



The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill

CONSULTATION AND DRAFT BILL

Foreword by the Minister for Culture, External Affairs and the Constitution

I am delighted to publish for consultation this draft Bill to amend heritage legislation in Scotland.

Scotland's historic environment is at the core of nationhood, it provides us with a strong sense of identity and plays a large role in helping to attract foreign visitors and investment to Scotland. Our historic environment is both inspiring and irreplaceable and has a significant role to play in developing a sustainable economic future for Scotland. This Bill will improve the ability of owners, tenants, businesses, the voluntary sector and the regulatory authorities to manage this unique historic asset for the benefit of future generations.

The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill is about making sure we are giving people in the front line of protecting Scotland's historic environment an effective toolkit, so that we pass on a legacy of which future generations of Scots can be proud. We are responding to suggestions from stakeholders, particularly in local government, about how primary legislation can best be used to: remove uncertainty; enhance ability to work with developers; align aspects of the listing and scheduling systems; contribute to planning improvement; increase deterrent penalties; improve capacity to deal with urgent threats; and remove obstacles to the use of existing powers.

This is a rare chance to tackle some long-standing practical issues which can only be dealt with through primary legislation, leaving a valuable legacy in relation to the day-to-day business of protecting what we have for future generations. The Bill, however, is only part of a much wider package of administrative reforms being progressed by Historic Scotland and the rest of the Scottish Government in partnership with local authorities.

I would encourage all who have an interest in Scotland's historic environment to consider carefully the proposed amendments set out in the draft Bill and to respond to this consultation.



Michael Russell
Minister for Culture, External Affairs and the Constitution

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Consultation

Purpose of the Consultation

In this consultation paper the Scottish Government seeks your views on the proposed provisions of the Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill.

The Bill is a tightly-focused technical amending Bill that will introduce new provisions and remove barriers to the use of existing powers that will enhance the ability of the regulatory and planning authorities to manage our historic environment in a sustainable way for the enjoyment and benefit of future generations.

It is part of a wider programme for change in the operation of the system for the protection and management of our patrimony.

The consultation paper is structured as follows:

Section 1: includes introductory and background information on the Bill process to date; explains in broad terms what the Bill will do; comments on the level of consultation undertaken so far; and provides comment on the overall policy aims of the Bill.

Section 2: provides you with an outline of the policy aims underpinning each of the amending provisions and should be read in conjunction with the draft Bill.

Section 3: provides you with an initial assessment of the costs associated with the implementation of the Bill.

Section 4: comprises a Partial Regulatory Impact Assessment for the Bill.

Section 5: sets out the Scottish Government's initial comments on the equalities impact of the Bill.

Section 6: comprises a statement on Strategic Environmental Assessment.

Section 7: comprises the draft Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill.

The Scottish Government would welcome comments on what is proposed to be included in the draft Bill, bearing in mind that, in challenging circumstances, the Scottish Government is keen to avoid placing new burdens on owners of assets, businesses and local and central government.

We would also be grateful for your views on:

- the potential financial implications of the Bill;
- the Partial Regulatory Impact Assessment; and,
- the equalities impact of the Bill.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Responding to this consultation paper

We are inviting written responses to this consultation paper by 14 August 2009.

Please send your response with the completed Respondent Information Form (see ‘Handling your Response’ below) to:

HS.policy@scotland.gsi.gov.uk

or

Policy Team
Historic Scotland
Room 2.9
Longmore House
Salisbury Place
Edinburgh
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If you have any queries contact Frankie Quinn on 0131 668 8639.

We would be grateful if you would clearly identify individual provisions you wish to comment on, and structure any general comments in such a way as to aid our analysis of the responses received.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** attached to the covering letter as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should, however, be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and, whatever the wishes of the respondent, would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library. (See the attached Respondent Information Form.) These will be made available to the public in the Scottish Government Library by 11 September and on Historic Scotland's consultation web page by the same date. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help Ministers reach a decision on the content of the Ancient Monuments and Listed Buildings (Amendment)(Scotland) Bill. We aim to issue an analysis of the responses by 4 November 2009.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

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Policy Team
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Room 2.9
Longmore House
Salisbury Place
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Section 1

Introduction and Background Information

- 1.1 This consultation document has been prepared by Historic Scotland on behalf of the Scottish Ministers. It contains a draft of the Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill.
- 1.2 The Bill is an amending piece of legislation and its scope and content are formed by a series of amending provisions identified by Historic Scotland and local government, and during the course of discussions with stakeholders during 2007, which followed the publication of a report by the Historic Environment Advisory Council for Scotland on the need for a review of heritage legislation in Scotland.¹
- 1.3 The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill will contribute to the Scottish Government's central purpose of sustained economic growth by introducing a series of provisions that will enhance the ability of central and local government to manage Scotland's unique and irreplaceable historic environment. The amending Bill will support, in particular, the Government's Greener Strategic Objective and will provide the regulatory authorities with a much-improved toolkit to help manage, protect and enhance Scotland's historic environment for future generations.
- 1.4 The draft Bill is made up of four Parts. The first three Parts comprise amending provisions corresponding to the three principal Acts that will be amended by the Bill and a fourth Part which includes provisions on 'Interpretation' and 'Short title and commencement'. The principal Acts are:
- The Historic Buildings and Ancient Monuments Act 1953 ('the 1953 Act');
 - The Ancient Monuments and Archaeological Areas Act 1979 ('the 1979 Act'); and,
 - The Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 ('the 1997 Act').

Digital copies of the Acts can be accessed at the UK Statute Law Database at the following web address: www.statutelaw.gov.uk

- 1.5 The 1979 Act is a piece of UK legislation, which has already been amended for England, when English Heritage was established. The opportunity will be taken to simplify the reading of the Act as applied in Scotland where possible, and minor technical amendments will also be introduced where these are required.

¹ The Report and the Minister's response can be found on the Advisory Council's website at the following address: www.heacs.org.uk

- 1.6 The policy aims underlying each of the new provisions are set out under Section 2 below and we would encourage you to read this section in conjunction with the draft Bill.
- 1.7 This consultation document invites readers' comments on:
- the draft Bill provisions;
 - the potential financial implications of the Bill;
 - the Partial Regulatory Impact Assessment;
 - the equalities impact of the Bill.
- 1.8 While we would particularly appreciate respondents' views on these key areas all comments and views are welcomed and will be carefully considered.
- 1.9 After responses have been analysed Ministers will consider what proposals to introduce to the Scottish Parliament.

Background to the Bill

- 1.10 In December 2007 the then Minister for Europe, External Affairs and Culture responded to the Historic Environment Advisory Council for Scotland's (HEACS) report on *Whether there is a need to review heritage protection legislation in Scotland*. The report argued in favour of a major legislative review. After careful consideration Ministers came to the view that the present system did not have sufficient problems to warrant major legislative reform. However, while rejecting the need for a wholesale review and revision of heritage protection legislation in Scotland, they indicated that there were legislative changes that might be considered as part of the wider improvement of the system.
- 1.11 The Scottish Government's position was informed by a year-long stakeholder engagement process involving the wider historic environment sector, local authorities and government which examined in detail the issues raised by the HEACS report. This process suggested that there were gaps and weaknesses in the existing heritage protection legislative framework, but that the system was basically fit for purpose and that there was not an overwhelming need for fundamental review.
- 1.12 Scottish Ministers concluded that what was required was a single, simple piece of legislation, with a limited scope, to amend the three pieces of primary legislation listed above, while protecting the core of the current system.
- 1.13 In parallel, consideration has been given to the protection of the marine historic environment, where the legislation was generally agreed no longer to be fit for purpose. New provisions were introduced separately on 29 April in the Marine (Scotland) Bill.

- 1.14 Ministers were aware throughout of plans for major reform in England and Wales, work on which began in 2001. A draft Bill was not included in the Westminster legislative programme for 2009-10; Ministers there have now committed to a programme of non-legislative reform.

What the Bill will do

- 1.15 The Bill is only one part of the Scottish Government's programme to streamline, simplify and clarify the system for protecting and managing the historic environment and should be seen as complementing work which has already been progressed by Historic Scotland in partnership with the local authorities, for example, the establishment of Joint Working Agreements between local government and Historic Scotland, and the managed removal of a duty on local authorities to notify Scottish Ministers of certain casework.
- 1.16 The Bill, by amending the three pieces of legislation noted above, will address some of the gaps and weaknesses that were identified during the stakeholder engagement process, but will leave the fundamentals of the legislation in place: i.e. there will still be scheduling of monuments of national importance and listing of buildings of special architectural or historic interest and separate consent processes for the 1979 and 1997 Acts. There is a sound rationale for having different legal frameworks for scheduled monuments and listed buildings. For scheduled monuments (which are mainly sites of archaeological importance), the default position is that they should, as far as possible, remain in the state to which they came down to us. For listed buildings, the default position is that they should remain in active use. Not all things needing protecting are the same, and it is widely considered in Scotland that the different approaches of the legislation governing each group are rational and useful.
- 1.17 The Bill will also contribute to the Scottish Government's wider streamlining and simplification agenda by harmonising provisions within the 1979 and 1997 Acts (for example, in levels of fines and the removal of the 'defence of ignorance' from the 1979 Act) and, where practicable, by harmonising elements of the historic environment legislation with the planning regime (for example, by introducing a system of stop and temporary stop notices for unauthorised works to scheduled monuments and listed buildings). It will also complement the Scottish Government's new policies for planning and the historic environment that were launched at the Planning Summit on 28 October 2008.²
- 1.18 The Bill will place no new burdens or duties on central or local government, owners of assets, businesses or members of the public. The new powers that it will introduce, such as scheduled monument enforcement notices and powers to serve a fixed penalty notice in relation to a breach of a listed building enforcement notice, will complement existing powers and their use will be at the discretion of the regulatory authorities.

² The *Scottish Historic Environment Policy October 2008* can be downloaded from www.historic-scotland.gov.uk/shep.pdf and the *Scottish Planning Policy 23: Planning and the Historic Environment* from www.scotland.gov.uk/Resource/Doc/242900/0067569.pdf

- 1.19 The new provisions for a ‘certificate that building not intended to be listed’ (referred to for convenience as ‘certificates of immunity from listing’) will provide greater certainty for individuals and businesses planning development.
- 1.20 The Bill is pitched at a level that is both affordable and manageable; it will make the existing system more efficient and effective and will result in a much-improved heritage protection framework in Scotland.
- 1.21 The Scottish Government is confident that the Bill will deliver significant benefits by amending the three main Acts. Moreover, the amendments contribute to the Government’s overall priority of sustainable economic growth by improving the ability of the regulatory authorities to conserve and manage sustainably the historic environment. The proposed changes also reflect the Government’s desire not to impose new statutory controls and duties when better and more proportionate means to bring about improvements to the heritage legislative framework in Scotland are available – in this case through tightly-focused, targeted legislative amendment and the non-statutory improvements in the management of the historic environment that are being progressed by Historic Scotland and the local authorities.

