



# Town and Country Planning (Scotland) Act 1972

## 1972 CHAPTER 52

### PART IV

#### ADDITIONAL CONTROL IN SPECIAL CASES

##### *Buildings of special architectural or historic interest*

#### **52 List of buildings of special architectural or historic interest**

- (1) For the purposes of this Act and with a view to the guidance of local 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 list thereunder the Secretary of State shall consult with 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.
- (4) As soon as may be after any list has been compiled or approved under this section, or any amendments of such a list have been made, a copy of so much of the list as

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relates to the district of any local authority being the local planning authority or the local authority for the purposes of the Housing (Scotland) Acts 1966 to 1969, or of so much of the amendments as relates thereto, as the case may be, certified by or on behalf of the Secretary of State to be a true copy thereof, shall be deposited with the clerk of that authority.

- (5) As soon as may be after the inclusion of any building in a list under this section, whether on the compilation or approval of the list or by the amendment thereof, or as soon as may be after any such list has been amended by the exclusion of any building therefrom, the local planning authority concerned in whose district the building is situated, on being informed of the fact by the Secretary of State, 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, as the case may be.
- (6) 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 this section ; and 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 area.
- (7) 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 the provisions of this Act relating to listed buildings and building preservation notices, any object or structure fixed to a building, or forming part of the land and comprised within the curtilage of a building, shall be treated as part of the building.
- (8) Every building which immediately before 3rd August 1970 was subject to a building preservation order under section 27 of the Act of 1947 but was not then included in a list compiled or approved under section 28 of that Act, shall be deemed to be a listed building; but the Secretary of State may at any time direct, in the case of any building, that this subsection shall no longer apply to it and the local planning authority in whose district the building is situated, on being notified of the Secretary of State's direction, shall give notice of it to the owner, lessee and occupier of the building.
- (9) Before giving a direction under subsection (8) of this section in relation to a building, the Secretary of State shall consult with the local planning authority and with the owner, lessee and occupier of the building.

### **53 Control of works for demolition, alteration or extension of listed buildings**

- (1) Subject to this Part of this Act, if a person executes or causes 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, and the works are not authorised under this Part of this Act, he shall be guilty of an offence.
- (2) Works for the demolition of a listed building, or for its alteration or extension, are authorised under this Part of this Act only if—
  - (a) the local planning authority or the Secretary of State have granted written consent (in this Act referred to as "listed building consent") for the execution of the works and the works are executed in accordance with the terms of the

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consent and of any conditions attached to the consent under section 54 of this Act; and

- (b) in the case of demolition, notice of the proposal to execute the works has been given to the Royal Commission and thereafter either—
  - (i) for a period of at least three 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 Commission have, by their Secretary or other officer of theirs with authority to act on the Commission's behalf for the purposes of this section, stated in writing that they have completed their recording of the building or that they do not wish to record it.

(3) In subsection (2) of this section " the Royal Commission " means the Royal Commission on the Ancient and Historical Monuments of Scotland; but the Secretary of State may, by order provide that the said subsection shall, in the case of works executed or to be executed on or after such date as may be specified in the order, have effect with the substitution for the reference to the Royal Commission of a reference to such other body as may be so specified.

(4) Without prejudice to subsection (1) of this section, 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 under section 54 of this Act, he shall be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £250, or both ; or
- (b) on conviction on indictment to imprisonment for a term not exceeding twelve months or a fine, or both;

and, in determining the amount of any fine to be imposed on a person convicted on indictment, 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.

(6) In proceedings for an offence under this section it shall be a defence to prove that the works were urgently necessary in the interests of safety or health, or for the preservation of the building, and that notice in writing of the need for the works was given to the local planning authority as soon as reasonably practicable.

#### **54 Provisions supplementary to s. 53**

(1) Section 53 of this Act shall not apply to works for the demolition, alteration or extension of—

- (a) an ecclesiastical building which is for the time being used for ecclesiastical purposes or would be so used but for the works; or
- (b) a building which is the subject of a scheme or order under the enactments for the time being in force with respect to ancient monuments; or
- (c) a building for the time being included in a list of monuments published by the Secretary of State under any such enactment.

For the purposes of this subsection, 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.

