

SCHEDULES

THIRD SCHEDULE

Section 45.

ENFORCEMENT OF NOTICES UNDER SECTIONS 30 AND 33 OF ACT OF 1947

PART I

NOTICES RELATING TO LISTED BUILDINGS

Preliminary

- 1 In this Part of this Schedule the expression " notice " means a notice under subsection (8) of section thirty of the Act of 1947.
- 2 Subject to the provisions of this Part of this Schedule, a notice shall take effect at the expiration of such period (not being less than twenty-eight days after the service thereof) as may be specified therein.

Right of appeal

- 3 (1) A person on whom a notice is served, or any other person having an interest in the building to which the notice relates, may at any time within the period specified in the notice as the period at the expiration of which it is to take effect, appeal to the Minister against the notice on any of the following grounds, that is to say—
 - (a) that the works to which the notice relates were not, or were not wholly, works in contravention of subsection (6) of section thirty of the Act of 1947, or
 - (b) that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works to which the notice relates were carried out, or
 - (c) that the period specified in the notice as the period within which any steps required by the notice are to be taken falls short of what should reasonably be allowed, or
 - (d) that any of the steps required by the notice to be taken would not serve the purpose of restoring the character of the building to what it was before the works to which the notice relates were carried out, and that, if and so far as those works constituted the carrying out of development in contravention of Part III of the Act of 1947, permission ought to be granted for the retention of those works.
- (2) On an appeal under this paragraph Part III of the Act of 1947 shall have effect as if an application for permission for the development, if any, involved in the works to which the notice relates had been duly made under the said Part III and referred to the Minister under section fifteen of that Act.

The provisions of this sub-paragraph shall not be taken as applying sections thirty-six and thirty-seven of the Town and Country Planning Act, 1959.

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- (3) If an appeal is brought under this paragraph the notice shall be of no effect pending the final determination or withdrawal of the appeal.
 - (4) An appeal under this paragraph shall be made to the Minister by a written notice which shall indicate the grounds on which the appeal is brought; and on an appeal under this paragraph the Minister shall, if either the appellant or the local planning authority so desire, afford to each of them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.
 - (5) On an appeal under this paragraph the Minister may correct any informality, defect or error in the notice if he is satisfied that the informality, defect or error is not a material one.
 - (6) On the determination of an appeal under this paragraph the Minister shall give directions for giving effect to his determination, including where appropriate directions for quashing the notice or for varying the terms of the notice in favour of the appellant.
 - (7) Subsection (5) of section two hundred and ninety of the Local Government Act, 1933, shall apply in relation to any proceedings before the Minister on an appeal under this paragraph as if those proceedings were an inquiry held by the Minister under the said section two hundred and ninety.
 - (8) The validity of a notice which has been served under subsection (8) of the said section thirty on the owner and occupier of the building shall not be questioned in any proceedings whatsoever on the grounds specified in paragraph (a) of sub-paragraph (1) of this paragraph except by way of an appeal under this paragraph.
- 4
- (1) Where the Minister gives any decision in proceedings on an appeal under this Part of this Schedule against a notice the appellant or the local planning authority or any person (other than the appellant) on whom the notice was served may appeal to the High Court against the decision on a point of law.
 - (2) The Minister may at any stage of the proceedings on an appeal under this Part of this Schedule against a notice, state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court, and a decision of the High Court on a case stated by virtue of this sub-paragraph shall be deemed to be a judgment of the court within the meaning of section twenty-seven of the Supreme Court of Judicature (Consolidation) Act, 1925 (which relates to the jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).
 - (3) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this paragraph the power to make rules of court shall include power to make rules—
 - (a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Minister, and
 - (b) providing for the Minister, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.
 - (4) Rules of court relating to such proceedings as aforesaid may provide for excluding so much of subsection (1) of section sixty-three of the Supreme Court of Judicature (Consolidation) Act, 1925, as requires appeals to the High Court to be heard and

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determined by a Divisional Court, but no appeal to the Court of Appeal shall be brought by virtue of this paragraph except with the leave of the High Court or the Court of Appeal.

- 5 Where any person has appealed to the Minister against a notice under this Part of this Schedule neither that person nor any other shall be entitled to claim in any proceedings, being proceedings instituted, after the making of the appeal, that the notice was not served in accordance with the provisions of section one hundred and five of the Act of 1947 on the person who appealed.

