



Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997)

1972 CHAPTER 52

PART V

ENFORCEMENT OF CONTROL UNDER PARTS III AND IV

Listed buildings

92 Power to serve listed building enforcement notice.

(1) Where it appears to the . . . ^{F1} planning authority that any works have been, or are being, executed to a listed building in their district and are such as to involve a contravention of section 53(1) or (4) of this Act, then, . . . ^{F2}, 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, serve a notice—

(a) specifying the alleged contravention; and

[^{F3}(b) specifying one of the following sets of steps—

(i) the steps required to restore the building to its former state;

(ii) the steps required to bring the building to the state it would have been in if the terms and conditions of any listed building consent for the works had been complied with;

(iii) subject to subsection (1A) below, the steps required to alleviate, in a manner acceptable to the planning authority, the effects of works executed without listed building consent; and

^{F4}(c)

[A planning authority may specify steps under sub-paragraph (iii) of paragraph (b) of ^{F5}(1A) subsection (1) above, if, but only if, it appears to them either—

(a) that complete restoration of the building to its former state is not reasonably practicable; or

Status: Point in time view as at 26/03/1992.

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- (b) that such restoration is undesirable, having regard to the desirability of preserving—
- (i) the character of the building; or
 - (ii) its features of architectural or historical interest.]
- (2) a notice under this section is in this Act referred to as a “listed building enforcement notice”.
- [Where such steps as are mentioned in subsection (1)(b)(iii) above have been taken in
- ^{F6}(2A) relation to works carried out on a building, listed building consent shall be deemed to have been granted in respect of those works as alleviated.]
- (3) a listed building enforcement notice shall be served on the owner, on the lessee and on the occupier of the building to which it relates and on any other person having an interest in the building, being an interest which in the opinion of the authority is materially affected by the notice.
- [Service under subsection (3) above shall be effected by the service of a copy of the
- ^{F7}(3A) notice; and references in this Act to service of listed building enforcement notices shall be so construed.]
- [A listed building enforcement notice—
- ^{F8}(4) (a) shall specify the date upon which it is to take effect, and, subject to section 93(3) of this Act, shall take effect on that date, and
- (b) shall specify the period within which any steps are required to be taken and may specify different periods for different steps,
- and, where different periods apply to different steps, references in this Part of this Act to the period for compliance with a listed building enforcement notice, in relation to any step, are to the period within which the step is required to be taken.]
- [The planning authority may—
- ^{F9}(5) (a) withdraw a listed building enforcement notice (without prejudice to their power to issue another); or
- (b) waive or relax any requirement of such a notice and, in particular, may extend the period specified in accordance with section 92(4) of this Act,
- and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.
- (5A) The planning authority shall, 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 listed building enforcement notice or would, if the notice were re-issued, be served with a copy of it]
- (6) Every. . . ^{F1} planning authority shall keep available for public inspection free of charge at reasonable hours and at a convenient place a list containing particulars of any building in their district in respect of which a listed building enforcement notice has been served.]

Textual Amendments

F1 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)

F2 Words repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), Sch. 4 Pt. I](#)

F3 [S. 92\(1\)\(b\)\(c\)](#) substituted for [s. 92\(1\)\(b\)](#) by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 69\(2\), Sch. 2 para. 26\(a\)](#)

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- F4** S. 92(1)(c) repealed (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), s. 57, **Sch. 10**, para. 4(a) (with s. 84(5)); S.I. 1992/334, **art.4**
- F5** S. 92(1A) inserted by Local Government and Planning (Scotland) Act 1982 (c. 43), s. 69(2), **Sch. 2 para. 26(b)**
- F6** S. 92(2A) inserted by Local Government and Planning (Scotland) Act 1982 (c. 43), s. 69(2), Sch. 2 para. 26(c)
- F7** S. 92(3A) inserted by Local Government and Planning (Scotland) Act 1982 (c. 43), s. 69(2), **Sch. 2 para. 26(d)**
- F8** S. 92(4) substituted (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), s. 57, **Sch. 10**, para. 4(b) (with s. 84(5)); S.I. 1992/334, **art. 4**
- F9** S. 92(5)(5A) substituted for s. 92(5) (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), s. 57, **Sch. 10**, para.5 (with s. 84(5)); S.I. 1992/334, **art.4**

