



Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997)

1972 CHAPTER 52

PART V

ENFORCEMENT OF CONTROL UNDER PARTS III AND IV

Modifications etc. (not altering text)

C1 Pt. V excluded by [Local Government, Planning and Land Act 1980 \(c.65\)](#), [Sch. 17 para. 8\(2\)](#)

[^{F1} Introductory]

Textual Amendments

F1 [Ss. 83A, 83B](#) and cross heading inserted (26.3.1992 except so far as relating to breach of condition notices, 25.9.1992 so far as not already in force) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s. 36\(1\)](#) (with [s. 84\(5\)](#)); [S.I. 1992/334](#), [art.4](#) and [S.I. 1992/1937](#), [art. 4](#) (with [art. 5](#)).

^{F2F2}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),

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Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

constitutes taking enforcement action.

- (3) In this Part of this Act “planning permission” includes planning permission under Part III of the ^{M1}Town and Country Planning (Scotland) Act 1947.]

Textual Amendments

F2 Ss. 83A, 83B and cross heading inserted (26.3.1992 except so far as relating to breach of condition notices, 25.9.1992 so far as not already in force) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), **s. 36(1)** (with s. 84(5)); S.I. 1992/334, **art. 4** and S.I. 1992/1937, **art. 4** (with art.5).

Marginal Citations

M1 1947 c. 53.

[^{F3F3}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.]

Textual Amendments

F3 Ss. 83A, 83B and cross heading inserted (26.3.1992 except so far as relating to breach of condition notices, 25.9.1992 so far as not already in force) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), **s. 36(1)** (with s. 84(5)); S.I. 1992/334, **art. 4** and S.I. 1992/1937, **art.4** (with art. 5)

Modifications etc. (not altering text)

- C2** S. 83B(3) excluded (20.2.1992 until 25.9.1992) by S.I. 1992/334, **art.5(1)(b)**
- C3** S.83B(4)(b) restricted (temp.) (20.2.1992) by S.I. 1992/334, **art. 5(2)(3)**

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

[^{F4} Planning contravention notices]

Textual Amendments

- F4** Ss. 83C, 83D and cross heading inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s.33](#) (with [s. 84\(5\)](#)); [S.I. 1992/334](#), [art.4](#).

[^{F5F5} 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.
- (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.

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- (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.]

Textual Amendments

F5 Ss. 83C, 83D and cross heading inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s.33](#) (with s. 84(5)); S.I. 1992/334, [art.4](#).

[^{F6F6}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.
- (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.]

Textual Amendments

F6 Ss. 83C, 83D and cross heading inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s.33](#) (with s. 84(5)); S.I. 1992/334, [art. 4](#).

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Development requiring planning permission

[84 ^{F7} **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
 - (b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.]

Textual Amendments

- F7** Ss. 84, 84AA, 84AB substituted for s. 84 (24.2.1992 for purpose of enabling Secretary of State to make regulations under s. 84AA(10), otherwise 26.3.1992) by [Planning and Compensation Act 1991](#) (c. 34, SIF 123:2), [s.37](#) (with s. 84(5)); S.I. 1992/334, [arts. 3, 4](#).

[^{F8F8}84A **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;

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- (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.
- (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.]

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Textual Amendments

F8 Ss. 84, 84AA, 84AB substituted for s. 84 (24.2.1992 for purpose of enabling Secretary of State to make regulations under s. 84AA(10), otherwise 26.3.1992) by [Planning and Compensation Act 1991](#) (c. 34, SIF 123:2), [ss.37, 84\(2\)](#) (with s. 84(5)); S.I. 1992/334, [arts. 3, 4](#) .

Modifications etc. (not altering text)

C4 [S. 84AA\(10\)](#) extended (with modifications) (26.3.1992) by S.I. 1992/478, [reg.2](#), [Sch.](#)

[^{F9F9}**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.]

Textual Amendments

F9 Ss. 84, 84AA, 84AB substituted for s. 84 (24.2.1992 for purpose of enabling Secretary of State to make regulations under s. 84AA(10), otherwise 26.3.1992) by [Planning and Compensation Act 1991](#) (c. 34, SIF 123:2), [ss.37, 84\(2\)](#) (with s. 84(5)); S.I. 1992/334, [arts. 3, 4](#).

Modifications etc. (not altering text)

C5 [S. 84AB](#) extended (with modifications) (26.3.1992) by S.I. 1992/478, [reg.2](#), [Sch.](#)

^{F10}**84A**

Textual Amendments

F10 [S. 84A](#) repealed (1.4.1996) by 1994 c. 39, s. 180(2), [Sch. 14](#); S.I. 1996/323, [art. 4\(1\)\(b\)\(d\)](#), [Sch. 2](#)

85 **Appeal against enforcement notice.**

[^{F11}(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

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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.]

