



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

## 1997 CHAPTER 9

### PART I

#### LISTED BUILDINGS

#### CHAPTER III

#### RIGHTS OF OWNERS ETC.

#### *Compensation*

#### **25 Compensation where listed building consent revoked or modified.**

- (1) This section shall have effect where listed building consent is revoked or modified by an order under section 21 (other than an order which takes effect by virtue of section 23).
- (2) If, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the building—
  - (a) has incurred expenditure in carrying out works which are rendered abortive by the revocation or modification, or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,the authority shall pay to that person compensation in respect of that expenditure, loss or damage.
- (3) Subject to subsection (4), no compensation shall be paid under this section in respect of—
  - (a) any works carried out before the grant of the listed building consent which is revoked or modified, or

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- (b) any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.
- (4) For the purposes of this section, expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory to any works, shall be taken to be included in the expenditure incurred in carrying out those works.

**Modifications etc. (not altering text)**

- C1** Ss. 6-25 applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with reg. 2)

**26 Compensation for loss or damage caused by service of building preservation notice.**

- (1) This section applies where a building preservation notice ceases to have effect without the building having been included in a list compiled or approved by [<sup>F1</sup>Historic Environment Scotland] under section 1.
- (2) Any person who at the time when the notice was served had an interest in the building shall, on making a claim to the planning authority within the prescribed time and in the prescribed manner, be entitled to be paid compensation by the authority in respect of any loss or damage directly attributable to the effect of the notice.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) shall include a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.

**Textual Amendments**

- F1** Words in s. 26(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 3 para. 25](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, [sch.](#); [S.S.I. 2015/196](#), art. 2, [sch.](#)

**27 General provisions as to compensation for depreciation under this Part.**

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 12 of the <sup>M1</sup>Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (2) This section applies to any compensation which is payable under section 25 or 26 in respect of depreciation of the value of an interest in land.
- (3) Where an interest in land is subject to a heritable security—
  - (a) any compensation to which this section applies which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the security,

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- (b) a claim for any such compensation may be made by any creditor in a heritable security over the interest, but without prejudice to the making of a claim by the person entitled to the interest,
  - (c) no compensation to which this section applies shall be payable in respect of the interest of the creditor in the heritable security (as distinct from the interest which is subject to the security), and
  - (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the heritable security shall be paid to the creditor in the security or, if there is more than one such creditor, to the creditor whose security ranks first, and shall in either case be applied by him as if it were proceeds of sale by him under the powers competent to creditors in heritable securities.
- (4) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under section 25 or 26 shall be referred to and determined by the Lands Tribunal.
- (5) In relation to the determination of any such question, the provisions of sections 9 and 11 of the <sup>M2</sup>Land Compensation (Scotland) Act 1963 shall apply, subject to any necessary modifications and to the provisions of any regulations made under this Act.

#### Marginal Citations

**M1** 1963 c. 51.

**M2** 1963 c. 51.

### *Listed building purchase notices*

## **28 Purchase notice on refusal or conditional grant of listed building consent.**

- (1) Where—
- (a) listed building consent in respect of a building is refused or is granted subject to conditions, or is revoked or modified by an order under section 21 or 24, and
  - (b) any owner or lessee of the building claims that—
    - (i) the conditions mentioned in subsection (2) are satisfied with respect to it and any land comprising the building, or contiguous or adjacent to it, and owned or occupied with it, and
    - (ii) the conditions mentioned in subsection (3) are satisfied with respect to that land,
 he may, within the prescribed time and in the prescribed manner, serve on the planning authority in whose district the building and land is situated a notice (in this Act referred to as a “listed building purchase notice”) requiring that authority to purchase his interest in the building and the land in accordance with sections 29 to 33.
- (2) The conditions mentioned in subsection (1)(b)(i) are—
- (a) that the building and land in respect of which the notice is served have become incapable of reasonably beneficial use in their existing state,
  - (b) in a case where listed building consent has been granted subject to conditions with respect to the execution of the works or has been modified by the imposition of such conditions, that the building and land cannot be rendered