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- (2) Where, on an application in that behalf, planning permission is granted, or has been granted on or after 3rd August 1970, and—
- (a) the development for which the permission is or was granted includes the carrying out of any works for the alteration or extension of a listed building; and
  - (b) the planning permission or any condition subject to which it is or was granted is or was so framed as expressly to authorise the execution of the works (describing them),
- the planning permission shall operate as listed building consent in respect of those works; but, except as provided by this subsection, the grant of planning permission for any development shall not make it unnecessary for such consent to be obtained in respect of any works to which section 53 of this Act applies.
- (3) In considering whether to grant planning permission for development which consists in or includes works for the alteration or extension of a listed building, and in considering whether to grant listed building consent for any works, the local planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or any features of special architectural or historic interest which it possesses.
- (4) Without prejudice to subsection (1) of section 26 of this Act, the conditions which may under that subsection be attached to a grant of planning permission shall, in the case of such development as is referred to in subsection (2) of this section, include conditions with respect to—
- (a) the preservation of particular features of the building, either as part of it or after severance therefrom ;
  - (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.
- (5) Listed building consent may be granted either unconditionally or subject to conditions, which may include such conditions as are mentioned in subsection (4) of this section.
- (6) Part I of Schedule 10 to this Act shall have effect with respect to applications to local planning authorities for listed building consent, the reference of such applications to the Secretary of State and appeals against decisions on such applications ; and Part II of that Schedule shall have effect with respect to the revocation of listed building consent by a local planning authority or the Secretary of State.

## **55 Acts causing or likely to result in damage to listed buildings**

- (1) Where a building, not being a building excluded by section 54(1) of this Act from the operation of section 53 of this Act, is included in a list compiled or approved under section 52 of this Act, then, if any person who, but for this section, would be entitled to do so, does or permits the doing of any act which causes or is likely to result in damage to the building (other than an act for the execution of excepted works) and he does or permits it with the intention of causing such damage, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.
- (2) In subsection (1) of this section " excepted works " means works authorised by planning permission granted or deemed to be granted in pursuance of an application

under this Act and works for which listed building consent has been given under this Act.

- (3) Where 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 £20 for each day on which the failure continues.

## **56 Building preservation notice in respect of building not listed**

- (1) If it appears to the local planning authority, in the case of a building in their district which is not a listed building, that it is of special architectural or historic interest and is in danger of demolition or of alteration in such a way as to affect its character as such, they may (subject to subsection (2) of this section) serve on the owner, lessee and occupier of the building a notice (in this section referred to as a "building preservation notice")—
- (a) stating that the building appears to them 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 52 of this Act; and
  - (b) explaining the effect of subsections (3) and (4) of this section.
- (2) A building preservation notice shall not be served in respect of an excepted building, that is to say—
- (a) an ecclesiastical building which is for the time being used for ecclesiastical purposes ; or
  - (b) a building which is the subject of a scheme or order under the enactments for the time being in force with respect to ancient monuments ; or
  - (c) a building for the time being included in a list of monuments published by the Secretary of State under any such enactment.

For the purposes of this subsection, 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.

- (3) A building preservation notice 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 shall remain in force for six months from the date when it is served or, as the case may be, last served; but it shall cease to be in force if, before the expiration of that period, the Secretary of State either includes the building in a list compiled or approved under section 52 of this Act or notifies the local planning authority in writing that he does not intend to do so.
- (4) While a building preservation notice is in force with respect to a building, the provisions of this Act (other than section 55) shall have effect in relation to it as if the building were a listed building; and if the notice ceases to be in force (otherwise than by reason of the building being included in a list compiled or approved under the said section 52), the provisions of Part III of Schedule 10 to this Act shall have effect with respect to things done or occurring under the notice or with reference to the building being treated as listed.
- (5) If, following the service of a building preservation notice, the Secretary of State notifies the local planning authority that he does not propose to include the building in a list compiled or approved under section 52 of this Act, the authority—
- (a) shall forthwith give notice of the Secretary of State's decision to the owner, lessee and occupier of the building; and

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- (b) shall not, within the period of twelve months beginning with the date of the Secretary of State's notification, serve another such notice in respect of the said building.
- (6) If it appears to the local 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; and this shall be treated for all the purposes of this section and of Schedule 10 to this Act as service of the said notice, in relation to which subsection (1)(b) of this section shall be taken to include a reference to this subsection.