



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

1997 CHAPTER 9

PART I

LISTED BUILDINGS

CHAPTER IV

ENFORCEMENT

34 Power to issue listed building enforcement notice.

- (1) Where it appears to the planning authority—
- (a) that any works have been, or are being, executed to a listed building in their district, and
 - (b) that the works are such as to involve a contravention of section 8(1) or (2),
- 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, serve a notice under this section (in this Act referred to as a “listed building enforcement notice”).

[^{F1}(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.]
- (2) [^{F2}Those steps are] —
- (a) for restoring the building to its former state,

Status: Point in time view as at 01/10/2015.

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- (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider are required to alleviate in a manner acceptable to them the effect of the works which were carried out without listed building consent, or
 - (c) for bringing the building to the state it would have been in if the terms and conditions of any listed building consent for the works had been complied with.
- (3) In considering whether such restoration is undesirable under subsection (2)(b), the authority shall have regard to the desirability of preserving—
- (a) the character of the building, or
 - (b) its features of architectural or historical interest.
- (4) Where such further works as are mentioned in subsection (2)(b) have been carried out on a building, listed building consent shall be deemed to have been granted in respect of the works carried out on that building.
- (5) A listed building enforcement notice—
- (a) shall specify the date upon which it is to take effect and, subject to section 35(3), shall take effect on that date, and
 - (b) shall specify the period (the “period for compliance”) within which [^{F3}—
 - (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.]
- and, where different periods apply to different steps, references in 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.
- [^{F4}(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 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.]
- (6) A copy of a listed building enforcement notice shall be served—
- (a) on the owner, on the lessee and on the occupier of the building to which it relates, and
 - (b) on any other person having an interest in the building, being an interest which in the opinion of the authority is materially affected by the notice.
- (7) 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, extend the period specified in accordance with subsection (5),
- and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.
- (8) The planning authority shall, immediately after exercising the powers conferred by subsection (7), give notice of the exercise to every person who has been served with

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a copy of the listed building enforcement notice or would, if the notice were reissued, be served with a copy of it.

- (9) Every planning authority shall keep available for public inspection free of charge at reasonable hours and at a convenient place a list containing particulars of any building in their district in respect of which a listed building enforcement notice has been served.

Textual Amendments

- F1** S. 34(1A) inserted (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 22(2)(a)**, 33(2); S.S.I. 2011/372, art. 2, sch.
- F2** Words in s. 34(2) substituted (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 22(2)(b)**, 33(2); S.S.I. 2011/372, art. 2, sch.
- F3** Words in s. 34(5) substituted (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 22(2)(c)**, 33(2); S.S.I. 2011/372, art. 2, sch.
- F4** S. 34(5A)(5B) inserted (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 22(2)(d)**, 33(2); S.S.I. 2011/372, art. 2, sch.

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, **sch. 3** (with reg. 2)

35 Appeal against listed building enforcement notice.

- (1) A person on whom a listed building enforcement notice is served or any other person having an interest in the building to which it relates may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds—
- (a) that the building is not of special architectural or historic interest;
 - (b) that the matters alleged to constitute a contravention of section 8(1) or (2) have not occurred;
 - (c) that those matters (if they occurred) do not constitute such a contravention;
 - (d) that—
 - (i) works to the building were urgently necessary in the interests of safety or health, or for the preservation of the building,
 - (ii) 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
 - (iii) the works carried out were limited to the minimum measures immediately necessary;
 - (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
 - (f) that copies of the notice were not served as required by section 34(6);
 - (g) except in relation to such a requirement as is mentioned in section 34(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;

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- (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
 - (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
 - [^{F5}(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),]
 - (j) that steps required to be taken by virtue of section 34(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;
 - (k) that steps required to be taken by virtue of section 34(2)(c) exceed what may reasonably be required to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.
- (2) An appeal under this section shall be made ^{F6}...—
- (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 prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date^{F7}; or
 - (c) by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date]
- (3) Where an appeal is brought under this section the notice shall be of no effect pending the final determination or withdrawal of the appeal.
- (4) A person who gives notice of appeal under this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed, a statement in writing—
- (a) specifying the grounds on which he is appealing against the listed building enforcement notice, and
 - (b) giving such further information as may be prescribed.
- (5) Schedule 3 (which makes provision regarding the determination of certain appeals by a person appointed by the Secretary of State) applies in relation to appeals under this section.