^{F12}(2A) A person who gives notice under subsection (2) of this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed under subsection (2B) of this section, a statement in writing—

- (a) specifying the grounds on which he is appealing against the enforcement notice; and
- (b) giving such further information as may be so prescribed.

(2B) The Secretary of State may prescribe the procedure to be followed on appeals under this section, and (without prejudice to the generality of the foregoing provisions of this subsection) in so prescribing—

- (a) may specify the time within which an appellant is to submit a statement under subsection (2A) of this section and the matters on which information is to be given in such a statement;
- (b) may require the planning authority to submit, within such time as may be specified, a statement indicating the submissions which they propose to put forward on the appeal;
- (c) may specify the matters to be included in such a statement;
- (d) may require the authority or the appellant to give such notice of an appeal under this section as may be specified, [^{F13}to such persons as may be specified];
- (e) may require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be specified, a copy of the enforcement notice and a list of the persons on whom the notice has been served.

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- (2C) The Secretary of State—
- (a) may dismiss an appeal if the appellant fails to comply with subsection (2A) above within the time prescribed under subsection (2B)(a) above; and
 - (b) may allow an appeal and quash the enforcement notice if the planning authority fail to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of subsection (2B) above.
- (2D) Subject to subsection (2C) above, the Secretary of State shall, if either the planning authority or the appellant so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by him for the purpose.
- (3) Where an appeal is brought under this section, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (4) On an appeal under this section—
- [^{F14}(a) the Secretary of State may—
- (i) correct any defect, error or misdescription in the enforcement notice; or
 - (ii) vary the terms of the enforcement notice,
- if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority;]
- (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section [^{F15}84(2)] of this Act to be served with the notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
- (5) On the determination of an appeal under this section, the Secretary of State shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the enforcement notice ^{F16}. . . ; and the Secretary of State may—
- [^{F17}(a) grant planning permission in respect of any of the matters stated in the enforcement notice as constituting a breach of planning control or any of those matters so far as relating to part of the land to which the notice relates;
- (b) discharge any condition or limitation subject to which planning permission was granted;
 - (c) grant planning permission for such other development on the land to which the enforcement notice relates as appears to him to be appropriate; and
 - (d) determine whether on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which the permission was granted was lawful and, if so, issue a certificate under section 90 of this Act.]

[^{F18}(5A) The provisions of sections 90 to 90C of this Act mentioned in subsection (5B) of this section shall apply for the purposes of subsection (5)(d) of this section as they apply for the purposes of section 90 of this Act, but as if—

 - (a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
 - (b) references to the planning authority were references to the Secretary of State.

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(5B) Those provisions are: sections 90(5) to (7), 90B(4) (so far as it relates to the form of the certificate), (6) and (7) and 90C.]

(6) In considering whether to grant planning permission under subsection (5) of this section, the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject-matter of the enforcement notice, and to any other material considerations; —

[^{F19}(6A) The planning permission which may be granted under subsection (5) of this section is any planning permission which might be granted on an application under Part III of this Act.

(6B) Where the Secretary of State discharges a condition or limitation under subsection (5) of this section, he may substitute for it any other condition or limitation.]

(7) Where an appeal against an enforcement notice is brought under this section, the appellant shall be deemed to have made an application for planning permission [^{F20}in respect of the matters stated in the enforcement notice as constituting a breach of planning control]and, in relation to any exercise by the Secretary of State of his powers under subsection (5) of this section, the following provisions shall have effect—

- (a) any planning permission granted thereunder shall be treated as granted on the said application;
- (b) in relation to a grant of planning permission or a determination under that subsection, the Secretary of State’s decision shall be final; and
- (c) for the purposes of section 31 of this Act, the decision shall be treated as having been given by the Secretary of State in dealing with an application for planning permission made to the . . . ^{F21} planning authority.

[^{F22}(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 ^{M2}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,

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.]

(8) ^{F23}

(9) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.

(10) The validity of an enforcement notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (b) to (e) of subsection (1) of this section.

