

# **HISTORIC ENVIRONMENT (AMENDMENT) (SCOTLAND) ACT 2011**

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

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

##### ***Section 26 – Liability of owner and successors for expenses of urgent works***

112. **Section 26** inserts new sections 50A to 50G into the 1997 Act. These new sections will enable a notice of liability for expenses to be registered in the appropriate property register against a listed building.

##### **New section 50A – Liability of owner and successors for expenses of works executed under [section 49](#)**

113. New section 50A deals with the apportionment of liability for the expenses of urgently necessary works for the preservation of a listed building when a property is sold. It makes it clear that an owner does not cease to be liable when he or she ceases to own a property. Subsection (1) provides that an owner will remain liable for relevant costs after the property has been sold.
114. Subsection (2) deals with the liability of an incoming or “new” owner of a property. A new owner is severally liable with the outgoing owner. If there are further new owners, both or all are bound. This is, however, subject to the provisions of subsection (3) which provides that an incoming owner will be liable for the cost of any urgent works which have been carried out prior to the date on which the new owner becomes the owner of the property only if a notice of liability for expenses has been registered in the property registers (on or before a date 14 days prior to the new owner becoming the owner) and the notice has not expired before that date or that a notice of renewal has been registered and has not expired. Liability for the cost of completed urgent works where no notice has been registered is thus excluded. In other words, if no notice is registered, the purchaser is not liable. Where a notice is registered, then a new owner would be liable for the full amount of the cost of the urgent works as described in the notice.
115. Where the new owner pays any relevant costs, under subsection (8) they may recover the amount paid from a former owner, if the former owner is liable.

##### **New section 50B – Notice of liability for expenses: further provision**

116. Subsection (1) of new section 50B sets out who may register a notice of liability for expenses and provides that a notice may be registered in relation to different works executed on a listed building. A notice will expire after 5 years, though it may be renewed.

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

117. Subsection (2) provides that the Keeper of the Registers of Scotland will not be required to determine whether or not the information contained in a notice of potential liability for expenses is accurate.

**New section 50C – Notices of renewal**

118. Subsection (1) sets out that a notice of renewal may be registered only when a notice of liability for expenses has been registered and has not expired.
119. Subsection (2) provides Scottish Ministers and planning authorities with the power to register a notice of renewal in a form prescribed under inserted section 50G.
120. Subsection (3) allows for a second or subsequent notice of renewal to be registered in respect of the same expenses and works as specified in the original notice of liability.
121. Subsection (4) sets out that a second or subsequent notice of renewal cannot be registered if a notice of renewal for expenses has expired.
122. Subsection (5) makes it clear that where a notice of liability for expenses has been registered by Scottish Ministers a notice of renewal may be registered only on application of Scottish Ministers. Subsection (5) also makes it clear that where a notice of liability for expenses has been registered by a planning authority a notice of renewal may be registered only on application of that authority.
123. Subsection (6) states that a notice of renewal expires after a period of 5 years.
124. Subsection (7) makes it clear that the Keeper of the Registers of Scotland will not be required to determine whether or not the information in a notice of renewal is accurate.

**New section 50D – Notice of determination following representations under section 50**

125. Subsection (1) makes it clear that subsections (2) and (3) apply only where a notice of liability of expenses or a notice of renewal has been registered and the owner has made representations to the Scottish Ministers under the terms of section 50(4) of the 1997 Act or section 50(6) of the 1997 Act as inserted by section 26(2) of this Act.
126. Subsection (2) sets out that when a notice of liability has been registered by a planning authority the authority must apply to register a notice of determination in a form prescribed under new section 50G as soon as practicable after the Scottish Ministers have given notice of their determination under the terms of section 50(5).
127. Subsection (3) sets out that when the original notice of liability has been registered by Scottish Ministers they must apply to register a notice of determination as soon as practicable after they have made their determination.
128. Subsection (4) sets out that a notice of determination must specify the amount recoverable in connection with a notice of liability for expenses.
129. Subsection (5) makes it clear that when the amount recoverable as set out in a notice of determination is less than the amount specified as the expenses of the works set out in the original notice of liability the amount specified in the notice of determination is to be treated as the amount recoverable.
130. Subsection (6) makes it clear that the Keeper of the Registers of Scotland will not be required to determine whether or not the information in a notice of determination is accurate.

**New section 50E – Discharge of notice of liability for expenses and notice of renewal**

131. Subsections (1)(a) and (b) clarify that subsections (2) and (3) apply only when a notice of liability for expenses or a notice of renewal have been registered and any liability for expenses under section 50(2) has been fully discharged.
132. Subsection (2) states that when a planning authority has registered the original notice of liability for expenses the authority must register a notice of discharge in a form prescribed under section 50G stating that the liability has been fully discharged.
133. Subsection (3) states that when Scottish Ministers have registered the original notice of liability for expenses they must register a notice of discharge in a form prescribed under section 50G stating that the liability has been fully discharged.
134. Subsection (4) confirms that, when registered, a notice of discharge discharges a notice of liability for expenses or, where applicable, a notice of renewal.
135. Subsection (5) makes it clear that the Keeper of the Registers of Scotland will not be required to determine whether or not the information in a notice of discharge is accurate.

**New section 50F – Meaning of “register” in relation to notices**

136. Section 50F defines what is meant to ‘register’ a notice of liability for expenses, a notice of renewal, a notice of determination and a notice of discharge. For the purposes of the 1997 Act, ‘registration’ is effected when the information in the notice is registered in the Land Registers of Scotland, or where appropriate, where the notice itself is recorded in the Register of Sasines.

**New section 50G – Power to prescribe forms**

137. Section 50G gives the Scottish Ministers power to prescribe the forms of notices for liability for expenses, notices of renewal, notices of determination and notices of discharge.