Historic Environment (Amendment) (Scotland) Act 2011

2011 asp 3

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th January 2011 and received Royal Assent on 23rd February 2011

An Act of the Scottish Parliament to make provision amending certain aspects of the law relating to ancient monuments and listed buildings, including provision in relation to unauthorised works, powers of enforcement in connection with such works, offences and fines, powers of entry to ancient monuments, the control and management of certain ancient monuments, and liability for the expenses of urgent works on listed buildings; to make provision for the creation of inventories of gardens and designed landscapes and of battlefields; to provide for grants and loans in respect of the development and understanding of matters of historic and other interest; and for connected purposes.

PART 1

AMENDMENT OF THE HISTORIC BUILDINGS AND ANCIENT MONUMENTS ACT 1953

1 Recovery of grants for repair, maintenance and upkeep of certain property

(1) Section 4A of the 1953 Act (recovery of grants under section 4) is amended in accordance with this section.

(2) In subsection (3), at the beginning, insert " Subject to subsection (3A) below, ".

(3) After subsection (3) insert—

"(3A) Where a condition referred to in subsection (3) above specifies, or makes provision for calculating, the amount recoverable in the event of a condition being contravened or not complied with, that amount is the amount recoverable under subsection (3) in respect of the contravention or failure to comply with the condition.".

(4) In subsection (4), at the beginning, insert " Subject to subsection (4A) below, ".

(5) After subsection (4) insert—

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"(4A) Where a condition referred to in subsection (3) above specifies, or makes provision for calculating, the amount recoverable in the event of a disposal by the grantee of the relevant interest, that amount is the amount recoverable under subsection (4) above in respect of the disposal.".

Commencement Information

I1 S. 1 in force at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

PART 2

MODIFICATIONS OF THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979

VALID FROM 01/12/2011

Control of works affecting scheduled monuments

2 Control of works affecting scheduled monuments

In section 2 of the 1979 Act (control of works affecting scheduled monuments)—

(a) in paragraph (a) of subsection (3), the word "written" is repealed,

(b) after that subsection insert—

"(3A) If—

(a) works to which this section applies have been executed without being authorised under this Part; and

(b) the Scottish Ministers grant consent for the retention of the works,

the works are authorised under this Part of this Act from the grant of the consent.

(3B) References in this Act to scheduled monument consent include consent under subsection (3A) above.".

VALID FROM 01/12/2011

Defences

3 Offences under sections 2, 28 and 42: modification of defences

(1) The 1979 Act is amended in accordance with this section.

(2) In section 2(8), for the words "prove that" substitute "show that, before executing, causing the execution of or, as the case may be, permitting the execution of the works —

(a) he had taken all reasonable steps to find out whether there was a scheduled monument within the area affected by the works, and".

(3) In section 28(1) (offence of damaging certain ancient monuments)—

(a) for the word "lawful" substitute " reasonable ",

(b) after "monument", where it first occurs, insert " shall be guilty of an offence if the person ",

(c) in paragraph (a), for the words "knowing that it is" substitute " knew or ought to have known that it was ",

(d) in paragraph (b)—

(i) for the word "intending" substitute " intended ",

(ii) for the word "being" substitute " was ",

(e) the words "shall be guilty of an offence" are repealed.

(4) In section 42 (restrictions on use of metal detectors)—

(a) in subsection (6) for the word "prove" substitute " show ",

(b) in subsection (7)—

(i) for the words "prove that he had taken all reasonable precautions" substitute "show that—

(a) he had taken all reasonable steps",

(ii) for the words "and did not believe that it was" substitute "; and

(b) he did not know and had no reason to believe that that place was a protected place".

VALID FROM 01/12/2011

Fines

4 Fines: increases and duty of court in determining amount

(1) The 1979 Act is amended in accordance with this section.

(2) In section 2 (control of works affecting scheduled monuments)—

(a) in subsection (10) for "the statutory maximum" substitute " £50,000 ",

(b) after that subsection insert—

"(10A) In determining the amount of any fine to be imposed on a person under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.".

(3) In section 28 (offence of damaging certain ancient monuments)—

(a) in subsection (4) for "the statutory maximum" substitute " £50,000 ",

(b) after that subsection add—

"(5) In determining the amount of any fine to be imposed on a person under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.".

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Powers of entry

5 Powers of entry to inspect condition of scheduled monument

In section 6(1) of the 1979 Act (powers of entry for inspection of scheduled monument with a view to ascertaining its condition), for "and" substitute " ; and such power may, in particular, be exercised with a view to ascertaining— ".

Commencement Information
I2 S. 5 in force at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

Works affecting scheduled monuments: enforcement

6 Works affecting scheduled monuments: enforcement

(1) After section 9 of the 1979 Act insert—

"Scheduled monument enforcement notices

9A Power to issue scheduled monument enforcement notice

(1) Where it appears to the Scottish Ministers that—
(a) any works have been, or are being, executed to a scheduled monument or to land in, on or under which there is a scheduled monument, and
(b) the works are such as to involve a contravention of section 2(1) or (6),

they may, if they consider it expedient having regard to the effect of the works on the character of the monument as one of national importance, serve a notice under this section (in this Act referred to as a "scheduled monument enforcement notice").

(2) A scheduled monument enforcement notice must specify the alleged contravention and must (either or both)—
(a) specify any works falling within subsection (1) which the Scottish Ministers require to cease,
(b) require steps falling within subsection (3) and specified in the notice to be taken.

(3) Those steps are—
(a) for restoring the monument or land to its former state,
(b) if the Scottish Ministers consider that restoration to its former state 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 scheduled monument consent, or
(c) for bringing the monument or land to the state it would have been in if the conditions of any scheduled monument consent for the works had been complied with.

(4) In considering whether restoration is undesirable under subsection (3)(b), the Scottish Ministers are to have regard to the desirability of preserving—
  (a) the national importance of the monument,
  (b) its features of historical, architectural, traditional, artistic or archaeological interest.

(5) Where further works of a kind mentioned in subsection (3)(b) have been carried out on a monument or land, scheduled monument consent is treated as having been granted in respect of the works carried out on that monument or land.