^{F24}(11)

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Textual Amendments

- F11** S. 85(1)(2) substituted (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), **ss. 38(1), 84(2)** (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 2**.
- F12** S. 85(2)—(2D) substituted for s. 85(2) by Local Government and Planning (Scotland) Act 1982 (c.43), s. 69(2), **Sch. 2 para. 20(b)**
- F13** Words in s. 85(2B)(d) substituted (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), ss. 61, 84(2), **Sch. 13**, para. 20(a) (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 2**.
- F14** S. 85(4)(a) substituted (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), ss. 61, 84(2), **Sch. 13**, para. 20(b)(i) (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 2**.
- F15** Words in s. 85(4)(b) substituted (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), ss. 61, 84(2), **Sch. 13**, para. 20(b)(ii) (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 2**.
- F16** Words in s. 85(5) repealed (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), ss. 61, 84(6), **Sch. 13**, para. 20(c)(i), **Sch. 19**, Pt.IV (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 2**.
- F17** S. 85(5)(a)-(d) substituted for s. 85(a)(b) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), ss. 61, 84(2), **Sch. 13 para. 20(c)(ii)** (with s. 84(5)), the substitution being in force at 26.3.1992 as regards s. 85(5)(a)-(c) by S.I. 1992/334, art. 4, **Sch. 2** and 25.9.1992 otherwise by S.I. 1992/1937, **art. 4**
- F18** S. 85(5A)(5B) inserted (25.9.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), ss. 61, **Sch. 13**, para. 20(d) (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 2**.
- F19** S. 85(6A)(6B) inserted (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), ss. 61, 84(2), **Sch. 13**, para. 20(e) (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 2**.
- F20** Words in s. 85(7) substituted (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), ss. 61, 84(2), **Sch. 13**, para. 20(f) (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 2**.
- F21** Word repealed by Local Government (Scotland) Act 1973 (c. 65), **s. 172(2)**
- F22** S. 85(7A) inserted (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), **ss. 38(2), 84(2)** (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 2**.
- F23** S. 85(8) repealed by Housing and Planning Act 1986 (c. 63, SIF 123:2), s. 53(2), **Sch. 12 Pt. IV**
- F24** S. 85(11) repealed (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), ss. 61, 84(2) (6), **Sch. 13**, para. 20(g), **Sch. 19**, Pt. IV (with s. 84(5)); S.I. 1992/334, art. 4, **Sch. 2**.

Modifications etc. (not altering text)

- C6** S. 85 applied in part (with modifications) (1.5.1993) by S.I. 1993/323, reg. 19, **Sch. 4 Pts.I, 5**
- C7** S. 85(2)—(5) extended by Town and Country Planning Act 1984 (c. 10, SIF 123:1, 2), **s. 3(9)**
- C8** S. 85(10) extended (with modifications) (26.3.1992) by S.I. 1992/478, reg. 2, **Sch.**

Marginal Citations

- M2** 1980 c. 65

186 ^{F25}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.

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

- (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 £20,0; 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.]

Textual Amendments

F25 S. 86 substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), **s.40** (with s. 84(5)); [S.I. 1992/334](#), **art.4**.

Modifications etc. (not altering text)

C9 S. 86 extended (with modifications) (26.3.1992) by [S.I. 1992/478](#), **reg. 2, Sch.**
S. 86 modified in part (1.5.1993) by [S.I. 1993/323](#), **reg. 21, Sch. 4 Pts.2, 5**

[^{F26}**87** **Stop Notices.**

- [Where the planning authority consider it expedient that any relevant activity should
- ^{F27}(1) 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.

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

- (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.]
- (4) A stop notice shall cease to have effect—(a)when it is withdrawn under the provisions of subsection (10) below;
- (b) when the enforcement notice to which it relates is withdrawn or quashed; or
 - (c) when the period for compliance with that enforcement notice specified under section [F2884AA(9)] of this Act has expired;
- whichever is the earlier.
- (5) Where the enforcement notice to which a stop notice relates is varied so that it no longer relates to any [F29relevant activity], the stop notice shall cease to have effect in relation to that activity.
- (6) A stop notice may be served by the planning authority on any person who appears to them to have an interest in the land or to be engaged in [F30the relevant activity specified] in the enforcement notice.
- (7) The planning authority may publicise a stop notice by displaying on the land a notice (to be referred to as a “site notice”) which shall state—
- (a) the requirements of the stop notice;
 - (b) that the stop notice has been served on a particular person or persons; and
 - (c) the consequences under subsection (8) below of contravention of the stop notice.
- [If any person contravenes a stop notice after a site notice has been displayed or the F31(8) 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.
- (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.

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

- (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 £20,0; 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.]
- (9) A stop notice shall not be invalid by reason that the enforcement notice to which it relates was not served as required by section [^{F32}84] of this Act if it is shown that the planning authority took all such steps as were reasonably practicable to effect proper service.
- (10) The planning authority may at any time withdraw a stop notice (without prejudice to their power to serve another) by notice which—
- (a) shall be served on all persons who were served with the stop notice; and
 - (b) shall be publicised by displaying it for seven days in place of all or any relative site notices.]