Consultation

- 1.22 As noted above, an informal consultation exercise on the issue of heritage legislation in Scotland was undertaken in 2007. This involved written papers, a series of meetings with stakeholders and substantial discussion including meetings facilitated by bodies in the heritage sector. While some stakeholders argued for major reform, others were keen to identify a range of gaps and weaknesses in the current system that could be addressed through focused legislative amendment. The provisions set out in the attached Bill were identified during that process and, as noted above, include proposals to harmonise aspects of the two main Acts. Subsequently, the provisions have been discussed with COSLA.

Overarching policy aims

- 1.23 The overarching aims of the Bill are to improve the management and protection of our historic environment by addressing the gaps and weaknesses of the current historic environment legislative framework that were identified during the year-long stakeholder engagement process; to avoid introducing significant new burdens or duties; and in a challenging economic period to keep the implementation costs low.
- 1.24 The Scottish Government is confident that the Bill will meet these overarching policy aims through the range of amending provisions brought forward in the Bill. For example, and as noted in the Minister’s foreword the Bill will:

- Remove uncertainty, for example, by introducing a new power that will enable Scottish Ministers to offer any person a certificate of immunity from listing that will guarantee that a building will not be listed during the five years from the date of the certificate.
 - Enhance the ability of the regulatory authorities to work with developers by making it clear that Scottish Ministers can specify in a grant award letter the amount of grant that would be recoverable in certain circumstances.
 - Align aspects of the listing and scheduling systems, for example by enabling Scottish Ministers to issue a scheduled monument enforcement notice which will parallel similar provisions in the 1997 Act; and by harmonising the level of fine on summary conviction under sections 2 and 28 of the 1979 Act and section 8 of the 1997 Act.
 - Contribute to planning improvement by removing the right to be heard in connection with applications and appeals under the 1997 Act in line with similar procedures in planning legislation.
 - Increase deterrents by raising the level of fines on summary conviction; by empowering Scottish Ministers to serve a scheduled monument enforcement notice that will allow for the reversal or amelioration of unauthorised works, or works in breach of any conditions attached to a scheduled monument consent to scheduled monuments; and, by enabling local planning authorities to issue fixed penalty notices as an alternative in cases when a person is in breach of a listed building enforcement notice.
 - Improve capacity to deal with urgent threats by introducing new powers to enable a person authorised by the Scottish ministers to enter land to carry out essential investigatory works, including excavations for the purpose of archaeological investigation where they know or have reason to believe that any ancient monument is at risk of imminent damage or destruction.
 - Remove obstacles to the use of existing powers by introducing explicit powers to enable Scottish Ministers to offer ancient monuments grants to a third party to undertake works of preservation, maintenance and management of an ancient monument.
- 1.25 These proposals, and the other draft provisions which are described in greater detail in Section 2 of this consultation document, will enhance the ability of the regulatory and planning authorities to manage sustainably our irreplaceable historic environment and will help ensure that we pass on a legacy of which future generations of Scots can be proud.

Section 2

The Provisions

- 2.1 The following section outlines the policy aims underpinning each of the amending provisions and should be read in conjunction with the attached draft Bill.
- 2.2 Where an individual provision seeks to harmonise aspects of the 1979 and 1997 Acts, or brings aspects of historic environment legislation into line with the planning regime, this is indicated in the provision heading as a ‘harmonising amendment’. Where the purpose of a proposal is to clarify an existing provision, this too is highlighted in the text.
- 2.3 The text of Section 2 broadly follows the order of the sections. It is not a comprehensive description of each section of the draft Bill but focuses on the key issues in the draft 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

- 2.4 Section 1 amends and is intended to clarify section 4A of the 1953 Act which enables the Scottish Ministers to recover grants made under section 4 of that Act. The intention is to make it clear that the grant offer can specify the amount recoverable or can make provision for calculating the amount recoverable in certain specified circumstances, for example, in the event of a sale of the building. This will ensure certainty for developers applying for grants who require knowledge of the terms and conditions of a grant at the outset in order to make financial arrangements.

Part 2 – Modifications of the Ancient Monuments and Archaeological Areas Act 1979

Section 2 – Control of works affecting scheduled monuments

- 2.5 Section 2 of the Bill will amend legislation so that an offence is committed if a scheduled monument is *disturbed*, as well as damaged, where such disturbance affects the conservation, stability or national importance of the monument. Currently an offence is committed only if there are any unauthorised works ‘resulting in the demolition or destruction of or any damage to a scheduled monument’. There is a need to strengthen legislation in this area to give protection to scheduled monuments which have been ‘disturbed’ by such unauthorised works. This is consistent with the proposed provisions in the Marine (Scotland) Bill which was introduced to Parliament on 29 April.

Section 3 – Works affecting scheduled monuments: consent for works without authority [harmonising amendment]

- 2.6 Section 3 amends section 2 of the 1979 Act to deal with consent for the retention of unauthorised works. In certain limited circumstances it may be appropriate and in the best interests of the scheduled monument to retain certain unauthorised works. Currently there is no legal mechanism to allow for a retrospective scheduled monument consent (SMC) for work already carried out on a scheduled monument. This amendment will allow Scottish Ministers to grant written consent for the retention of unauthorised works and will parallel similar provision in section 7(3) of the 1997 Act.

Section 4 – Defences involving knowledge or belief to certain offences under the 1979 Act [harmonising amendment]

- 2.7 Section 4 of the draft Bill will remove the ‘defence of ignorance’ from the 1979 Act. It is currently a defence under section 2(8) of the 1979 Act to prove that unauthorised works to a scheduled monument were carried out in ignorance that it was scheduled or that it was in an area affected by the works. The defence of ignorance is not paralleled in the 1997 Act, nor is it found in comparative nature conservation legislation and it does not appear in the Marine (Scotland) Bill introduced to Parliament on 29 April in relation to historic marine protected areas. The historic environment sector in Scotland has made it clear that they consider that the defence is a serious weakness in the existing heritage protection legislative framework and that they would welcome its removal. Since 1979 information on the location and extent of protected monuments and buildings has become much more easily accessible.
- 2.8 A similar defence of ignorance in section 28(1)(a) of the 1979 Act in relation to the offence of damaging certain ancient monuments, and section 42(7) of the 1979 Act in relation to the unauthorised use of metal detectors, will also be removed.

Section 5 – Fines: increases and duty of court in determining amount [harmonising amendment]

- 2.9 Section 5 of the draft Bill will raise the level of fines on summary conviction under section 2 and section 28 of the 1979 Act. Penalties relating to sections 2 and 28 will be increased to £50,000 for offences tried summarily. The Scottish Government is of the view that the current statutory maximum fine of £10,000 is too low in current times in proportion to the financial benefit (often arising from development or development potential) which may accrue from the commission of the offences of either carrying out unauthorised works or destroying or damaging a protected monument. The Government believes that the increase in the level of fines will act as an appropriate deterrent.

- 2.10 The same section will also make it a requirement that the Court, in determining the amount of the fine to be imposed on a person convicted of an offence under sections 2 or 28 takes into account the extent of any financial gain that has or is likely to accrue to the offender; this will parallel provisions already in the 1997 Act.
- 2.11 There is relevant precedent for the imposition of this level of fine. The Nature Conservation (Scotland) Act 2004 creates offences which are triable either on summary conviction or on indictment and which carry a maximum fine on summary conviction of £40,000. Under the terms of the Marine (Scotland) Bill a £50,000 maximum level fine is proposed for offences in relation to all kinds of marine protected areas.

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

- 2.12 Section 6 will amend and is intended to clarify section 6(1) of the 1979 Act regarding the powers of the Scottish Ministers to enter land to inspect the condition of a scheduled monument. Section 6(1) of the 1979 Act confers a general power to enter land to inspect a monument with a view to ascertaining its condition, with paragraphs (a) and (b) merely providing particular instances of how the power may be used. However, more than one reading of subsection (1) is possible. Section 6 of this Bill will remove any uncertainty.

Section 7 – Works affecting scheduled monuments: enforcement [harmonising amendment]

- 2.13 Section 7 (inserted sections 9A to 9F) will introduce new powers to enable Scottish Ministers to serve a scheduled monument enforcement notice that will allow for the reversal or amelioration of unauthorised works or works in breach of any condition attached to scheduled monument consent to scheduled monuments in cases where such remedial works are desirable or reasonably practicable. A scheduled monument enforcement notice will also enable Scottish Ministers to specify works that are to cease. Currently there are no provisions in the 1979 Act for enforcement and remedy where works have been executed to a scheduled monument without the requisite scheduled monument consent. There are such provisions for listed buildings in the 1997 Act and the Scottish Government believes that parallel provisions for scheduled monuments are required.

Stop notices and temporary stop notices for unauthorised works on scheduled monuments [harmonising amendment]

- 2.14 Section 7 (inserted sections 9G to 9O) will introduce new powers to enable Scottish Ministers to issue a stop notice and a temporary stop notice for unauthorised works on a scheduled monument. These will effect a halt – immediate in the case of temporary stop notices – to unauthorised works to a scheduled monument and will provide additional powers to prevent irremediable damage to such a nationally important monument through illegal and unauthorised works.

- 2.15 Currently, if unauthorised works causing damage to a scheduled monument are found to be underway there is no legal mechanism, other than by way of an Interim Interdict, to stop them quickly. As part of this Bill a new power will be introduced regarding enforcement and remedy where works have been executed without the requisite scheduled monument consent see paragraph 2.13 (above). This provision will result in the creation of a scheduled monument enforcement notice. The Bill will also allow for an appeal to be made against the issuing of such a notice. Where an appeal is brought, the enforcement notice will not take effect until the appeal has been finally determined or withdrawn. In view of the possible delays to the aim of achieving a stop and remediation of unauthorised works provisions are proposed to achieve a more immediate ban on works specified in the enforcement notice. Section 7 introduces stop notices. The new provisions will allow a stop notice to be issued where the Scottish Ministers consider it expedient that the unauthorised works should stop before the end of the period in which the enforcement notice requires to be complied with. A stop notice is to be served before the scheduled monument enforcement notice comes into effect.
- 2.16 The effect of the stop notice will be to prohibit the carrying out of the alleged unauthorised works until such time as the enforcement notice to which it relates is withdrawn or quashed, the period of compliance of the enforcement notice expires, or the stop notice is withdrawn.
- 2.17 Furthermore, with the aim of achieving a more immediate conclusion to unauthorised works than a stop notice can provide for, the Bill will introduce new powers to enable Scottish Ministers to issue temporary stop notices which will parallel similar powers in the planning regime. The Scottish Ministers will be able to issue such a notice where works have been or are being carried out to a scheduled monument which involve a contravention of section 2(1) or (6) of the 1979 Act and where they consider it is expedient that the works are stopped immediately. This new power taken together with the new power to issue scheduled monument enforcement notices and stop notices introduces a strengthened package of protection for scheduled monuments.
- 2.18 It should be noted that a stop notice is issued only when a scheduled monument enforcement notice is, or has been given, but a temporary stop notice can be issued even if no scheduled monument enforcement notice has been given. It should also be noted that new powers of entry are provided for to complement the new scheduled monument enforcement provisions.