Textual Amendments

- F5** S. 35(1)(ia) inserted (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), ss. **22(3)**, 33(2); S.S.I. 2011/372, art. 2, sch.
- F6** Word in s. 35(2) omitted (28.7.2004) by virtue of [The Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), **9(a)**
- F7** S. 35(2)(c) and word inserted (28.7.2004) by [The Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), **9(b)**

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, **sch. 3** (with reg. 2)

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36 Appeals: supplementary provisions.

- (1) The Secretary of State may prescribe the procedure to be followed on appeals under section 35, and may in particular—
- (a) require the planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal,
 - (b) specify the matters to be included in such a statement,
 - (c) require the authority or the appellant to give such notice of such an appeal as may be prescribed to such persons as may be prescribed, and
 - (d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

^{F8}(2)

Textual Amendments

F8 S. 36(2) repealed (1.12.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006](#) (asp 17), s. 59(2), [sch.](#); S.S.I. 2011/382, art. 2(1)(2)(b)(3)

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015](#) (S.S.I. 2015/243), regs. 1, 15, [sch. 3](#) (with [reg. 2](#))
- C2** S. 36(2) savings for effects of 2006 asp 17, sch. (1.12.2011) by [The Planning etc. \(Scotland\) Act 2006](#) (Listed Buildings) (Saving Provisions) Order2011 (S.S.I. 2011/381), arts. 1(1), [3\(2\)\(b\)](#)

37 Determination of appeals under section 35.

- (1) On the determination of an appeal under section 35 the Secretary of State shall give directions for giving effect to the determination, including where appropriate directions for quashing the listed building enforcement notice.
- (2) On such an appeal the Secretary of State—
- (a) 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 planning authority, and
 - (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 34(6) to be served with a copy of the notice was not served, may disregard that fact if he is satisfied that the person has not been substantially prejudiced by the failure to serve him.
- (3) The Secretary of State may—
- (a) dismiss such an appeal if the appellant fails to comply with section 35(4) within the prescribed time;

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- (b) allow such an appeal or quash the listed building enforcement notice if the planning authority fail to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 36(1)(a), (b) or (d).
- (4) On the determination of an appeal under section 35 the Secretary of State may—
 - (a) grant listed building consent for the works to which the listed building enforcement notice relates,
 - (b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or
 - [^{F9}(c) direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to that determination.]
- (5) Any listed building consent granted by the Secretary of State under subsection (4) shall be treated as granted on an application for the same consent under section 9.
- (6) The validity of a listed building enforcement notice shall not, except by way of appeal under section 35, be questioned in any proceedings whatsoever on the grounds specified in section 35(1)(b) and (f).

Textual Amendments

- F9** S. 37(4)(c) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 3 para. 21](#) (with [ss. 29, 30](#)); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), [regs. 1, 15](#), [sch. 3](#) (with [reg. 2](#))

38 Execution of works required by listed building enforcement notice.

- (1) If any of the steps specified in the listed building enforcement notice have not been taken within the period for compliance with the notice, the authority may—
 - (a) enter on the land and take those steps, and
 - (b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- (2) Where a listed building enforcement notice has been served in respect of a building—
 - (a) any expenses incurred by the owner, lessee or occupier of a building for the purpose of complying with it, and
 - (b) any sums paid by the owner or lessee of a building under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by it,
 shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.
- (3) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by

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- a listed building enforcement notice, the sheriff may by warrant authorise the owner to go on the land and carry out that work.
- (4) A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal.
- (5) After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.
- (6) Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—
- (a) he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
 - (b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
- his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.
- (7) A planning authority who by reason of subsection (6) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.
- (8) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with reg. 2)

39 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 [^{F10}or any works required by the notice to cease have not ceased], the person who is for the time being owner of the land is in breach of the notice.
- (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 [^{F11}or that all works required by the notice to cease were ceased,] , or

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- (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.