Textual Amendments

- F26** S. 87 substituted by [Town and Country Planning \(Scotland\) Act 1977 \(c. 10\), s. 4](#)
- F27** S. 87(1)(2)-(2D)(3) substituted (26.3.1992) for s. 87(1)-(3) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 41\(1\)](#), (with s. 84(5)); S.I. 1992/334, [art.4](#).
- F28** Words in s. 87(4)(c) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 61, Sch. 13, para. 21\(a\)](#) (with s. 84(5)); S.I. 1992/334, [art. 4, Sch.2](#)
- F29** Words in s. 87(5) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 61, Sch. 13, para. 21\(b\)](#) (with s. 84(5)); S.I. 1992/334, [art. 4, Sch.2](#)
- F30** Words in s. 87(6) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 61, Sch. 13, para. 21\(c\)](#) (with s. 84(5)); S.I. 1992/334, [art. 4, Sch.2](#)
- F31** S. 87(8)-(8E) substituted (26.3.1992) for s. 87(8) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 41\(2\)](#) (with s. 84(5)); S.I. 1992/334, [art.4](#).
- F32** Word in s. 87(9) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 61, Sch. 13, para. 21\(d\)](#) (with s. 84(5)); S.I. 1992/334, [art. 4, Sch. 2](#)

Modifications etc. (not altering text)

- C10** S. 87 extended (with modifications) (26.3.1992) by [S.I. 1992/478, reg.2, Sch.](#)

[^{F33} Breach of condition]

Textual Amendments

- F33** S. 87AA and cross heading inserted before s. 87A (10.8.1992 in so far as the inserting section inserts into this Act a definition of a breach of condition notice, otherwise 25.9.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s.34](#) (with s. 84(5)); S.I. 1992/1937, [arts.3, 4](#) (with art. 5).

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

87 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—
 - (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.

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

(13) In this section—

- (a) “conditions” includes limitations; and
- (b) references to carrying out any development include causing or permitting another to do so.]

Textual Amendments

F34 S. 87AA and cross heading inserted before s. 87A (10.8.1992 in so far as the inserting section inserts into this Act a definition of a breach of condition notice, otherwise 25.9.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s.34](#) (with s. 84(5)); S.I. 1992/1937, [arts.3, 4.](#) (with art. 5)

[^{F35}87A Register of waste land, enforcement and stop notices.

- (1) Every ^{F36} . . . planning authority shall, with respect to [^{F37} notices under section 63 of this Act], enforcement notices [^{F38} , breach of condition notices] and stop notices which have been served in relation to land in their district, keep a register—
- (a) in such manner; and
 - (b) containing such information,
- as may be prescribed; and there may also be prescribed circumstances in which an entry in the register shall be deleted.
- (2) Every register kept under this section shall be available for inspection by the public at all reasonable hours.]

Textual Amendments

F35 S. 87A inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), [ss. 44, 69\(2\)](#)

F36 Words in s. 87A(1) repealed (1.4.1996) by 1994 c. 39, s. 180(2), [Sch. 14](#); S.I. 1996/323, art. 4(1)(b)(d), [Sch. 2](#)

F37 Words in s. 87A(1) substituted (10.8.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 61, [Sch. 13 para. 22](#) (with s. 84(5)); S.I. 1992/1937, [art. 3](#) (with art. 5)

F38 Words in s. 87A(1) inserted (10.8.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 61, [Sch. 13 para. 22](#) (with s. 84(5)); S.I. 1992/1937, [art. 3](#) (with art. 5)

Modifications etc. (not altering text)

C11 S. 87A extended (with modifications) by S.I. 1992/478, reg. 2, [Sch.](#)

C12 S. 87A modified (1.5.1993) by S.I. 1993/323, reg. 22, [Sch. 4 Pts. 3, 5](#)

88 Execution and cost of works required by enforcement notice.

- (1) If, within the period specified in an enforcement notice for compliance therewith, or within such extended period as the. . . ^{F39} planning authority may allow, any steps required by the notice to be taken ^{F40} . . . have not been taken, the. . . ^{F39} planning authority may enter on the land and take those steps, and may recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so; and if that person, having been entitled to appeal to the Secretary of State failed to make such an appeal, he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken in accordance with the notice by the. . . ^{F39} planning authority.

