

Appendix A

Comments from East Lothian Council on the Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill

Part 1 – Amendment of the Historic Buildings and ancient monuments act 1953

Section 1: Recovery of grants for repair, maintenance and upkeep of certain property

No comments.

Part 2 – Modifications to the Ancient monuments and archaeological Areas Act 1979

Section 2: Control of works affecting scheduled monuments

The proposal that an offence is committed if a scheduled monument is *disturbed* as well as damaged is welcomed. Terms should be defined in the legislation.

Section 3: Works affecting scheduled monuments: consent for works without authority

Generally supported.

Section 4: Defences involving knowledge or belief to certain offences under the 1979 Act

Removal of defence of ignorance is welcomed

Section 5: Fines: increases and duty of court in determining amount

Supported.

Section 6: Powers of entry to inspect condition of scheduled monument

No comments.

Section 7: Works affecting scheduled monuments: enforcement

Supported. These powers will allow for the reversal or amelioration of unauthorised works or works in breach of any condition attached to a scheduled monument consent.

Section 8, 9 and 10: Monuments under guardianship.

No comments.

Section 11: Financial support for preservation etc. of monuments

Powers to enable Scottish Ministers to offer ancient monument grants to a third party to undertake works of preservation, maintenance and management on a scheduled monument are supported.

Section 12: Power of entry on land where monument at risk

Supported.

Section 13: Offence of disturbance of certain ancient monuments

Supported but note that the legislation should define 'disturbance'.

Section 14: Development and understanding of matters of historic, etc. interest: grants and loans.

This new power will permit Scottish Ministers to make grants or loans to any organisation or individual involved in promoting the development or understanding of historic, architectural, traditional, artistic or archaeological interest. It will apply to all aspects of the historic environment including listed buildings and is supported.

Section 15: Retention of found objects of archaeological or historic interest

Supported.

Section 16: Meaning of 'Monument' in the 1979 Act

Generally supported. Concern that in practice it may be difficult to define a boundary for some types of sites mentioned, for example, flint scatters and archaeological deposits.

Section 17: Refusal to entertain certain applications for scheduled monument consent

Supported.

Part 3 - Modifications to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Section 18: Certificate that a building is not intended to be listed

This is a new proposal to introduce a certificate of immunity from listing for a fixed period of 5 years to give owners and developers preparing proposals for buildings certainty in respect of listing.

The responsibility for research and the granting of any such certificate will lie with Historic Scotland. At present when a property is proposed to be listed the local authority is consulted. The Bill does not allow for this and provision must be made for local authorities to participate in the process. Local authorities may possess specific knowledge of or have an interest in the building.

Whilst it is agreed that the proposal would provide certainty for a developer it would require a thorough assessment of the property by Historic Scotland to ensure that it is not worthy of listing. There have been examples of buildings

not thought to be of great architectural or historic importance where something important has been discovered in the course of development work that was not apparent before work commences. At present, for appropriate buildings, the Council requires a developer to undertake a historic building appraisal by a qualified buildings archaeologist, as a condition of planning permission or listed building consent. If a certificate of immunity has been granted could such a condition still apply?

It is likely that Historic Scotland will receive a substantial number of requests for certificates of immunity from listing. The Council wishes to highlight that if Historic Scotland cannot provide additional resources to deal with these then this work will be undertaken by the same staff that currently review the parish and burgh lists thus potentially further delaying the prospect of revised burgh and parish lists across Scotland, a situation that should not be permitted.

There is a danger that during property transactions certificates of immunity might be routinely requested. A charge for the process might act as a partial deterrent.

If this new power is applied, it must not prevent the planning authority from making it a condition of any subsequent planning permission or listed building consent requiring historic building recording and if necessary the retention of any historic features of the building.

Section 19: Offences in relation to unauthorised works and listed building consent: increases in fines

Supported.

Section 20: Hearings in connection with applications for listed building consent and appeals

Supported.

Section 21 and 22: Enforcement notice: requirement to cease works and stop notices and temporary stop notices

The introduction of a temporary stop notice is welcomed. However, the Bill allows a person served with a stop notice (in conjunction with an enforcement notice) which is subsequently quashed, withdrawn or varied so as to change the works concerned to be compensated by the Planning Authority for any loss or damage attributable to the actions required by the notice. This loss will include any loss due to breach of contract. Therefore, where a stop notice is served and the person served has entered into a contract with a builder who cannot continue with the works, the Planning Authority may be liable to compensate the person served for any costs incurred under the penalty clauses of the building contract. The Planning Authority has no way of knowing, at the time of service of the stop and enforcement notices, what contracts are in place and what the terms of these are. Should the Planning Authority serve notices and then decide, following investigation/discussion etc, that these should be withdrawn or substantially varied, it would be in the position of having to consider that doing so may incur this liability despite the notices having been served in good faith on the information available at the time of service. The only ground on which an

enforcement notice can be quashed without incurring liability is that listed building consent ought to be granted for the works. There appears to be no defence for the Planning Authority of good faith, reasonableness or due diligence. There is also no restriction on the level of compensation to reasonable loss. Accordingly, should a building contract specify unreasonable or punitive penalty sums there is nothing the Planning Authority could do to mitigate its liability for these sums.

Section 23: Non-compliance with listed building enforcement notice: fixed penalty notice

Supported

Section 24: Amount specified in fixed penalty notices for breach of listed building enforcement notice: procedure

Supported.

Section 25: Liability of owner and successors for expenses of urgent works

Supported. The Bill should also amend section 49 of the 1997 Act to allow urgent works notices to apply to all buildings whether occupied or not.

Section 26: Recovery of grants for preservation of listed buildings, etc.

Supported

Section 27: Regulations in connection with inquiries, etc.

Supported.

Additional Items suggested for inclusion within the Bill

Listed Buildings

Remove the word *deliberately* in s45 of the 1997 Act when applied to owners that allow listed buildings to fall into disrepair for the purposes of justifying its demolition. This will make it easier for minimum compensation to be awarded and should provide a better deterrent to neglect by owners.

To bring listed building consent in line with the provisions of the new planning Act and its requirements for planning permission, there should be a requirement to notify the planning authority when a listed building consent is to be implemented, and a requirement for a listed building consent completion certificate.

At present there is a reluctance amongst planning authorities to serve Urgent Works Notices or Repair Notices under the 1997 Act for fear of incurring substantial unplanned for expenditure in its subsequent acquisition if repair is not carried out. The Bill should make provision for grants to local authorities

who seek to serve notice on a listed building in need of repair towards the costs of urgent works, repairs and property purchases. This would encourage more positive action by local authorities on buildings at risk.

Local Lists

Introduce a new power for Local Authorities to be able to designate buildings of local interest on a local list with associated legal protection.

Conservation Areas

The 1997 Act should be amended to give Conservation Areas additional controls on development. There should be universal restrictions in permitted development without the need to prepare additional Article 4 directions.

Exemptions for Ecclesiastical Buildings

The 1997 Act should be amended to remove exemption for church buildings in use for ecclesiastical purposes.