9B Scheduled monument enforcement notices: further provisions

(1) A scheduled monument enforcement notice—
  (a) must specify the date on which it is to take effect and, subject to section 9C(3), takes effect on that date, and
  (b) must specify the period (the "period for compliance") within which—
    (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.

(2) Where different periods apply to different works or steps, references in this Act to the period for compliance with a scheduled monument 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.

(3) The date specified in the notice under subsection (1)(a) must be at least 28 days after the date on which the notice is served.

(4) A copy of a scheduled monument enforcement notice must be served—
  (a) on the owner, the lessee and the occupier of the monument to which it relates and of the land in, on or under which the monument is situated,
  (b) on any other person having an interest in the monument or land, being an interest which in the opinion of the Scottish Ministers is materially affected by the notice.

(5) The Scottish Ministers may, at any time—
  (a) withdraw a scheduled monument 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 for compliance.

(6) The Scottish Ministers must, 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 scheduled monument enforcement notice or would, if the notice were reissued, be served with a copy of it.

(7) The Scottish Ministers must—
  (a) publish by electronic means (as for example by means of the internet) a list containing particulars of any monument in respect of which a scheduled monument enforcement notice has been served, and

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(b) on request, provide a copy of a scheduled monument enforcement notice.

9C Appeal against scheduled monument enforcement notice

(1) A person on whom a scheduled monument enforcement notice is served or any other person having an interest in the monument to which it relates or the land in, on or under which it is situated may, at any time before the date specified in the notice as the date on which it is to take effect, by summary application appeal to the sheriff on any of the grounds in subsection (2).

(2) Those grounds are—

(a) that the matters alleged to constitute a contravention of section 2(1) or (6) have not occurred,

(b) that those matters (if they occurred) do not constitute such a contravention,

(c) that—

(i) works to the monument or land were urgently necessary in the interests of safety or health,

(ii) it was not practicable to secure safety or health 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,

(d) that copies of the notice were not served as required by section 9B(4),

(e) that the period for compliance for any works or step falls short of what should reasonably be allowed.

(3) Where an appeal is brought under this section the notice is of no effect until the appeal is withdrawn or finally determined.

(4) In determining an appeal under this section the sheriff may uphold or quash the notice.

(5) The sheriff may uphold a notice despite copies of it not having been served as required by section 9B(4) if satisfied that any person on whom a copy should have been, but was not, served has not been substantially prejudiced by the failure.

9D Execution of works required by scheduled monument enforcement notice

(1) If any steps specified in the scheduled monument enforcement notice have not been taken within the period for compliance with the notice, the Scottish Ministers may—

(a) enter on the land in, on or under which the scheduled monument is situated and take those steps, and

(b) recover from the person who is then the owner or lessee of the monument or land any expenses reasonably incurred by them in doing so.

(2) Where a scheduled monument enforcement notice has been served in respect of a monument—

(a) any expenses incurred by the owner, lessee or occupier of a monument or the land in, on or under which it is situated for the purpose of complying with it, and

(b) any sums paid by the owner or lessee of a monument or land under subsection (1) in respect of expenses incurred by the Scottish Ministers in taking steps required by it,

are to be treated as 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 scheduled monument or land it appears to the sheriff that the occupier of the monument or land is preventing the owner from carrying out work required to be carried out by a scheduled monument enforcement notice, the sheriff may by warrant authorise the owner to enter the land and carry out the work.

(4) If the Scottish Ministers take steps under subsection (1) they may sell any materials removed by them from the monument or land unless those materials are claimed by the owner within 3 days of their removal.

(5) After selling the materials the Scottish Ministers must pay the proceeds to the owner less the expenses recoverable by them from the owner.

(6) Where the Scottish Ministers seek, under subsection (1), to recover any expenses from a person on the basis that the person is the owner of the scheduled monument or land, and the person proves that—

(a) the person is receiving the rent in respect of the monument or land merely as trustee, tutor, curator, factor or agent of some other person, and

(b) the person has not, and since the date of the service of the demand for payment has not had, in the person's hands on behalf of that other person sufficient money to discharge the whole demand of the Scottish Ministers,

the person's liability is limited to the total amount of the money which the person has or has had in the person's hands on behalf of that other person.

(7) If by reason of subsection (6) the Scottish Ministers have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent they 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) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

9E Offence where scheduled monument enforcement notice not complied with

(1) Where, after the end of the period for compliance with a scheduled monument enforcement notice, any works required by the notice to cease have not ceased or any step required by the notice has not been taken, the person who is for the

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time being owner of the scheduled monument or of the land in, on or under which it is situated is in breach of the notice.

(2) If at any time the owner of the monument or land is in breach of a scheduled monument enforcement notice the owner is guilty of an offence.

(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 scheduled monument enforcement notice, be convicted of more than one offence under this section by reference to different days or different periods.

(5) In proceedings against any person for an offence under this section, it is a defence for the person to show that—
   (a) the person did everything the person could be expected to do to secure that all works required by the notice to cease were ceased or that all the steps required by the notice were taken, or
   (b) the person was not served with a copy of the notice and was not aware of its existence.

(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 any fine to be imposed, 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.

9F Effect of scheduled monument consent on scheduled monument enforcement notice

(1) If, after the issue of a scheduled monument enforcement notice, consent is granted under section 2(3A)—
   (a) for the retention of any work to which the notice relates, or
   (b) permitting the retention of works without complying with some condition subject to which a previous scheduled monument consent was granted,

   the notice ceases to have effect in so far as 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 a scheduled monument enforcement notice has wholly or partly ceased to have effect under subsection (1) does not affect the liability of any person for an offence in respect of a previous failure to comply with it. Stop notices

9G Stop notices

(1) Subsection (2) applies where the Scottish Ministers consider it expedient that any relevant works should cease before the expiry of the period for compliance with a scheduled monument enforcement notice.

(2) The Scottish Ministers may, when they serve the copy of the scheduled monument enforcement notice or afterwards, serve a notice (in this Act referred to as a "stop notice") prohibiting the execution of the relevant works to the scheduled monument to which the enforcement notice relates, or to land in, on or under which the monument is situated, or to any part of the monument or land specified in the stop notice.