Sections 8, 9 and 10 – Monuments under guardianship

- 2.19 Sections 8, 9 and 10 will update and clarify the powers of Scottish Ministers to fund and provide a range of facilities and services for the public at properties in the guardianship of Scottish Ministers, to take account of the modern needs and expectations of visitors and other users, particularly community groups, and the wider range of facilities that they now expect to be offered. These provisions regularise existing practice and include the provision of information, interpretation, toilets, ticket sales, retail, catering, religious ceremonies, functions and events and other facilities that Ministers judge are in the public interest and consistent with the status of the monument.

2.20 As part of this exercise of clarifying control over the monument and land in guardianship, the Bill will also remove the technical distinction of levels of management control which currently exist between monuments taken in to care before and after the 1979 Act and will bring all monuments (and adjoining land) which are under the guardianship of Scottish Ministers under their full control and management. The transitional provisions in paragraph 6 of Schedule 3 to the 1979 Act no longer serve any practical purpose; at all monuments current management actions reflect the principal duties of the Act to preserve, present and make accessible the monuments.

Section 11 – Financial support for preservation etc. of monuments

2.21 Section 11 will introduce explicit powers to enable Scottish Ministers to offer ancient monuments grants to a third party to undertake works of preservation, maintenance and management on a scheduled monument. At present such grants, under the terms of section 24(2) of the 1979 Act, can only be made ‘at the request of the owner’; this is unnecessarily restrictive. The owner may not be the person carrying out the works. A tenant or third party (such as a conservation charity) may wish to promote and undertake the works. It is likely that such persons would require the consent of the owner to carry out the works but the Scottish Government is of the view that the grant-giving powers of the Scottish Ministers should not be restricted in this way.

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

2.22 Section 12 introduces a new power to enable a person authorised by the Scottish Ministers to enter land to carry out essential investigatory works, including excavations for the purpose of archaeological investigation, where they know or have reason to believe that any ancient monument is at risk of imminent damage or destruction, if necessary without the permission of the owner. This will cover situations, for example, where there is an ancient monument (such as another Skara Brae) which is under threat of being washed away due to coastal erosion and where it is not possible to carry out remedial works to preserve the monument and unique information within the monument would be lost or destroyed without any record unless action was taken.

Section 13 – Offence of disturbance of certain ancient monuments

2.23 Section 13 will amend section 28 of the of the 1979 Act to capture the offence of ‘disturbance’ introduced by section 2 of this Bill. Section 13(c) will clarify that the type of disturbance which is to constitute an offence under section 28 of the 1979 Act should be the same as that under section 2 of this Bill i.e. that it must affect the conservation, stability or national importance of the monument.

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

2.24 Section 14 is concerned with the provision of a new power of financial assistance to the Scottish Ministers. It is intended that such financial assistance will be by way of grant or loan and will be given to any organisation or individual involved in promoting the development or understanding of historic, architectural, traditional, artistic or archaeological interest (terms used in the 1979 and 1997 Acts). The existing powers are limited in scope both in terms of the bodies or individuals who are eligible to receive the grant and in terms of the purposes for which the grant can be paid. This section will introduce an express power to allow Scottish Ministers to make payment of a grant or loan to organisations or individuals involved in promoting the development or understanding of matters of historic, architectural, traditional, artistic or archaeological interest.

Section 15 – Retention of found objects of archaeological or historical interest

2.25 Section 15 will amend section 54 of the 1979 Act and will clarify the position in Scotland regarding finds from archaeological excavations on scheduled monuments. The provisions set out in section 54 of the 1979 Act ensure that someone carrying out an excavation in the situations set out in sections 54(1) (a)–(c) of the Act can take custody of the artefacts recovered during excavation for research and reporting. Unfortunately, section 54(2), in referring to the consent of the landowner, refers only to the situation in England, where landowners may have rights to ownerless artefacts found on their property. In Scotland no such rights exist, but this clause has misled landowners into believing that they do. The policy aim here is simply to remove an unnecessary provision.

Section 16 – Meaning of ‘monument’ in the 1979 Act

2.26 The 1979 Act has been criticised for its lack of provisions to protect archaeological remains where there is nothing that can be clearly defined as a ‘structure’ or ‘work’: as a consequence many sites of early human settlement or industry (such as artefact scatters; a scatter of flint tools marking sites of human occupation and the manufacture of stone tools; archaeological deposits, for example soils containing artefacts, food remains etc) cannot be protected or managed. Section 16 will extend the range of historic environment assets that can be designated under the 1979 Act by expressly allowing Scottish Ministers to designate ‘any site comprising any thing, or group of things, that evidences previous human activity’. This is intended to cover the sorts of sites described immediately above.

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

2.27 Section 17 will introduce a power to enable Scottish Ministers to decline to consider a scheduled monument consent application where that application is similar to an application that had been made within the previous two years. There is currently no limit to the number of applications for scheduled monument consent, for very similar works to the same scheduled monument. The consideration of such applications can prove time-consuming and costly for all parties involved. This provision will bring the ancient monuments legislation in

line with other forms of designation, while not removing the opportunity for applicants to have a full and proper hearing for any proposal.

Part 3 – Modifications of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Section 18 – Certificate that building not intended to be listed

2.28 Section 18 will introduce a new power that will enable Scottish Ministers to offer any person a certificate of immunity from listing which will guarantee that a building will not be listed during the five years from the date of the certificate. The beneficiaries of the provision will be owners and developers of buildings as it will provide certainty for owners and developers preparing proposals for a building or group of buildings.

Section 19 – Offences in relation to unauthorised works and listed building consent: increase in fines [harmonising amendment]

2.29 Section 19 will raise the level of fines on summary conviction under section 8 of the 1997 Act. Section 8 of the 1997 Act provides that offences created under that section (unauthorised works for the demolition or alteration or extension of a listed building and failure to comply with conditions attached to listed building consent) are triable either summarily or on indictment. The Bill will increase the level of fine that can be imposed on summary conviction under section 8 to £50,000 to act as an appropriate and effective deterrent to unauthorised works. This provision will also achieve harmony between the treatment of listed buildings and scheduled monuments.

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

2.30 Section 20 will remove the right to be heard in connection with applications and appeals under the 1997 Act. This directly parallels what has happened in the planning system. The intention is to amend the 1997 Act to bring the equivalent processes into line with those in the the Town and Country Planning (Scotland) Act 1997 (the TCPS Act) once relevant provisions of the Planning etc. (Scotland) Act 2006 are commenced.

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

2.31 Sections 21 and 22 will introduce new powers that will enable Scottish Ministers and local authorities to issue stop notices and temporary stop notices that will effect a halt – immediate in the case of temporary stop notices – to specified unauthorised works to listed buildings. Under existing legislation any alteration, extension or demolition of a listed building requires a listed building consent. The provisions of enforcement against works executed to a listed building without the requisite consent are detailed in Chapter IV of the 1997 Act. The enforcement provisions provide for a planning authority or the Scottish Ministers to serve a listed building enforcement notice to remedy such works. Section 21 will amend the 1997

Act to allow a listed building enforcement notice to specify such works as the planning authority or the Scottish Ministers require to be stopped.

- 2.32 Section 22 introduces stop notices. The new provisions will allow a stop notice to be issued where the planning authority or the Scottish Ministers consider it expedient that the unauthorised works should stop before the end of the period in which the enforcement notice requires to be complied with. A stop notice is to be served before the listed building enforcement notice comes into effect.
- 2.33 The existing legislation allows for an appeal to be made against the issuing of such an enforcement notice. Where an appeal is brought, the enforcement notice will not take effect until the appeal has been finally determined or withdrawn. In view of the possible delays to the aim of achieving a stop and remediation to unauthorised works, this additional provision will provide another tool to achieve a ban on works specified in the enforcement notice. The effect of the stop notice is to prohibit the carrying out of the alleged unauthorised works until such time as the enforcement notice to which it relates is withdrawn or quashed, the period of compliance of the enforcement notice expires, or the stop notice is withdrawn.
- 2.34 Furthermore, in an effort to achieve a more immediate conclusion to unauthorised works than a stop notice can provide for, the Bill will introduce new powers to enable planning authorities or the Scottish Ministers to issue temporary stop notices which will parallel similar powers in the planning regime. The planning authority or the Scottish Ministers will be able to issue such a notice where works have been or are being carried out to a listed building which involve a contravention of section 8(1) or (2) of the 1997 Act and where they consider it is expedient that the works are stopped immediately. This new power taken together with the new power to issue stop notices introduces a strengthened package of protection for listed buildings.
- 2.35 In addition section 21(2)(d) makes a minor amendment to section 34 of the 1997 Act to provide a minimum 28 day time limit before a listed building enforcement notice takes effect. This provision will bring listed building enforcement provision in to line with the planning enforcement regime.
- 2.36 It should be noted that a stop notice is issued only when a listed building monument enforcement notice is or has been given, but a temporary stop notice can be issued even if no listed building enforcement notice has been given. It should also be noted that new powers of entry are provided for to complement the new listed building enforcement provisions.

Section 23 – Non-compliance with listed building enforcement notice: fixed penalty notice [harmonising with planning]

- 2.37 Section 23 will introduce a new power that will enable planning authorities to issue fixed penalty notices as an alternative to prosecution in cases where a person is in breach of a listed building enforcement notice. The power parallels that introduced into the planning regime by section 25 of the Planning etc. (Scotland) Act 2006. It offers a quick, practical and viable

alternative which will give local authorities an effective tool to deal with those who break the law, as well as safeguarding listed buildings. Local authorities will be able to issue a fixed penalty notice provided certain conditions are met.

- 2.38 The Scottish Ministers will set out the fixed penalty amounts in regulations. Further, it is intended that the amount of the fixed penalty imposed by legislation shall escalate in the event that the breach of the enforcement notice continues where the fixed penalty is paid. In such circumstances it is intended that a further enforcement notice will be issued followed by a subsequent fixed penalty notice for an increased amount and so on for escalating amounts.

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

- 2.39 Section 24 amends section 82 of the 1997 Act so that a statutory instrument containing regulations prescribing the fixed penalty amounts made by virtue of section 39A(5) is subject to affirmative procedure in the Scottish Parliament. This procedure provides a stringent form of parliamentary control since it requires a draft of the regulations to be laid before the Scottish Parliament for positive approval. The amount of fixed penalty will therefore be subject to Parliamentary control.

