



# Planning (Scotland) Act 2019

## 2019 asp 13

### PART 4

#### OTHER MATTERS

##### *Enforcement*

#### **42 Fines: increases and duty of court in determining amount**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 126 (penalties for non-compliance with planning contravention notice)—
  - (a) in subsection (4), for “level 3” substitute “level 5”,
  - (b) in subsection (6), for “level 5 on the standard scale” substitute “the statutory maximum”.
- (3) In section 136 (offence where enforcement notice not complied with), in subsection (8)
  - (a), for “£20,000” substitute “£50,000”.
- (4) In section 138 (enforcement notice to have effect against subsequent development)—
  - (a) in subsection (4), for “level 5 on the standard scale” substitute “the statutory maximum”,
  - (b) after subsection (4), insert—
    - “(5) In determining the amount of the fine to be imposed under subsection (4), 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 activity which constituted the offence.”.
- (5) In section 144 (penalties for contravention of stop notice), in subsection (5)(a), for “£20,000” substitute “£50,000”.
- (6) In section 144C (temporary stop notices: offences), in subsection (6)(a), for “£20,000” substitute “£50,000”.
- (7) In section 145 (enforcement of conditions)—
  - (a) in subsection (12), for “level 3” substitute “level 5”,
  - (b) after subsection (12), insert—

“(12A) In determining the amount of the fine to be imposed under subsection (12), 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 activity which constituted the offence.”.

- (8) In section 186 (enforcement of control as to advertisements), in subsection (3) for “level 3” in both places it occurs substitute “level 5”.

### **43 Liability for expenses under enforcement notice**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 135 (execution and cost of works required by enforcement notice)—
- (a) in subsection (1)(b)—
    - (i) the words “from the person who is then the owner or lessee of the land” are repealed, and
    - (ii) after “so”, insert “from—
      - (i) the person who is then the lessee of the land, or any part of the land,
      - (ii) any person who is then or subsequently becomes the owner of the land, or any part of the land (whether or not that person remains the owner).”.
  - (b) in paragraph (b) of subsection (4), the words from “in respect” to the end of that paragraph are repealed,
  - (c) after subsection (4), insert—
 

“(4A) The right of recovery that an owner, lessee or occupier of land has under subsection (4) applies whether or not that person remains the owner, lessee or occupier of the land.”.
- (3) After section 158A, insert—

#### *“Charging orders*

### **158B Liability under a charging order**

- (1) Where—
- (a) a planning authority or the Scottish Ministers (“the charging body”) have taken action in relation to land under section 135(1), and
  - (b) a person is liable under that section for the expenses reasonably incurred by the charging body in taking that action,
- the charging body may make a charging order and apply to register it in the appropriate land register.
- (2) Once the charging order is registered the amount payable under section 135(1) (b)—
- (a) becomes payable in instalments in accordance with section 158C, and

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- (b) includes the administrative expenses referred to in subsection (3)(a) and, if the order so provides, the interest charges referred to in subsection (3)(b).
- (3) The administrative expenses and interest charges referred to are—
  - (a) any administrative expenses reasonably incurred by the charging body in connection with recovering the amount due under section 135(1)(b) (including the fees for registration and discharge of the charging order),
  - (b) if the charging order provides for it, interest—
    - (i) on the expenses mentioned in subsection (1)(b),
    - (ii) at the rate (which must be a reasonable rate) specified in the order,
    - (iii) in respect of the period beginning with the first demand for payment of the expenses mentioned in subsection (1)(b) and ending with payment of the amount payable under section 135(1)(b).
- (4) In this section and sections 158C to 158F, reference to section 135(1) includes reference to that section as applied by section 139(4) or 179(6).
- (5) A charging order may not be made or registered in connection with a liability under section 135(1) that was incurred before section 43 of the Planning (Scotland) Act 2019 came into force.

#### **158C Payments under a charging order**

- (1) A charging body which makes a charging order must specify in the order—
  - (a) the number of annual instalments in which the amount payable under section 135(1)(b) is to be paid (which must be between 3 and 30), and
  - (b) the date on which each instalment falls due.
- (2) The date specified under subsection (1)(b) for the payment of the first instalment must fall at least 56 days after the date on which a copy of the charging order is served on a person from whom payment is sought.
- (3) A person may redeem the amount payable under section 135(1)(b) early by paying to the charging body—
  - (a) the amount payable under section 135(1)(b), or
  - (b) such lower sum as the person agrees with the charging body.
- (4) For the avoidance of doubt, despite the terms of a registered charging order, the charging body may (at any time) waive or reduce the amount payable under section 135(1)(b).

#### **158D Form of a charging order**

- (1) A charging order may not be registered unless it is in the form prescribed by the Scottish Ministers in regulations.
- (2) Regulations under subsection (1) must require that a charging order contain at least the following information—
  - (a) the land to which it relates,

- (b) the action taken under section 135(1) in relation to the land,
  - (c) the amount payable under section 135(1)(b), or a description of that amount,
  - (d) the number of annual instalments into which the amount payable under section 135(1)(b) is divided and the date on which each instalment falls due,
  - (e) notice that an instalment which is not paid is recoverable as a debt.
- (3) On making a charging order, the charging body are to serve a copy of the order on the owner of the land to which it relates.

### **158E Discharge of charging order**

- (1) The charging body must register a discharge of a registered charging order in the appropriate land register as soon as reasonably practicable after it has received payment in full of—
- (a) the amount payable under section 135(1)(b), or
  - (b) such lower sum as the person agrees with the charging body under section 158C(3)(b).
- (2) A discharge of a registered charging order may not be registered unless it is in the form prescribed by the Scottish Ministers in regulations.

### **158F Meaning of “register” and “appropriate land register”**

- (1) In sections 158B to 158E, “register” means—
- (a) register the information contained in the order, discharge or notice in the Land Register of Scotland, or
  - (b) record the order, discharge or notice in the Register of Sasines, and “registered” is to be construed accordingly.
- (2) In sections 158B and 158E, “appropriate land register” means the Land Register of Scotland or the Register of Sasines.”.
- (4) In section 186(2) (enforcement of control as to advertisements), after “enforcement notices” insert “, charging orders”.
- (5) The modifications made by this section do not apply in relation to any liability under section 135(1) of the Town and Country Planning (Scotland) Act 1997 that was incurred before this section came into force.

## **44 Enforcement charters: statement on major developments**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 158A (enforcement charters), after subsection (1) insert—
- “(1A) The charter is also to contain a statement in relation to the planning authority’s monitoring of compliance with planning permissions which have been granted in respect of major developments (as described in regulations made under section 26A(2)), which must set out—
- (a) how the authority monitor compliance with such planning permissions,

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- (b) how the authority record—
  - (i) the monitoring activities undertaken, and
  - (ii) the findings of those monitoring activities, and
- (c) how the authority make such records available to the public.”.