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- capable of such use by the carrying out of the works in accordance with those conditions, and
- (c) in any case, that the building and land cannot be rendered capable of such use by the carrying out of any other works for which listed building consent has been granted or for which the planning authority or the Secretary of State has undertaken to grant such consent.
- (3) The conditions mentioned in subsection (1)(b)(ii) are that the use of the land is substantially inseparable from that of the building and that it ought to be treated, together with the building, as a single holding.
- (4) Where, for the purpose of determining whether the conditions mentioned in subsection (2) are satisfied in relation to any building and land, any question arises as to what is or would in any particular circumstances be a reasonably beneficial use of the building and land, no account shall be taken of any prospective use which would involve the carrying out of development (other than any development specified in paragraph 1 or 2 of Schedule 11 to the principal Act) or of any works requiring listed building consent which might be executed to the building, other than works for which the planning authority or the Secretary of State has undertaken to grant such consent.

**Modifications etc. (not altering text)**

- C2** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with [reg. 2](#))

**[<sup>F2</sup>28A Purchase notices: Crown land**

- (1) A listed building purchase notice may be served in respect of Crown land only as mentioned in this section.
- (2) The owner of a private interest in Crown land must not serve a listed building purchase notice unless—
- (a) he first offers to dispose of his interest to the appropriate authority on equivalent terms, and
  - (b) the offer is refused by the appropriate authority.
- (3) The appropriate authority may serve a listed building purchase notice in relation to the following land—
- (a) land belonging to Her Majesty in right of her private estates,
    - [ land which forms part of the property, rights and interests to which
    - <sup>F3</sup>(aa) section 90B(5) of the Scotland Act 1998 applies,]
  - (b) land which forms part of the Crown Estate.
- (4) An offer is made on equivalent terms if the price payable for the interest is equal to (and, in default of agreement, determined in the same manner as) the compensation which would be payable in respect of it if it were acquired in pursuance of a listed building purchase notice.]

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### Textual Amendments

- F2** S. 28A inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 2](#) (with s. 111); S.S.I. 2006/268, art. 3(f)
- F3** S. 28A(3)(aa) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), [Sch. 5 para. 28\(2\)](#)

### Modifications etc. (not altering text)

- C2** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with [reg. 2](#))

## 29 Action by planning authority on whom listed building purchase notice served.

- (1) The planning authority on whom a listed building purchase notice is served under section 28 shall serve on the owner or lessee by whom the notice was served a notice stating—
- that the authority are willing to comply with the purchase notice,
  - that another planning authority or statutory undertakers specified in the notice under this subsection have agreed to comply with it in their place, or
  - that for reasons specified in the notice under this subsection the authority are not willing to comply with the purchase notice and have not found any other planning authority or statutory undertakers who will agree to comply with it in their place, and that they have sent to the Secretary of State a copy of the purchase notice and of the notice under this subsection.
- (2) A notice under subsection (1) must be served before the end of the period of 3 months beginning with the date of service of the listed building purchase notice.
- (3) Where the planning authority on whom a listed building purchase notice is served by an owner or lessee have served on him a notice in accordance with subsection (1)(a) or (b) the authority, or the other planning authority or statutory undertakers specified in the notice, as the case may be, shall be deemed—
- to be authorised to acquire the interest of the owner or lessee compulsorily in accordance with the provisions of section 42, and
  - to have served a notice to treat in respect of it on the date of service of the notice under that subsection.
- (4) Where the planning authority propose to serve such a notice as is mentioned in subsection (1)(c), they shall first send to the Secretary of State a copy of—
- the proposed notice, and
  - the listed building purchase notice which was served on them.