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

- 2.40 Section 25 will amend existing legislation by enabling a notice of liability for expenses to be registered in the appropriate property register against the listed building. Under the terms of section 49 of the 1997 Act a local planning authority may execute any works which appear to them to be urgently necessary for the preservation of a listed building in their district. The Scottish Ministers have similar powers. The costs incurred through carrying out such works can be recovered under the terms of section 50 of the 1997 Act which empowers local authorities to ‘give notice to the owner of the building requiring him to pay the expenses of the work’. At present the planning authority and Scottish Ministers are limited to pursuing recovery of expenses from whoever was the owner at the time notification under section 50(2) was served. The Scottish Government wish to improve the powers to recover such expenses. The power to be able to recover the costs from such persons will remain but in addition the new provision will provide that any new owner from time to time of the property will also be liable to pay the costs. This new power will enable the planning authorities or Scottish Ministers to register a notice of liability for expenses of works in the Land Register of Scotland or record such information contained in the notice in the Register of Sasines as appropriate. It is proposed that the notices will be in the form prescribed in Schedule 4 inserted into the 1997 Act by section 25(5) of the Bill and contained in the schedule to the Bill. Provision is proposed to cover the situation where the Scottish Ministers make a determination as to the amount recoverable where representations are made to them under section 50 of the 1997 Act against the notice received requiring the expenses of the works to be paid. Provision is also made for the discharging of a notice of liability for expenses.

Section 26 – Recovery of grants for preservation of listed buildings, etc

- 2.41 Section 26 will amend those sections of the 1997 Act which enables the Scottish Ministers and local authorities to recover grants made under sections 51, 52 and 70 of the Act. The intention is to make it clear that the grant can specify the amount recoverable or can make provision for calculating the amount recoverable in certain specified circumstances, for example, in the event of a sale of the building. This will ensure certainty for developers applying for grants who require knowledge of the terms and conditions of a grant at the outset in order to make financial arrangements.

Section 27 – Regulations in connection with inquiries, etc.

- 2.42 Section 79(1) of the 1997 Act applies various provisions of the TCPS Act for the purposes of the 1997 Act. This means, for example, that the power to hold inquiries under section 265 of the TCPS Act applies not only to proceedings under that Act but also to proceedings under the 1997 Act. Section 52 of the Planning etc. (Scotland) Act 2006 introduces a new section 275A into the TCPS Act which enables the procedure to be followed in such inquiries to be set by regulations made by the Scottish Ministers. Section 27(1) of the Bill adds a reference to the new section 275A into section 79(1) and so will enable such regulations to be made in relation to inquiries held under the 1997 Act. This has the benefit that it will be possible to provide in one set of regulations all the aspects of procedures for appeals under the 1997 Act, including where an inquiry is held.
- 2.43 The change made by section 27(2) of the Bill removes the power to make rules under the Tribunals and Inquiries Act for inquiries held under Schedule 3 to the 1997 Act as the procedure would in future be governed by regulations made under the new section 275A.

Schedule – Form of notices

- 2.44 The schedule to the Bill sets out the form of notices of determination, discharge and liability for expenses in relation to section 25 of this Bill regarding the liability of an owner and successors for expenses of urgent works.

Section 3

Financial Assessment

Costs associated with the Bill provisions

- 3.1 As noted above, this is an enabling Bill the provisions of which are designed to carry no or absolutely minimal cost. The Bill places no new significant burdens or duties on central or local government or owners of assets, businesses or individual members of the public, and the use of the new powers that the Bill will introduce will be a discretionary matter for the regulatory authorities, not a duty.
- 3.2 A brief assessment of the financial implications of the Bill for different sectors within Scotland is set out below.

Costs on the Scottish Administration

- 3.3 The Bill will not place any significant additional burdens on Historic Scotland in terms of caseload. However there are a few provisions such as scheduled monument enforcement notices, stop notices for unauthorised work on scheduled monuments and the issuing of certificates of immunity from listing that will lead to additional administrative costs. However, it is the Government's view that these costs will be marginal and absorbable.
- 3.4 In the case of a certificate of immunity from listing, while there is no absolutely reliable way of estimating the number of certificates that Historic Scotland may have to deal with it is instructive to look at the situation in England where a system of such certificates has been in place for a number of years. In England 20 certificates were issued in 2008. Given the relative size of their list and overall building stock this would suggest only 2-3 certificates issuing on average per year in Scotland. However, this does not take account of applications dismissed where buildings have been considered and then listed. Since 1997 there have been 50 total cases per year in England which might translate to 5-6 per year in Scotland. These are small numbers and the associated administrative cost will be very low.
- 3.5 Similarly, the service of scheduled monument enforcement notices (SMENs) and stop notices under the 1979 Act will produce a small additional administrative cost as this is not something Historic Scotland currently does. Once again however, the numbers involved will be small and the costs absorbable.
- 3.6 There is a potential cost in relation to compensation for losses in certain circumstances in relation to enforcement and stop notices, but the risk of a compensation claim would be factored into any decision to serve such a notice.
- 3.7 These marginal and additional administrative costs will be met from within the existing Historic Scotland budget and will not require the allocation of additional funding from the core Scottish Government.

Costs on the Scottish Courts and the Crown Office and Procurator Fiscal Service

- 3.8 The new provisions relating to scheduled monument enforcement notices (SMEN) provide for an appeal to the Sheriff against the terms of the notice. This may have marginal cost implications for the Scottish Courts. However, it is impossible to say how many cases will reach appeal. We do not believe that a significant number of SMENs will be issued and it is the Scottish Government's view that not many will be appealed.

Costs on Local Authorities

- 3.9 As noted above, the Bill places no new duties on local government. The Bill will introduce new *powers* rather than duties. The provisions have been discussed with COSLA.
- 3.10 There will be marginal administrative costs associated with serving a statutory repairs notice on a property, stop notices, and fixed penalties for non-compliance with the terms of a listed building enforcement notice. However, it should be stressed that local authorities will not be obliged to use these new powers. They will simply be free to do so when they conclude this offers the best local approach when all issues, including cost, are taken into account. There is a potential cost in relation to compensation for losses in certain circumstances in relation to enforcement and stop notices, but the risk of a compensation claim would be factored into any decision to serve such a notice.

Costs on the Private Sector

- 3.11 There may be financial implications for the businesses but only for those who contravene the legislation.

Conclusion

- 3.12 In line with the Parliament's Standing Orders we are required to prepare a Financial Memorandum on the financial implications of the Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill. We would particularly welcome your comments on any aspect of the above financial assessment and any potential financial implications of the Bill that you identify. Your comments will be carefully considered as we draft the Financial Memorandum that will accompany the Bill on its introduction to Parliament.

Section 4

Partial Regulatory Impact Assessment

Title of Bill

- 4.1 The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill.

Purpose and Intended effect

- 4.2 Objectives

The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill will introduce a series of provisions that will help Scottish Ministers and local planning authorities manage sustainably Scotland's unique and irreplaceable historic environment for the benefit of future generations. The Bill is also part of a much wider programme of change in the operation of the heritage protection system being progressed by Historic Scotland and the rest of Scottish Government in partnership with local authorities.

- 4.3 Background

In December 2007 the then Minister responded to the Historic Environment Advisory Council for Scotland's report on the *Whether there is a need to review heritage legislation in Scotland*. In her response the Minister noted that, after careful consideration, the Government was of the view that the present system did not have sufficient problems to warrant major legislative reform. However, while rejecting the need for a wholesale review and revision the Minister noted that there were various legislative changes that might merit consideration and indicated that Scottish Ministers might well choose to address these as policy developed and legislative opportunities arose. The Minister's response was informed by a year-long stakeholder engagement process in 2007.

In due course a Ministerial statement was made on 4 December 2008 informing Parliament that the Government intended to consult in 2009 on a draft Bill containing focused legislative amendments. The Scottish Government has discussed the provisions with COSLA.

- 4.4 Rationale for government intervention

The stakeholder engagement process identified a series of largely technical gaps and weaknesses in the current heritage protections framework that can only be addressed through primary legislation. Scottish Ministers are aware of the important role that Scotland's historic environment plays in helping to define our sense of nationhood, and fully recognises the significant part it can play in helping to ensure a sustainable economic future for Scotland.

Addressing these issues now will make the existing system more efficient and will result in a much improved heritage protection system that will ensure that we leave a valuable legacy in which future generations can take pride.

Consultation

- 4.5 As noted above the Minister's response to HEACS was informed by a year-long stakeholder engagement process involving the wider historic environment sector, local authorities and government officials which examined in detail the issues raised by the HEACS report. This involved written papers, a series of meetings with stakeholders and substantial discussion including meetings facilitated by bodies in the heritage sector. While some stakeholders argued for major reform others were more keen to identify a range of gaps and weaknesses in the current system that might be addressed through focused legislative amendment. The provisions set out in the draft Bill were identified during that process and include proposals to harmonise aspects of the two main acts.

Options

- 4.6 In this area of work, Scottish Ministers have the following options available to them:

- 4.7 Option 1 – do nothing

If nothing is done then the regulatory authorities would continue to apply legislation that contained the technical gaps and weaknesses identified during the year-long stakeholder engagement process.

- 4.8 Option 2 – take forward proposals for a tightly focused amending Bill to address those 'gaps and weaknesses' in the current heritage protection legislative framework

With this option the existing legislative framework will be strengthened by addressing the gaps and weaknesses of the current system that were identified by key stakeholders in 2007.

Costs and Benefits

Sectors and Groups affected

- 4.9 It is the Government's view that if we do not take this opportunity to legislate to improve heritage protection legislation the people of Scotland will ultimately be disadvantaged. Although this is largely a technical, amending Bill, it will introduce new provisions and remove barriers to the use of existing powers that will enhance the ability of the regulatory and planning authorities to manage our historic environment in a sustainable way for the enjoyment and benefit of future generations.

4.10 Do Nothing Option

There will be no additional costs associated with this option. However, costs associated with abortive plans for listed buildings, that would be addressed by a certificate that building not intended to be listed, will continue to be incurred.

4.11 Take forward proposals for a tightly focused amending Bill

The Bill is an enabling Bill and its provisions are designed to carry no or absolutely minimal cost. The minor administrative costs associated with some of the new provisions such as scheduled monument enforcement notices, and listed building stop and temporary stop notices will be manageable and absorbable.

Small Firms Impact Test

4.12 Historic Scotland does not consider that any of the draft provisions will have a significant impact on small firms. Indeed two of the provisions (certificate that building not intended to be listed and the power to set out at the grant award stage the terms of grant recovery) will be beneficial for a number of small firms working in the historic environment and building sectors. The Bill will also contribute to the Government's simplification agenda by harmonising aspects of the 1979 and 1997 acts and where practicable bringing aspects of heritage legislation in to line with the planning regime. We believe that simplification of heritage legislation in this way will be welcomed by most small firms. We would however, welcome comments from small firms who are concerned at any potential impact. Historic Scotland will liaise with businesses and/or their representatives if we become aware of any costs or impacts further down the line.

Competition Assessment

4.13 Historic Scotland is not aware of any competition impact but would welcome comments from anyone who is concerned that such an impact could occur.

Enforcement, sanctions and monitoring

4.14 The Bill places no new burdens or duties on the public or private sector. The new provisions that the Bill will introduce will be discretionary. However, Historic Scotland will be responsible for undertaking a review of the effectiveness of the new legislation within 3 years of it coming into force.

