



# Historic Environment (Amendment) (Scotland) Act 2011 2011 asp 3

## PART 3

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

#### *Enforcement notices, stop notices and temporary stop notices*

#### **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

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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 ”.

#### Commencement Information

**II** [S. 22](#) in force at 1.12.2011 by [S.S.I. 2011/372](#), art. 2, [Sch.](#)

## 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.

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- (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

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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).
- (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).

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- (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.

#### **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.

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- (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,
  - (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)—

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- (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—

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- (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 ”.
- (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**

- I2** [S. 23](#) in force for specified purposes at 30.6.2011 by [S.S.I. 2011/174](#), art. 2, [Sch.](#)
- I3** [S. 23](#) in force in so far as not already in force at 1.12.2011 by [S.S.I. 2011/372](#), art. 2, [Sch.](#)



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