(3) In this section and sections 9H and 9I, "relevant works" means any works specified in the scheduled monument enforcement notice as works which the Scottish Ministers 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 scheduled monument 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 Scottish Ministers 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 Scottish Ministers on any person who appears to them to have an interest in the monument or the land in, on or under which it is situated or who is executing, or causing to be executed, the relevant works specified in the scheduled monument enforcement notice.

(7) The Scottish Ministers 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 9H(3)).

9H Stop notices: supplementary provisions

(1) A stop notice ceases to have effect when—

(a) the scheduled monument 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 9G(7),

whichever occurs first.

(2) Where a requirement of the scheduled monument enforcement notice to which a stop notice relates is waived or relaxed by virtue of section 9B(5) so that the scheduled monument enforcement notice no longer relates to any relevant works, the stop notice ceases to have effect in relation to those works.

(3) Where a stop notice has been served in respect of a scheduled monument the Scottish Ministers may publicise it by displaying on the land in, on or under which the monument is situated or on the monument (except where doing so

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might damage it) a notice (in this section and in sections 6 and 9J 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 9J.

(4) A stop notice is not invalid by reason that a copy of the scheduled monument enforcement notice to which it relates was not served as required by section 9B if it is shown that the Scottish Ministers took all such steps as were reasonably practicable to effect proper service.

9I 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 scheduled monument to which the notice relates or the land in, on or under which the monument is situated is entitled to be compensated by the Scottish Ministers 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

(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 scheduled monument enforcement notice is quashed,

(b) a requirement of the scheduled monument enforcement notice is waived or relaxed by virtue of section 9B(5) so that any works the execution of which are prohibited by the stop notice cease to be relevant works,

(c) the scheduled monument enforcement notice is withdrawn by the Scottish Ministers otherwise than in consequence of the grant by them of scheduled monument consent for the works to which the notice relates, or

(d) the stop notice is withdrawn.

(4) 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.

(5) 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 2(1) or (6), or

(b) in the case of a claimant who was required to provide information under section 57 (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 Scottish Ministers when responding to the notice.

9J 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.

Temporary stop notices

9K Temporary stop notices

(1) Where it appears to the Scottish Ministers that—
- (a) any works have been, or are being, executed to a scheduled monument or to land in, on or under which there is a scheduled monument,
- (b) the works are such as to involve a contravention of section 2(1) or (6), 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 monument as one of national importance, 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 Scottish Ministers' 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 Scottish Ministers to be executing, or causing to be executed, the works,

(b) a person who appears to the Scottish Ministers to have an interest in the scheduled monument or the land in, on or under which the monument is situated (whether as owner or occupier or otherwise).

(4) The Scottish Ministers must display on the land in, on or under which the monument is situated or on the monument (except where doing so might damage it)—

(a) a copy of the notice, and

(b) a statement as to the effect of section 9M.

(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 Scottish Ministers 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.

9L Temporary stop notices: restrictions

(1) A second or subsequent temporary stop notice must not be issued in respect of the same works unless the Scottish Ministers have in the meantime taken some other enforcement action in relation to the contravention of section 2(1) or (6) which is constituted by the works.

(2) In subsection (1), "enforcement action" includes obtaining the grant of an interdict under section 9O.

9M 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 9K(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 guilty 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.

9N Temporary stop notices: compensation

(1) A person who, at the date on which a temporary stop notice is first displayed in pursuance of section 9K(4), has an interest (whether as owner or occupier or otherwise) in the scheduled monument to which the notice relates or the land in, on or under which the monument is situated is entitled to be compensated by the Scottish Ministers 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 scheduled monument consent granted on or before the date mentioned in that subsection,

(b) the Scottish Ministers withdraw the notice other than following such grant of scheduled monument consent as is mentioned in paragraph (a).

(3) Subsections (4) and (5) of section 9I apply to compensation payable under this section as they apply to compensation payable under that section; and for the purpose of that application references in subsection (5) of that section to a stop notice are to be taken to be references to a temporary stop notice.

Interdicts

9O Interdicts restraining unauthorised works on scheduled monuments

(1) Whether or not they have exercised or propose to exercise any of their other powers under this Act, the Scottish Ministers may seek to restrain or prevent any actual or apprehended breach of any of the controls provided by or under this Act on the execution of works affecting scheduled monuments by means of an application for interdict.

(2) On an application under subsection (1) the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the breach.

(3) In this section "the court" means the Court of Session or the sheriff.".

(2) In section 6 of the 1979 Act (powers of entry), after subsection (3) insert—

"(3A) Any person duly authorised in writing by the Scottish Ministers may at any reasonable time enter any land—

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(a) to ascertain whether a scheduled monument enforcement notice, a stop notice or a temporary stop notice should be served in relation to a scheduled monument in, on or under that or any other land,

(b) for the purposes of displaying—

(i) a site notice,

(ii) a notice under section 9G(7) in place of a site notice, or

(iii) a copy of a temporary stop notice, and a statement as to the effect of section 9M, under section 9K(4),

(c) to ascertain whether a scheduled monument enforcement notice, a stop notice or a temporary stop notice has been complied with,

(d) to ascertain whether any offence has been, or is being, committed with respect to any scheduled monument in, on or under that or any other land under section 2(1) or (6), 9E, 9J or 9M.”.

(3) In subsection (1) of section 61 of that Act (interpretation), in the appropriate places in alphabetical order insert—

““period for compliance” is to be construed in accordance with section 9B(1) and (2);”,

““scheduled monument enforcement notice” has the meaning given by section 9A(1) of this Act;”,

““site notice” has the meaning given in section 9H(3);”,

““stop notice” has the meaning given in section 9G(2) of this Act;”,

““temporary stop notice” means a notice issued under section 9K(1) of this Act;”.

Commencement Information

I3 S. 6 in force for specified purposes at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

Monuments and associated land under guardianship

7 Control and management of monuments and land under guardianship

(1) The 1979 Act is amended in accordance with this section.