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

- [^{F41}(1A) In computing the amount of the expenses which may be recovered by them under subsection (1) above, a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.]
- (2) Any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with an enforcement notice served in respect of any breach of planning control ^{F42} . . . and any sums paid by the owner or lessee of any land under subsection (1) of this section in respect of expenses incurred by the . . . ^{F39} planning authority in taking steps required by such a notice to be taken, shall be recoverable from the person by whom the breach of planning control was committed.
- [^{F43}(3) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by an enforcement notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.
- (4) A planning authority taking steps under subsection (1) above may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal by the planning authority; and where such materials have been sold the planning authority shall, after deducting therefrom any expenses recoverable by them from the owner, pay him the proceeds of such sale.
- (5) Where a planning authority seek, under subsection (1) above, to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—
- (a) he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person; and
- (b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
- his liability shall be limited to the total amount of the money which he has or has had in his hands as aforesaid; but a planning authority who by reason of the foregoing provisions of this subsection have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.]
- [^{F44}(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.]

Textual Amendments

- F39** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)
- F40** Words in s. 88(1) repealed (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 84\(6\), Sch. 19, Pt.IV](#) (with s. 84(5)); S.I. 1992/334, art. 4, [Sch.1](#)
- F41** S. 88(1A) added by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 69\(2\), Sch. 2 para. 23\(a\)](#)
- F42** Words in s. 88(2) repealed (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), ss. 61, 84\(6\), Sch. 13 para. 23, Sch. 19 Pt.IV](#) (with s. 84(5)); S.I. 1992/334, art. 4, Schs.1, 2
- F43** S. 88(3)—(5) substituted for s. 88(3)(4) by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 69\(2\), Sch. 2 para. 23\(b\)](#)
- F44** S. 88(6) inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s.39](#) (with s. 84(5)); S.I.1992/334, [art. 4](#)

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

Modifications etc. (not altering text)

C13 S. 88 modified (1.5.1993) by S.I. 1993/323, reg. 21, Sch. 4 Pts.2, 5

89 Enforcement notice to have effect against subsequent development.

- (1) Compliance with an enforcement notice, whether in respect of—
 - (a) the [^{F45}removal] or alteration of any building or works; or
 - (b) the discontinuance of any use of land,
 or in respect of any other requirements contained in the enforcement notice, shall not discharge the enforcement notice.
- (2) Without prejudice to subsection (1) of this section, any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III of this Act; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.
- (3) Without prejudice to subsection (1) of this section, if any development is carried out on land by way of reinstating or restoring buildings or works which have been [^{F46}removed] or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were [^{F46}removed] or altered.
- (4) a person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been [^{F46}removed] or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding [^{F47}level 5 on the standard scale].

Textual Amendments

- F45** Word in s. 89(1) substituted (26.3.92) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), s. 61, **Sch. 13 para. 24(a)** (with s. 84(5)); S.I. 1992/334, art. 4, **Sch.2**
- F46** Words in s. 89(3)(4) substituted (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), s. 61, **Sch. 13, para. 24(b)** (with s. 84(5)); S.I. 1992/334, art. 4, **Sch.2**
- F47** Words substituted by virtue of Criminal Procedure (Scotland) Act s. 289G (as inserted by **Criminal Justice Act 1982 (c. 48), s. 54**)

Modifications etc. (not altering text)

- C14** S. 89 extended (with modifications) (26.3.1992) by S.I. 1992/478, reg.2, **Sch.**
 S. 89 modified (1.5.1993) by S.I. 1993/323, reg. 21, Sch. 4 Pts.2, 5

[89A ^{F48} **Effect of planning permission, etc., on enforcement or breach of condition notice.**

- (1) Where, after the service of—
 - (a) a copy of an enforcement notice; or
 - (b) a breach of condition notice,

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

- (2) Where, after a breach of condition notice has been served, any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.
- (3) The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.]

Textual Amendments

F48 S. 89A substituted (26.3.1992 except in so far as it relates to a breach of condition notice, 25.9.1992 so far as not already in force) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 61, [Sch. 13 para.25](#) (with s. 84(5)); S.I. 1992/334, art. 4, [Sch. 2](#) and S.I. 1992/1937, [art. 4](#) (with art. 5)

Modifications etc. (not altering text)

C15 S. 89A modified in part (1.5.1993) by S.I. 1993/323, reg. 21, [Sch. 4 Pts.2, 5](#)

C16 S. 89A(1)(a) extended (26.3.1992) by S.I. 1992/478, reg.2, [Sch.](#)

C17 S. 89A(3) extended (with modifications) (26.3.1992) by S.I. 1992/478, reg.2, [Sch.](#)

[^{F49} Certificate of lawful use or development]

Textual Amendments

F49 Ss. 90-90C and cross heading substituted for s. 90 ((10.8.1992 for certain purposes under s. 90B, otherwise 25.9.1992)) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 42(1) (with s. 84(5)); S.I. 1992/1937, [arts.3, 4](#) (with art. 5).