93 Appeal against listed building enforcement notice.

(1) a person on whom a listed building enforcement notice is served, or any other person having an interest in the building to which it relates, may, at any time [^{F10}before the date specified in the notice as the date on] which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds—

- (a) that the building is not of special architectural or historic interest;
- [^{F11}(b) that the matters alleged to constitute a contravention of section 53(1) or (4) of this Act have not occurred;
- (ba) that those matters (if they occurred) do not constitute such a contravention;]
- [^{F12}(c) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;]
- (d) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- (e) that the notice was not served as required by section 92(3) of this Act
- (f) that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- (g) that the period specified in the notice as the period within which any steps required thereby are to be taken falls short of what should reasonably be allowed;
- (h) that the steps required by the notice to be taken would not serve the purpose of restoring the character of the building to its former state.
- [^{F13}(i) that the steps specified under sub-paragraph (ii) of section 92(1)(b) of this Act exceed what is necessary to bring the building to the state mentioned in that sub-paragraph;
- (j) that the steps specified under sub-paragraph (iii) of the said section 92(1)(b) exceed what may reasonably be required in terms of that sub-paragraph;
- [^{F14}(k)

[An appeal under this section shall be made either—
^{F15}(2)

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- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the listed building enforcement notice as the date on which it is to take effect; or
- (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.]

^{F16F17} [The provisions of subsections (2A) to (2D) of section 85 of this Act (which relates to (2A) appeals against enforcement notices) shall apply to appeals under this section as they apply to appeals under that section.]

(3) Where an appeal is brought under this section the notice shall be of no effect pending the final determination or withdrawal of the appeal.

(4) On an appeal under this section,—

- ^{F18} [the Secretary of State may—
 - (a) (i) correct any defect, error or misdescription in the listed building enforcement notice; or
 - (ii) vary the terms of the listed building enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.]
 - (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 92(3) of this Act to be served with the notice was not served, the Secretary of State may disregard that fact if he is satisfied that the person has not been substantially prejudiced by the failure to serve him.

(5) On the determination of an appeal under this section the Secretary of State shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the listed building enforcement notice ^{F19} . . . , and the Secretary of State may—

- (a) grant listed building consent for the works to which the notice relates or, as the case may be, discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous;
- (b) . . . ^{F20}
- (c) if he thinks fit, exercise his power under section 52 of this Act to amend any list compiled or approved thereunder by removing from it the building to which the appeal relates or his power under subsection (8) of that section to direct that that subsection shall no longer apply to the building.

^{F16} [Any listed building consent granted by the Secretary of State under subsection (5) (6) above shall be treated as granted on an application for such consent made under Part I of Schedule 10 to this Act.]

(7) The validity of a listed building enforcement notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (b) or (e) of subsection (1) of this section.

(8) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section.]

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Textual Amendments

- F10** Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), s. 69(2), **Sch. 2 para. 27(a)(i)**
- F11** [S. 93\(1\)\(b\)\(ba\)](#) substituted for s. 93(1)(b) (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 57, **Sch. 10**, para. 6(2)(a) (with s. 84(5)); S.I. 1992/334, **art. 4**
- F12** [S. 93\(1\)\(c\)](#) substituted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 50, **Sch. 9 Pt. II**, para. 15(2)
- F13** [S. 93\(1\)\(i\)-\(k\)](#) added by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), s. 69(2), **Sch. 2 para. 27(a)(ii)**
- F14** [S. 93\(1\)\(k\)](#) repealed (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), ss. 57, 84(6), **Sch. 10**, para. 6(2)(b), **Sch. 19**, Pt. IV (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 1**
- F15** [S. 93\(2\)](#) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 57, **Sch. 10**, para. 6(3) (with s. 84(5)); S.I. 1992/334, **art. 4**
- F16** [S. 93\(6\)](#) substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), s. 69(2), **Sch. 2 para. 27(c)**
- F17** [S. 93\(2\)\(2A\)](#) substituted for s. 93(2) by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), s. 69(2), **Sch. 2 para. 27(b)**
- F18** [S. 93\(4\)\(a\)](#) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 57, **Sch. 10**, para. 6(4) (with s. 84(5)); S.I. 1992/334, **art. 4**
- F19** Words in [s. 93\(5\)](#) repealed (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), ss. 57, 84(6), **Sch. 10**, para. 6(5), **Sch. 19**, Pt. IV (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 1**
- F20** [S. 93\(5\)\(b\)](#) repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), **Sch. 4 Pt. I**

[94] ^{F21}Offence where listed building enforcement notice not complied with.

