



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

## 1997 CHAPTER 9

### PART III

#### GENERAL

#### *Special cases*

#### **73 Application of Act to land and works of planning authorities**

- (1) In relation to land of planning authorities, sections 1(1) and (3) and 2 shall have effect subject to such exceptions and modifications as may be prescribed by regulations.
- (2) The provisions mentioned in subsection (3) shall have effect for the purpose of applications by planning authorities relating to the execution of works for the demolition, alteration or extension of listed buildings, subject to such exceptions and modifications as may be prescribed by regulations.
- (3) Those provisions are—
  - section 1(2), (4) and (5),
  - sections 3 to 26,
  - sections 28 to 45,
  - sections 56 to 58,
  - section 59(1),
  - section 60(2)(b), (3) and (4),
  - section 65(2)(b), (3) and (4),
  - Schedules 1 and 2, and
  - sections 54(1) to (4) and 55 as they apply with respect to the foregoing provisions.
- (4) The regulations may in particular provide—

- (a) for the making of applications for listed building consent to the Secretary of State, and
- (b) for the service by him of notices under section 2(2) and the provisions mentioned in subsection (3) of this section.

#### **74 Exercise of powers in relation to Crown land**

- (1) Notwithstanding any interest of the Crown in Crown land, but subject to the following provisions of this section—
- (a) a building which for the time being is Crown land may be included in a list compiled or approved by the Secretary of State under section 1,
  - (b) any restrictions imposed or powers conferred by any of sections 1 to 24, 28 to 41, 49, 50, 53 to 56, 59(1), 60, 65 and 68 and Schedules 1 to 3 shall apply and be exercisable in relation to Crown land, to the extent of any interest in it for the time being held otherwise than by or on behalf of the Crown, and
  - (c) any power to acquire land compulsorily under section 42 may be exercised in relation to any interest in the land which is for the time being held otherwise than by or on behalf of the Crown.
- (2) Except with the consent of the appropriate authority—
- (a) no notice shall be served under section 34 in relation to land which for the time being is Crown land, and
  - (b) no interest in land which for the time being is Crown land shall be acquired compulsorily under section 42.
- (3) No listed building enforcement notice shall be served in respect of works executed by or on behalf of the Crown in respect of a building which was Crown land at the time when the works were executed.
- (4) No listed building purchase notice shall be served in relation to any interest in Crown land unless—
- (a) an offer has previously been made by the owner of the interest to dispose of it to the appropriate authority on terms that the price payable for it—
    - (i) shall be equal to the compensation which would be payable in respect of the interest if it were acquired in pursuance of such a notice, or
    - (ii) in default of agreement shall be determined in a similar manner to that in which that compensation would be determined, and
  - (b) that offer has been refused by the appropriate authority.
- (5) A person who is entitled to occupy Crown land by virtue of a contract in writing shall be treated for the purposes of subsection (1)(b) as having an interest in land.
- (6) In this section—
- “Crown land” means land in which there is a Crown interest, and
  - “Crown interest” means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department.
- (7) For the purposes of this section “the appropriate authority”, in relation to any land—
- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

- (b) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land, and
  - (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department.
- (8) If any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

## **75 Application for listed building or conservation area consent in anticipation of disposal of Crown land**

- (1) This section has effect for the purpose of enabling Crown land, or an interest in Crown land, to be disposed of with the benefit of listed building consent or conservation area consent.
- (2) Notwithstanding the interest of the Crown in the land in question, an application for any such consent may be made by—
- (a) the appropriate authority, or
  - (b) any person authorised by that authority in writing,
- and, subject to subsections (3) and (4), all the statutory provisions relating to the making and determination of any such application shall accordingly apply as if the land were not Crown land.
- (3) Any listed building consent or conservation area consent granted by virtue of this section shall apply only—
- (a) to works carried out after the land in question has ceased to be Crown land, and
  - (b) so long as that land continues to be Crown land, to works carried out by virtue of a private interest in the land.
- (4) The Secretary of State may by regulations—
- (a) modify or exclude—
    - (i) any of the statutory provisions referred to in subsection (2), and
    - (ii) any other statutory provisions,in their application to consents granted by virtue of this section,
  - (b) make provision for requiring a planning authority to be notified of any disposal of, or of an interest in, any Crown land in respect of which an application has been made by virtue of this section, and
  - (c) make such other provision in relation to the making and determination of applications by virtue of this section as he thinks necessary or expedient.
- (5) This section shall not be construed as affecting any right to apply for any listed building consent or conservation area consent in respect of Crown land in a case in which such an application can be made by virtue of a private interest in the land.
- (6) A person who is entitled to occupy Crown land by virtue of a contract in writing shall be treated for the purpose of this section as having an interest in land and references to the disposal or grant of an interest in Crown land and to a private interest in such land shall be construed accordingly.
- (7) In this section “statutory provisions” means provisions contained in or having effect under any enactment and references to the disposal of an interest in Crown land include references to the grant of an interest in such land.

- (8) Subsections (6) to (8) of section 74 apply for the purposes of this section as they apply for the purposes of that section.