[^{F50F50}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 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.

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

- (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 ^{M3}Caravan Sites and Control of Development Act 1960;
 - (b) section 5(2) of the ^{M4}Control of Pollution Act 1974; and
 - (c) section 36(2)(a) of the ^{M5}Environmental Protection Act 1990.]

Textual Amendments

F50 Ss. 90-90C and cross heading substituted for s. 90 (10.8.1992 for certain purposes under s. 90B, otherwise 25.9.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 42(1) (with s. 84(5)); S.I. 1992/1937, arts.3, 4 (with art. 5).

Marginal Citations

M3 1960 c. 62.
M4 1974 c. 40.
M5 1990 c. 43.

[^{F51}F51] **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.

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- (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 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.]

Textual Amendments

F51 Ss. 90-90C and cross heading substituted for s. 90 (10.8.1992 for certain purposes under s. 90B, otherwise 25.9.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s. 42\(1\)](#) (with [s. 84\(5\)](#)); [S.I. 1992/1937](#), [arts. 3, 4](#) (with [art. 5](#)).

[^{F52}~~F52~~ **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,

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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.
- (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.]

Textual Amendments

F52 Ss. 90-90C and cross heading substituted for s. 90 (10.8.1992 for certain purposes under s. 90B, otherwise 25.9.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s. 42\(1\)](#) (with [s. 84\(5\)](#)); [S.I. 1992/1937](#), [arts. 3, 4](#) (with [art. 5](#)).

[^{F53F53}90] 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.]

Textual Amendments

F53 Ss. 90-90C and cross heading substituted for s. 90 (10.8.1992 for certain purposes under s. 90B, otherwise 25.9.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s. 42\(1\)](#) (with [s. 84\(5\)](#)); [S.I. 1992/1937](#), [arts.3, 4](#) (with [art. 5](#)).

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91 Grant of certificate by Secretary of State on referred application or appeal against refusal.

- (1) ^{F54}
- (2) Where an application is made to a . . . ^{F55} planning authority for [^{F56}a certificate under section 90 or 90A] and is refused, or is refused in part, the applicant may by notice under this subsection appeal to the Secretary of State; and on any such appeal the Secretary of State shall—
- (a) if and so far as he is satisfied that the authority’s refusal is not well-founded, grant to the appellant an established use certificate accordingly or, as the case may be, modify the certificate granted by the authority on the application; and
 - (b) if and so far as he is satisfied that the authority’s refusal is well-founded, dismiss the appeal.
- ^{F57}(3)
- (4) Before determining an . . . ^{F58} appeal under this section the Secretary of State shall, if either the . . . ^{F58} appellant . . . ^{F58} or the . . . ^{F55} planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- ^{F57}(5)
- (6) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section.
- [^{F59}(7) Where the Secretary of State or a person appointed by him under Schedule 7 to this Act to determine an appeal grants a certificate under section 90 or 90A of this Act, the Secretary of State or that person shall give notice to the planning authority of that fact.]

Textual Amendments

- F54** Ss. 91(1), 111, 112 repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), [Sch. 4](#)
- F55** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [s. 172\(2\)](#)
- F56** Words in s. 91(2) substituted (25.9.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s. 61](#), [Sch. 13 para. 26\(a\)](#) (with [s. 84\(5\)](#)); S.I. 1992/1937, [art.4](#) (with [art. 5](#))
- F57** S. 91(3)(5) repealed (25.9.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s. 61](#), [Sch. 13, para. 26\(b\)](#), [Sch. 19 Pt.IV](#); S.I. 1992/1937, [art.4](#) (with [art. 5](#))
- F58** Words repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), [Sch. 4](#)
- F59** S. 91(7) inserted (25.9.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s. 61](#), [Sch. 13, para. 26\(c\)](#) (with [s. 84\(5\)](#)); S.I. 1992/1937, [art. 4](#) (with [art. 5](#))

[^{F60} Rights of entry for enforcement purposes]

Textual Amendments

- F60** Ss. 91A-91C and cross heading inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [ss. 43\(1\)](#), [84\(2\)](#) (with [s. 84\(5\)](#)); S.I. 1992/334, [art.4](#)

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[^{F61F61}91] 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;
 - (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.]

Textual Amendments

F61 Ss. 91A-91C and cross heading inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s. 43\(1\)](#), (with s. 84(5)); [S.I. 1992/334](#), [art. 4](#).

[^{F62F62}91] 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.]