Conclusion

4.15 In line with Government guidance we are required to construct a Regulatory Impact Assessment (RIA) to assess the costs and benefits of the proposed Bill. We would therefore welcome your comments on any aspect of this partial RIA. Your comments will be considered as part of the full Regulatory Impact Assessment process.

Section 5

Equalities Impact Assessment

- 5.1 Historic Scotland considers it unlikely that the provisions of the Bill would have significant equalities impacts, but invites views on the proposed amendments in that regard. We would also welcome any information which may assist us with an assessment. In your response it would be helpful to know what you consider the equality issues to be.

Section 6

Strategic Environmental Assessment

- 6.1 Historic Scotland has applied the criteria specified in schedule 2 of the Environmental Assessment (Scotland) 2005 Act to the provisions of the Bill and has determined that the proposed amendments are exempt from Strategic Environmental Assessment under section 7(1).

Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill

[CONSULTATION DRAFT]

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Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill

[CONSULTATION DRAFT]

An Act of the Scottish Parliament to amend the law relating to ancient monuments and listed buildings; to provide for grants and loans in respect of the development and understanding of matters of historic and other interest; and for connected purposes.

PART 1

AMENDMENT OF THE HISTORIC BUILDINGS AND ANCIENT MONUMENTS ACT 1953

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

- (1) Section 4A of the 1953 Act (recovery of grants under section 4) is amended in accordance with this section.
- (2) In subsection (3), at the beginning, insert “Subject to subsection (3A) below,”.
- (3) After subsection (3) insert—

“(3A) Where a condition referred to in subsection (3) above specifies, or makes provision for calculating, the amount recoverable in the event of a condition being contravened or not complied with, that amount is the amount recoverable under subsection (3) in respect of the contravention or failure to comply with the condition.”.
- (4) In subsection (4), at the beginning, insert “Subject to subsection (4A) below,”.
- (5) After subsection (4) insert—

“(4A) Where a condition referred to in subsection (3) above specifies, or makes provision for calculating, the amount recoverable in the event of a disposal by the grantee of the relevant interest, that amount is the amount recoverable under subsection (4) above in respect of the disposal.”.

PART 2

MODIFICATIONS OF THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979

Control of works affecting scheduled monuments

2 Control of works affecting scheduled monuments

- (1) In section 2(2) of the 1979 Act (works affecting scheduled monuments), after paragraph (a) insert—

“(aa) any works resulting in the disturbance of a scheduled monument affecting its conservation, stability or national importance;”.
- (2) In section 6(1)(b) of that Act (powers of entry for inspection of scheduled monuments etc.), after “damaged” insert “or disturbed”.

3 Works affecting scheduled monuments: consent for works without authority

In section 2 of the 1979 Act (control of works affecting scheduled monuments), after subsection (3) insert—

“(3A) If—

- (a) works to which this section applies have been executed without being authorised under this Part, and
- (b) the Scottish Ministers grant written consent for the retention of the works,

the works are authorised under this Part of this Act from the grant of the consent.

(3B) References in this Act to scheduled monument consent include consent under subsection (3A) above.”.

Defences

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

In the 1979 Act, the following provisions (which concern defences involving knowledge or belief in relation to monuments or areas of archaeological importance) are repealed—

- (a) in section 2 (control of works affecting scheduled monuments), subsection (8),
- (b) in section 28 (offence of damaging certain ancient monuments), paragraph (a) of subsection (1) and the word “and” immediately following that paragraph,
- (c) in section 42 (restrictions on use of metal detectors), subsection (7).

Fines

5 Fines: increases and duty of court in determining amount

(1) The 1979 Act is amended in accordance with this section.

(2) In section 2 (control of works affecting scheduled monuments)—

- (a) in subsection (10) for “the statutory maximum” substitute “£50,000”,
- (b) after that subsection insert—

“(10A) In determining the amount of any fine to be imposed on a person under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.”.

(3) In section 28 (offence of damaging certain ancient monuments)—

- (a) in subsection (4) for “the statutory maximum” substitute “£50,000”,
- (b) after that subsection, add—

“(5) In determining the amount of any fine to be imposed on a person under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.”.

Powers of entry

6 Powers of entry to inspect condition of scheduled monument

In section 6(1) of the 1979 Act (powers of entry for inspection of scheduled monument with a view to ascertaining its condition), for “and” substitute “; and such power may, in particular, be exercised with a view to ascertaining—”.

Works affecting scheduled monuments: enforcement

7 Works affecting scheduled monuments: enforcement

(1) After section 9 of the 1979 Act insert—

“Scheduled monument enforcement notices

9A Power to issue scheduled monument enforcement notice

- (1) Where it appears to the Scottish Ministers that—
- (a) any works have been, or are being, executed to a scheduled monument or to land in, on or under which there is a scheduled monument, and
 - (b) the works are such as to involve a contravention of section 2(1) or (6),
- they may, if they consider it expedient having regard to the effect of the works on the character of the monument as one of national importance, serve a notice under this section (in this Act referred to as a “scheduled monument enforcement notice”).
- (2) A scheduled monument enforcement notice must specify the alleged contravention and must (either or both)—
- (a) specify any works falling within subsection (1) which the Scottish Ministers require to cease,
 - (b) require steps falling within subsection (3) and specified in the notice to be taken.
- (3) Those steps are—
- (a) for restoring the monument or land to its former state,
 - (b) if the Scottish Ministers consider that restoration to its former state would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider are required to alleviate in a manner acceptable to them the effect of the works which were carried out without scheduled monument consent, or
 - (c) for bringing the monument or land to the state it would have been in if the conditions of any scheduled monument consent for the works had been complied with.
- (4) In considering whether restoration is undesirable under subsection (3)(b), the Scottish Ministers are to have regard to the desirability of preserving—
- (a) the national importance of the monument, or
 - (b) its features of historical, architectural, traditional, artistic or archaeological interest.

- (5) Where further works of a kind mentioned in subsection (3)(b) have been carried out on a monument or land, scheduled monument consent is treated as having been granted in respect of the works carried out on that monument or land.

9B Scheduled monument enforcement notices: further provisions

- (1) A scheduled monument enforcement notice—
- (a) must specify the date on which it is to take effect and, subject to section 9C(3), takes effect on that date, and
 - (b) must specify the period (the “period for compliance”) within which—
 - (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.
- (2) Where different periods apply to different works or steps, references in this Act to the period for compliance with a scheduled monument 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.
- (3) The date specified in the notice under subsection (1)(a) must be at least 28 days after the date on which the notice is served.
- (4) A copy of a scheduled monument enforcement notice must be served—
- (a) on the owner, the lessee and the occupier of the monument to which it relates and of the land in, on or under which the monument is situated,
 - (b) on any other person having an interest in the monument or land, being an interest which in the opinion of the Scottish Ministers is materially affected by the notice.
- (5) The Scottish Ministers may, at any time—
- (a) withdraw a scheduled monument enforcement notice (without prejudice to their power to issue another), or
 - (b) waive or relax any requirement of such a notice and, in particular, extend the period for compliance.
- (6) The Scottish Ministers must, 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 scheduled monument enforcement notice or would, if the notice were reissued, be served with a copy of it.
- (7) The Scottish Ministers must—
- (a) publish by electronic means (as for example by means of the internet) a list containing particulars of any monument in respect of which a scheduled monument enforcement notice has been served, and
 - (b) on request, provide a copy of a scheduled monument enforcement notice.

9C Appeal against scheduled monument enforcement notice

- (1) A person on whom a scheduled monument enforcement notice is served or any other person having an interest in the monument to which it relates or the land in, on or under which it is situated may, at any time before the date specified in the notice as the date on which it is to take effect, by summary application appeal to the sheriff on any of the grounds in subsection (2).
- (2) Those grounds are—
 - (a) that the matters alleged to constitute a contravention of section 2(1) or (6) have not occurred,
 - (b) that those matters (if they occurred) do not constitute such a contravention,
 - (c) that—
 - (i) works to the monument or land were urgently necessary in the interests of safety or health,
 - (ii) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter, and
 - (iii) the works carried out were limited to the minimum measures immediately necessary,
 - (d) that copies of the notice were not served as required by section 9B(4),
 - (e) that the period for compliance for any works or step falls short of what should reasonably be allowed.
- (3) Where an appeal is brought under this section the notice is of no effect until the appeal is withdrawn or finally determined.
- (4) In determining an appeal under this section the sheriff may uphold or quash the notice.
- (5) The sheriff may uphold a notice despite copies of it not having been served as required by section 9B(4) if satisfied that any person on whom a copy should have been, but was not, served has not been substantially prejudiced by the failure.
- (6) The validity of a scheduled monument enforcement notice is not to be questioned on the grounds specified in subsection (2)(a) and (d) in any proceedings other than on an appeal under this section.

9D Execution of works required by scheduled monument enforcement notice

- (1) If any steps specified in the scheduled monument enforcement notice have not been taken within the period for compliance with the notice, the Scottish Ministers may—
 - (a) enter on the land in, on or under which the scheduled monument is situated and take those steps, and
 - (b) recover from the person who is then the owner or lessee of the monument or land any expenses reasonably incurred by them in doing so.
- (2) Where a scheduled monument enforcement notice has been served in respect of a monument—

- (a) any expenses incurred by the owner, lessee or occupier of a monument or the land in, on or under which it is situated for the purpose of complying with it, and
- (b) any sums paid by the owner or lessee of a monument or land under subsection (1) in respect of expenses incurred by the Scottish Ministers in taking steps required by it,

are to be treated as incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.

- (3) If on a complaint by the owner of any scheduled monument or land it appears to the sheriff that the occupier of the monument or land is preventing the owner from carrying out work required to be carried out by a scheduled monument enforcement notice, the sheriff may by warrant authorise the owner to enter the land and carry out the work.
- (4) If the Scottish Ministers take steps under subsection (1) they may sell any materials removed by them from the monument or land unless those materials are claimed by the owner within 3 days of their removal.
- (5) After selling the materials the Scottish Ministers must pay the proceeds to the owner less the expenses recoverable by them from the owner.
- (6) Where the Scottish Ministers seek, under subsection (1), to recover any expenses from a person on the basis that the person is the owner of the scheduled monument or land, and the person proves that—
 - (a) the person is receiving the rent in respect of the monument or land merely as trustee, tutor, curator, factor or agent of some other person, and
 - (b) the person has not, and since the date of the service of the demand for payment has not had, in the person's hands on behalf of that other person sufficient money to discharge the whole demand of the Scottish Ministers,

the person's liability is limited to the total amount of the money which the person has or has had in the person's hands on behalf of that other person.

