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The Urgent Works Notice

1 Introduction

Section 49 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 enables local authorities to carry out any emergency works which appear to them to be urgently necessary for the preservation of a listed buildings in their area and, as modified by section 25 of the Historic Environment (Amendment) (Scotland) Act 2011, to undertake preventative works necessary to limit the deterioration of a building. The objective is to preserve that which exists, to prevent it from getting worse and to do so in a cost-effective manner. The owner must be given a minimum of seven days' written notice (the Urgent Works Notice) of the intention to undertake the works and the notice must describe the proposed works. The notice is therefore a statement by the local authority that it intends to execute works and not one requiring that the owner undertake them. The minimum period gives the owner the opportunity to comply with the notice. In practice notices are usually served after informal requests to the owner to undertake the works have been ignored and there is a risk that the building may deteriorate further if action is delayed. Scottish Ministers are also enabled to serve a notice and have the works carried out, via Historic Scotland, on their behalf. Subsequently, the local authority or Scottish Ministers may require that the owner pay the expenses for the works undertaken.

If the building is occupied, the works may be carried out only to those parts not in use. Care should therefore be taken in advance to confirm the occupancy status of the property before serving any notice.

Urgent works notices cannot be served in relation to:

- **Crown land.** However, an Urgent Works Notice may be served on any non-Crown interest in the land such as a leaseholder.
- **Ecclesiastical buildings** in use as such where there is an exemption from the need for listed building consent under section 54 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- A listed building which is also a **scheduled monument**, for which there are separate legal provisions.

Is the building occupied?

If a building is occupied, urgent works under section 49 of the 1997 Act may be carried out only to those parts that are not in use. The definition of occupancy and use are not clear complicated by the fact that many listed buildings in Scotland are tenements or have been subdivided into smaller units since first constructed. In most situations, Urgent Works Notices will cover works to those parts of a building which serve, or are integral to, all of its parts. For example, works may be urgently required to the roof and rainwater goods or to ensure overall

stability. It is possible therefore that a court might take the view that such common parts are actually 'in use' if they serve any part of a building that is occupied.

Some guidance on how to judge if a building is in use is provided by court decisions but this is limited. If the building or parts of it are in use but the building itself is not occupied, then how does this relate to the scope of the Act? Occupation means a regular or active use of the building primarily for its intended purpose. Thus a warehouse, being put to use in its intended way and requiring only occasional attendance from personnel, should be regarded as being occupied. For a house to be regarded as being occupied it will be used for living or may be converted to some other significant active use, such as industry or commerce. On the other hand, a small house that is used for residual and occasional storage of largely unwanted items is not occupied. The use of the term 'not in use' as opposed to 'unoccupied' means that Urgent Works Notices can be applied to certain unused parts of a building which is otherwise in use, such as the vacant upper floors over a shop that is in use.

An internal inspection, undertaken using statutory powers of access, might be necessary to determine whether a building is occupied and what parts of it are in use. Shelter Scotland's Empty Homes initiative has published excellent guidance¹ on investigating buildings that are thought to be vacant and unoccupied and on identifying owners.

2 The scope of the Urgent Works Notice

Each Urgent Works Notice has to be tailored to the circumstances of the case that it seeks to address. Works undertaken should normally be those designed to keep a building wind and weatherproof, to provide necessary structural support in cases of potential danger or to prevent damage by vandals. A notice is appropriate in the earlier stages in a building's deterioration when relatively inexpensive works can halt a building's decline and greatly improve its chances of economic re-use. It is also suited to situations where deterioration is so far advanced that without emergency intervention irretrievable loss is inevitable. It offers planning authorities the power to undertake works of temporary support or shelter on a continuing basis. For instance, the erection of supportive scaffolding or temporary measures such as a roof covering to prevent water penetration can often afford a useful breathing space in which the future of the building can be properly considered. A modification to the provisions of the 1997 Act by section 25 of the Historic Environment (Amendment) (Scotland) Act 2011 also enables an authority to undertake preventative works necessary to limit any deterioration of a building. Given the owner's right to challenge a council's reclaim of expenses for the works, however, there is a responsibility to ensure that the work done to a building is the minimum required to meet these ends and is carried out at a reasonable cost. Expensive permanent repairs and restoration should not be undertaken using these powers. A notice might typically comprise some, or all, of the following classes of work, although the list is not exhaustive. These are also covered in the Toolkit text *11 Buying Time*:

Works to protect the building from the elements

This could involve:

¹ http://scotland.shelter.org.uk/data/assets/pdf_file/0004/294862/Scottish_Empty_Homes_Partnership_-_Data_Collection_Guide_2012_Update.pdf

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- The prevention of water ingress through works to the roof covering and flashing either by localised repairs to the existing fabric or, where deterioration and threat is extensive, through the provision of a temporary roof covering.
- Ensuring adequate rainwater disposal and prevention of water ingress by clearing, unblocking, repair or replacement of gutters, downpipes, gullies and drains etc.
- Preventing the blocking of draining systems and associated deterioration through the careful removal of invasive plant growth on, in and immediately around the building.
- Preventing water ingress by closing openings caused by missing items such as skylights and windows.

Works to assist the building to dry out

Wet and dry rot are very common natural causes of deterioration that can lead to loss of fabric and structural collapse. Where water ingress has occurred it is essential to allow the building to dry out thus removing the conditions which support the start or spread of dry rot.

- Making provision for through ventilation such as through fixing inaccessible windows open and fitting them with appropriate grilles and/or providing air flow through fixed security boarding.
- Clearing the property of rubbish and debris, pigeon droppings and carpets. Such debris can retain moisture and contribute to fires and inhibit inspection and maintenance.

Making the building safe from structural collapse

Such works might require to be guided by an appropriately qualified and experienced structural engineer and could include including:

- Propping.
- Securing areas already subject to collapse, fire or other damage.

Making the building safe from vandalism, theft and damage

Prevention of unauthorised entry, vandalism and theft can be a challenge and may require input from specialist advisors.

- Temporary boarding of openings.
- Fitting and replacing locks.
- Removal of valuable fixtures and their safe storage.
- Boarding of important fittings.
- Erecting temporary barriers.
- Erecting signage.

Local authorities, in weighing up which proposed works are appropriate, might wish to consider a High Court case in Wales² where it was found that some of the works undertaken by the council seeking to recover costs had in fact been urgently necessary for the preservation of the building. The remaining works, however, were found to have been necessary for the preservation of the building although not urgent. In these circumstances the court determined

² R v. Secretary of State for Wales ex. P. Swansea CC. See discussion in Charles Mynors *Listed Buildings, Conservation Areas and Monuments* 4th edition (London, 2006) p. 268.

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that all the costs were recoverable. The council was therefore justified in serving the Notice as all that was necessary was that the works were necessary. It is for each council to determine whether the state of any building is such that urgent works are necessary for its preservation and to stop deterioration. If having concluded that works are necessary then the council should carefully consider whether to use its powers to serve Urgent Works or Repairs Notices as failure to do so might lead to complaints of maladministration.

3 Duration of the Works

In specifying the works, cost-effectiveness is a crucial consideration and a balance will require to be struck between ensuring that the scale and cost of the action are not beyond the minimum necessary. Permanent repairs can be specified when this is the cheapest option to achieve the objective and it is advisable to avoid the need for repeat notices at frequent intervals which could result in potentially higher cumulative costs over time. One rule of thumb might be to specify works that will hold good for a full seasonal cycle. Longer periods may require tailored 'mothballing' schemes (Toolkit text *11 Buying Time*). Also, in cases where a building is clearly in need of extensive, more permanent repair, serious consideration should be given to serving a Repairs Notice instead. Similarly, consideration might be given to serving a Repairs Notice concurrently with the Urgent Works Notice or at a specified later date if no proposals come forward for the building's long-term proper preservation.

4 Implementation

While it is always best to commence by attempting to find a way of progressing works in co-operation with the owner, there will be situations where they are unresponsive to informal approaches and a service of a notice has to be contemplated.