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Textual Amendments

F62 Ss. 91A-91C and cross heading inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), **s. 43(1)** (with s. 84(5)); S.I. 1992/334, **art. 4**.

[^{F63}F63] **91(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.
- (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.]

Textual Amendments

F63 Ss. 91A-91C and cross heading inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), **s. 43(1)** (with s. 84(5)); S.I. 1992/334, **art. 4**.

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Listed buildings

92 Power to serve listed building enforcement notice.

(1) Where it appears to the . . . ^{F64} planning authority that any works have been, or are being, executed to a listed building in their district and are such as to involve a contravention of section 53(1) or (4) of this Act, then, . . . ^{F65}, they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, serve a notice—

(a) specifying the alleged contravention; and

[^{F66}(b) specifying one of the following sets of steps—

(i) the steps required to restore the building to its former state;

(ii) the steps required to bring the building to the state it would have been in if the terms and conditions of any listed building consent for the works had been complied with;

(iii) subject to subsection (1A) below, the steps required to alleviate, in a manner acceptable to the planning authority, the effects of works executed without listed building consent; and

^{F67}(c)

[A planning authority may specify steps under sub-paragraph (iii) of paragraph (b) of ^{F68}(1A) subsection (1) above, if, but only if, it appears to them either—

(a) that complete restoration of the building to its former state is not reasonably practicable; or

(b) that such restoration is undesirable, having regard to the desirability of preserving—

(i) the character of the building; or

(ii) its features of architectural or historical interest.]

(2) a notice under this section is in this Act referred to as a “listed building enforcement notice”.

[Where such steps as are mentioned in subsection (1)(b)(iii) above have been taken in ^{F69}(2A) relation to works carried out on a building, listed building consent shall be deemed to have been granted in respect of those works as alleviated.]

(3) a listed building enforcement notice shall be served on the owner, on the lessee and on the occupier of the building to which it relates and on any other person having an interest in the building, being an interest which in the opinion of the authority is materially affected by the notice.

[Service under subsection (3) above shall be effected by the service of a copy of the ^{F70}(3A) notice; and references in this Act to service of listed building enforcement notices shall be so construed.]

[A listed building enforcement notice—

^{F71}(4) (a) shall specify the date upon which it is to take effect, and, subject to section 93(3) of this Act, shall take effect on that date, and

(b) shall specify the period within which any steps are required to be taken and may specify different periods for different steps,

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and, where different periods apply to different steps, references in this Part of this Act to the period for compliance with a listed building enforcement notice, in relation to any step, are to the period within which the step is required to be taken.]

- [The planning authority may—
- ^{F72}(5) (a) withdraw a listed building enforcement notice (without prejudice to their power to issue another); or
- (b) waive or relax any requirement of such a notice and, in particular, may extend the period specified in accordance with section 92(4) of this Act,
- and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.
- (5A) The planning authority shall, immediately after exercising the powers conferred by subsection (5), give notice of the exercise to every person who has been served with a copy of the listed building enforcement notice or would, if the notice were re-issued, be served with a copy of it]
- (6) Every. . . ^{F64} planning authority shall keep available for public inspection free of charge at reasonable hours and at a convenient place a list containing particulars of any building in their district in respect of which a listed building enforcement notice has been served.]

Textual Amendments

- F64** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)
- F65** Words repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), Sch. 4 Pt. I](#)
- F66** [S. 92\(1\)\(b\)\(c\)](#) substituted for [s. 92\(1\)\(b\)](#) by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 69\(2\), Sch. 2 para. 26\(a\)](#)
- F67** [S. 92\(1\)\(c\)](#) repealed (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 57, Sch. 10, para. 4\(a\) \(with s. 84\(5\)\); S.I. 1992/334, art.4](#)
- F68** [S. 92\(1A\)](#) inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 69\(2\), Sch. 2 para. 26\(b\)](#)
- F69** [S. 92\(2A\)](#) inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 69\(2\), Sch. 2 para. 26\(c\)](#)
- F70** [S. 92\(3A\)](#) inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 69\(2\), Sch. 2 para. 26\(d\)](#)
- F71** [S. 92\(4\)](#) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 57, Sch. 10, para. 4\(b\) \(with s. 84\(5\)\); S.I. 1992/334, art. 4](#)
- F72** [S. 92\(5\)\(5A\)](#) substituted for [s. 92\(5\) \(26.3.1992\)](#) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 57, Sch. 10, para.5 \(with s. 84\(5\)\); S.I. 1992/334, art.4](#)