(2) In section 13 (effect of guardianship of ancient monuments)—

(a) after subsection (2) insert—

“(2A) The power conferred by subsection (2) above includes power—

(a) to control the holding of events in or on the monument;

(b) to control and manage such events;

(c) to require payment of a charge in respect of the holding of such events;

(d) to exclude, restrict or otherwise control public access to the monument in connection with such events.”,

(b) after subsection (7) add—

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"(8) In subsection (2A) above—

(a) "events" includes functions and any other organised activities;

(b) references to the holding of events, in relation to organised activities, are to be construed as references to the carrying out of such activities.".

(3) In section 15 (acquisition and guardianship of land in vicinity of an ancient monument)—

(a) in subsection (3), after "and" where it fourth occurs, insert " without prejudice to that generality ",

(b) after that subsection insert—

"(3A) The power of full control and management of land under guardianship conferred by subsection (3) above includes power—

(a) to control the holding of events on associated land;

(b) to control and manage such events;

(c) to require payment of a charge in respect of the holding of such events;

(d) to exclude, restrict or otherwise control public access to associated land in connection with such events.",

(c) after subsection (4) insert—

"(4A) Subsections (3), (3A) and (4) are subject to any provision to the contrary in the guardianship deed.",

(d) after subsection (6) add—

"(7) In subsection (3A) above—

(a) "events" includes functions and any other organised activities;

(b) references to the holding of events, in relation to organised activities, are to be construed as references to the carrying out of such activities.".

(4) In subsection (1) of section 19 (public access to monuments under public control), after "to" where it first occurs, insert " sections 13(2A) and 15(3A) of this Act and to ".

(5) Paragraph 6(1) of Schedule 3 (transitional provisions) is repealed.

Commencement Information

I4 S. 7 in force at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

Provision of facilities, etc. at ancient monuments

8 Provision of facilities, etc. at ancient monuments

In section 20 of the 1979 Act (provision of facilities for the public in connection with ancient monuments)—

(a) in subsection (1)—

Status: *Point in time view as at 30/06/2011. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

(i) the words "for or in connection with affording public access" are repealed,

(ii) in paragraph (a) for "to" substitute " in or on ",

(iii) in paragraph (b) for "to" substitute " in or on ",

(b) for subsection (2) substitute—

"(2) In subsection (1), references to a monument include references to any land associated with the monument.

(2A) The facilities and services which may be provided for the public under this section include—

(a) facilities and information or other services for or in connection with affording public access to the monument, and

(b) facilities for the sale of goods and the provision of other services.".

Commencement Information

I5 S. 8 in force at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

Financial support in relation to ancient monuments

9 Financial support for preservation, etc. of monuments

In section 24 of the 1979 Act (expenditure by the Scottish Ministers or local authority on acquisition and preservation of ancient monuments etc.)—

(a) in subsection (2), for the words from "at" to the end of the subsection substitute—

"(a) at the request of the owner undertake, or assist in, or

(b) defray or contribute towards the cost of,

the preservation, maintenance and management of any ancient monument. ",

(b) in subsection (4), for the words from "at" to the end of the subsection substitute—

"(a) at the request of the owner undertake, or assist in, or

(b) defray or contribute towards the cost of,

the preservation, maintenance and management of any ancient monument situated in or in the vicinity of their area. ".

Commencement Information

I6 S. 9 in force at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

Status: *Point in time view as at 30/06/2011. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

VALID FROM 01/12/2011

Power of entry where monument at risk

10 Power of entry on land where monument at risk

In section 26 of the 1979 Act (power of entry on land believed to contain ancient monument)—

(a) in subsection (3), at the beginning, insert " Subject to subsection (4) below, ",

(b) after subsection (3) add—

"(4) Subsection (3) does not apply where—

(a) land is, or is to be, excavated in exercise of the power conferred by subsection (2); and

(b) the Scottish Ministers know or have reason to believe that any ancient monument they know or believe to be in, on or under that land is or may be at risk of imminent damage or destruction.".

Inventories of gardens, designed landscapes and battlefields

11 Inventories of gardens and designed landscapes and of battlefields

After section 32 of the 1979 Act insert—

"**PART 1A**

INVENTORIES OF GARDENS AND DESIGNED LANDSCAPES AND OF BATTLEFIELDS

32A Inventory of gardens and designed landscapes

(1) The Scottish Ministers must compile and maintain (in such form as they think fit) an inventory of such gardens and designed landscapes as appear to them to be of national importance.

(2) In subsection (1), references to gardens and designed landscapes are to grounds which have been laid out for artistic effect and, in appropriate cases, include references to any buildings, land, or water on, adjacent, or contiguous to such grounds.

(3) The Scottish Ministers may, from time to time, modify the inventory so as to—

(a) add an entry relating to grounds mentioned in subsection (2);

(b) remove an entry relating to such grounds;

(c) amend an entry relating to such grounds (whether by excluding anything previously included as part of the grounds or adding anything not previously so included, or otherwise).

Status: *Point in time view as at 30/06/2011. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

(4) As soon as reasonably practicable after including any grounds in the inventory in exercise of their duty under subsection (1), or modifying the inventory under subsection (3), the Scottish Ministers must—

(a) inform—

(i) the owner of the grounds;

(ii) (if the owner is not the occupier) the occupier of the grounds; and

(iii) any local authority in whose area the grounds are situated,

of the inclusion or modification; and

(b) where the grounds are so included, or the inventory is modified as mentioned in paragraph (a) or (c) of subsection (3), send to any person or any local authority informed under paragraph (a) of this subsection a copy of the entry or, as the case may be, of the amended entry in the inventory relating to the grounds.

(5) The Scottish Ministers must from time to time publish, in such manner as they think fit, a list of all the gardens and designed landscapes which are for the time being included in the inventory.

32B Inventory of battlefields

(1) The Scottish Ministers must compile and maintain (in such form as they think fit) an inventory of such battlefields as appear to them to be of national importance.

(2) In this section, "battlefield" means—

(a) an area of land over which a battle was fought; or

(b) an area of land on which any significant activities relating to a battle occurred (whether or not the battle was fought over that area).

(3) Subsections (3) to (5) of section 32A apply to an inventory compiled and maintained under subsection (1) of this section as they apply to an inventory compiled and maintained under subsection (1) of that section; and, for the purposes of that application, references to gardens and designed landscapes, and to grounds referred to by those expressions, are to be construed as references to a battlefield.".