- (7) If by reason of subsection (6) the Scottish Ministers have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent they may recover any unpaid balance from the person on whose behalf the rent is received.
- (8) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

9E Offence where scheduled monument enforcement notice not complied with

- (1) Where, after the end of the period for compliance with a scheduled monument enforcement notice, any works required by the notice to cease have not ceased or any step required by the notice has not been taken, the person who is for the time being owner of the scheduled monument or of the land in, on or under which it is situated is in breach of the notice.
- (2) If at any time the owner of the monument or land is in breach of a scheduled monument enforcement notice the owner is guilty of an offence.

- (3) An offence under this section may be charged by reference to any day or longer period of time.
- (4) A person may be convicted of more than one offence under this section by reference to different days or different periods.
- (5) In proceedings against any person for an offence under this section, it is a defence for the person to show that—
 - (a) the person did everything the person could be expected to do to secure that all works required by the notice to cease were ceased or that all the steps required by the notice were taken, or
 - (b) the person was not served with a copy of the notice and was not aware of its existence.
- (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.
- (7) In determining the amount of any fine to be imposed, 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.

9F Effect of scheduled monument consent on scheduled monument enforcement notice

- (1) If, after the issue of a scheduled monument enforcement notice, consent is granted under section 2(3A)—
 - (a) for the retention of any work to which the notice relates, or
 - (b) permitting the retention of works without complying with some condition subject to which a previous scheduled monument consent was granted,

the notice ceases to have effect in so far as it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition.

- (2) The fact that a scheduled monument enforcement notice has wholly or partly ceased to have effect under subsection (1) does not affect the liability of any person for an offence in respect of a previous failure to comply with it.

Stop notices

9G Stop notices

- (1) Subsection (2) applies where the Scottish Ministers consider it expedient that any relevant works should cease before the expiry of the period for compliance with a scheduled monument enforcement notice.
- (2) The Scottish Ministers may, when they serve the copy of the scheduled monument 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 scheduled monument to which the enforcement notice relates, or to land in, on or under which the monument is situated, or to any part of the monument or land specified in the stop notice.

- (3) In this section and sections 9H and 9I, “relevant works” means any works specified in the scheduled monument enforcement notice as works which the Scottish Ministers 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 scheduled monument enforcement notice has taken effect.
- (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 Scottish Ministers 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 Scottish Ministers on any person who appears to them to have an interest in the monument or the land in, on or under which it is situated or who is executing, or causing to be executed, the relevant works specified in the scheduled monument enforcement notice.
- (7) The Scottish Ministers 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 9H(2)).

9H Stop notices: supplementary provisions

- (1) A stop notice ceases to have effect when—
 - (a) the scheduled monument 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 9G(7),whichever occurs first.
- (2) Where a stop notice has been served in respect of a scheduled monument the Scottish Ministers may publicise it by displaying on the land in, on or under which the monument is situated or on the monument (except where doing so might damage it) a notice (in this section and section 9J 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 9J.

- (3) A stop notice is not invalid by reason that a copy of the scheduled monument enforcement notice to which it relates was not served as required by section 9B if it is shown that the Scottish Ministers took all such steps as were reasonably practicable to effect proper service.

9I 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 scheduled monument to which the notice relates or the land in, on or under which the monument is situated is entitled to be compensated by the Scottish Ministers in respect of any loss or damage directly attributable to the prohibition contained in the stop notice.
- (2) For the purposes of this section, a stop notice ceases to have effect when—
 - (a) the scheduled monument enforcement notice is quashed,
 - (b) the scheduled monument enforcement notice is withdrawn by the Scottish Ministers otherwise than in consequence of the grant by them of scheduled monument consent for the works to which the notice relates, or
 - (c) the stop notice is withdrawn.
- (3) 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.
- (4) 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 2(1) or (6), or
 - (b) in the case of a claimant who was required to provide information under section 57 (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 Scottish Ministers when responding to the notice.

9J 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.
- (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

9K Temporary stop notices

- (1) Where it appears to the Scottish Ministers that —
 - (a) any works have been, or are being, executed to a scheduled monument or to land in, on or under which there is a scheduled monument,
 - (b) the works are such as to involve a contravention of section 2(1) or (6), 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 monument as one of national importance, issue a temporary stop notice.
- (2) The notice 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 Scottish Ministers' 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 Scottish Ministers to be executing, or causing to be executed, the works,
 - (b) a person who appears to the Scottish Ministers to have an interest in the scheduled monument or the land in, on or under which the monument is situated (whether as owner or occupier or otherwise).
- (4) The Scottish Ministers must display on the land in, on or under which the monument is situated or on the monument (except where doing so might damage it)—
 - (a) a copy of the notice, and
 - (b) a statement as to the effect of section 9M.
- (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 Scottish Ministers 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.

9L Temporary stop notices: restrictions

- (1) A second or subsequent temporary stop notice must not be issued in respect of the same works unless the Scottish Ministers have in the meantime taken some other enforcement action in relation to the contravention of section 2(1) or (6) which is constituted by the works.
- (2) In subsection (1), “enforcement action” includes obtaining the grant of an interdict under section 9O (interdicts restraining unauthorised works on scheduled monuments).

9M 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 9K(4),is guilty of an offence.
- (2) Contravention of a stop notice includes causing or permitting the contravention of it.
- (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 guilty 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.

9N Temporary stop notices: compensation

- (1) A person who, at the date on which a temporary stop notice is first displayed in pursuance of section 9K(4), has an interest (whether as owner or occupier or otherwise) in the scheduled monument to which the notice relates or the land in, on or under which the monument is situated is entitled to be compensated by the Scottish Ministers 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—
 - (a) the works specified in the notice are authorised by scheduled monument consent granted on or before the date mentioned in that subsection,
 - (b) the Scottish Ministers withdraw the notice other than following such grant of scheduled monument consent as is mentioned in paragraph (a).
- (3) Subsections (3) and (4) of section 9I apply to compensation payable under this section as they apply to compensation payable under that section; and for the purpose of that application references in subsection (4) to a stop notice are to be taken to be references to a temporary stop notice.

Interdicts

9O Interdicts restraining unauthorised works on scheduled monuments

- (1) Whether or not they have exercised or propose to exercise any of their other powers under this Act, the Scottish Ministers may seek to restrain or prevent any actual or apprehended breach of any of the controls provided by or under this Act on the execution of works affecting scheduled monuments by means of an application for interdict.
 - (2) On an application under subsection (1) the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the breach.
 - (3) In this section “the court” means the Court of Session or the sheriff.”.
- (2) In section 6 of that Act (powers of entry), after subsection (3) insert—
- “(3A) Any person duly authorised in writing by the Scottish Ministers may at any reasonable time enter any land—
- (a) to ascertain whether a scheduled monument enforcement notice, a stop notice or a temporary stop notice should be served in relation to a scheduled monument in, on or under that or any other land, or
 - (b) to ascertain whether a scheduled monument enforcement notice, a stop notice or a temporary stop notice has been complied with,
 - (c) for the purposes of section 9G(7), 9H(2) or 9K(4),
 - (d) to ascertain whether any offence has been, or is being, committed with respect to any scheduled monument in, on or under that or any other land under section 2(1) or (6), 9E, 9J or 9M.”.
- (3) In subsection (1) of section 61 of that Act (interpretation), in the appropriate places in alphabetical order insert—

““period for compliance” is to be construed in accordance with section 9B(1) and (2);

“scheduled monument enforcement notice” has the meaning given by section 9A(1) of this Act;

“stop notice” has the meaning given in section 9G(2) of this Act;

“temporary stop notice” means a notice issued under section 9K(1) of this Act;”.

Monuments under guardianship

8 Control and management of monuments under guardianship

In the 1979 Act—

- (a) in subsection (3) of section 15 (acquisition and guardianship of land adjoining or in the vicinity of an ancient monument), after “and” where it fourth occurs insert “without prejudice to that generality”,
- (b) paragraph 6(1) of Schedule 3 (transitional provisions) is repealed.

9 Permission to hold events, etc. in or on ancient monument under guardianship

- (1) In subsection (1) of section 19 of the 1979 Act (public access to monuments under public control), after “section” insert “and section 19A”.
- (2) After section 19 insert—

“19A Permission to hold events, etc. in or on monuments under guardianship

- (1) The Scottish Ministers or a local authority may, subject to such conditions as they think fit, grant permission for a monument which is under their guardianship by virtue of this Act to be used for a purpose mentioned in subsection (3).
- (2) But the power in subsection (1) may not be exercised if to do so would be contrary to any express provision in the guardianship deed.
- (3) The purposes are—
 - (a) the holding of an event or function in or on the monument or on any land associated with the monument;
 - (b) the carrying out of any other organised activity in or on the monument or on such land.
- (4) Conditions to which permission under subsection (1) are subject may include a requirement to pay to the Scottish Ministers or, as the case may be, the local authority a charge in respect of the use of the monument.
- (5) For the purposes of this section, it is irrelevant—
 - (a) whether or not the public are permitted access—
 - (i) to an event or function;
 - (ii) for or in connection with the carrying out of any other organised activity;
 - (b) whether or not a fee is payable for any such access.
- (6) A person other than—

- (a) the Scottish Ministers (in the case of a monument under their guardianship); or
 - (b) the local authority (in the case of a monument under their guardianship), may use the monument for a purpose mentioned in subsection (3) only with, or in accordance with, permission granted under subsection (1).
- (7) Where permission is granted under subsection (1), the Scottish Ministers or, as the case may be, the local authority may exclude, restrict or otherwise control public access to the monument in connection with the holding of the event or function, or the carrying out of the activity, to which the permission relates.
- (8) Any permission granted under subsection (1) is in addition to any permission or other consent which may be required by virtue of any other enactment.

Provision of facilities, etc. at ancient monuments

10 Provision of facilities, etc. at ancient monuments

In section 20 of the 1979 Act (provision of facilities for the public in connection with ancient monuments)—

- (a) in subsection (1)—
 - (i) the words “for or in connection with affording public access” are repealed,
 - (ii) in paragraph (a) for “to” substitute “in or on”,
 - (iii) in paragraph (b) for “to” substitute “in or on”,
- (b) for subsection (2) substitute—
 - “(2) In subsection (1), references to a monument includes references to any land associated with the monument.
 - (2A) The facilities and services which may be provided for the public under this section include—
 - (a) facilities and information or other services for or in connection with affording public access to the monument, and
 - (b) facilities for the sale of goods and the provision of other services.”.

Financial support in relation to ancient monuments

11 Financial support for preservation etc. of monuments

In section 24 of the 1979 Act (expenditure by the Scottish Ministers or local authority on acquisition and preservation of ancient monuments etc.)—

- (a) in subsection (2), for the words from “at” to the end of the subsection substitute—
 - “(a) at the request of the owner undertake, or assist in, or
 - (b) defray or contribute towards the cost of,

the preservation, maintenance and management of any ancient monument.”,

and
- (b) in subsection (4), for the words from “at” to the end of the subsection substitute—
 - “(a) at the request of the owner undertake, or assist in, or
 - (b) defray or contribute towards the cost of,

the preservation, maintenance and management of any ancient monument situated in or in the vicinity of their area.”.