- (1) Where, after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been taken, the person who is for the time being owner of the land is in breach of the duty under this subsection.
- (2) If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence.
- (3) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.
- (4) In proceedings against any person for an offence under this section, it shall be a defence for him to show—
 - (a) that he did everything he could be expected to do to secure that all the steps required by the notice were taken; or
 - (b) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence.
- (5) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding £20,0; and
 - (b) on conviction on indictment, to a fine.
- (6) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial

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benefit which has accrued or appears likely to accrue to him in consequence of the offence.]

Textual Amendments

F21 S. 94 substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 57, [Sch. 10 para.7](#) (with s. 84(5)); S.I. 1992/334, [art. 4](#)

95 Execution and cost of works required by listed building enforcement notice.

- (1) If, within the period allowed for compliance with a listed building enforcement notice, any steps required by the notice to be taken have not been taken, the authority may enter on the land and take those steps, and may recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- (2) Any expenses incurred by the owner, lessee or occupier of a building for the purpose of complying with a listed building enforcement notice, and any sums paid by the owner or lessee of a building under subsection (1) of this section in respect of expenses incurred by the . . . ^{F22} planning authority in taking steps required by such a notice to be taken, shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.
- (3) The provisions of section 88(3) and (4) of this Act shall apply in relation to a listed building enforcement notice as they apply in relation to an enforcement notice; and any regulations made by virtue of this subsection may provide for the charging on the land on which the building stands of any expenses recoverable by a . . . ^{F22} planning authority under subsection (1) of this section.
- [^{F23}(4) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

Textual Amendments

F22 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), s. 172(2)

F23 S. 95(4) inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 57, [Sch. 10 para.8](#) (with s. 84(5)); S.I. 1992/334, [art. 4](#)

[^{F24}95A Effect of listed building consent on listed building enforcement

- (1) If, after the issue of a listed building enforcement notice, consent is granted under section 53(2A) of this Act for the retention of any work to which the listed building enforcement notice relates, the notice shall cease to have effect in so far as it requires steps to be taken which would involve the works not being retained in accordance with the consent.
- (2) If the consent is granted so as to permit the retention of works without complying with some condition subject to which a previous listed building consent was granted, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.

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- (3) The preceding provisions of this section shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the listed building enforcement notice before the relevant provisions of that notice ceased to have effect.]

Textual Amendments

F24 S. 95A inserted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 50, **Sch. 9 Pt. II para. 19**

96 Enforcement by, or by direction of, the Secretary of State.

- (1) If it appears to the Secretary of State, after consultation with the . . . ^{F25} planning authority, to be expedient that a listed building enforcement notice should be served in respect of any land, he . . . ^{F26} may himself serve such a notice; and any notice so served by the Secretary of State shall have the like effect as a notice served by the . . . ^{F25} planning authority.
- (2) In relation to a listed building enforcement notice served by the Secretary of State, the provisions of sections 94(3) and 95 of this Act shall apply as if for any reference therein to the . . . ^{F25} planning authority there were substituted a reference to the Secretary of State.

Textual Amendments

F25 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), s. 172(2)

F26 Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), **Sch. 29**

[^{F27}97 Urgent works to preserve building.

- (1) Where it appears to the planning authority or the Secretary of State that works are urgently necessary for the preservation of—
- a listed building, or
 - a building in respect of which a direction has been given by the Secretary of State that this section shall apply,
- they or he may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.
- (2) The ground on which the Secretary of State may give a direction that this section shall apply to a building is that the building is in a conservation area and it appears to him that its preservation is important for maintaining the character or appearance of the conservation area.
- (3) If the building is occupied works may be carried out only to those parts which are not in use; and no action may be taken in respect of an excepted building within the meaning of section 56(2) of this Act.
- (4) The owner of the building shall be given not less than 7 days' notice in writing of the intention to carry out the works and the notice shall describe the works proposed to be carried out.]

