Planning etc. (Scotland) Act 2006

2006 asp 17

PART 4

ENFORCEMENT

Fixed penalty notices

25 Fixed penalty notices

(1) After section 136 of the principal Act (offence where enforcement notice not complied with) insert—

"**136A Fixed penalty notice where enforcement notice not complied with**

(1) Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.

(2) The fixed penalty notice is to specify—

(a) the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or

(b) the activity so specified which has not ceased.

(3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.

(4) For the purposes of this section, a "fixed penalty notice" is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice.

(5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.

(6) The fixed penalty notice is to identify the period mentioned in subsection (4) 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%.

(7) The conditions are that the fixed penalty notice—

(a) is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and

(b) is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice.

(8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.

(9) 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 136 as respects that breach.

(10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.

(11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.”.

(2) After section 145 of the principal Act (enforcement of conditions) insert—

“**145A Fixed penalty notice where breach of condition notice not complied with**

(1) Where a planning authority have reason to believe that, by virtue of subsection (8) of section 145, a person is in breach of a breach of condition notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.

(2) The fixed penalty notice is to specify—

(a) the step specified, under subsection (5) of section 145, in the breach of condition notice which has not been taken, or

(b) the activity so specified which has not ceased.

(3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.

(4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in that notice, any liability to conviction for an offence under section 145(9) as respects the breach of the breach of condition notice.

(5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.

(6) The fixed penalty notice is to identify the period mentioned in subsection (4) 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%.

(7) The conditions are that the fixed penalty notice—

(a) is served within the period of 6 months which immediately follows the period allowed by section 145(7) for compliance with the breach of condition notice, and

(b) is not served after the person has been charged with an offence under section 145(9) as respects the breach of the breach of condition notice.

(8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 145(9) as respects that breach.

(9) 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 145(9) as respects that breach.

(10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.

(11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.”.

Commencement Information

I1 S. 25 in force at 12.12.2008 for specified purposes by S.S.I. 2008/411, **art. 2(2)**(3)(b)

I2 S. 25 in force at 3.8.2009 in so far as not already in force by S.S.I. 2009/219, art. 2, **Sch.**

Stop notices

26 Temporary stop notices

(1) After section 144 of the principal Act (penalties for contravention of stop notice) insert—

“Temporary stop notices

144A Temporary stop notices

(1) If a planning authority consider that—

(a) there has been a breach of planning control in relation to any land,

(b) the breach consists in engagement in an activity, and

(c) it is expedient that the activity (or any part of the activity) is stopped immediately,

they may issue a temporary stop notice.

(2) The notice must be in writing and must—

(a) specify the activity in question,

Changes to legislation: *There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006, Part 4. (See end of Document for details)*

(b) prohibit engagement in the activity (or in so much of the activity 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 engaged in the activity,

(b) a person who appears to the authority to have an interest in the land (whether as owner or occupier or otherwise).

(4) The authority must display on the land—

(a) a copy of the notice, and

(b) a statement as to the effect of section 144C.

(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) Except that 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.

144B Temporary stop notices: restrictions

(1) A temporary stop notice does not prohibit—

(a) the use of a building as a dwellinghouse, or

(b) engagement in an activity (either or both)—

(i) of such description,

(ii) in such circumstances,

as may be prescribed.

(2) A temporary stop notice does not prohibit engagement in any activity which has been engaged in (whether continuously or not) for a period of more than 4 years ending with the day on which a copy of the notice is first displayed in pursuance of section 144A(4).

(3) But subsection (2) does not prevent a temporary stop notice prohibiting—

(a) activity consisting in, or incidental to, building, engineering, mining or other operations, or

(b) the deposit of refuse or waste materials.

(4) For the purposes of subsection (2), any period during which the activity in question is authorised by planning permission is to be ignored.

(5) A second or subsequent temporary stop notice must not be issued in respect of the same activity unless the planning authority have in the meantime taken some other enforcement action in relation to the breach of planning control which is constituted by the activity.

(6) In subsection (5), "enforcement action" includes obtaining the grant of an interdict under section 146(2).

144C Temporary stop notices: offences

(1) A person is guilty of an offence if he contravenes a temporary stop notice—
  (a) which has been served on him, or
  (b) a copy of which has been displayed in pursuance of section 144A(4).

(2) Contravention of a temporary 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 period longer than a day.

(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) he 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 activity which constituted the offence.

144D Temporary stop notices: compensation

(1) A person who, as at the date on which a temporary stop notice is first displayed in pursuance of section 144A(4), has an interest (whether as owner or occupier or otherwise) in the land 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 at least one of the following paragraphs—
  (a) the activity which is specified in the notice is authorised by planning permission granted on or before the date mentioned in that subsection,
  (b) a certificate in respect of the activity is issued under section 150 or granted under that section by virtue of section 154,
  (c) the authority withdraws the notice other than following such grant of planning permission as is mentioned in paragraph (a).

(3) Subsections (3) to (7) of section 143 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 269 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 for the purposes of section 144A(4).", and

(b) in subsection (2), after the words "stop notice" insert " , temporary stop notice ".

Commencement Information

I3 S. 26 in force at 12.12.2008 for specified purposes by S.S.I. 2008/411, **art. 2(2)**(3)(b)

I4 S. 26 in force at 3.8.2009 in so far as not already in force by S.S.I. 2009/219, art. 2, **Sch.**

Enforcement charters

27 Enforcement charters

After section 158 of the principal Act insert—

"Enforcement charters

158A Enforcement charters

(1) A planning authority are to prepare an enforcement charter; that is to say, a document in which are set out—

(a) a statement of the authority's policies as regards their taking enforcement action for the purposes of this Act,

(b) an account of how members of the public are to bring any ostensible breach of planning control to the attention of the authority, and

(c) an account—

(i) of how any complaint to the authority as regards the taking by them of enforcement action is to be made, and

(ii) of their procedures for dealing with any such complaint.

(2) The Scottish Ministers may issue guidance to a planning authority for the purposes of this section and an authority must have regard to any guidance so issued.

(3) A planning authority must keep their enforcement charter under review and must update and re-publish it—

(a) whenever required to do so by the Scottish Ministers, and

(b) (subject to paragraph (a)) whenever they think it appropriate to do so but in any event within 2 years after last publishing (or re-publishing) it.

(4) When they publish, or re-publish, their enforcement charter, the authority are to—

(a) send two copies of it to the Scottish Ministers, and

(b) place a copy of it in each public library in their district,

and such publication, or re-publication, is to include by electronic means (as for example by means of the internet).”.

Commencement Information

I5 S. 27 in force at 1.4.2007 by S.S.I. 2007/130, art. 2(2)(3), **Sch.**

Changes to legislation:
There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006, Part 4.