



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

1997 CHAPTER 9

PART I

LISTED BUILDINGS

CHAPTER IV

ENFORCEMENT

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;

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- (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;
 - (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;
 - [^{F1}(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 ^{F2}...—
- (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^{F3}; 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

- F1** 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.
- F2** 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)**

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- F3** 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)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 82(1)(aa)-(ad) inserted by [2006 asp 17 s. 55\(5\)](#)