

## SCHEDULES

### SCHEDULE 10

Section 58.

#### LISTED BUILDINGS, CONSERVATION AREAS AND HAZARDOUS SUBSTANCES - SCOTLAND

##### *The 1972 Act*

- 1 The 1972 Act is amended as follows.
- 2 For section 53(5) (offences: penalties) there is substituted—
  - “(5) A person who is guilty of an offence under this section shall be liable—
    - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000, or both; or
    - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;and in determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”
- 3 In section 56L(4) (offences)—
  - (a) for “the statutory maximum” there is substituted “£20,000”; and
  - (b) for the words following paragraph (b) there is substituted—
    - “(4A) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”
- 4 In section 92, (power to serve listed buildings enforcement notice)—
  - (a) paragraph (1)(c) is omitted; and
  - (b) for subsection (4) there is substituted—
    - “(4) A listed building enforcement notice—
      - (a) shall specify the date upon which it is to take effect, and, subject to section 93(3) of this Act, shall take effect on that date, and
      - (b) shall specify the period within which any steps are required to be taken and may specify different periods for different steps,and, where different periods apply to different steps, references in this Part of this Act to the period for compliance with a listed building enforcement notice, in relation to any step, are to the period within which the step is required to be taken.”
- 5 For section 92(5) of that Act (withdrawal of notices) there is substituted—

“(5) The planning authority may—

- (a) withdraw a listed building enforcement notice (without prejudice to their power to issue another); or
- (b) waive or relax any requirement of such a notice and, in particular, may extend the period specified in accordance with section 92(4) of this Act,

and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.

(5A) The planning authority shall, immediately after exercising the powers conferred by subsection (5), give notice of the exercise to every person who has been served with a copy of the listed building enforcement notice or would, if the notice were re-issued, be served with a copy of it”.

6 (1) Section 93 (appeals) is amended as follows.

(2) In subsection (1)—

(a) for paragraph (b) there is substituted—

- “(b) that the matters alleged to constitute a contravention of section 53(1) or (4) of this Act have not occurred;
- (ba) that those matters (if they occurred) do not constitute such a contravention;”; and

(b) paragraph (k) is omitted.

(3) For subsection (2) of that section there is substituted—

“(2) An appeal under this section shall be made either—

- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the listed building enforcement notice as the date on which it is to take effect; or
- (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.”

(4) In subsection (4) (power to correct notice on appeal), for paragraph (a) there is substituted—

“(a) the Secretary of State may—

- (i) correct any defect, error or misdescription in the listed building enforcement notice; or
- (ii) vary the terms of the listed building enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.”

(5) In subsection (5), the words “or for varying the terms of the notice in favour of the appellant” are omitted.

7 For section 94 (penalties for non-compliance with listed building enforcement notice) there is substituted—

**“94 Offence where listed building enforcement notice not complied with**

- (1) Where, after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been

taken, the person who is for the time being owner of the land is in breach of the duty under this subsection.

- (2) If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence.
- (3) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.
- (4) In proceedings against any person for an offence under this section, it shall be a defence for him to show—
  - (a) that he did everything he could be expected to do to secure that all the steps required by the notice were taken; or
  - (b) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence.
- (5) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding £20,000; and
  - (b) on conviction on indictment, to a fine.
- (6) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”

8 In section 95 (execution and cost of works required by listed building enforcement notice), at the end there is inserted—

“(4) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

- 9 (1) In section 97B (power to issue hazardous substances contravention notice)—
- (a) in subsection (3)(b) after “remedy” there is inserted “wholly or partly”, and
  - (b) in subsection (8) after “before” there is inserted “or after”, and
  - (c) at the end of subsection (9) there is inserted “or would, if the notice were re-issued, be served with a copy of it”.

10 After section 97A there is inserted—

**“97AB Further provision as to rights of entry in relation to listed buildings**

- (1) The provisions of this section and of section 97AC of this Act shall apply, in place of the provisions of section 266 of this Act, to rights of entry exercised under section 265 of this Act in relation to listed buildings and listed buildings control.
- (2) If the sheriff is satisfied—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 265 of this Act; and
  - (b) that—
    - (i) admission to the land has been refused, or a refusal is reasonably apprehended; or

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*Status: This is the original version (as it was originally enacted).*

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- (ii) the case is one of urgency,  
 he may issue a warrant authorising any person duly authorised in writing to enter the land.
- (3) For the purposes of subsection (2)(b)(i) of this section admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (4) 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.

#### **97AC Rights of entry in relation to listed buildings: supplementary provisions**

- (1) Subject to subsection (2) of this section, a person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 265 or 97AB of this Act (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 265 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 Secretary of State; and section 168 of this Act shall apply in relation to compensation under this subsection as it applies in relation to compensation under Part VIII of this Act.
- (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 on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.
- (8) No person shall carry out any works in exercise of a power conferred under section 97 of this Act 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 appropriate Minister shall be required for the carrying out of works in exercise of a power conferred under section 97 of this Act 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.

(10) Section 213(1) of this Act applies for the purposes of subsection (9) of this section as it applies for the purposes of section 266(6)(b) of this Act.”

11 After section 97B there is inserted—

**“97BA Variation of hazardous substances contravention notices**

- (1) A planning authority may waive or relax any requirement of a hazardous substances contravention notice issued by them and, in particular, may extend any period specified in accordance with section 97B(5)(b) of this Act in the notice.
- (2) The powers conferred by subsection (1) of this section may be exercised before or after the notice takes effect.
- (3) The planning authority shall, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice or would, if the notice were re-issued, be served with a copy of it.

**97BB Further provision as to rights of entry in relation to hazardous substances control**

- (1) The provisions of this section and of section 97BC of this Act apply, in place of the provisions of section 266 of this Act, to rights of entry exercised under section 265 of this Act in relation to applications for hazardous substances consent and hazardous substances control.
- (2) If the sheriff is satisfied—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 265 of this Act; 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 (2)(b)(i) of this section 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.

**97BC Rights of entry in relation to hazardous substances control:  
supplementary provisions**

- (1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 265 or 97BB of this Act (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) 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.
- (3) 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 Secretary of State; and section 168 of this Act shall apply in relation to compensation under this subsection as it applies in relation to compensation under Part VIII of this Act.
- (4) 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.
- (5) Subsection (4) 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.
- (6) A person who is guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.
- (7) The authority of the appropriate Minister shall be required for the carrying out of works in exercise of a power conferred under section 265(8) of this Act 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.
- (8) Section 213(1) of this Act applies for the purposes of subsection (7) of this section as it applies for the purposes of section 266(6)(b) of this Act.”

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In section 265 (rights of entry)—

- (a) in subsection (2), for “thereon” there is substituted “on that or any other land”; and
- (b) in subsection (3), for “the land” there is substituted “that or any other land”.

*Local Government, Planning and Land Act 1980 (c. 65)*

- 13 In Part I of Schedule 30 to the Local Government, Planning and Land Act 1980, the following is inserted at the appropriate place among the provisions there listed: 97AB.