Power of entry where monument at risk

12 Power of entry on land where monument at risk

In section 26 of the 1979 Act (power of entry on land believed to contain ancient monument)—

- (a) in subsection (3), at the beginning, insert “Subject to subsection (4) below,”,
- (b) after subsection (3) add—
 - “(4) Subsection (3) does not apply where—
 - (a) land is, or is to be, excavated in exercise of the power conferred by subsection (2); and
 - (b) the Scottish Ministers know or have reason to believe that any ancient monument they know or believe to be in, on or under that land is or may be at risk of imminent damage or destruction.”.

Offence of disturbing certain ancient monuments

13 Offence of disturbance of certain ancient monuments

In section 28 of the 1979 Act (offence of damaging certain ancient monuments)—

- (a) in subsection (1), after “destroys” insert “, disturbs”,
- (b) in paragraph (b) of that subsection—
 - (i) after “destroy” insert “, disturb”,
 - (ii) after “destroyed” insert “, disturbed”,
- (c) after that subsection insert—
 - “(1A) In subsection (1), any reference to disturbance of a protected monument is to such disturbance affecting the conservation, stability or national importance of the monument.”.

Grants and loans

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

After section 45 of the 1979 Act insert—

“45A Development and understanding of matters of historic, etc. interest: grants and loans

- (1) The Scottish Ministers may make grants or loans for the purpose of defraying in whole or in part any expenditure incurred, or to be incurred—
 - (a) in or in connection with;
 - (b) with a view to the promotion of,the development or understanding of matters of historic, architectural, traditional, artistic or archaeological interest.

- (2) A grant or loan under this section may be made subject to such conditions (including conditions as to repayment) as the Scottish Ministers consider appropriate.”.

Retention of certain objects

15 Retention of found objects of archaeological or historical interest

In section 54 of the 1979 Act (treatment and preservation of finds), subsection (2) is repealed.

Meaning of “monument”

16 Meaning of “monument” in the 1979 Act

In section 61 (interpretation) of the 1979 Act—

- (a) in subsection (7)—
- (i) the word “and” immediately following paragraph (b) is repealed,
 - (ii) after paragraph (c) insert “and
 - (d) any site (other than one falling within paragraph (b) or (c) above) comprising any thing, or group of things, that evidences previous human activity;”,
- (b) in subsection (8), paragraph (b) is repealed.

Applications for scheduled monument consent

17 Refusal to entertain certain applications for scheduled monument consent

After paragraph 2A of Schedule 1 to the 1979 Act insert—

- “2B (1) Where sub-paragraph (2) or (3) applies, the Scottish Ministers may refuse to entertain an application for scheduled monument consent.
- (2) This sub-paragraph applies where—
- (a) within the period of 2 years ending with the date the application is received, the Scottish Ministers have refused a similar application; and
 - (b) in their opinion there has been no significant change in any material considerations since the similar application was refused.
- (3) This sub-paragraph applies where the application is made at a time when a similar application is under consideration.
- (4) For the purposes of this paragraph, an application for scheduled monument consent is to be taken to be similar to another such application only if the scheduled monument and the works to which the applications relate are, in the opinion of the Scottish Ministers, the same or substantially the same.”.

PART 3

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

Certificate that building not intended to be listed

18 Certificate that building not intended to be listed

After section 5 of the 1997 Act insert—

“5A Issue of certificate that building not intended to be listed

- (1) The Scottish Ministers may, on the application of any person, issue a certificate stating that they do not intend to include a building in a list compiled or approved under section 1.
- (2) Where the Scottish Ministers issue a certificate under subsection (1) in respect of a building—
 - (a) they may not for a period of 5 years from the date of issue exercise in relation to the building any of the powers conferred on them by section 1, and
 - (b) a planning authority may not for that period—
 - (i) serve a building preservation notice in relation to the building, or
 - (ii) affix such a notice under section 4(1).
- (3) A person submitting an application to the Scottish Ministers under subsection (1) must, at the same time as submitting it, give notice of the application to the planning authority within whose district the building is situated.”.

Offences under section 8: fines

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

In subsection (4)(a) of section 8 of the 1997 Act (offences), for “£20,000” substitute “£50,000”.

Applications and appeals: hearings

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

In the 1997 Act—

- (a) subsection (4) of section 11 (reference of certain applications to the Scottish Ministers) is repealed,
- (b) in Schedule 3 (determination of certain appeals by person appointed by the Scottish Ministers), the following are repealed—
 - (i) in paragraph 2, sub-paragraphs (2) to (4),
 - (ii) in paragraph 3, sub-paragraphs (4) and (5),
 - (iii) in paragraph 6(2)(a), the words “by virtue of paragraph 2(4)”.

Enforcement notices, stop notices and temporary stop notices

21 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, in addition to specifying the alleged contravention, shall (either or both)—

 - (a) specify any works such as are mentioned in subsection (1) which the authority requires to cease;
 - (b) require such steps mentioned in subsection (2) as may be 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)—
 - (i) in paragraph (b), after “which” insert “any works are required to cease or”,
 - (ii) in that paragraph, after “different” where it second occurs, insert “works or different”,
 - (iii) after “different” where it fourth occurs, insert “works or different”,
 - (iv) after “notice,” where it second occurs, insert “in relation to any works, are to the period within which those works are required to cease, and”,
 - (d) after that subsection insert—

“(5A) 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 (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”.

22 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 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 where the listed building enforcement notice has taken effect.
- (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(8),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 varied 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 section 41E 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 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 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 varied 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).
- (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.
- (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)—
 - (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 stop notice includes causing or permitting the contravention of it.
- (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—
 - (a) the works which are 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 references in those subsections to a stop notice are to be taken to be references to a temporary stop notice.”.
- (2) 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) to ascertain whether a listed building enforcement notice, a stop notice or a temporary stop notice has been complied with,
 - (b) for the purposes of section 41A(7), 41B(4) or 41F(4).”.
 - (b) in subsection (2)(b), after the number “39” insert “, 41E, 41H”.
- (3) In subsection (1) of section 81 of that Act (interpretation), after the definition of “prescribed” insert—
- ““stop notice” has the meaning given in section 41A(2),
 - “temporary stop notice” means a notice issued under section 41F(1).”.

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

After section 39 of the 1997 Act insert—

“39A Fixed penalty notice where listed building enforcement notice not complied with

- (1) Where a planning authority have reason to believe that, by virtue of subsection (1) of section 39, a person is in breach of a listed building enforcement notice they may, if the conditions in subsection (9) are satisfied, serve on the person a fixed penalty notice as respects that breach.
- (2) The fixed penalty notice is to specify—
 - (a) the step specified, under subsection (2) of section 34, in the listed building enforcement notice which has not been taken, or
 - (b) the works so specified which have not ceased.
- (3) It is not competent to serve more than one fixed penalty notice in relation to a breach of a listed building enforcement notice.
- (4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging any liability to conviction for an offence under section 39 as respects the breach of the listed building enforcement notice.
- (5) The person discharges any such liability by paying to the planning authority, within the relevant period, a penalty of a prescribed amount specified in the fixed penalty notice.
- (6) The relevant period mentioned in subsection (5) is the period of 30 days immediately following the day on which the fixed penalty notice is served.
- (7) But if payment is made within the first 15 days of the period mentioned in subsection (6) the amount payable is reduced by 25%.
- (8) The fixed penalty notice is to identify the period mentioned in subsection (6) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
- (9) The conditions are that the fixed penalty notice—
 - (a) is served within the period of 6 months which immediately follows the period for compliance with the listed building enforcement notice,
 - (b) is not served after the person has been charged with an offence under section 39 as respects the breach of the listed building enforcement notice.
- (10) During the period mentioned in subsection (6) it is not competent to commence proceedings against the person for an offence under section 39 as respects that breach.
- (11) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 39 as respects that breach.
- (12) A penalty received by a planning authority by virtue of subsection (5) is to accrue to that authority.
- (13) In prescribing an amount for the purposes of subsection (5), the Scottish Ministers may make different provision for different cases or different classes of case, including provision for different amounts by reference to previous breaches of listed building enforcement notices relating to the same steps or works.”.

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

In section 82 of the 1997 Act (regulations and orders)—

- (a) in subsection (3), at the beginning insert “Subject to subsection (3A),”,
- (b) after subsection (3) insert—

“(3A) A statutory instrument containing regulations made under section 39A(5) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

Liability of owner and successors for expenses of urgent works

25 Liability of owner and successors for expenses of urgent works

- (1) The 1997 Act is amended in accordance with subsections (2) to (4) of this section.
- (2) After section 50 insert—

“Liability of owner and successors for expenses of works executed under section 49

50A Liability of owner and successors for expenses of works executed under section 49

- (1) An owner of a listed building who is liable for expenses under section 50(2) does not, by virtue only of ceasing to be such an owner, cease to be liable for those expenses.
- (2) Subject to subsection (3), where a person becomes an owner of a listed building (any such person being referred to in this section as a “new owner”) that person is severally liable with any former owner of the building for any expenses under section 50(2) for which the former owner is liable.
- (3) A new owner is liable as mentioned in subsection (2) for expenses relating to works executed before the acquisition date (within the meaning of section 50E) only if—
 - (a) a notice of liability for expenses (within the meaning of that section) was registered in relation to the building at least 14 days before the acquisition date, and
 - (b) the notice had not expired before the acquisition date.
- (4) Where a new owner of a listed building pays any expenses for which a former owner of the building is liable, the new owner may recover the amount so paid from the former owner.
- (5) A person who is entitled to recover an amount under subsection (4) does not, by virtue only of ceasing to be the owner of the listed building, cease to be entitled to recover that amount.
- (6) This section applies as respects any expenses for which an owner of a listed building becomes liable on or after the day on which this section comes into force.

50B Notice of liability for expenses: further provision

- (1) A notice of liability for expenses—

- (a) may be registered in relation to a listed building only on the application of the Scottish Ministers or a planning authority,
 - (b) may not be registered unless it is signed by or on behalf of the Scottish Ministers or, as the case may be, the planning authority.
- (2) A notice of liability for expenses may be registered in respect of expenses of different works executed on a listed building.
 - (3) A notice of liability for expenses expires at the end of the period of 5 years beginning with the date of its registration, unless the notice is renewed by being registered again before the end of that period.
 - (4) This section applies to a renewed notice of liability for expenses as it applies to any other such notice.
 - (5) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in any notice of liability for expenses submitted for registration is accurate.
 - (6) The Scottish Ministers may by order amend Schedule 6 to this Act.

