

SCHEDULES

SCHEDULE 11

PLANNING : MINOR AND CONSEQUENTIAL AMENDMENTS

PART II

SCOTLAND

Directions as to modifications of local plans

- 28 (1) After subsection (2) of section 12 of the Town and Country Planning (Scotland) Act 1972 (adoption and approval of local plans) insert—

“(2A) After copies of a local plan have been sent to the Secretary of State and before it has been adopted by the planning authority, the Secretary of State may, if it appears to him that any part of it is unsatisfactory, and without prejudice to his power to make a direction under subsection (3) below, direct the authority to consider modifying the plan in such respects as are indicated in the direction.

(2B) An authority to whom a direction is given shall not adopt the plan unless they satisfy the Secretary of State that they have made the modifications necessary to confirm with the direction or the direction is withdrawn.”.

- (2) In subsection (1) of that section for the words " (2) and (3)" substitute " (2), (2A), (2B) and (3) ".

Operation of Use Classes Order on subdivision of planning unit

- 29 In section 19(2) of the Town and Country Planning (Scotland) Act 1972 (operations and changes of use not amounting to development), in paragraph (f) (use of same prescribed class as existing use) for " the use thereof" substitute " the use of the buildings or other land or, subject to the provisions of the order, of any part thereof ".

Development orders

- 30 In section 21 of the Town and Country Planning (Scotland) Act 1972 (development orders), for subsection (3) (general and special orders) substitute—

“(3) A development order may be made either—

- (a) as a general order applicable, except so far as the order otherwise provides, to all land, but which may make different provision with respect to different descriptions of land, or
- (b) as a special order applicable only to such land or descriptions of land as may be specified in the order.”.

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Applications to vary or revoke conditions attached to planning permission

31 After section 28 of the Town and Country Planning (Scotland) Act 1972 insert—

“28A Permission to develop land without compliance with conditions previously attached.

- (1) This section applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- (2) Special provision may be made with respect to such applications—
 - (a) by regulations under section 22 of this Act as regards the form and content of the application, and
 - (b) by a development order as regards the procedure to be followed in connection with the application.
- (3) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
 - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
 - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- (4) This section does not apply where the application is made after the previous planning permission has become time-expired, that is to say, the previous permission having been granted subject to a condition as to the time within which the development to which it related was to have begun, that time has expired without the development having been begun.”.

Land adversely affecting amenity of neighbourhood

32 (1) For subsection (1) of section 63 of the Town and Country Planning (Scotland) Act 1972 (proper maintenance of waste land) substitute—

“(1) If it appears to a planning authority that the amenity of any part of their district, or an adjoining district, is adversely affected by the condition of any land in their district, they may serve on the owner, lessee and occupier of the land a notice under this section requiring such steps for abating the adverse effect as may be specified in the notice to be taken within such period as may be so specified.”.

(2) In subsections (1B) and (1C) of the said section, for the words " waste land notice " substitute " notice under this section ".

33 (1) In subsections (1) and (5) of section 63A (appeals against waste land notices) of the Town and Country Planning (Scotland) Act 1972, for the words " waste land notice " substitute " notice under section 63 of this Act ".

(2) For paragraph (a) of the said subsection (1) substitute—

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“(a) that neither the amenity of any part of the planning authority's district nor that of any adjoining district has been adversely affected;”.

(3) In paragraph (b) of the said subsection (1), for the word " injury " substitute " adverse effect " .

Appeals against notices under section 63A

34 (1) After subsection (6) of section 63A insert—

“(7) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section.”.

(2) After sub-paragraph (1)(d) of paragraph 2 of Schedule 7 (determination of appeals by person appointed by Secretary of State) to the Town and Country Planning (Scotland) Act 1972, insert—

“(aa) in relation to appeals under section 63A, subsections (4) and (6);”.

Purchase notices: transmission of documents to the Secretary of State

35 (1) In section 170 of the Town and Country Planning (Scotland) Act 1972 (action by planning authority on whom purchase notice is served)—

(a) in subsection (1)(c) (notice of unwillingness to comply with purchase notice: contents of notice) for the words from " and that they have transmitted " to the end substitute " and that they have transmitted to the Secretary of State a copy of the purchase notice and of the notice under this subsection " ;

(b) in subsection (3) (duty of planning authority to transmit documents to Secretary of State) for the words from " they shall transmit" to the end substitute " then, before they take steps to serve that notice, they shall transmit to the Secretary of State a copy of the purchase notice together with a copy of the notice which they propose to serve " .

