
- (a) liabilities incurred before the commencement of this paragraph by reason of the object or structure being so treated cease to have effect, and
  - (b) a condition attached to listed building consent ceases to have effect if, or to the extent that, it could not have been attached if this paragraph had been in force ;
- except for the purposes of criminal proceedings begun before the commencement of this paragraph.

### *Late application for listed building consent*

- .....
- 14 (1) In subsection (1) of section 53 (control of works for demolition, alteration or extension of listed buildings) of the Town and Country Planning (Scotland) Act 1972, for the words “this Part of this Act” where they appear for the second time, substitute “ subsection (2) of this section ”.
- (2) After subsection (2) of the said section 53 insert—
- “(2A) If written consent is granted by the planning authority or the Secretary of State for the retention of works for the demolition, alteration or extension of a listed building which have been executed without consent under subsection (2) of this section, the works are authorised under this Part of this Act from the grant of the consent under this subsection.”
- (3) After subsection (3) of the said section insert—
- “(3A) Consent under subsection (2) or (2A) of this section is referred to in this Part of this Act as “listed building consent”.”.

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- (4) At the end of section 54A (limit on duration of listed building consent) of the Town and Country Planning (Scotland) Act 1972 there shall be added—

“(5) Nothing in this section applies to any consent to the retention of works granted under section 53(2A) of this Act.”.

*Defence to proceedings under section 53*

- .....
- 15 (1) In section 53 of the Town and Country Planning (Scotland) Act 1972 (control of works for demolition, alteration or extension of listed buildings), for subsection (6) (exception for certain urgent works) substitute—

“(6) 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.”.

- (2) In section 93 of the Town and Country Planning (Scotland) Act 1972 (appeal against listed building enforcement notice), in subsection (1) (grounds of appeal), for paragraph (c) substitute—

“(c) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, 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, and that the works carried out were limited to the minimum measures immediately necessary ;”.

*Grant of listed building consent subject to subsequent approval of detail*

- .....
- 16 (1) In section 54 of the Town and Country Planning (Scotland) Act 1972 (supplementary provisions with respect to listed building consent), after subsection (4) insert—

“(4A) Listed building consent may 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.”.

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- (2) In paragraph 7(1) of the said Schedule 10 to the 1972 Act (listed building consent : appeal against decision), for the words from the beginning to “and the consent is refused” substitute—

“Where an application is made to the planning authority—

- (a) for listed building consent, or  
(b) for approval of the authority required by a condition imposed on the granting of listed building consent with respect to details of the works,

and the consent or approval is refused”.

- (3) Renumber paragraph 8 of that Schedule (appeal in default of decision) as sub-paragraph (1) of that paragraph and after it insert—

“(2) Sub-paragraph (1) of this paragraph applies to an application to the planning authority for approval by the authority required by a condition imposed on the granting of listed building consent with respect to details of the works as it applies to an application for listed building consent, with the following modifications—

- (a) for references to the prescribed period substitute references to the period of two months from the date of the receipt of the application, and  
(b) omit paragraph (b) and the word “or” preceding it.”.

*Application to modify or discharge conditions attached to listed building consent*

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17      After section 54C of the Town and Country Planning (Scotland) Act 1972 insert—

**“54D 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 Part I of Schedule 10 to this Act 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.”.

*Extent of exemption accorded to ecclesiastical buildings*

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18      (1) After section 56 of the Town and Country Planning (Scotland) Act 1972 insert—

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**“56AA Power to restrict exemption of certain ecclesiastical buildings.**

- (1) The Secretary of State may by order provide for restricting or excluding in such cases as may be specified in the order the operation in relation to ecclesiastical buildings of sections 54(1) and 56(2) of this Act (buildings excepted from provisions relating to listed buildings and building preservation notices).
  - (2) An order under this section 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 52(7) of this Act) 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 of any instrument made under this Act, as appear to the Secretary of State to be appropriate.
  - (3) This section is without prejudice to the Church of Scotland Act 1921.”.
- (2) In section 273 (regulations and orders) of the Town and Country Planning (Scotland) Act 1972—
- (a) in subsection (4) (orders to be made by statutory instrument), after “53(3)” insert “ 56AA ”
  - (b) in subsection (5) (orders subject to negative resolution), after “1(3)” insert “ 56AA ” ;
  - (c) in subsection (9) (power to include supplementary and incidental provision), after “section” insert “ 56AA ”.