50C Notice of determination following representations under section 50

- (1) Subsections (2) and (3) apply where—
 - (a) a notice of liability for expenses (the “original notice”) in respect of a listed building has been registered, and
 - (b) the owner of the listed building has made representations to the Scottish Ministers under section 50(4) or (6).
- (2) Where the original notice was registered by a planning authority, that authority must, as soon as practicable after the Scottish Ministers give notice of their determination under section 50(5), register a notice of determination.
- (3) Where the original notice was registered by the Scottish Ministers, the Scottish Ministers must, as soon as practicable after making their determination under section 50(5), register a notice of determination.
- (4) A notice of determination must—
 - (a) be, or be as near as may be, in the form set out in Schedule 4 to this Act,
 - (b) contain the information required by the notes for completion set out in that Schedule.
- (5) Where the amount specified in the notice of determination as the amount recoverable (“amount A”) is less than the amount specified as the expenses of the works in the original notice (“amount B”), amount B is on registration of the notice of determination to be treated as amount A.
- (6) The Scottish Ministers may by order amend Schedule 4 to this Act.

50D Discharge of notice of liability for expenses

- (1) Subsections (2) and (3) apply where—
 - (a) a notice of liability for expenses has been registered, and
 - (b) any liability for expenses under section 50(2) to which the notice relates has been fully discharged.

- (2) Where the notice of liability for expenses was registered by a planning authority, that authority must register a notice of discharge.
- (3) Where the notice of liability for expenses was registered by the Scottish Ministers, the Scottish Ministers must register a notice of discharge.
- (4) A notice of discharge—
 - (a) must be, or be as near as may be, in the form set out in Schedule 5,
 - (b) on being registered, discharges the notice of liability for expenses.
- (5) The Scottish Ministers may by order amend Schedule 5 to this Act.

50E Interpretation of sections 50A to 50D

- (1) In section 50A, “acquisition date” means the date on which the new owner (within the meaning of that section) acquired right to the listed building.
- (2) In sections 50A, 50B, 50C and 50D, “notice of liability for expenses” means notice of the works mentioned in section 50A(3)—
 - (a) in, or as near as may be in, the form set out in Schedule 6 to this Act, and
 - (b) containing the information required by the notes for completion set out in that Schedule.
- (3) For the purposes of sections 50A, 50B, 50C and 50D, a notice of liability for expenses is registered if—
 - (a) the information contained in the notice is registered in the Land Register of Scotland, or
 - (b) the notice is recorded in the Register of Sasines,
 as appropriate; and “registration” in relation to such a notice is to be construed accordingly.
- (4) For the purposes of section 50C, a notice of determination is registered if—
 - (a) where the original notice (within the meaning of that section) was registered in the Land Register of Scotland, the information it contains is registered in that Register,
 - (b) where the original notice was recorded in the Register of Sasines, it is recorded in that Register,
 and cognate expressions are to be construed accordingly.
- (5) For the purposes of section 50D, a notice of discharge is registered if—
 - (a) where the notice of liability for expenses to which it relates was registered in the Land Register for Scotland, the information it contains is registered in that Register,
 - (b) where the notice of liability for expenses to which it relates was recorded in the Register of Sasines, it is recorded in that Register,
 and “register” is to be construed accordingly.”.
- (3) In section 50 (recovery of expenses of works under section 49), after subsection (5) add—

- “(6) Where a person to whom notice has been given under subsection (2) ceases, during the 28 day period mentioned in subsection (4), to be the owner of a building, a person may within 28 days of becoming the new owner of the building represent to the Scottish Ministers a matter mentioned in any of paragraphs (a) to (c) of subsection (4); and the Scottish Ministers shall determine to what extent the representations are justified.
- (7) Subsection (5) applies to a determination under subsection (6) as it applies to a determination under subsection (4).”.
- (4) In section 82 (regulations and orders)—
- (a) in subsection (4), after “sections 7(5),” insert “50B(6), 50C(6), 50D(5),”,
- (b) in subsection (5), after “section” insert “50B(6), 50C(6), 50D(5),”.
- (5) The schedule to this Act, which inserts Schedules 4 to 6 into the 1997 Act, has effect.

Recovery of grants for preservation of listed buildings, etc.

26 Recovery of grants for preservation etc. of listed buildings and conservation areas

- (1) The 1997 Act is amended in accordance with this section.
- (2) In section 51 (power of local authority to contribute to the preservation of listed buildings etc.)—
- (a) after subsection (5) insert—
- “(5A) A contribution under this section by way of grant may be made subject to such conditions as the local authority may determine.”,
- (b) in subsection (6), at the beginning insert “Without prejudice to the generality of subsection (5A),”.
- (3) In section 52 (recovery of grants under section 51)—
- (a) in subsection (1), at the beginning insert “Subject to subsection (1A),”,
- (b) after that subsection insert—
- “(1A) Where a condition imposed on the making of a grant to which this section applies specifies, or makes provision for calculating, the amount recoverable in the event of a disposal by the grantee of that interest, that amount is the amount recoverable under subsection (1) in respect of the disposal.”,
- (c) in subsection (4), at the beginning insert “Subject to subsection (4A),”,
- (d) after that subsection insert—
- “(4A) Where a condition referred to in subsection (4) specifies, or makes provision for calculating, the amount recoverable in the event of a condition being contravened or not complied with, that amount is the amount recoverable under subsection (4) in respect of the contravention or failure to comply with the condition.”.
- (4) In section 70 (recovery of grants under section 69)—
- (a) in subsection (4), at the beginning insert “Subject to subsection (4A),”,
- (b) after that subsection insert—

“(4A) Where a condition imposed on the making of a grant to which this section applies specifies, or makes provision for calculating, the amount recoverable in the event of a disposal by the grantee of that interest, that amount is the amount recoverable under subsection (4) in respect of the disposal.”,

(c) in subsection (7), at the beginning insert “Subject to subsection (7A),”,

(d) after that subsection insert—

“(7A) Where a condition referred to in subsection (7) specifies, or makes provision for calculating, the amount recoverable in the event of a condition being contravened or not complied with, that amount is the amount recoverable under subsection (7) in respect of the contravention or failure to comply with the condition.”.

Regulations in connection with inquiries

27 Regulations in connection with inquiries, etc.

(1) In section 79(1) of the 1997 Act (application of certain general provisions of the Town and Country Planning (Scotland) Act 1997), after the reference to section 273 (offences by corporations) insert—

“section 275A (further provision as regards regulations: inquiries, etc.),”.

(2) In subsection (5) of section 9 of the Tribunals and Inquiries Act 1992 (c.53) (procedure in connection with statutory inquiries)—

(a) the words from “an” to the end become paragraph (a) of that subsection,

(b) after that paragraph insert “; or

(b) an inquiry held under paragraph 6 of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).”.

PART 4

GENERAL

28 Interpretation

In this Act—

“the 1953 Act” means the Historic Buildings and Ancient Monuments Act 1953 (c.49),

“the 1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979 (c.46),

“the 1997 Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).

29 Short title and commencement

(1) This Act may be cited as the Ancient Monuments and Listed Buildings (Amendment) (Scotland) Act 2009.

(2) The provisions of this Act, except this section, come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(3) Different days may be appointed under subsection (2) for different purposes.

SCHEDULE
(introduced by section 25(5))

FORM OF NOTICES OF DETERMINATION, DISCHARGE AND LIABILITY FOR EXPENSES

After Schedule 3 to the 1997 Act insert—

“SCHEDULE 4
(introduced by section 50C(4))

FORM OF NOTICE OF DETERMINATION

“NOTICE OF DETERMINATION

This notice specifies the amount recoverable in a notice given by the Scottish Ministers under section 50(5) of the Planning (Listed Buildings and Conservations Areas) (Scotland) Act 1997. The amount relates to works in respect of which a notice of liability for expenses has been registered.

Amount recoverable:

(see note 1 below)

Listed building to which the notice relates:

(see note 2 below)

Description of the works to which the notice relates:

(see note 3 below)

Notice of liability for expenses to which the amount recoverable relates:

(see note 4 below)

Person giving notice:

(see note 5 below)

Signature:

(see note 6 below)

Date of signing:”

Notes for completion

(Theses notes are not part of the notice)

- 1 Enter the amount specified in the Scottish Ministers' determination under section 50(5) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in respect of representations made to them under section 50(4) of that Act.
- 2 Describe the listed building in the same way as it is described in the notice of liability for expenses.
- 3 Describe the works in the same way as they were described in the notice of liability for expenses.
- 4 Give details of the notice of liability to which the amount recoverable relates by reference to its date of registration in the Land Register of Scotland or the date of its recording in the Register of Sasines.
- 5 Give the name and address of the planning authority or, as the case may be, the person acting on behalf of the Scottish Ministers applying for registration of the notice.
- 6 The notice must be signed on behalf of the planning authority or the Scottish Ministers as appropriate.

SCHEDULE 5

(introduced by section 50D(4))

FORM OF NOTICE OF DISCHARGE

“NOTICE OF DISCHARGE OF A NOTICE OF LIABILITY FOR EXPENSES

This notice discharges the notice of liability for expenses described below.

Notice of liability for expenses discharged:

(see note 1 below)

Listed building to which the notice relates:

(see note 2 below)

Description of the works to which the notice relates:

(see note 3 below)

Person giving notice:

(see note 4 below)

Signature:

(see note 5 below)

Date of signing:”

Notes for completion

(These notes are not part of the notice)

- 1 Give details of the notice of liability being discharged by reference to its date of registration in the Land Register of Scotland or the date of its recording in the Register of Sasines.
- 2 Describe the listed building in the same way as it is described in the notice of liability for expenses.
- 3 Describe the works in the same way as they were described in the notice of liability for expenses.
- 4 Give the name and address of the planning authority or, as the case may be, the person acting on behalf of the Scottish Ministers applying for registration of the notice.
- 5 The notice must be signed on behalf of the planning authority or the Scottish Ministers as appropriate.

SCHEDULE 6

(introduced by section 50E(2))

FORM OF NOTICE OF LIABILITY FOR EXPENSES

“NOTICE OF LIABILITY FOR EXPENSES

This notice gives details of expenses of certain urgent works carried out in relation to the listed building specified in the notice. The effect of the notice is that a person may, on becoming owner of the listed building, be liable by virtue of section 50A of the Ancient Monuments and Listed Buildings (Amendment) (Scotland) Act 2009 (asp 00) for any outstanding expenses relating to the works.

Listed building to which the notice relates:

(see note 1 below)

Description of the works to which the notice relates:

(see note 2 below)

Expenses of the works:

(see note 3 below)

Person giving notice:

(see note 4 below)

(see note 5 below)

Date of signing:”

Notes for completion

(Theses notes are not part of the notice)

- 1 Describe the listed building in a way that is sufficient to identify it. Where the building has a postal address, the description must include that address. Where title to the building has been registered in the Land Register of Scotland, the description must refer to the title number of the building or of any larger subjects of which it forms part. Otherwise, the description should normally refer to and identify a deed recorded in a specific division of the Register of Sasines.
- 2 Describe the works in general terms.
- 3 Give the amount of the expenses of the works.
- 4 Give the name and address of the planning authority or, as the case may be, the person acting on behalf of the Scottish Ministers applying for registration of the notice.
- 5 The notice must be signed on behalf of the planning authority or the Scottish Ministers as appropriate.”.