(2) In paragraph 1 of Schedule 17 to the Town and Country Planning (Scotland) Act 1972 (action by planning authority on whom listed building purchase notice is served)—

(a) in sub-paragraph (1)(c) (notice of unwillingness to comply with purchase notice: contents of notice) for the words from " and that they have transmitted " to the end substitute " and that they have transmitted to the Secretary of State a copy of the purchase notice and of the notice under this sub-paragraph. " ;

(b) in sub-paragraph (3) (duty of planning authority to transmit documents to Secretary of State) for the words from " they shall transmit " to " reasons " substitute " then, before they take steps to serve that notice, they shall transmit to the Secretary of State a copy of the purchase notice together with a copy of the notice which they propose to serve under subparagraph (1)(c) " .

*Purchase notice relating to land where use
restricted by virtue of previous planning permission*

36 In section 173 of the Town and Country Planning (Scotland) Act 1972 (power to refuse to confirm purchase notice where land has restricted use by virtue of previous planning permission)—

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- (a) in subsection (1) (cases to which the section applies) for " land which has a restricted use " substitute " land which consists in whole or in part of land which has a restricted use "; and
- (b) in subsection (3) (power of Secretary of State to refuse to confirm purchase notice), for the words " the land ought, in accordance with the previous planning permission," substitute " the land having a restricted use by virtue of a previous planning permission ought, in accordance with that permission, ".

Consideration of purchase notice concurrently with related planning appeal

- 37 (1) In section 175(3) of the Town and Country Planning (Scotland) Act 1972 (relevant period at end of which purchase notice is deemed to have been confirmed) after " relevant period is" insert " , subject to subsection (3A) of this section, ", and after that subsection insert—

“(3A) The relevant period does not run if the Secretary of State has before him at the same time both a copy of the purchase notice transmitted to him under section 170(3) of this Act and an appeal notice under any of the following provisions of this Act relating to any of the land to which the purchase notice relates—

section 33 (appeal against refusal of planning permission, &c),
 section 85 (appeal against enforcement notice),
 section 91 (appeal against refusal of established use certificate),
 section 93 (appeal against listed building enforcement notice), or
 paragraph 7 or 8 of Schedule 10 (appeal against refusal of listed building consent, &c.).”.

- (2) In paragraph 3(3)(b) of Schedule 17 to the Town and Country Planning (Scotland) Act 1972 (relevant period at end of which listed building purchase notice is deemed to have been confirmed) after " " the relevant period " is " insert " , subject to sub-paragraph (3A) of this paragraph, ", and after that sub-paragraph insert—

“(3A) The relevant period does not run if the Secretary of State has before him at the same time both a copy of the listed building purchase notice transmitted to him under paragraph 1(3) of this Schedule and an appeal notice under any of the following provisions of this Act relating to any of the land to which the purchase notice relates—

section 93 (appeal against listed building enforcement notice), or
 paragraph 7 or 8 of Schedule 10 (appeal against refusal of listed building consent, &c.).”.

National Scenic Areas

- 38 After section 262B of the Town and Country Planning (Scotland) Act 1972 insert—

“**262C National Scenic Areas.**

- (1) Where it appears to the Secretary of State, after such consultation with the Countryside Commission for Scotland and such other persons or bodies as he thinks fit, that an area is of outstanding scenic value and beauty in a national context, and that special protection measures are appropriate for it, he may

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designate the area by a direction under this section as a National Scenic Area ; and any such designation may be varied or cancelled by a subsequent direction.

- (2) Notice of any such designation, variation, or cancellation as is mentioned in subsection (1) above shall be published in the Edinburgh Gazette and in at least one newspaper circulating in the vicinity of the Area by the Secretary of State.
- (3) Every planning authority shall compile and make available for inspection free of charge at reasonable hours and at a convenient place a list containing such particulars as the Secretary of State may determine of any area in their district which has been designated as a National Scenic Area.
- (4) Where any area is for the time being designated as a National Scenic Area, special attention shall be paid to the desirability of preserving or enhancing its character or appearance in the exercise, with respect to any land in that area, of any powers under this Act.”.

