



# Planning and Compensation Act 1991

## 1991 CHAPTER 34

### PART II

#### TOWN AND COUNTRY PLANNING - SCOTLAND

##### *New enforcement powers*

### 33 Planning contravention notices

In the Town and Country Planning (Scotland) Act 1972 (referred to in this Act as “the 1972 Act”) in Part V (enforcement of controls under Parts III and IV) before section 84 there is inserted—

##### *“Planning contravention notices*

#### **83C Power to require information about activities on land**

- (1) Where it appears to the planning authority that there may have been a breach of planning control in respect of any land, they may serve notice to that effect (referred to in this Act as a “planning contravention notice”) on any person who—
  - (a) is the owner or occupier of the land or has any other interest in it; or
  - (b) is carrying out operations on the land or is using it for any purpose.
- (2) A planning contravention notice may require the person on whom it is served to give such information as to—
  - (a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land; and
  - (b) any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted,as may be specified in the notice.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Without prejudice to the generality of subsection (2) of this section, the notice may require the person on whom it is served, so far as he is able—
- (a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;
  - (b) to state when any use, operations or activities began;
  - (c) to give the name and address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;
  - (d) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operation;
  - (e) to state the nature of his interest (if any) in the land and the name and address of any other person known to him to have an interest in the land.
- (4) A planning contravention notice may give notice of a time and place at which—
- (a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to refrain from carrying out any operations or activities or to undertake remedial works; and
  - (b) any representations which he may wish to make about the notice, will be considered by the authority, and the authority shall give him an opportunity to make in person any such offer or representations at that time and place.
- (5) A planning contravention notice must inform the person on whom it is served—
- (a) of the likely consequences of his failing to respond to the notice and, in particular, that enforcement action may be taken; and
  - (b) of the effect of section 166(6) of this Act.
- (6) Any requirement of a planning contravention notice shall be complied with by giving information in writing to the planning authority.
- (7) The service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control.
- (8) In this section references to operations or activities on land include operations or activities in, under or over the land.

### **83D Penalties for non-compliance with planning contravention notice**

- (1) If at any time after the end of the period of twenty-one days beginning with the day on which a planning contravention notice has been served on any person, he has not complied with any requirement of the notice, he shall be guilty of an offence.
- (2) An offence under subsection (1) of this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.

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- (3) It shall be a defence for a person charged with an offence under subsection (1) of this section to prove that he had a reasonable excuse for failing to comply with the requirement.
- (4) A person guilty of an offence under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) If any person—
  - (a) makes any statement purporting to comply with a requirement of a planning contravention notice which he knows to be false or misleading in a material particular; or
  - (b) recklessly makes such a statement which is false or misleading in a material particular,he shall be guilty of an offence.
- (6) A person guilty of an offence under subsection (5) of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

### **34 Enforcement of conditions**

Before section 87A of the 1972 Act there is inserted—

#### *“Breach of condition*

##### **87AA Enforcement of conditions**

- (1) This section applies where planning permission for carrying out any development has been granted subject to conditions.
- (2) The planning authority may, if any of the conditions is not complied with, serve a notice (in this Act referred to as a “breach of condition notice”) on—
  - (a) any person who is carrying out or has carried out the development; or
  - (b) any person having control of the land,requiring him to secure compliance with such of the conditions as are specified in the notice.
- (3) References in this section to the person responsible are to the person on whom the breach of condition notice has been served.
- (4) The conditions which may be specified in a notice served by virtue of subsection (2)(b) of this section are any of the conditions regulating the use of the land.
- (5) A breach of condition notice shall specify the steps which the authority consider ought to be taken, or the activities which the authority consider ought to cease, to secure compliance with the conditions specified in the notice.
- (6) The authority may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve on him a further breach of condition notice in respect of the conditions specified in the earlier notice or any other conditions.
- (7) The period allowed for compliance with the notice is—

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- (a) such period of not less than twenty-eight days beginning with the date of service of the notice as may be specified in the notice, or
  - (b) that period as extended by a further notice served by the planning authority on the person responsible.
- (8) If, at any time after the end of the period allowed for compliance with the notice.
- (a) any of the conditions specified in the notice is not complied with, and
  - (b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,
- the person responsible is in breach of the notice.
- (9) If the person responsible is in breach of the notice he shall be guilty of an offence.
- (10) An offence under subsection (9) of this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.
- (11) It shall be a defence for a person charged with an offence under subsection (9) of this section to prove—
- (a) that he took all reasonable measures to secure compliance with the conditions specified in the notice; or
  - (b) where the notice was served on him by virtue of subsection (2)(b) of this section, that he no longer had control of the land.
- (12) A person who is guilty of an offence under subsection (9) of this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (13) In this section—
- (a) “conditions” includes limitations; and
  - (b) references to carrying out any development include causing or permitting another to do so.”

### **35 Interdicts relating to breaches of planning control**

After section 260 of the 1972 Act there is inserted—

*“Interdicts restraining breaches of planning control*

#### **260A Interdicts restraining breaches of planning control**

- (1) Whether or not they have exercised or propose to exercise any of their other powers under this Act, a planning authority may seek to restrain or prevent any actual or apprehended breach of any of the controls provided for by or under this Act by means of an application for interdict.
- (2) On an application under subsection (1) of this section the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the breach.
- (3) In this section “the court” means the Court of Session or the sheriff.”