



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

## 1997 CHAPTER 9

### PART I

#### LISTED BUILDINGS

#### CHAPTER IV

#### ENFORCEMENT

### **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 appellants 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—

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**Changes to legislation:** Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Section 37 is up to date with all changes known to be in force on or before 30 October 2023. 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) [View outstanding changes](#)

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- (a) dismiss such an appeal if the appellant fails to comply with section 35(4) within the prescribed time;
  - (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
  - [<sup>F1</sup>(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

- F1** 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)

**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\(5\)](#)