Recovery of expenses of local inquiry

- 39 (1) For subsection (7) of section 267 (local inquiries) of the Town and Country Planning (Scotland) Act 1972 and subsections (7) and (8) of section 210 (power to direct inquiries) of the Local Government (Scotland) Act 1973 substitute—

“(7) The Minister may make orders as to the expenses incurred—

(a) by the Minister in relation to—

(i) the inquiry;

(ii) arrangements made for an inquiry which does not take place ; and

(b) by the parties to the inquiry,

and as to the parties by whom any of the expenses mentioned in paragraphs (a) and (b) above shall be paid.

(7A) What may be recovered by the Minister is the entire administrative expense of the inquiry, so that, in particular—

(a) there shall be treated as expenses incurred in relation to the inquiry such reasonable sum as the Minister may determine in respect of the general staff expenses and overheads of his department, and

(b) there shall be treated as expenses incurred by the Minister holding the inquiry any expenses incurred in relation to the inquiry by any other Minister or Government department and, where appropriate, such reasonable sum as that Minister or department may determine in respect of general staff expenses and overheads.

(7B) The Minister may by regulations prescribe for any description of inquiry a standard daily amount and where an inquiry of that description does take place what may be recovered is—

(a) the prescribed standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the inquiry sits or the person appointed to hold the inquiry is otherwise engaged on work connected with the inquiry,

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- (b) expenses actually incurred in connection with the inquiry on travelling or subsistence allowances or the provision of accommodation or other facilities for the inquiry, and
- (c) any expenses attributable to the appointment of an assessor to assist the person appointed to hold the inquiry, and
- (d) any legal expenses or disbursements incurred or made by or on behalf of the Minister in connection with the inquiry.”.

(2) After subsection (7B) of the said section 210 of the Local Government (Scotland) Act 1973 insert—

“(8) Where the Minister has made an order under subsection (7) of this section requiring any party to pay expenses to him he shall certify the amount of the expenses, and any amount so certified shall be a debt due by that party to the Crown and shall be recoverable accordingly.”.

(3) In subsection (1) of section 233 of the Local Government (Scotland) Act 1973 (orders, rules and regulations), after " 104(1)" insert " 210(7) ".

(4) After section 210 of the Local Government (Scotland) Act 1973 insert—

“210A Recovery of expenses of local inquiry.

(1) The following provisions of this section apply where a Minister is authorised under or by virtue of any of the following statutory provisions to recover expenses incurred by him in relation to an inquiry—

section 129(1)(d) of the Road Traffic Regulation Act 1984 (expenses of inquiry under that Act),

any other statutory provision to which this section is applied by order of the Minister.

(2) What may be recovered by the Minister is the entire administrative expense of the inquiry, so that, in particular—

(a) there shall be treated as expenses incurred in relation to the inquiry such reasonable sum as the Minister may determine in respect of the general staff expenses and overheads of his department, and

(b) there shall be treated as expenses incurred by the Minister holding the inquiry any expenses incurred in relation to the inquiry by any other Minister or Government department and, where appropriate, such reasonable sum as that Minister or department may determine in respect of general staff expenses and overheads.

(3) The expense of an inquiry which does not take place may be recovered by the Minister from any person who would have been a party to the inquiry to the same extent, and in the same way, as the expense of an inquiry which does take place.

(4) The Minister may by regulations prescribe for any description of inquiry a standard daily amount and where an inquiry of that description does take place what may be recovered is—

(a) the prescribed standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the inquiry sits or the person appointed to hold the inquiry is otherwise engaged on work connected with the inquiry.

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- (b) expenses actually incurred in connection with the inquiry on travelling or subsistence allowances or the provision of accommodation or other facilities for the inquiry,
 - (c) any expenses attributable to the appointment of an assessor to assist the person appointed to hold the inquiry, and
 - (d) any legal expenses or disbursements incurred or made by or on behalf of the Minister in connection with the inquiry.
- (5) An order or regulation under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order applying this section to a statutory provision may provide for the consequential repeal of so much of that provision, or any other provision, as restricts the sum recoverable by the Minister in respect of the services of any officer engaged in the inquiry or is otherwise inconsistent with the application of the provisions of this section.”.

Orders as to expenses of parties where no local inquiry held

- 40 (1) After the said section 267 of the Town and Country Planning (Scotland) Act 1972 insert—

“267A Orders as to expenses of parties where no local inquiry held.