Textual Amendments

F10 Words in s. 39(1) inserted (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 22(4)(a)**, 33(2); S.S.I. 2011/372, art. 2, sch.

F11 Words in s. 39(4)(a) inserted (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 22(4)(b)**, 33(2); S.S.I. 2011/372, art. 2, sch.

Modifications etc. (not altering text)

C1 Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, **sch. 3** (with [reg. 2](#))

[^{F12}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 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%.

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- (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.]

Textual Amendments

F12 S. 39A inserted (30.6.2011 for specified purposes, 1.12.2011 in so far as not already in force) by Historic Environment (Amendment) (Scotland) Act 2011 (asp 3), ss. 24, 33(2); S.S.I. 2011/174, art. 2, sch.; S.S.I. 2011/372, art. 2, sch.

Modifications etc. (not altering text)

C1 Ss. 28-41I applied (with modifications) (1.10.2015) by The Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 (S.S.I. 2015/243), regs. 1, 15, sch. 3 (with reg. 2)

40 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 7(3)—
 - (a) for the retention of any work to which the listed building enforcement notice relates, or
 - (b) permitting 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 ^{F13}such work is or such works are required by the notice to cease, or in so far as] it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition.
- (2) The fact that such a notice has wholly or partly ceased to have effect under subsection (1) shall not affect the liability of any person for an offence in respect of a previous failure to comply with that notice.

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Textual Amendments

F13 Words in s. 40(1) inserted (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) (asp 3), **ss. 22(5), 33(2)**; S.S.I. 2011/372, art. 2, sch.

Modifications etc. (not altering text)

C1 Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015](#) (S.S.I. 2015/243), regs. 1, 15, **sch. 3** (with reg. 2)

41 Enforcement by Secretary of State.

- (1) If it appears to the Secretary of State that it is expedient that a listed building enforcement notice should be served in respect of any land, he may himself serve such a notice under section 34.
- (2) A listed building enforcement notice served by the Secretary of State shall have the same effect as a notice served by the planning authority.
- (3) The Secretary of State shall not serve such a notice without consulting the planning authority.
- (4) The provisions of this Act relating to listed building enforcement notices apply, so far as relevant, to a listed building enforcement notice served by the Secretary of State as they apply to a listed building enforcement notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.

Modifications etc. (not altering text)

C1 Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015](#) (S.S.I. 2015/243), regs. 1, 15, **sch. 3** (with reg. 2)

[^{F14}Stop notices

Textual Amendments

F14 Ss. 41A-41I and cross-headings inserted (30.6.2011 for specified purposes, 1.12.2011 in so far as not already in force) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) (asp 3), **ss. 23(1), 33(2)**; S.S.I. 2011/174, art. 2, sch.; S.S.I. 2011/372, art. 2, Sch.

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

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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—
 - (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)).

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with reg. 2)

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).

Status: Point in time view as at 01/10/2015.

Changes to legislation: Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Chapter IV is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, **sch. 3** (with [reg. 2](#))

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.

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, **sch. 3** (with [reg. 2](#))

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,

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- (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.
- (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.

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with [reg. 2](#))

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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.

Modifications etc. (not altering text)

- C1 Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with [reg. 2](#))

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—

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- (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.

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with [reg. 2](#))

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.
- (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).

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with [reg. 2](#))

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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.

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with [reg. 2](#))

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,
 - (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

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application the reference in section 41D(7) to a stop notice is to be taken to be a reference to a temporary stop notice.]

Modifications etc. (not altering text)

- C1** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, **sch. 3** (with reg. 2)

Status:

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