Commencement Information

I7 S. 11 in force at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

Grants and loans

12 Development and understanding of matters of historic, etc. interest: grants and loans

After section 45 of the 1979 Act insert—

Status: *Point in time view as at 30/06/2011. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

"45A Development and understanding of matters of historic, etc. interest: grants and loans

(1) The Scottish Ministers may make grants or loans for the purpose of defraying in whole or in part any expenditure incurred, or to be incurred—
  (a) in or in connection with;
  (b) with a view to the promotion of,
the development or understanding of matters of historic, architectural, traditional, artistic or archaeological interest.

(2) A grant or loan under this section may be made subject to such conditions (including conditions as to repayment) as the Scottish Ministers consider appropriate.

(3) Without prejudice to any powers of the Scottish Ministers under any enactment (including this Act), the total amount of grants and loans which may be made under this section must not exceed £100,000 in any one year period.".

Commencement Information
I8 S. 12 in force at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

Regulations and orders

13 Regulations and orders under the 1979 Act

Before subsection (1) of section 60 of the 1979 Act (regulations and orders) insert—

"(A1) Any power conferred by this Act to make regulations or orders includes power to make such incidental, supplemental, consequential, transitory, transitional or saving provision as the Scottish Ministers consider necessary or expedient.".

Commencement Information
I9 S. 13 in force at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

VALID FROM 01/12/2011

Meaning of "monument"

14 Meaning of "monument" in the 1979 Act

In section 61 of the 1979 Act (interpretation)—
  (a) in subsection (7)—
    (i) the word "and" immediately following paragraph (b) is repealed,
    (ii) after paragraph (c) insert "and

Status: *Point in time view as at 30/06/2011. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

(d) any site (other than one falling within paragraph (b) or (c) above) comprising any thing, or group of things, that evidences previous human activity;",

(b) in subsection (8), paragraph (b) is repealed.

Scheduled monument consent

15 Scheduled monument consent: applications, etc.

(1) Schedule 1 to the 1979 Act (control of works affecting scheduled monuments) is amended in accordance with subsections (2) and (3).

(2) After paragraph 1(1) insert—

"(1A) The Scottish Ministers may by regulations make provision as to—

(a) the manner in which scheduled monument consent is to be granted;

(b) the form and content of scheduled monument consent.".

(3) In paragraph 2—

(a) for sub-paragraphs (1) and (2) substitute—

"(1) The Scottish Ministers may refuse to entertain an application for scheduled monument consent unless it is accompanied by a certificate as to the interests in the monument to which the application relates.

(2) The Scottish Ministers may by regulations—

(a) make provision as to the notice of any application for scheduled monument consent to be given to any person (other than the applicant) who, at the beginning of the period of 21 days ending with the date of the application, was the owner of the monument;

(b) make provision for publicising applications for scheduled monument consent;

(c) make provision as to—

(i) the form and content of certificates such as are mentioned in sub-paragraph (1) and notices such as are mentioned in paragraph (a);

(ii) service of such notices;

(d) make provision as to such further particulars of the matters to which such certificates relate as may be prescribed;

(e) require an applicant for scheduled monument consent to certify, in such form as may be prescribed, or to provide evidence, that any requirements of the regulations have been satisfied.

(2A) Regulations under sub-paragraph (2) may make different provision for different classes of case.",

(b) in sub-paragraph (4), after "paragraph" insert " or regulations made under it ".

(4) In subsection (11) of section 2 of that Act (control of works affecting scheduled monuments), after "for," insert " the manner of granting, and the form, content ".

Commencement Information

I10 S. 15 in force for specified purposes at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

VALID FROM 01/12/2011

16 Refusal to entertain certain applications for scheduled monument consent

After paragraph 2A of Schedule 1 to the 1979 Act insert—

"2B (1) Where sub-paragraph (2) or (3) applies, the Scottish Ministers may refuse to entertain an application for scheduled monument consent.

(2) This sub-paragraph applies where—

(a) within the period of 2 years ending with the date the application is received, the Scottish Ministers have refused a similar application; and

(b) in their opinion there has been no significant change in any material considerations since the similar application was refused.

(3) This sub-paragraph applies where the application is made at a time when a similar application is under consideration.

(4) For the purposes of this paragraph, an application for scheduled monument consent is to be taken to be similar to another such application only if the scheduled monument and the works to which the applications relate are, in the opinion of the Scottish Ministers, the same or substantially the same.".

VALID FROM 01/12/2011

Inquiries and hearings

17 Application for scheduled monument consent: inquiries and hearings

In paragraph 3(2) of Schedule 1 to the 1979 Act (control of works affecting scheduled monuments), for "shall" substitute " may ".

Status: *Point in time view as at 30/06/2011. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

PART 3

MODIFICATIONS OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997

VALID FROM 01/12/2011

Certificate that building not intended to be listed

18 Certificate that building not intended to be listed

(1) After section 5 of the 1997 Act insert—

"**5A Certificate that building not intended to be listed**

(1) The Scottish Ministers may, on the application of any person, issue a certificate stating that they do not intend to include a building in a list compiled or approved under section 1.

(2) Where the Scottish Ministers issue a certificate under subsection (1) in respect of a building—

(a) they may not for a period of 5 years from the date of issue exercise in relation to the building any of the powers conferred on them by section 1, and

(b) a planning authority may not for that period—

(i) serve a building preservation notice in relation to the building, or

(ii) affix such a notice under section 4(1).

(3) A person submitting an application to the Scottish Ministers under subsection (1) must, at the same time as submitting it, give notice of the application to the planning authority within whose district the building is situated.".

(2) In section 76 of that Act (rights of entry), in subsection (1), at the end add " or in connection with an application under section 5A(1) ".

VALID FROM 01/12/2011

Offences under section 8: fines

19 Offences in relation to unauthorised works and listed building consent: increase in fines

In subsection (4)(a) of section 8 of the 1997 Act (offences), for "£20,000" substitute " £50,000 ".