- (1) The Secretary of State has the same power to make orders under section 267(7) above in relation to proceedings to which this section applies which do not give rise to a local inquiry as he has in relation to a local inquiry.
 - (2) This section applies to proceedings under this Act where the Secretary of State is required, before reaching a decision, to afford any person an opportunity of appearing before and being heard by a person appointed by him.”.
- (2) In Schedule 7 to the Town and Country Planning (Scotland) Act 1972 (determination of certain appeals by person appointed by the Secretary of State), in paragraph 5 (local inquiries and hearings)—
- (a) in sub-paragraph (3) after the word " shall" insert " subject to sub-paragraph (4) below ".
 - (b) after sub-paragraph (3) insert—
- “(4) The person appointed to determine the appeal has the same power to make orders under section 267(7) of this Act in relation to proceedings under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry.
 - (5) For the purposes of this paragraph, references to the Minister in subsections (7) and (8) of section 267 shall be read as references to the person appointed by the Secretary of State to determine the appeal.”.

Procedure on applications and appeals disposed of without inquiry or hearing

- 41 After section 267A of the Town and Country Planning (Scotland) Act 1972 insert—

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“267B Procedure on certain appeals and applications.

- (1) The Secretary of State may by regulations prescribe the procedure to be followed in connection with proceedings under this Act where he is required, before reaching a decision, to afford any person an opportunity of appearing before and being heard by a person appointed by him and which are to be disposed of without an inquiry or hearing to which rules under section 11 of the Tribunals and Inquiries Act 1971 apply.
- (2) The regulations may in particular make provision as to the procedure to be followed—
 - (a) where steps have been taken with a view to the holding of such an inquiry or hearing which does not take place, or
 - (b) where steps have been taken with a view to the determination of any matter by a person appointed by the Secretary of State and the proceedings are the subject of a direction that the matter shall instead be determined by the Secretary of State, or
 - (c) where steps have been taken in pursuance of such a direction and a further direction is made revoking that direction,
 and may provide that such steps shall be treated as compliance, in whole or in part, with the requirements of the regulations.
- (3) The regulations may also—
 - (a) provide for a time limit within which any party to the proceedings must lodge written submissions and any supporting documents;
 - (b) prescribe the time limit (which may be different for different classes of proceedings) or enable the Secretary of State to give directions setting the time limit in a particular case or class of case;
 - (c) empower the Secretary of State to proceed to a decision taking into account only such written submissions and supporting documents as were lodged within the time limit; and
 - (d) empower the Secretary of State, after giving the parties written notice of his intention to do so, to proceed to a decision notwithstanding that no written submissions were lodged within the time limit, if it appears to him that he has sufficient material before him to enable him to reach a decision on the merits of the case.”.

Power to return appeal for determination by appointed person

42

In Schedule 7 to the Town and Country Planning (Scotland) Act 1972 (determination of certain appeals by persons appointed by the Secretary of State), after paragraph 3 (power of Secretary of State to direct that appeal should be determined by him) insert—

- “3A (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 of this Schedule at any time before the determination of the appeal.
- (2) A direction under this paragraph shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the applicant or appellant, the planning authority and any person who has made representations relating to the subject

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matter of the appeal which the authority are required to take into account under section 26(3)(a) of this Act.

- (3) Where a direction under this paragraph has been given, the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the person appointed to determine the appeal (including any arrangements made for the holding of a hearing or local inquiry) shall, unless that person directs otherwise, be treated as having been done by him.”.

Appointment of assessors

- 43 In Schedule 7 to the Town and Country Planning (Scotland) Act 1972 (determination of certain appeals by persons appointed by the Secretary of State), in paragraph 5 (local inquiries and hearings), after sub-paragraph (1) insert—

“(1A) Where a person appointed under this Schedule to determine an appeal—
(a) holds a hearing by virtue of paragraph 2(2)(b) of this Schedule, or
(b) holds an inquiry by virtue of this paragraph,
an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising notwithstanding that the appointed person is to determine the appeal.”

Increase of daily penalties for offences

- 44 (1) In the provisions of the Town and Country Planning (Scotland) Act 1972 listed in column 1 of the following Table, which imposes daily penalties for certain offences whose general nature is indicated in column 2, for the amount shown in column 3 substitute the amount shown in column 4.

TABLE

<i>Provision of 1972 Act</i>	<i>Nature of offence</i>	<i>Present maximum daily fine</i>	<i>New maximum daily fine</i>
Section 55(3)	Damage to listed building.	£20	£40
Section 86.	Non-compliance with enforcement notice.	£100	£200
Section 87(8)(6).	Non-compliance with stop notice.	£100	£200
Section 94(2)(a).	Failure to secure compliance with listed building enforcement notice.	£100	£200

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<i>Provision of 1972 Act</i>	<i>Nature of offence</i>	<i>Present maximum daily fine</i>	<i>New maximum daily fine</i>
Section 98(3).	Failure to secure compliance with tree preservation order.	£50	£100
Section 100(1)(c).	Non-compliance with discontinuance order.	£100	£200
Section 101(2).	Contravention of advertisement control regulations.	£20	£40

(2) The increased amounts applicable by virtue of sub-paragraph (1) apply to every day after the commencement of this paragraph, notwithstanding that the offence began before.

