

HISTORIC ENVIRONMENT (AMENDMENT) (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 3 – Modifications of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Section 23 – Stop notices and temporary stop notices

81. **Section 23** inserts new sections 41A to 41I into the 1997 Act giving local authorities the power to serve stop notices and temporary stop notices in relation to unauthorised works on a listed building.

New section 41A – Stop notices

82. Subsections (1) and (2) set out the circumstances in which local planning authorities may issue a stop notice. In so doing local planning authorities must consider it expedient for the works to cease before the expiry of the period for compliance with a listed building enforcement notice.
83. Subsections (2) and (4) provide the power to serve a stop notice prohibiting the execution of “relevant works” and make it clear that a stop notice may be served at the same time as or after a copy of the listed building enforcement notice has been served but may not be served after the listed building enforcement notice has taken effect.
84. Subsection (3) of new section 41A clarifies that “relevant works” refers to the “works” that the local planning authority require to cease under the terms of the enforcement notice together with any associated works.
85. Subsection (5) sets out that a stop notice must specify the date that it is to come into effect. The date must not be earlier than 3 days (unless the planning authority consider there are special reasons for specifying an earlier date) after the date, nor later than 28 days from the date, when the notice is served.
86. Subsection (6) sets out that the local planning authority may serve the notice on any person who appears to them to have an interest in the building or is executing or causing to be executed the relevant works specified in the listed building enforcement notice.
87. Subsection (7) allows local planning authorities to withdraw a stop notice at any time by notice which must be served on all persons who were served with the stop notice. It also sets out that the notice withdrawing the stop notice must be displayed for 7 days in place of all or any site notices publicising a stop notice.

New section 41B – Stop notices: supplementary provisions

88. New section 41B sets out supplementary provisions relating to stop notices. Subsections (1) and (2) set out the circumstances in which a stop notice ceases to have effect.

Subsection (4) sets out how the planning authority may publicise the serving of a stop notice by displaying a site notice and provides what such a notice must state.

New section 41C – Power of the Scottish Ministers to serve stop notice

89. New section 41C allows Scottish Ministers to serve a stop notice under section 41A. It clarifies that notices so served have the same effect as those served by a local planning authority and that provisions of the Act relating to stop notices apply to those served by Scottish Ministers as they apply to those served by the planning authority. Scottish Ministers may serve a stop notice either where a planning authority have issued an enforcement notice or where Scottish Ministers themselves have issued the enforcement notice.
90. Subsection (3) makes it clear that Scottish Ministers must consult the planning authority before issuing a stop notice.

New section 41D – Compensation for loss due to stop notice

91. Subsection (1) sets out that a person with an interest in the building is entitled to compensation in respect of any loss or damage that can be attributed to the prohibition in the stop notice. Compensation is also payable where works prohibited by the stop notice cease to be “relevant works” (within the meaning of section 41A(3)) as a result of a variation of the listed building enforcement notice. For the purposes of determining if compensation is payable a stop notice is taken to have ceased to have effect in the circumstances specified in subsection (3). Essentially these are when the stop notice is withdrawn or the associated enforcement notice is quashed, withdrawn, or varied. Subsection (6) provides that the compensation that may be payable under this section includes any sum payable in respect of a breach of contract caused by taking action necessary to comply with the stop notice. No compensation is, however, payable in the circumstances set out in subsection (7). Subsection (8) provides that any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

New section 41E – Penalties for contravention of stop notice

92. New section 41E sets out the circumstances in which a person is guilty of an offence for contravening a stop notice and makes provision in relation to the contravention and the offences including allowing for conviction to be made for any number of offences with reference to different days or periods. Subsection (6) sets out the applicable penalties, and subsection (7) imposes a requirement for the court to have regard to any financial benefit which might accrue to the convicted person as a result of the execution of the works which constituted the offence.

New section 41F – Temporary stop notices

93. New sections 41F to 41I cover the operation of the new system of temporary stop notices.
94. In new section 41F subsection (1) sets out the circumstances in which planning authorities may issue temporary stop notices. The planning authority has to consider that the works to a listed building are unauthorised or fail to comply with a condition attached to consent and consider there is a reason for stopping the works immediately having regard to the effect of the works on the character of the building as one of special architectural or historic interest.
95. Subsection (2) requires a notice to be in writing and to specify the works in question, prohibit execution of the works and set out the planning authority’s reasons for issuing the notice.

*These notes relate to the Historic Environment (Amendment) (Scotland)
Act 2011 (asp 3) which received Royal Assent on 23 February 2011*

96. Subsection (3) states that notice may be served on a person who either appears to be executing, or causing to be executed the works and/or a person who has an interest in the building.
97. Subsection (4) states that the planning authority must display a copy of the notice and a statement on the effect of section 41H (relating to offences) on the building in question.
98. Subsections (5) to (7) sets out when the notice starts and ceases to have effect. It may have effect for a maximum of 28 days.
99. Subsection (8) provides that if the notice is withdrawn before the end of the 28 day period (or specified shorter period), it ceases to have effect at that point.

New section 41G – Temporary stop notices: restrictions

100. In new section 41G, subsection (1) enables regulations to be made prescribing types of work the execution of which is not prohibited by a stop notice; and subsection (2) prohibits the issue of further temporary stop notice unless another form of enforcement action has been taken e.g. the service of an enforcement notice.

New section 41H – Temporary stop notices: offences

101. In new section 41H subsections (1) to (4) set out the circumstances in which a person is guilty of an offence for contravening a temporary stop notice and allow for conviction to be made for any number of offences with reference to different days or periods.
102. Subsection (5) sets out the statutory defences under this section, which are that the notice was not served on the accused and that he did not know, and could not reasonably have known, of its existence.
103. Subsections (6) and (7) set out the penalties for offences under these new sections, including a requirement for the court to have regard to any financial benefit which might accrue to the convicted person as a result of the activity which constituted the offence.

New section 41I – Temporary stop notices: compensation

104. In new section 41I subsection (1) sets out who is entitled to compensation in respect of any loss or damage which can be directly attributed to the prohibition in the notice. Subsection (2) limits the entitlement to compensation to particular circumstances. These are that the works in the notice are authorised by listed building consent granted on or before the date the temporary stop notice is first displayed and/or the planning authority withdraws the notice other than following such grant of listed building consent. Subsection (3) applies subsections (5) to (9) of new section 41D to compensation under this section. Any question of disputed compensation will be referred to and determined by the Lands Tribunal.
105. Subsection (2) of section 23 amends section 66 of the 1997 Act, which relates to the control of works affecting unlisted buildings in conservation areas, to provide that sections 41A to 41I of that Act (as inserted by this Act) apply in relation to such buildings as they apply in relation to listed buildings. This ensures that stop notices and temporary stop notices will be available as enforcement tools in relation to unlisted buildings in conservation areas where subsection (3) of section 66 applies.
106. Subsection (3) of section 23 amends section 76 of the 1997 Act to give persons duly authorised by a planning authority rights of entry for certain purposes. The purposes are to enable such persons to ascertain whether a listed building enforcement notice, stop notice or temporary stop notice has been complied with, or whether any offence in relation to any building under new sections 41E or 41H of the 1997 Act has been committed. The subsection also confers rights of entry in connection with the display of certain notices under the Act.