### Modifications etc. (not altering text)

- C2** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with [reg. 2](#))
- C3** S. 29: power to modify conferred (27.5.1997) by [1980 c. 65, Sch. 30 Pt. II para. 10](#) (as substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\), Sch. 2 para. 31\(12\)](#))

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### 30 Procedure on reference of listed building purchase notice to Secretary of State.

- (1) Where a copy of a listed building purchase notice is sent to the Secretary of State under section 29(4), he shall consider whether to confirm the notice or to take other action under section 31 in respect of it.
- (2) Before confirming such a notice or taking such other action, the Secretary of State shall give notice of his proposed action—
  - (a) to the person who served the notice,
  - (b) to the planning authority on whom it was served, and
  - (c) if the Secretary of State proposes to substitute any other planning authority or statutory undertakers for the planning authority on whom the notice was served, to them.
- (3) A notice under subsection (2) shall specify the period (which must not be less than 28 days from its service) within which any of the persons, authorities or statutory undertakers on whom it is served may require the Secretary of State to give them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) If within that period any of those persons, authorities or statutory undertakers so requires, the Secretary of State shall, before he confirms the listed building purchase notice or takes any other action under section 31 in respect of it, give each of them such an opportunity.
- (5) If, after any of those persons, authorities or statutory undertakers have appeared before and been heard by the appointed person, or the persons, authorities and statutory undertakers concerned have agreed to dispense with such a hearing, it appears to the Secretary of State to be expedient to take action under section 31 otherwise than in accordance with the notice given by him, the Secretary of State may take that action accordingly.
- (6) In this section and sections 31 to 33, “land” means the building and the land in respect of which the notice under section 28(1) is served.

#### Modifications etc. (not altering text)

- C2** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with [reg. 2](#))
- C4** S. 30: power to modify conferred (27.5.1997) by [1980 c. 65](#), [Sch. 30 Pt. II para. 11](#) (as substituted (27.5.1997) by [1997 c. 11](#), ss. 4, 6(2), [Sch. 2 para. 31\(12\)](#))

### 31 Action by Secretary of State in relation to listed building purchase notice.

- (1) Subject to the following provisions of this section, if the Secretary of State is satisfied that the conditions specified in section 28(2)(a) to (c) are satisfied in the case of any listed building purchase notice, he shall confirm the notice.
- (2) If the Secretary of State is satisfied that those conditions are fulfilled only in respect of part of the land, he shall confirm the notice only in respect of that part and the notice shall have effect accordingly.

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- (3) The Secretary of State shall not confirm the notice unless he is satisfied that the land comprises such land contiguous or adjacent to the building as is in his opinion required—
- (a) for preserving the building or its amenities,
  - (b) for affording access to it, or
  - (c) for its proper control or management.
- (4) If it appears to the Secretary of State to be expedient to do so he may, instead of confirming the notice—
- (a) in the case of a notice served on account of the refusal of listed building consent for any works, grant such consent for those works,
  - (b) in the case of a notice served on account of such consent being granted subject to conditions, revoke or amend those conditions so far as it appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of those works,
  - (c) in the case of a notice served on account of such consent being revoked by an order under section 21 or 24, cancel the order revoking the consent, or
  - (d) in the case of a notice served on account of such consent being modified by such an order by the imposition of conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of the works in respect of which the consent was granted.
- (5) If it appears to the Secretary of State that the land, or any part of it, could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out—
- (a) of any other works for which listed building consent ought to be granted, or
  - (b) of any development for which planning permission ought to be granted,
- he may, instead of confirming the listed building purchase notice (or confirming it so far as it relates to that part), direct that if an application is made for such consent for those works, or as the case may be for planning permission for that development, it shall be granted.
- (6) If it appears to the Secretary of State, having regard to the probable ultimate use of the building or its site, that it is expedient to do so he may, if he confirms the notice, modify it in relation to either the whole or any part of the land, by substituting another planning authority or statutory undertakers for the authority on whom the notice was served.
- (7) Any reference in section 30 to the taking of action by the Secretary of State under this section includes a reference to the taking by him of a decision not to confirm the purchase notice on the grounds that any of the conditions referred to in subsection (1) of this section are not satisfied.