*Effect of listed building enforcement notice*

.....

19           After section 95 of the Town and Country Planning (Scotland) Act 1972 insert—

**“95A 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 53(2A) of this Act for the retention of any work to which the listed building enforcement notice relates, the notice shall cease to have effect in so far as it requires steps to be taken which would involve the works not being retained in accordance with the consent.

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- (2) If the consent is granted so as to permit 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 for complying with that condition.
- (3) The preceding provisions of this section shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the listed building enforcement notice before the relevant provisions of that notice ceased to have effect.”

*Works for preservation of buildings*

.....

20 For section 97 of the Town and Country Planning (Scotland) Act 1972 (urgent works for preservation of unoccupied buildings) substitute—

**“97 Urgent works to preserve building.**

- (1) Where it appears to the planning authority or the Secretary of State that works are urgently necessary for the preservation of—
  - (a) a listed building, or
  - (b) a building in respect of which a direction has been given by the Secretary of State that this section shall apply,
they or he may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.
- (2) The ground on which the Secretary of State may give a direction that this section shall apply to a building is that the building is in a conservation area and it appears to him that its preservation is important for maintaining the character or appearance of the conservation area.
- (3) If the building is occupied works may be carried out only to those parts which are not in use ; and no action may be taken in respect of an excepted building within the meaning of section 56(2) of this Act.
- (4) The owner of the building shall be given not less than 7 days’ notice in writing of the intention to carry out the works and the notice shall describe the works proposed to be carried out.

**97A Recovery of expenses of works under s. 97.**

- (1) This section has effect for enabling the expenses of works executed under section 97 of this Act 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—

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- (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.”.

*Control of demolition in conservation areas*

- .....
- 21 Section 262A(8) of the Town and Country Planning (Scotland) Act 1972 (application to buildings in conservation areas of provisions relating to listed buildings) is amended as follows—
- (a) for the words from “section 53” to “section 54C” substitute “ sections 53 to 54D and 56AA ” ;
  - (b) for “sections 92 to 95” substitute “ sections 92 to 96 ” ;
  - (c) after “section 179” insert “ sections 231 and 233, section 242 ” ;
  - (d) after “section 253(1)(b)” insert “ ,(4) and (5), section 257 ” ;
  - (e) after “Schedule 17” insert “ Part IV of Schedule 19 ”.

*Form of application for listed building consent*

- .....
- 22 For paragraph 1(1) of Schedule 10 of the Town and Country Planning (Scotland) Act 1972 (regulations as to form and manner of application for listed building consent) substitute—
- “(1) An application for listed building consent 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, and

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(b) such other plans and drawings as are necessary to describe the works which are the subject of the application.

and such other particulars as may be required by the planning authority.

(1A) Provision may be made by regulations under this Act with respect to the manner in which applications for listed building consent are to be made, the manner in which such applications are to be advertised and the time within which they are to be dealt with by planning authorities or, as the case may be, by the Secretary of State.”.

*Calling in of application for listed building consent*

.....

23      In paragraph 5(2) of Schedule 10 to the Town and Country Planning (Scotland) Act 1972 (notice, to planning authority that Secretary of State requires further time to consider whether to call in application for listed building consent), for the words from “and sub-paragraph (1)” to the end substitute “ ; and if he gives such a notice the authority shall not grant the listed building consent until he has notified them that he does not intend to require the reference of the application. ”.

*Application to planning authorities of provisions relating to listed buildings*

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24      In Part IV of Schedule 19 to the Town and Country Planning (Scotland) Act 1972 (provisions of Act applying to applications by planning authorities with respect to listed buildings), at the appropriate place insert “ Sections 231 and 233 ”.



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