Where there is clearly an ongoing need for urgent works and the owner proves uncooperative it is recommended that the council write to them:

- Setting out the provisions of sections 49-50 of the 1997 Act;
- Requesting access to the building with a view to inspecting and making a record of its condition. This should include, or be followed up by, a professional survey by an independent expert briefed to report in a manner tailored to the scope and function of this type of notice;
- Making reference to statutory rights of entry, whether problems of access is anticipated or not; and
- Requesting a meeting with the owner to consider the findings of the inspection and survey and to clarify the implications of the service of an Urgent Works Notice.

The results of the inspection and survey should be dated and added to a case file along with all previous correspondence, photographs and reports which record the condition of the building, how it has changed and any correspondence with the owner.

If, on inspection, other areas of concern are noted such as evidence of possible unauthorised works or damage to the listed building, then these should also be recorded and appropriate enforcement or intervention initiated.

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An examination of the nature and depth of surveys undertaken by local authorities in England in relation to Urgent Works Notices found that the nature and depth of these varied between councils. One council reported that it carried out ‘a detailed survey of the exterior and interior’, another that it undertook a ‘thorough visual survey noting obvious problems’. Yet another said it undertook a ‘thorough survey’ while a fourth carried out a ‘one-hour external/internal inspection’. Several stated that a conservation officer or architect prepared their schedules with assistance from a structural engineer, building surveyor or other surveyor. Consultant surveyors were also used.³

The initial inspection should be followed up with a second letter to the owner including a draft schedule of urgent works and setting a date for formal service of a notice if the works are not carried out. The owner should also be reminded of the need to obtain listed building consent and planning permission for certain works and the arrangements for discussing proposals and obtaining consent. It might also be helpful to attach lists of firms with expertise in working with historic buildings in the area if available.

Specimen letters are to be included in the Toolkit that can be adapted to suit the circumstances of the case (or amalgamated with the letters relating to a Repairs Notice if both courses of action are under consideration).

Often a key stage in negotiations with the owner (such as serving a formal request for access, a meeting to explain why it might be in the owners best interest that they, rather than the council, instruct the necessary works or a written warning of impending service of an Urgent Works Notice) will be sufficient to encourage them to progress the works. Holding back service of the formal notice might have merits if this is a possibility, depending on the circumstances of the case, the response of the owner and their track record. However, giving repeated warnings without follow up or leaving matters in the air without ongoing dialogue is likely to undermine the credibility of the local authority and reduce the apparent urgency. If the works are truly urgent, as backed by professional advice, then they should be acted upon accordingly.

If the owner co-operates and indicates a willingness to undertake the works then it is reasonable to require convincing proof and the council should request immediate written confirmation of:

- The owner’s agreement to undertake the works;
- That they will be carried out in accordance with the draft schedule provided;
- That a contractor has been appointed;
- The date for commencement; and
- An estimate of the time the works will take.

Also the authority should exercise its statutory right to access the building to ensure that the works are being undertaken.

The best way to ensure that the works are carried out properly is to establish a good working relationship with the owner and their contractor. If the work is unsatisfactory the council can still, having served notice, enter the property and carry out the works that were specified in the notice. Unless there is a clear-cut matter of undertaking a specific item that the owner had omitted, or a case of very extreme urgency, the local authority may need to consider serving a

³ Paula Judson ‘Urgent Works Notices in Practice’ *Context* 51 pp. 29-30 at 30.

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further notice. This would require a modified schedule of works and a covering letter setting out the reasons and initiating enforcement action where unauthorised works have occurred.

It is crucial that the notice is carefully drafted to ensure it is effective and that the expenses of the works can be reclaimed in due course. The notice must describe the works to be carried out. While there is no prescribed format the following should be included:

- A summary of the provisions of section 49 of the Planning (Listed Buildings and Conservation Areas)(Scotland)Act 1997 as modified;
- Reference to the provisions of section 50 of the Planning (Listed Buildings and Conservation Areas)(Scotland)Act 1997 as modified;
- A separate schedule of work with accompanying plans and drawings as appropriate.
- A location plan indicating the building labelled *For identification purposes only*; and
- Local authority contact names and details.