Status: *Point in time view as at 30/06/2011. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

Declining to determine applications for listed building consent

20 Declining to determine an application for listed building consent

(1) After section 10 of the 1997 Act, insert—

"**10A Declining to determine an application**

(1) A planning authority may decline to determine an application (in this subsection referred to as the "current application") for listed building consent—

(a) if—

(i) in the period of two years ending with the date on which the current application is received, the Scottish Ministers have refused a similar application referred to them under section 11 or have dismissed an appeal against the refusal of, or an appeal under section 18(2) in respect of, a similar application, and

(ii) in the opinion of the authority there has not, since the Scottish Ministers refused the similar application or dismissed the appeal, been any significant change in any material considerations,

(b) if—

(i) in that period of two years the planning authority have refused more than one similar application,

(ii) there has been no appeal to the Scottish Ministers against either (or as the case may be any) of those refusals, and

(iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in any material considerations,

(c) if—

(i) in that period of two years the planning authority have refused more than one similar application,

(ii) there has been an appeal to the Scottish Ministers against either (or as the case may be any) of those refusals but as at the time the current application is received no such appeal has yet been determined, and

(iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in any material considerations,

(d) if—

(i) in that period of two years there have been appeals under section 18(2) in respect of more than one similar application but as at the time the current application is received no such appeal has yet been determined, and

(ii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the appeals was made, been any significant change in any material considerations, or

(e) if—

(i) in that period of two years two similar applications have been made to the planning authority,

(ii) the planning authority have refused one of those applications and there has been an appeal under section 18(2) in respect of the other but as at the time the current application is received the appeal under that section has yet to be determined as has the appeal (if any) against the refusal, and

(iii) in the opinion of the authority there has not, since the refusal or since the appeal was made (whichever was the more recent), been any significant change in any material considerations.

(2) For the purposes of this section an application for listed building consent is to be taken to be similar to another such application only if the listed building and the works to which the applications relate are in the opinion of the planning authority the same or substantially the same.”.

(2) In section 18(2) of that Act (right to appeal against decision or failure to take decision) —

(a) for the word “neither” substitute “ not ”,

(b) the word “nor” after paragraph (a) is repealed,

(c) after that paragraph, insert—

“(aa) given notice to the applicant that they have exercised their power under section 10A to decline to determine the application, or”.

Commencement Information

I11 S. 20 in force for specified purposes at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

VALID FROM 01/12/2011

Applications and appeals: hearings

21 Hearings in connection with applications for listed building consent and appeals

In the 1997 Act—

(a) subsection (4) of section 11 (reference of certain applications to the Scottish Ministers) is repealed,

(b) in Schedule 3 (determination of certain appeals by person appointed by the Scottish Ministers), the following are repealed—

(i) in paragraph 2, sub-paragraphs (2) to (4),

(ii) in paragraph 3, sub-paragraphs (4) and (5),

(iii) in paragraph 6(2)(a), the words “by virtue of paragraph 2(4)”.

Status: *Point in time view as at 30/06/2011. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

Enforcement notices, stop notices and temporary stop notices

VALID FROM 01/12/2011

22 Enforcement notice: requirement to cease works

(1) The 1997 Act is amended in accordance with this section.

(2) In section 34 (power to issue listed building enforcement notice)—

(a) after subsection (1) insert—

"(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.",

(b) in subsection (2), for the words from the beginning to "taken", substitute " Those steps are ",

(c) in subsection (5), for the words from "any", where it first occurs, to the end of that subsection, substitute "—

(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. ",

(d) after that subsection insert—

"(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.".

(3) In section 35 (appeal against listed building enforcement notice), after subsection (1)(i) insert—

"(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),".

(4) In section 39 (offence where listed building enforcement notice not complied with)—

(a) in subsection (1), after "taken" where it second occurs, insert " or any works required by the notice to cease have not ceased ",

(b) at the end of paragraph (a) of subsection (4), insert " or that all works required by the notice to cease were ceased, ".

(5) In section 40(1) (effect of listed building consent on listed building enforcement notice), after "as", where it first occurs, insert " such work is or such works are required by the notice to cease, or in so far as ".

Status: *Point in time view as at 30/06/2011. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

23 Stop notices and temporary stop notices

(1) After section 41 of the 1997 Act insert—

"Stop notices

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 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)).

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).

(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.

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.

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).

Status: *Point in time view as at 30/06/2011. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

(2) That is loss or damage directly attributable to—
- (a) the prohibition contained in the stop notice or,
- (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.

Status: *Point in time view as at 30/06/2011. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

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.

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—
- (a) a person who appears to the authority to be executing, or causing to be executed, the works,

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Changes to legislation: *There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)*

(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.

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).

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.

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

(2) In subsection (3) of section 66 of the 1997 Act (control of demolition in conservation areas), for “41” substitute “ 41I ”.

(3) In section 76 of that Act (rights of entry)—
  (a) after subsection (1) insert—

    “(1A) Any person duly authorised in writing by the planning authority may, at any reasonable time, enter upon land—
      (a) for the purposes of displaying—
        (i) a site notice,
        (ii) a notice under section 41A(7) in place of a site notice, or
        (iii) a copy of a temporary stop notice, and a statement as to the effect of section 41H, under section 41F(4),
      (b) to ascertain whether a listed building enforcement notice, a stop notice or a temporary stop notice has been complied with.”,
  (b) in subsection (2)(b), after “39” insert “ , 41E, 41H ”.

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(4) In subsection (1) of section 81 of that Act (interpretation), after the definition of "prescribed" insert—

""site notice" has the meaning given in section 41B(4),

"stop notice" has the meaning given in section 41A(2),

"temporary stop notice" means a notice issued under section 41F(1),".

Commencement Information
I12 S. 23 in force for specified purposes at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

Fixed penalty notices

24 Non-compliance with listed building enforcement notice: fixed penalty notice

After section 39 of the 1997 Act insert—

"**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%.

(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.”.

Commencement Information

I13 S. 24 in force for specified purposes at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

VALID FROM 01/12/2011

Urgent preservation

25 Urgent works to preserve unoccupied listed buildings

In section 49 of the 1997 Act (urgent works to preserve unoccupied listed buildings), in subsection (3), at the end add “ and preventative works necessary to limit any deterioration of the building ”.

