



Planning and Compensation Act 1991

1991 CHAPTER 34

PART II

TOWN AND COUNTRY PLANNING - SCOTLAND

Other changes relating to enforcement

36 Time limits on enforcement action

- (1) At the beginning of Part V of the 1972 Act (enforcement of control under Parts III and IV) there is inserted—

“Introductory

83A Expressions used in connection with enforcement

- (1) For the purposes of this Act—
- (a) carrying out development without the required planning permission; or
 - (b) failing to comply with any condition or limitation subject to which planning permission has been granted,
- constitutes a breach of planning control.
- (2) For the purposes of this Act—
- (a) the issue of an enforcement notice (defined in section 84 of this Act); or
 - (b) the service of a breach of condition notice (defined in section 87AA of this Act),
- constitutes taking enforcement action.
- (3) In this Part of this Act “planning permission” includes planning permission under Part III of the Town and Country Planning (Scotland) Act 1947.

Status: This is the original version (as it was originally enacted).

83B Time limits

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- (4) The preceding subsections do not prevent—
 - (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
 - (b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the planning authority have taken or purported to take enforcement action in respect of that breach.”
- (2) If, in the case of any breach of planning control, the time for issuing an enforcement notice has expired, before the coming into force of this section, by virtue of section 84(3)(b) of the 1972 Act (as originally enacted), nothing in this section enables any enforcement action to be taken in respect of the breach.

37 Enforcement notices

For section 84 of the 1972 Act (power to serve enforcement notice) there is substituted—

“84 Issue of enforcement notice

- (1) The planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them—
 - (a) that there has been a breach of planning control; and
 - (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- (2) A copy of an enforcement notice shall be served—
 - (a) on the owner and on the occupier of the land to which it relates; and
 - (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
- (3) The service of the notice shall take place—
 - (a) not more than twenty-eight days after its date of issue; and

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- (b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.

84AA Contents and effect of notice

- (1) An enforcement notice shall state—
 - (a) the matters which appear to the planning authority to constitute the breach of planning control; and
 - (b) the paragraph of section 83A(1) of this Act within which, in the opinion of the authority, the breach falls.
- (2) A notice complies with subsection (1)(a) of this section if it enables any person on whom a copy of it is served to know what those matters are.
- (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
- (4) Those purposes are—
 - (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - (b) remedying any injury to amenity which has been caused by the breach.
- (5) An enforcement notice may, for example, require—
 - (a) the alteration or removal of any buildings or works;
 - (b) the carrying out of any building or other operations;
 - (c) any activity on the land not to be carried on except to the extent specified in the notice; or
 - (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.
- (6) An enforcement notice issued in respect of a breach of planning control consisting of demolition of a building may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7) of this section, is as similar as possible to the demolished building.
- (7) A replacement building—
 - (a) must comply with any requirement imposed by or under any enactment applicable to the construction of buildings;
 - (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;
 - (c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b) of this subsection).
- (8) An enforcement notice shall specify the date on which it is to take effect and, subject to section 85(3) of this Act, shall take effect on that date.

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- (9) An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part of this Act to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.
- (10) An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 84 of this Act to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 85 of this Act.
- (11) Where—
- (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and
 - (b) all the requirements of the notice have been complied with,
- then, so far as the notice did not so require, planning permission shall be treated as having been granted under section 29 of this Act in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
- (12) Where—
- (a) an enforcement notice requires the construction of a replacement building; and
 - (b) all the requirements of the notice with respect to that construction have been complied with,
- planning permission shall be treated as having been granted under section 29 of this Act in respect of development consisting of that construction.

84AB Variation and withdrawal of enforcement notices

- (1) The planning authority may—
- (a) withdraw an enforcement notice issued by them; or
 - (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 84AA(9) of this Act.
- (2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.
- (4) The withdrawal of an enforcement notice does not affect the power of the planning authority to issue a further enforcement notice.”

38 Appeal against enforcement notice

(1) For section 85(1) and (2) of the 1972 Act (appeal against enforcement notice) there is substituted—

“(1) A person on whom an enforcement notice is served, or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds—

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the enforcement notice were not served as required by section 84 of this Act;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with section 84AA(9) of this Act falls short of what should reasonably be allowed.

(2) An appeal under this section shall be made either—

- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or
- (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.”

(2) After section 85(7) of that Act (appellant deemed to have made an application for planning permission for the development to which the enforcement notice relates) there is inserted—

“(7A) Where—

- (a) the statement under subsection (2A) of section 85 of this Act specifies the ground mentioned in subsection (1)(a) of that section;
- (b) any fee is payable under regulations made by virtue of section 87 (fees for planning applications etc.) of the Local Government, Planning and Land Act 1980 in respect of the application deemed to be made by virtue of the appeal; and
- (c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

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then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.”