5 Contracting and executing the Urgent Works

It is important that the local authority is ready to carry out the works when the stated period after the serving of the Urgent Works Notice has expired. A suitable contractor will therefore need to be identified and engaged to do the work. In order to support the reclaiming of costs under section 50 of the Act material and labour will need to be obtained at competitive market rates. Subject to procurement requirements it may be possible to engage a single contractor on competitive terms using a term contract arrangement that places the operative on call, as and when required. This will avoid the potential delays and administrative costs of raising a separate contract every time a notice is issued.

It is appropriate to present the works as a separate schedule of works comprising a set of numbered instructions. Always draft in the anticipation that the owner may undertake the works and use layman's terms where possible. Describe clearly appropriate techniques, materials and safeguards, particularly where there could be ambiguity or risk of damage to the historic fabric. Refer to relevant British Standards and codes of practice where appropriate. Make clear which works apply to which areas. Attach plans if necessary to inform the schedule. While the schedule should be confined to the necessary works, supplementary informatives can be used to reduce the risk of unauthorised loss through stripping out or damage. For instance, where fungal attack is present, or where there are loose items of historic joinery that must be protected or retained until their reinstatement after the building is eventually fully repaired.

The contractor for the works instructed by the council should be carefully briefed before they commence and the appropriate local authority officer should be present when they commence. The following should be followed:

- The owner should be advised in writing of the start date for the works on site.
- Local authority staff and contractors should carry a signed letter authorising their presence on site.
- The site must be kept secure at all times, especially outwith working hours.
- A full set of dated record photographs should be taken immediately before works begin and a further set made on completion. These should show the general condition of the building as well as details of the areas subject to the urgent works,

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- Works should be carried out strictly in accordance with the schedule in the notice. If it becomes apparent that works other than those that were specified are urgently necessary then the contractor should be obliged to contact the local authority immediately. This may require that a further notice is served to enable those works to be carried out after a minimum of seven days.
- If the contractor is ordered or barred from the site then access is deemed to have been denied. If this cannot be negotiated with the owner then an application will require to be made to the Sheriff Court for a warrant of entry.
- The site foreman should hold a copy of the Urgent Works Notice, schedule and any accompanying plans on site.
- A site log should be kept to record site conditions, descriptions of work carried out, general progress, problems and issues, visitors and security matters as well as day sheets for labour, plant and materials. Separate records should be kept for different properties being worked on at the same time.
- All moveable and salvageable items, including furniture and equipment, should be retained on site.
- When works are complete the site should be left in a state at least as secure as at the time of entry.
- The contractor's invoice should be based, as closely as possible, on the schedule of works. General site costs (e.g. plant and supervision), or costs arising during the course of work, should be separately itemised.

6 Reclaiming the expenses for the works

Section 50 of the 1997 Act enables a notice to be served on the owner by the local authority or Scottish Ministers to reclaim the expenses of the works undertaken. In the case of continuing expenses for temporary support or shelter, such as making available such necessary equipment as scaffolding, the notices may be repeated and the owner may be notified from time to time of the cumulative total of such continuing expenses.

Within 28 days of receipt of a notice requiring payment, the owner may represent to Scottish Ministers that:

- Some or all of the works were unnecessary for the preservation of the building;
- The amount claimed is unreasonable;
- The recovery of the cost would cause hardship; or
- The temporary arrangements for support of the building have continued for an unreasonable length of time.

As these representations will be taken into account by Scottish Ministers in determining the amount recoverable, any claim for expenses should contain sufficient detail to enable Scottish Ministers to form some conclusion as to its validity or otherwise.