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Textual Amendments

F27 Ss. 97, 97A substituted for s. 97 by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 50, [Sch. 9 Pt. II para. 20](#)

[^{F28}97A Recovery of expenses of works under s. 97.

- (1) This section has effect for enabling the expenses of works executed under section 97 of this Act to be recovered.
- (2) The planning authority or, as the case may be, the Secretary of State may give notice to the owner of the building requiring him to pay the expenses of the works.
- (3) Where the works consist of or include works for affording temporary support or shelter for the building—
 - (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used, and
 - (b) notices under subsection (2) in respect of any such continuing expenses may be given from time to time.
- (4) The owner may within 28 days of the service of the notice represent to the Secretary of State—
 - (a) that some or all of the works were unnecessary for the preservation of the building,
 - (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time, or
 - (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause him hardship,
 and the Secretary of State shall determine to what extent the representations are justified.
- (5) The Secretary of State shall give notice of his determination, the reasons for it and the amount recoverable—
 - (a) to the owner of the building, and
 - (b) to the planning authority, if they carried out the works.]

Textual Amendments

F28 Ss. 97, 97A substituted for s. 97 by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 50, [Sch. 9 Pt. II para. 20](#)

[^{F29}97AB^{F29} Further provision as to rights of entry in relation to listed buildings.

- (1) The provisions of this section and of section 97AC of this Act shall apply, in place of the provisions of section 266 of this Act, to rights of entry exercised under section 265 of this Act in relation to listed buildings and listed buildings control.
- (2) If the sheriff is satisfied—
 - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 265 of this Act; and

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- (b) that—
- (i) admission to the land has been refused, or a refusal is reasonably apprehended; or
 - (ii) the case is one of urgency,
- he may issue a warrant authorising any person duly authorised in writing to enter the land.
- (3) For the purposes of subsection (2)(b)(i) of this section admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (4) A warrant authorises entry on one occasion only and that entry must be—
- (a) within one month from the date of the issue of the warrant; and
 - (b) at a reasonable hour, unless the case is one of urgency.]

Textual Amendments

F29 Ss. 97AB, 97AC inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF\)](#), s. 57, [Sch. 10 para. 10](#) (with s. 84(5)); S.I. 1992/334, [art. 4](#)

[^{F30F30}97AC] Rights of entry in relation to listed buildings: supplementary provisions.

- (1) Subject to subsection (2) of this section, a person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 265 or 97AB of this Act (referred to in this section as “a right of entry”),—
 - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
 - (b) may take with him such other persons as may be necessary; and
 - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
- (2) Admission to any land which is occupied shall not be demanded as of right by virtue of section 265 of this section unless 24 hours’ notice of the intended entry has been given to the occupier of the land.
- (3) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If any damage is caused to land or moveable property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State; and section 168 of this Act shall apply in relation to compensation under this subsection as it applies in relation to compensation under Part VIII of this Act.
- (5) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.
- (6) Subsection (5) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.

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- (7) A person who is guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.
- (8) No person shall carry out any works in exercise of a power conferred under section 97 of this Act unless notice of his intention to do so was included in the notice required by subsection (2) of this section.
- (9) The authority of the appropriate Minister shall be required for the carrying out of works in exercise of a power conferred under section 97 of this Act if—
- (a) the land in question is held by statutory undertakers; and
 - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking.
- (10) Section 213(1) of this Act applies for the purposes of subsection (9) of this section as it applies for the purposes of section 266(6)(b) of this Act.]

Textual Amendments

F30 Ss. 97AB, 97AC inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF\)](#), s. 57, [Sch. 10 para.10](#) (with s. 84(5)); [S.I. 1992/334](#), [art.4](#)

Status:

Point in time view as at 26/03/1992.

Changes to legislation:

There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Cross Heading: Listed buildings.