Other minor amendments of the Town and Country Planning (Scotland) Act 1972

- 45 In section 84(7) of the Town and Country Planning (Scotland) Act 1972 (power to serve enforcement notice) after " place " insert " or, (according to the particular circumstances of the breach) to secure compliance with the conditions or limitations subject to which planning permission was granted ".
- 46 In section 99 (enforcement of duties as to replacement of trees) of the Town and Country Planning (Scotland) Act 1972, in subsection (3), after " 85(2)" insert " to (2D) ".
- 47 In section 158(6)(b) of the Town and Country Planning (Scotland) Act 1972 (compensation for planning decisions restricting development other than new development) for the word " 7 " there shall be substituted the word " 8 ".
- 48 In section 205(3)(a) and 205A(3)(a) of the Town and Country Planning (Scotland) Act 1972 (procedure in anticipation of planning permission, &c.) after " authority " insert " or ".
- 49 In section 205(5) of the Town and Country Planning (Scotland) Act 1972 for " 204(5)" substitute " 204(4) ".
- 50 In section 231 of the Town and Country Planning (Scotland) Act 1972 (validity of development plans and certain orders, decision and directions)—
- (a) at the end of subsection (2)(a) insert " or as applied under section 181 of the Local Government (Scotland) Act 1973 ", and
 - (b) at the end of subsection (2)(&) insert " or under the provisions of that section as applied by or under any other provision of this Act or as applied under section 181 of the Local Government (Scotland) Act 1973. ".
- 51 In section 260 of the Town and Country Planning (Scotland) Act 1972 (default powers of the Secretary of State), at the end of subsection (1) insert " or, in the case of a tree preservation order under section 58 of this Act, as if it had been made and confirmed by the planning authority ".
- 52 In section 270 of the Town and Country Planning (Scotland) Act 1972 (power to require information as to interest in land) insert—
- “(d) the time when that use began ;,

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- (e) the name and address of any person known to the person on whom the notice is served as having used the premises for those purposes;
- (f) the time when any activities being carried out on the premises began.”.

53 In sub-paragraph 2(2) of Schedule 7 (determination of certain appeals by person appointed by Secretary of State) of the Town and Country (Scotland) Act 1972, for " 85(2) " substitute " 85(2D) ".

Consequential amendments of the Town and Country Planning (Scotland) Act 1972

54 In section 26(1)(a) of the Town and Country Planning (Scotland) Act 1972, for the words " sections 38, 39, 68 and 75 to 78 " there shall be substituted the words " sections 38 and 39 ".

55 In sections 32(4) and 33(5) of the Town and Country Planning (Scotland) Act 1972 for the words " and 27A " substitute " 27A and 28A ".

56 In section 33(7) of the Town and Country Planning (Scotland) Act 1972 for the words ", 27(1) and 65 " there shall be substituted the words " and 27(1) ".

57 In section 53(4) of the Town and Country Planning (Scotland) Act 1972 omit " under section 54 of this Act ".

58 In section 267 (local inquiries) of the Town and Country Planning (Scotland) Act 1972, in subsection (9), after " section" insert " , except where the context otherwise requires ".

59 In section 275(1) of the Town and Country Planning (Scotland) Act 1972 (interpretation) the following shall be inserted after the definition of " Minister "—
“ National Scenic Area ' has the meaning assigned to it by section 262C of this Act.”.

60 In Parts I and III of Schedule 19 to the Town and Country Planning (Scotland) Act 1972 for "Sections 61 to 66" substitute " Sections 61 to 63A ".

Consequential amendments of other enactments

61 In subsection (5) of section 179 (reference of applications to regional planning authority) of the Local Government (Scotland) Act 1973, after " 27A " insert " 28A, ".

62 In subsection 8(4) of the Refuse Disposal (Amenity) Act 1978 (application of general provisions of the Town and Country Planning (Scotland) Act 1972 relating to local inquiries and services of notices) for " to 270 " substitute " and 268 to 270 ".