39 Execution of works required by enforcement notice

At the end of section 88 of the 1972 Act (execution and cost of works required by enforcement notice) there is inserted—

“(6) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

40 Offence where enforcement notice not complied with

For section 86 of the 1972 Act (penalties for non-compliance with enforcement notice) there is substituted—

“86 Offence where enforcement notice not complied with

- (1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
- (2) Where the owner of the land is in breach of the notice he shall be guilty of an offence.
- (3) In proceedings against any person for an offence under subsection (2) of this section, it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
- (4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
- (5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) of this section shall be guilty of an offence.
- (6) An offence under subsection (2) or (5) 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 the subsection in question by reference to any period of time following the preceding conviction for such an offence.
- (7) Where—
 - (a) a person charged with an offence under this section has not been served with a copy of the enforcement notice; and
 - (b) the notice is not contained in the appropriate register kept under section 87A of this Act,
 it shall be a defence for him to show that he was not aware of the existence of the notice.
- (8) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding £20,000; and

(b) on conviction on indictment, to a fine.

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”

41 Stop notices

(1) For section 87(1) to (3) of the 1972 Act (stop notices) there is substituted—

“(1) Where the planning authority consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, they may, when they serve the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a “stop notice”) prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.

(2) In this section, “relevant activity” means any activity specified in the enforcement notice as an activity which the planning authority require to cease and any activity carried out as part of that activity or associated with that activity.

(2A) A stop notice may not be served where the enforcement notice has taken effect.

(2B) A stop notice shall not prohibit the use of any building as a dwellinghouse.

(2C) A stop notice shall not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than four years ending with the service of the notice; and for the purposes of this subsection no account is to be taken of any period during which the activity was authorised by planning permission.

(2D) Subsection (2C) of this section does not prevent a stop notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.

(3) A stop notice shall specify the date when it is to come into effect, and that date—

(a) must not be earlier than three days after the date when the notice is served, unless the planning authority consider that there are special reasons for specifying an earlier date and a statement of those reasons is served with the stop notice; and

(b) must not be later than twenty-eight days from the date when the notice is first served on any person.”

(2) For section 87(8) of that Act there is substituted—

“(8) If any person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on him he shall be guilty of an offence.

(8A) An offence under 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 this section by reference to any period of time following the preceding conviction for such an offence.

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- (8B) It shall be a defence in any proceedings under subsection (8) of this section that the stop notice was not served on the accused and that he had no reasonable cause to believe that the activity was prohibited by the stop notice.
- (8C) References in this section to contravening a stop notice include causing or permitting its contravention.
- (8D) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000; and
 - (b) on conviction on indictment, to a fine.
- (8E) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”
- (3) For section 166(6) of that Act (compensation for loss due to stop notice) there is substituted—
- “(6) No compensation is payable under this section—
- (a) in respect of the prohibition in a stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or
 - (b) in the case of a claimant who was required to provide information under section 83C, 83D or 270 of this Act in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the planning authority when responding to the notice.”

42 Certificate of lawful use or development

- (1) For section 90 of, and Schedule 12 to, the 1972 Act (certification of established use) there is substituted—

“Certificate of lawful use or development

90 Certificate of lawfulness of existing use or development

- (1) If any person wishes to ascertain whether—
- (a) any existing use of buildings or other land is lawful;
 - (b) any operations which have been carried out in, on, over or under land are lawful; or
 - (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,
- he may make an application for the purpose to the planning authority specifying the land and describing the use, operations or other matter.
- (2) For the purposes of this Act, uses and operations are lawful at any time if—
- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning

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- permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
- (3) For the purposes of this Act, any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.
- (4) If, on an application under this section, the planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- (5) A certificate under this section shall—
- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 19(2)(f) of this Act, identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other thing to be lawful; and
- (d) specify the date of the application for the certificate.
- (6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.
- (7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—
- (a) section 3(3) of the Caravan Sites and Control of Development Act 1960;
- (b) section 5(2) of the Control of Pollution Act 1974; and
- (c) section 36(2)(a) of the Environmental Protection Act 1990.

90A Certificate of lawfulness of proposed use or development

- (1) If any person wishes to ascertain whether—
- (a) any proposed use of buildings or other land; or
- (b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the planning authority specifying the land and describing the use or operations in question.
- (2) If, on an application under this section, the planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application

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

they shall issue a certificate to that effect; and in any other case they shall refuse the application.