Liability of owner and successors for expenses of urgent works

26 Liability of owner and successors for expenses of urgent works

(1) The 1997 Act is amended in accordance with subsections (2) and (3) of this section.

(2) In section 50 (recovery of expenses of works under section 49), after subsection (5) add—

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"(6) Where a person to whom notice has been given under subsection (2) ceases, during the 28 day period mentioned in subsection (4), to be the owner of the building, a person may within 28 days of becoming the new owner of the building represent to the Scottish Ministers a matter mentioned in any of paragraphs (a) to (c) of subsection (4); and the Scottish Ministers shall determine to what extent the representations are justified.

(7) Subsection (5) applies to a determination under subsection (6) as it applies to a determination under subsection (4).".

(3) After that section insert—

"Liability of owner and successors for expenses of works executed under section 49

50A Liability of owner and successors for expenses of works executed under section 49

(1) An owner of a listed building who is liable for expenses under section 50(2) does not, by virtue only of ceasing to be such an owner, cease to be liable for those expenses.

(2) Subject to subsection (3), where a person becomes an owner of a listed building (any such person being referred to in this section as a "new owner") that person is severally liable with any former owner of the building for any expenses for which the former owner is liable under section 50(2).

(3) A new owner is liable as mentioned in subsection (2) only if the condition mentioned in subsection (4) or subsection (5) is met.

(4) The condition is that—
- (a) a notice (a "notice of liability for expenses") in the form prescribed under section 50G is registered in relation to the building,
- (b) the notice was registered at least 14 days before the acquisition date, and
- (c) the notice has not expired before the acquisition date.

(5) The condition is that—
- (a) a notice of renewal (within the meaning of section 50C) in relation to the building is registered, and
- (b) that notice has not expired before the acquisition date

(6) A notice of liability for expenses is to specify—
- (a) the expenses mentioned in subsection (2), and
- (b) the works to which the expenses relate.

(7) In this section, "acquisition date" means the date on which the new owner acquired right to the listed building.

(8) Where a new owner of a listed building pays any expenses for which a former owner of the building is liable, the new owner may recover the amount so paid from the former owner.

(9) A person who is entitled to recover an amount under subsection (8) does not, by virtue only of ceasing to be the owner of the listed building, cease to be entitled to recover that amount.

(10) This section applies as respects any expenses for which an owner of a listed building becomes liable on or after the day on which this section comes into force.

50B Notice of liability for expenses: further provision

(1) A notice of liability for expenses—
  (a) may be registered only on the application of the Scottish Ministers or a planning authority,
  (b) may be registered in respect of expenses of different works executed on a listed building,
  (c) expires at the end of the period of 5 years beginning with the date of its registration.

(2) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in any notice of liability for expenses submitted for registration is accurate.

50C Notices of renewal

(1) Subsection (2) applies where—
  (a) a notice of liability for expenses in relation to a listed building is registered, and
  (b) that notice has not expired.

(2) A notice (a "notice of renewal") in the form prescribed by section 50G specifying the same expenses and works as those specified in the notice of liability for expenses may be registered.

(3) A second or subsequent notice of renewal in respect of the same expenses and works specified in the notice of liability for expenses mentioned in subsection (1) may be registered.

(4) A second or subsequent notice of renewal may not be registered if an earlier notice of renewal has expired.

(5) Where the notice of liability for expenses mentioned in subsection (1) was registered on the application of—
  (a) the Scottish Ministers, a notice of renewal may be registered only on the application of the Scottish Ministers,
  (b) a planning authority, a notice of renewal may be registered only on the application of that authority.

(6) A notice of renewal expires at the end of the period of 5 years beginning with the date of its registration.

(7) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in any notice of renewal submitted for registration is accurate.

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50D Notice of determination following representations under section 50

(1) Subsections (2) and (3) apply where—

(a) a notice of liability for expenses (in this section, the "original notice") in relation to a listed building, or a notice of renewal in relation to the original notice, is registered, and

(b) the owner of the listed building has made representations to the Scottish Ministers under section 50(4) or (6).

(2) Where the original notice was registered on the application of a planning authority, the authority must, as soon as reasonably practicable after the Scottish Ministers give notice of their determination under section 50(5), apply to register a notice (a "notice of determination") in the form prescribed under section 50G.

(3) Where the original notice was registered on the application of the Scottish Ministers, the Scottish Ministers must, as soon as reasonably practicable after making their determination under section 50(4) or (6), apply to register a notice of determination.

(4) A notice of determination must specify the amount given by the Scottish Ministers as the amount recoverable in connection with a notice of determination under section 50(5).

(5) Where the amount recoverable ("amount A") is less than the amount specified as the expenses of the works in the original notice ("amount B"), amount B is, on registration of the notice of determination, to be treated as amount A.

(6) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in any notice of determination submitted for registration is accurate.

50E Discharge of notice of liability for expenses and notice of renewal

(1) Subsections (2) and (3) apply where—

(a) a notice of liability for expenses (in this section, the "original notice") in relation to a listed building, or a notice of renewal in relation to the original notice, is registered, and

(b) any liability for expenses under section 50(2) to which the original notice relates has been fully discharged.

(2) Where the original notice was registered on the application of a planning authority, the authority must apply to register a notice (a "notice of discharge") in the form prescribed under section 50G stating that liability has been fully discharged.

(3) Where the original notice was registered on the application of the Scottish Ministers, the Scottish Ministers must apply to register a notice of discharge.

(4) On being registered, a notice of discharge—

(a) discharges the notice of liability for expenses, or

(b) where a notice of renewal in relation to the original notice is registered, discharges the notice of renewal.

(5) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in any notice of discharge submitted for registration is accurate.

50F Meaning of "register" in relation to notices

In relation to—

(a) a notice of liability for expenses,
(b) a notice of renewal,
(c) a notice of determination,
(d) a notice of discharge,

"register" means register the information contained in the notice in question in the Land Register of Scotland or, as appropriate, record the notice in question in the Register of Sasines; and "registered" and other related expressions are to be construed accordingly.

50G Power to prescribe forms

(1) The Scottish Ministers may prescribe—
(a) the form of the notices mentioned in subsection (2), and
(b) the information to be contained in such notices (in addition to any required to be contained in them by virtue of any other provision of this Act).