*Miscellaneous provisions*

**76 Rights of entry**

- (1) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter upon any land for the purpose of surveying any building on that or any other land in connection with a proposal to include the building in, or exclude it from, a list compiled or approved under section 1.
- (2) Any person duly authorised in writing by the Secretary of State or the planning authority may at any reasonable time enter upon any land for any of the following purposes—
- (a) surveying it in connection with any proposal by the authority or the Secretary of State to make or serve any order or notice under or by virtue of any provision of this Act other than sections 25 to 33, 42, 44 to 48, 51, 52, 57, 58, 59(2) and (3), 61 to 67, 69 to 75, 79 to 83 and Schedule 3,
  - (b) ascertaining whether an offence has been, or is being, committed with respect to any building on that or any other land, under section 8, 10, 39 or 53,
  - (c) ascertaining whether any such building is being maintained in a proper state of repair,
  - (d) ascertaining whether any of the functions conferred by section 49 should or may be exercised in connection with the land, or
  - (e) exercising any of those functions in connection with the land.
- (3) Any person who is an officer of the Valuation Office or a person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation payable under this Act in respect of any land.
- (4) Any person who is an officer of the Valuation Office or a person duly authorised in writing by a planning authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation payable under section 25 or 26 in respect of any land.
- (5) Any person who is an officer of the Valuation Office or is duly authorised in writing by a planning authority having power to acquire land under sections 42 to 47 may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that land or any other land, or in connection with any claim for compensation in respect of any such acquisition.
- (6) Subject to sections 77 and 78, any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals in it.

**77 Power to issue warrant**

- (1) If in relation to rights of entry exercised under section 76 the sheriff is satisfied—
- (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in that section, and

- (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.
- (2) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (3) 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.

## **78 Rights of entry: supplementary provisions**

- (1) Subject to subsection (2), a person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 76 or 77 (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 76 or 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 subsections (4) and (5) of section 27 shall apply in relation to compensation under this subsection as they apply in relation to compensation under sections 25 to 27.
- (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.
- (7) A person who is guilty of an offence under subsection (5) shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.

- (8) No person shall carry out any works in exercise of a power conferred under section 49 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 49 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 217(1) of the principal Act applies for the purposes of subsection (9) as it applies for the purposes of section 270(9) of the principal Act.

## **79 Application of certain general provisions of principal Act**

- (1) Subject to subsection (2), the following provisions of the principal Act shall apply for the purposes of this Act as they apply for the purposes of that Act—
- section 85 (power to make provision for determination of claims),
  - section 146 (interdicts restraining breaches of planning control),
  - section 195 (general vesting declarations),
  - section 263 (local inquiries),
  - section 266 (orders as to expenses of parties where no local inquiry held),
  - section 267 (procedure on certain appeals and applications),
  - section 271 (service of notices),
  - section 272 (power to require information as to interests in land),
  - section 273 (offences by corporations), and
  - section 276 (Act not excluded by special enactments).
- (2) Section 273 of that Act shall not apply to offences under section 53 of this Act.

## **80 Financial provisions**

- (1) Where—
- (a) compensation is payable by a planning authority under this Act in consequence of any decision or order given or made under any provision of this Act other than sections 25 to 27, 42, 43(1) to (3), 44 to 52, 57, 58, 59(2) and (3), 61 to 64, 66, 67(1) to (4), (10) and (11) and 68 to 83, and
  - (b) that decision or order was given or made wholly or partly in the interest of a service which is provided by a government department and the cost of which is defrayed out of money provided by Parliament,
- the Minister responsible for the administration of that service may pay that authority a contribution of such amount as he may with the consent of the Treasury determine.
- (2) Any local authority and any statutory undertakers may contribute towards any expenses incurred by a planning authority in or in connection with the performance of any of their functions under the provisions of sections 1 to 24, 28 to 47, 50, 53, 54, 56, 59, 77 and 78 and Schedules 1 and 2.
- (3) In the application of subsection (2) to a local authority, “planning authority” means a planning authority other than that local authority.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Any expenses incurred by a planning authority under sections 28 to 30 and 42 to 47 in pursuance of a listed building purchase notice or in the acquisition of land under this Act for the purposes of any function of that authority shall be defrayed in the same manner as other expenses incurred by that authority for the purposes of that function.
- (5) Subsections (3) and (4) of section 261 of the principal Act (borrowing by authorities for purposes of the principal Act) shall apply for the purposes of this Act as they apply for the purposes of that Act.
- (6) There shall be paid out of money provided by Parliament—
  - (a) any sums necessary to enable the Secretary of State to make any payments becoming payable by him under sections 25 and 26,
  - (b) any expenses incurred by any government department including the Secretary of State in the acquisition of land under sections 42 to 47 or in the payment of compensation under section 46(4) or 78(4) or under subsection (1),
  - (c) any sums necessary to enable the Secretary of State to make grants or loans under sections 69 and 72, and
  - (d) any administrative expenses incurred by the Secretary of State for the purposes of this Act.
- (7) Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.