- (3) A certificate under this section shall—
- (a) specify the land to which it relates;
 - (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 19(2)(f) of this Act, identifying it by reference to that class);
 - (c) give the reasons for determining the use or operations to be lawful; and
 - (d) specify the date of the application for the certificate.
- (4) There shall be an irrefutable presumption as to the lawfulness of any use or operations for which a certificate is in force under this section unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

90B Certificates under sections 90 and 90A: supplementary provisions

- (1) An application for a certificate under section 90 or 90A of this Act shall be made in such manner as may be prescribed by regulations under this Act or a development order and shall include such particulars, and be verified by such evidence, as may be required by such regulations or such an order or by any directions given under such regulations or such an order or by the planning authority.
- (2) Provision may be made by such regulations or a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by planning authorities.
- (3) In particular, such regulations or such an order may provide for requiring the authority—
- (a) to give to any applicant within such time as may be prescribed by the regulations or the order such notice as may be so prescribed as to the manner in which his application has been dealt with; and
 - (b) to give to the Secretary of State and to such other persons as may be prescribed by or under the regulations or the order, such information as may be so prescribed with respect to such applications made to the authority, including information as to the manner in which any application has been dealt with.
- (4) A certificate under either of those sections may be issued—
- (a) for the whole or part of the land specified in the application; and
 - (b) where the application specifies two or more uses, operations or other things, for all of them or some one or more of them,
- and shall be in such form as may be prescribed by such regulations or a development order.
- (5) A certificate under section 90 or 90A shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.

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

- (6) In section 31 of this Act references to applications for planning permission shall include references to applications for certificates under section 90 or 90A of this Act.
- (7) A planning authority may revoke a certificate under either of those sections if, on the application for the certificate—
 - (a) a statement was made or document used which was false in a material particular; or
 - (b) any material information was withheld.
- (8) Provision may be made by such regulations or a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

90C Offences

- (1) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under section 90 or 90A of this Act—
 - (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
 - (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
 - (c) with intent to deceive, withholds any material information,he shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) of this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.”
- (2) An order under section 68(2) of this Act may provide for established use certificates to have effect, in such circumstances and to such extent as may be specified in the order, for the purposes of section 90 of the 1972 Act as substituted by this section.

43 Rights of entry

- (1) After section 91 of the 1972 Act there is inserted—

“Rights of entry for enforcement purposes

91A Right to enter without warrant

- (1) Any person duly authorised in writing by a planning authority may at any reasonable hour enter any land—
 - (a) to ascertain whether there is or has been any breach of planning control on the land or any other land;

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- (b) to determine whether any of the powers conferred on a planning authority by sections 84 to 91 or 100 of this Act should be exercised in relation to the land or any other land;
- (c) to determine how any such power should be exercised in relation to the land or any other land;
- (d) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land,

if there are reasonable grounds for entering for the purpose in question.

- (2) Any person duly authorised in writing by the Secretary of State may at any reasonable hour enter any land to determine whether an enforcement notice should be issued in relation to the land or any other land, if there are reasonable grounds for entering for that purpose.
- (3) The Secretary of State shall not so authorise any person without consulting the planning authority.
- (4) Admission to any building used as a dwellinghouse shall not be demanded as of right by virtue of subsection (1) or (2) of this section unless 24 hours' notice of the intended entry has been given to the occupier of the building.

91B Right to enter under warrant

- (1) If the sheriff is satisfied —
 - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 91A(1) or (2) of this Act; and
 - (b) that—
 - (i) admission to the land has been refused, or a refusal is reasonably apprehended; or
 - (ii) the case is one of urgency,

he may issue a warrant authorising any person duly authorised in writing to enter the land.
- (2) For the purposes of subsection (1)(b)(i) of this section admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (3) A warrant authorises entry on one occasion only and that entry must be—
 - (a) within one month from the date of the issue of the warrant; and
 - (b) at a reasonable hour, unless the case is one of urgency.

91C Rights of entry: supplementary provisions

- (1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 91A or 91B of this Act (referred to in this section as “a right of entry”)—
 - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
 - (b) may take with him such other persons as may be necessary; and
 - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.

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- (2) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
 - (3) If any damage is caused to land or moveable property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State.
 - (4) The provisions of section 168 of this Act shall apply in relation to compensation under subsection (3) of this section as they apply in relation to compensation under Part VIII of this Act.
 - (5) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.
 - (6) Subsection (4) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.
 - (7) A person who is guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.”
- (2) In section 266(4) of the 1972 Act (compensation for damage caused in exercise of right of entry)—
- (a) for “land is damaged” there is substituted “damage is caused to land or moveable property”; and
 - (b) for the words from “in respect of” to “in the land” there is substituted “may be recovered by any person suffering the damage”.