(2) The notices are—
(a) a notice of liability for expenses,
(b) a notice of renewal,
(c) a notice of determination,
(d) a notice of discharge.".

(4) In section 12 of the Land Registration (Scotland) Act 1979 (c.33), in subsection (3) (which specifies losses for which there is no entitlement to be indemnified by the Keeper under that section), after paragraph (s) add—

"(t) the loss arises in consequence of an inaccuracy in any information contained in—
(i) a notice of liability for expenses registered in pursuance of section 50A of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9);
(ii) a notice of renewal registered in pursuance of section 50C of that Act;
(iii) a notice of determination registered in pursuance of section 50D of that Act; or
(iv) a notice of discharge registered in pursuance of section 50E of that Act.".

Commencement Information

I14 S. 26 in force for specified purposes at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

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Recovery of grants for preservation of listed buildings, etc.

27 Recovery of grants for preservation, etc. of listed buildings and conservation areas

(1) The 1997 Act is amended in accordance with this section.

(2) In section 51 (power of local authority to contribute to the preservation of listed buildings etc.)—

(a) after subsection (5) insert—

"(5A) A contribution under this section by way of grant may be made subject to such conditions as the local authority may determine.",

(b) in subsection (6), at the beginning insert " Without prejudice to the generality of subsection (5A), ".

(3) In section 52 (recovery of grants under section 51)—

(a) in subsection (1), at the beginning insert " Subject to subsection (1A), ",

(b) after that subsection insert—

"(1A) Where a condition imposed on the making of a grant to which this section applies specifies, or makes provision for calculating, the amount recoverable in the event of a disposal by the grantee of that interest, that amount is the amount recoverable under subsection (1) in respect of the disposal.",

(c) in subsection (4), at the beginning insert " Subject to subsection (4A), ",

(d) after that subsection insert—

"(4A) Where a condition referred to in subsection (4) specifies, or makes provision for calculating, the amount recoverable in the event of a condition being contravened or not complied with, that amount is the amount recoverable under subsection (4) in respect of the contravention or failure to comply with the condition.".

(4) In section 70 (recovery of grants under section 69)—

(a) in subsection (4), at the beginning insert " Subject to subsection (4A), ",

(b) after that subsection insert—

"(4A) Where a condition imposed on the making of a grant to which this section applies specifies, or makes provision for calculating, the amount recoverable in the event of a disposal by the grantee of that interest, that amount is the amount recoverable under subsection (4) in respect of the disposal.",

(c) in subsection (7), at the beginning insert " Subject to subsection (7A), ",

(d) after that subsection insert—

"(7A) Where a condition referred to in subsection (7) specifies, or makes provision for calculating, the amount recoverable in the event of a condition being contravened or not complied with, that amount is the amount recoverable under subsection (7) in respect of the contravention or failure to comply with the condition.".

Commencement Information
I15 S. 27 in force at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

VALID FROM 01/12/2011

Crown application

28 Provisions that do not bind the Crown

In section 73A(2) of the 1997 Act (application to the Crown)—
(a) after paragraph (e) insert—
"(ea) section 41E;
(eb) section 41H;",
(b) after paragraph (g) insert—
"(ga) section 50A(2);".

Regulations in connection with inquiries

29 Regulations in connection with inquiries, etc.

(1) In section 79(1) of the 1997 Act (application of certain general provisions of the Town and Country Planning (Scotland) Act 1997), after the reference to section 273 (offences by corporations) insert— " section 275A (further provision as regards regulations: inquiries, etc.), ".

(2) In subsection (5) of section 9 of the Tribunals and Inquiries Act 1992 (c.53) (procedure in connection with statutory inquiries)—
(a) the words from "an" to the end become paragraph (a) of that subsection,
(b) after that paragraph insert "; or
(b) an inquiry held under paragraph 6 of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).".

Commencement Information
I16 S. 29(1) in force at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

Regulations and orders

30 Regulations and orders under the 1997 Act

(1) Section 82 of the 1997 Act (regulations and orders) is amended in accordance with this section.

(2) In subsection (2)—

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(a) the words "shall be exercisable by statutory instrument" become paragraph (a) of that subsection,

(b) after that paragraph insert—

"(b) may be exercised so as to make different provision for different purposes.".

(3) In subsection (3), at the beginning insert " Subject to subsection (3A), ".

(4) After subsection (3) insert—

"(3A) A statutory instrument containing regulations made under section 39A(5) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.".

(5) In subsection (4)—

(a) the words "shall be exercisable by statutory instrument" become paragraph (a) of that subsection,

(b) after that paragraph insert—

"(b) may be exercised so as to make different provision for different purposes.".

(6) For subsection (6) substitute—

"(6) Any power conferred by this Act to make regulations or orders includes power to make such incidental, supplemental, consequential, transitory, transitional or saving provision as the Scottish Ministers consider necessary or expedient.".

Commencement Information

I17 S. 30 in force at 30.6.2011 by S.S.I. 2011/174, art. 2, **Sch.**

PART 4

GENERAL

31 Interpretation

In this Act—

"the 1953 Act" means the Historic Buildings and Ancient Monuments Act 1953 (c.49),

"the 1979 Act" means the Ancient Monuments and Archaeological Areas Act 1979 (c.46),

"the 1997 Act" means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).

32 Ancillary provision

(1) The Scottish Ministers may by order made by statutory instrument make such supplementary, incidental, consequential, transitory, transitional or saving provision

as they consider necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.

(2) The provision which can be made under subsection (1) includes provision amending or repealing any enactment (including any enactment comprised in this Act) or any other instrument.

(3) An order under this section may make different provision for different purposes.

(4) Subject to subsection (5), a statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) A statutory instrument containing an order under this section which adds to, replaces or omits any part of the text of an Act is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.

33 Short title and commencement

(1) This Act may be cited as the Historic Environment (Amendment) (Scotland) Act 2011.

(2) The provisions of this Act, except sections 31, 32 and this section, come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(3) Different days may be appointed under subsection (2) for different purposes.

Status:
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Changes to legislation:
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