Power of local planning authority to act under notice in case of default

- 6 (1) If within the period specified in a notice, or within such extended period as the local planning authority may allow, any steps required by the notice to be taken have not been taken, the local planning authority may enter the building and the land held with the building and take those steps, and may recover as a simple contract debt in any court of competent jurisdiction from the person who is then the owner of the land any expenses reasonably incurred by them in that behalf.
- (2) Any expenses incurred by the owner or occupier of any building for the purpose of complying with a notice, and any sums paid by the owner of any building under the foregoing sub-paragraph in respect of expenses of the local planning authority in taking steps required to be taken by a notice, shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.

Supplemental regulations

- 7 Subsection (5) of section twenty-four of the Act of 1947 as amended by this Act shall apply as if any reference in that subsection, or in the provisions of this Act amending that subsection, to an enforcement notice included a reference to a notice as defined in this Part of this Schedule.

PART II

NOTICES RELATING TO WASTE LAND, ETC.

Preliminary

- 8 In this Part of this Schedule the expression " notice " means a notice under section thirty-three of the Act of 1947.
- 9 Subject to the provisions of this Part of this Schedule, a notice shall take effect at the expiration of such period (not being less than twenty-eight days after the service thereof) as may be specified therein.

Right of appeal

- 10 (1) A person on whom a notice is served, or any other person having an interest in the land to which the notice relates, may at any time within the period specified in the notice as the period at the expiration of which it is to take effect, appeal to a magistrates' court acting for the petty sessions area in which the land is situated against the notice on any of the following grounds, that is to say—

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- (a) that the condition of the land to which the notice relates does not seriously injure the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area, or
 - (b) that the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from, the carrying on of operations or a use of land which is not in contravention of Part III of the Act of 1947, or
 - (c) that the land to which the notice relates does not constitute a garden, vacant site or other open land in the area of the local planning authority who served the notice, or
 - (d) that the requirements of the notice exceed what is necessary for preventing the condition of the land from seriously injuring the amenity of any part of the area of the said local planning authority, or of any adjoining area, or
 - (e) that the period specified in the notice as the period within which any steps required by the notice are to be taken falls short of what should reasonably be allowed.
- (2) If an appeal is brought under this paragraph the notice shall be of no effect pending the final determination or withdrawal of the appeal.
- (3) On an appeal under this paragraph the magistrates' court may correct any informality, defect or error in the notice if satisfied that the informality, defect or error is not a material one.
- (4) On the determination of an appeal under this paragraph the magistrates' court shall give directions for giving effect to their determination, including where appropriate directions for quashing the notice or for varying the terms of the notice in favour of the appellant.
- (5) Subject to the provisions of paragraph 14 of this Schedule, the validity of a notice which has been served under the said section thirty-three on the owner and occupier of the land shall not be questioned in any proceedings whatsoever on any of the grounds specified in paragraph (a), (b) or (c) of sub-paragraph (1) of this paragraph except by way of an appeal under this paragraph.
- 11 An appeal against the decision of a magistrates' court under this Part of this Schedule may be brought to a court of quarter sessions by the appellant or the local planning authority.
- 12 Where any person has appealed against a notice under this Part of this Schedule neither that person nor any other shall be entitled to claim in any proceedings, being proceedings instituted after the making of the appeal, that the notice was not served in accordance with the provisions of section one hundred and five of the Act of 1947 on the person who appealed.
- Power of local planning authority to act under notice in case of default*
- 13 (1) If within the period specified in a notice, or within such extended period as the local planning authority may allow, any steps required by the notice to be taken have not been taken, the local planning authority may enter the land and take those steps, and may recover as a simple contract debt in any court of competent jurisdiction from the person who is then the owner of the land any expenses reasonably incurred by them in that behalf.

- (2) Any expenses incurred by the owner or occupier of any land for the purpose of complying with a notice, and any sums paid by the owner of any land under the foregoing sub-paragraph in respect of expenses of the local planning authority in taking steps required to be taken by a notice, shall be deemed to be incurred or paid for the use and at the request of the person who caused or permitted the land to come to be in the condition in which it was when the notice was served.

Criminal liability for failure to comply with notice

- 14 (1) If, at any time after the expiration of the period within which the steps required by the notice are to be taken any of those steps have not been taken, and any person does anything which has the effect of continuing or aggravating the injury caused by the condition of the land to which the notice relates, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding twenty pounds.
- (2) Sub-paragraph (5) of paragraph 10 of this Schedule shall not apply to proceedings brought under this paragraph against a person on whom the notice was not served, but who has held an interest in the land since before the notice was served on the owner and occupier of the land, if he did not appeal against the notice under this Part of this Schedule.

Supplemental regulations

- 15 Subsection (5) of section twenty-four of the Act of 1947 as amended by this Act shall apply as if any reference in that subsection, or in the provisions of this Act amending that subsection, to an enforcement notice included a reference to a notice as defined in this Part of this Schedule.