The claim notice should:

- Make it clear that the council is exercising its statutory power to seek reimbursement;

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- Contain a statement that the council carried out the works to the named premises on the stated dates, pursuant to the notice served under section 49 of the 1997 Act on the stated date;
- Summarise the provisions of section 50 of the 1997 Act and provide a statement that the notice is being served pursuant to those powers;
- Indicate the amount being reclaimed;
- Itemise the costs of the works with any additional eligible items;
- Include copies of all relevant invoices and receipts;
- Detail the mechanism for making representations to the Scottish Ministers; and
- The methods of payment, account and contact name for receipt.

Previously, the planning authority and Scottish Ministers were limited to pursuing recovery of expenses for urgent works on a listed building from whoever was the owner at the time of notification. A new power introduced in the Historic Environment (Amendment) (Scotland) Act 2011 enables a notice of liability for expenses for urgent works to be registered in the property register against the affected building. By enabling, in effect, a charge to be placed against the property itself, this provides that any new owner of the property will also be liable to pay the costs. This therefore removes the previous disincentive to councils considering using the power but concerned that they may be unable to pursue an elusive owner and inhibits owners seeking to ‘offload’ a problem building onto others.

Local authorities are advised to have processes for the serving of Urgent Works and Repairs Notices in place even if there are no current cases that require these. These should identify the roles and responsibilities of each player at each stage, including recovery of costs, and the forms of information required.

7 Urgent Works to an Unlisted Building in a Conservation Area

Under section 49 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Scottish Ministers may also direct that an unlisted building in a conservation area should come within the scope of these powers where its preservation is important for maintaining the character or appearance of the area. Usually, the Ministers will make such a direction in response to a request from a local authority, submitted via Historic Scotland, to enable it to serve an Urgent Works Notice. Historic Scotland is consulted before a decision is made.

There is no formal procedure for approaching Scottish Ministers but it is recommended that a written case is made in letter seeks the direction by writing to Historic Scotland. The letter should indicate how, in the council’s opinion, the character or appearance of the area would suffer if the works were not undertaken.

A request should be supported by evidence confirming the importance of the building and its contribution to the character of the conservation area. This might include:

- A concise assessment of the character of the conservation area;
- A description of the building, its significance and the positive contribution it makes to the character and appearance of the conservation area;

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- A statement of why the building's preservation is important for maintaining the character and appearance of the conservation area;
- A summary of the background comprising previous efforts to encourage the owner to repair the property and copies of relevant correspondence;
- Details of relevant applications for planning permission or conservation area consent to demolish and the decision letters. This is particularly important where there has been refusal on appeal of consent to demolish;
- An assessment (preferably by an independent expert advisor) of the building's condition and why works are urgently necessary;
- Details of any other statutory action taken;
- A copy of the proposed schedule of works;
- Reference to relevant conservation and regeneration with details of funding in place or being sought and how the disrepair of the building will undermine such efforts;
- Evidence of privately led regeneration and investment in the conservation area which might be negated by the disrepair of the building;
- Details of how proposed works would complement any wider initiative or concerted action such as the serving of urgent works and repairs notices on neighbouring listed buildings;
- Copies of any press reports and representations from local amenity bodies or members of the public; and
- Good supporting material by way of maps, plans, photographs of the building and its wider context in the conservation area and any images showing how it looked when in good repair.

Once the Scottish Ministers have made a direction, the procedures for serving the Urgent Works Notice are exactly the same as for a listed building. In drafting the notice, however, it should be remembered that it is to be served under section 49 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and not under section 68 which is purely the legal mechanism for obtaining the Scottish Ministers' authority. The notice should set out the provisions of both sections of the 1997 Act, specify that the Scottish Ministers have directed that the powers of section 49 can be exercised by the local authority and that the local authority is exercising its functions under Section 49.

8 Examples of Urgent Works Notice Schedules

The following examples illustrate the range of works that have been included in actual notices:

Example: Urgent Works Notice, Lauriston Place Church, Edinburgh

An Urgent Works Notice pursued by the council for this vacant listed church building in 2009 included a concise schedule of works:

- Board up all windows which contain damaged glazing.
- Clear all blocked gutters and replace damaged and missing rainwater goods to ensure that all rainwater from the roof coverings is properly collected.
- Remove all vegetation from the walls and parapet gutter.