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**Modifications etc. (not altering text)**

- C2** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, [sch. 3](#) (with [reg. 2](#))
- C5** S. 31(6): power to modify conferred (27.5.1997) by 1980 c. 65, [Sch. 30 Pt. II para. 12](#) (as substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 31\(12\)](#))

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### **32 Effect of Secretary of State’s action in relation to listed building purchase notice.**

- (1) Where the Secretary of State confirms a listed building purchase notice, the authority on whom the notice was served shall be deemed—
  - (a) to be authorised to acquire the owner’s or lessee’s interest in the land compulsorily in accordance with the provisions of section 42, and
  - (b) to have served a notice to treat in respect of it on such date as the Secretary of State may direct.
- (2) If before the end of the relevant period the Secretary of State has neither—
  - (a) confirmed the listed building purchase notice, nor
  - (b) notified the owner or lessee by whom it was served that he does not propose to confirm it, nor
  - (c) taken any such action in respect of it as is mentioned in subsection (4) or (5) of section 31,

the notice shall be deemed to be confirmed at the end of that period and the authority on whom the notice was served shall be deemed to have been authorised as is mentioned in subsection (1)(a) and to have served a notice to treat in respect of the owner’s or lessee’s interest at the end of that period.
- (3) Where a listed building purchase notice is confirmed in respect of only part of the land, references in this section to the owner’s or lessee’s interest in the land are references to the owner’s or lessee’s interest in that part.
- (4) Where a listed building purchase notice is modified under section 31(6) by the substitution of another planning authority or statutory undertakers for the authority on whom the notice was served, the reference in subsection (1) to that authority is to that other planning authority or those statutory undertakers.
- (5) In this section “the relevant period” means, subject to subsection (6)—
  - (a) the period of 9 months beginning with the date of the service of the listed building purchase notice, or
  - (b) if it ends earlier, the period of 6 months beginning with the date on which a copy of the purchase notice was sent to the Secretary of State.
- (6) The relevant period does not run if the Secretary of State has before him at the same time both—
  - (a) a copy of the listed building purchase notice sent to him under section 29(4), and
  - (b) a notice of appeal under section 18 or 35 relating to any of the land to which the purchase notice relates.
- (7) Where any decision by the Secretary of State to confirm or not to confirm a listed building purchase notice (including any decision to confirm the notice only in respect of part of the land, or to give any direction as to the granting of listed building consent or planning permission) is quashed under section 58, the notice shall be treated as cancelled, but the owner or lessee may serve a further notice in its place.
- (8) For the purposes of determining whether such a further notice has been served within the period prescribed for the service of listed building purchase notices, the decision concerning listed building consent on account of which the notice has been served shall be treated as having been made on the date on which the decision of the Secretary of State was quashed.



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**Modifications etc. (not altering text)**

- C2** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, **sch. 3** (with reg. 2)
- C6** S. 32(4): power to modify conferred (27.5.1997) by 1980 c. 65, **Sch. 30 Pt. II para. 13** (as substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 31(12)**)

**33 Reduction of compensation on acquisition where section 25 compensation payable.**

Where compensation is payable under section 25 in respect of expenditure incurred in carrying out any works to a building, any compensation which then becomes payable in respect of the acquisition of an interest in the land in pursuance of a listed building purchase notice shall be reduced by an amount equal to the value of those works.

**Modifications etc. (not altering text)**

- C2** Ss. 28-41I applied (with modifications) (1.10.2015) by [The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/243\)](#), regs. 1, 15, **sch. 3** (with reg. 2)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 82(1)(aa)-(ad) inserted by [2006 asp 17 s. 55\(5\)](#)