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Example: Urgent Works Notice, Old Courthouse, Campbeltown, Argyll & Bute

- Provide safe access to high level - assume scaffold towers. Ensure that tower is supported on boards as necessary to ensure a firm footing.
- Remove all slates and store on site securely for re-use.
- De-nail rafters.
- Remove guttering and down pipe and dispose of off site.
- Doubling joists with new timber sections.
- Supply and fix temporary felt roofing.
- Supply and fix temporary uPVC guttering and down pipe to run to existing surface water drain. Run felt roof into temporary guttering.
- Cut back vegetation and poison roots of shrubs.
- Cut back all loose render.
- Point up masonry as necessary to ensure structural stability in mortar to standard mix.
- Clear out all rubbish from ground floor areas.
- Provide access to all areas and supply and fix lockable secure doors.
- Supply and fix new PC lintel above central door opening and rebuild stonework above.
- Prop first floor.
- Provide 19mm plywood walking boards or similar to ensure safe access onto first floor.
- Take down all loose ceiling structure.
- Take up any loose or rotten floorboards.
- Board up windows.

The English Heritage guidance *Stopping the Rot* contains a specimen schedule of works by way of illustration:⁴

Example: Specimen Urgent Works Notice schedule

- Cover up the external faces of 4 no. ground floor windows so as to protect glass. Use external grade plywood or corrugated metal sheets with 10 no. 25mm diameter drilled holes per window for ventilation, secured by long bolts with heads placed externally, through top and bottom sash openings. Fix to 100mm x 50mm softwood sections placed internally across the width of the window and shimmed off the inside face of the plastered external wall to both sides of the opening with timber blocking pieces, to provide clearance of the internal window architraves.
- Clean and clear gutters, hoppers, downpipes and drains through to inspection chambers.
- Repair existing and reinstate missing sections of rainwater goods and generally ensure that all rainwater run-off is conducted to main drains.
- In such manner as to prevent ingress of rainwater [specify applicable method(s)]:
 - a) Re-fix loose and slipped roof slates and flashings. Repair leaks in gutters with self-adhesive impervious membrane.
 - b) Provide temporary roof covering at areas of the roof damaged or missing by installing

⁴ Sample 9, p. 80.

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impervious flexible sheeting, supported on existing structure and additional temporary support if necessary. Secure with suitable fixings, battens or weights. Dress into gutters and outlets. Install self-adhesive membrane flashings to seal edges and abutments.

c) Erect a temporary corrugated metal roof supported on scaffolding, fitted with gutters and downpipes discharging to drains at ground level. Install vertical flexible sheeting/netting as required to prevent wind-driven rain from entering the building.

- Prop the rotted trimmer beam at the first-floor stair landing at its unsupported end using an adjustable metal prop. Secure prop with screws at top and bottom plates. Wrap the prop full height with hazard warning tape.
- Cut back and treat vegetation rooting into rainwater goods and external brickwork using a suitable systemic killer in accordance with the manufacturer's recommendations.
- Clear away accumulated rubbish and combustible material from the interior, including pigeon droppings.
- Turn off any live services and drain down heating and water supply systems.
- Ensure that ventilation is provided to all internal spaces in accordance with BSCP 5925:1980

9 Steps towards an effective Urgent Works Notice

Stopping the Rot also contains a helpful Urgent Works Notice Checklist (Appendix 1, page 66) that, although written specifically for England, could be used in conjunction with the steps outlined above in preparing, serving and following through a notice.

The above guidance was prepared by The Architectural Heritage Fund for Historic Scotland and is published by the Buildings at Risk Register for Scotland as part of the Buildings at Risk Toolkit. <http://www.buildingsatrisk.org.uk/>

The text contains references to legislation and its interpretation that may contain inaccuracies or be out of date. Ensure you take appropriate professional advice before making decisions relating to property. Feedback, relevant case studies and suggested changes are welcomed.

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