93 Appeal against listed building enforcement notice.

- (1) a person on whom a listed building enforcement notice is served, or any other person having an interest in the building to which it relates, may, at any time [^{F73}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 the building is not of special architectural or historic interest;
- [^{F74}(b) that the matters alleged to constitute a contravention of section 53(1) or (4) of this Act have not occurred;
- (ba) that those matters (if they occurred) do not constitute such a contravention;]

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- [^{F75}(c) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;]
- (d) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- (e) that the notice was not served as required by section 92(3) of this Act
- (f) that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- (g) that the period specified in the notice as the period within which any steps required thereby are to be taken falls short of what should reasonably be allowed;
- (h) that the steps required by the notice to be taken would not serve the purpose of restoring the character of the building to its former state.
- [^{F76}(i) that the steps specified under sub-paragraph (ii) of section 92(1)(b) of this Act exceed what is necessary to bring the building to the state mentioned in that sub-paragraph;
- (j) that the steps specified under sub-paragraph (iii) of the said section 92(1)(b) exceed what may reasonably be required in terms of that sub-paragraph;
- ^{F77}(k)

[An appeal under this section shall be made either—

- ^{F78}(2) (a) by giving written notice of the appeal to the Secretary of State before the date specified in the listed building 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.]

[The provisions of subsections (2A) to (2D) of section 85 of this Act (which relates to ^{F79F80}(2A) appeals against enforcement notices) shall apply to appeals under this section as they apply to appeals under that section.]

(3) Where an appeal is brought under this section the notice shall be of no effect pending the final determination or withdrawal of the appeal.

(4) On an appeal under this section,—

- [the Secretary of State may—
- ^{F81}(a) (i) correct any defect, error or misdescription in the listed building enforcement notice; or
- (ii) vary the terms of the listed building enforcement notice,
- if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.]
- (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 92(3) of this Act to be served with the notice was not served, the Secretary of State may disregard that fact if he is satisfied that the person has not been substantially prejudiced by the failure to serve him.

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- (5) On the determination of an appeal under this section the Secretary of State shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the listed building enforcement notice^{F82} . . . , and the Secretary of State may—
- (a) grant listed building consent for the works to which the notice relates or, as the case may be, discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous;
 - (b) . . .^{F83}
 - (c) if he thinks fit, exercise his power under section 52 of this Act to amend any list compiled or approved thereunder by removing from it the building to which the appeal relates or his power under subsection (8) of that section to direct that that subsection shall no longer apply to the building.

[Any listed building consent granted by the Secretary of State under subsection (5)^{F79} (6) above shall be treated as granted on an application for such consent made under Part I of Schedule 10 to this Act.]

- (7) The validity of a listed building enforcement notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (b) or (e) of subsection (1) of this section.
- (8) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section.]

Textual Amendments

- F73** Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 69\(2\), Sch. 2 para. 27\(a\)\(i\)](#)
- F74** [S. 93\(1\)\(b\)\(ba\)](#) substituted for [s. 93\(1\)\(b\) \(26.3.1992\)](#) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 57, Sch. 10, para. 6\(2\)\(a\) \(with s. 84\(5\)\); S.I. 1992/334, art. 4](#)
- F75** [S. 93\(1\)\(c\)](#) substituted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\), s. 50, Sch. 9 Pt. II, para. 15\(2\)](#)
- F76** [S. 93\(1\)\(i\)-\(k\)](#) added by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 69\(2\), Sch. 2 para. 27\(a\)\(ii\)](#)
- F77** [S. 93\(1\)\(k\)](#) repealed (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), ss. 57, 84\(6\), Sch. 10, para. 6\(2\)\(b\), Sch. 19, Pt. IV \(with s. 84\(5\)\); S.I. 1992/334, art. 4, Sch. 1](#)
- F78** [S. 93\(2\)](#) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 57, Sch. 10, para. 6\(3\) \(with s. 84\(5\)\); S.I. 1992/334, art. 4](#)
- F79** [S. 93\(6\)](#) substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 69\(2\), Sch. 2 para. 27\(c\)](#)
- F80** [S. 93\(2\)\(2A\)](#) substituted for [s. 93\(2\)](#) by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 69\(2\), Sch. 2 para. 27\(b\)](#)
- F81** [S. 93\(4\)\(a\)](#) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 57, Sch. 10, para. 6\(4\) \(with s. 84\(5\)\); S.I. 1992/334, art.4](#)
- F82** Words in [s. 93\(5\)](#) repealed (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), ss. 57, 84\(6\), Sch. 10, para. 6\(5\), Sch. 19, Pt.IV \(with s. 84\(5\)\); S.I. 1992/334, art. 4, Sch. 1](#)
- F83** [S. 93\(5\)\(b\)](#) repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), Sch. 4 Pt. I](#)

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

[94] ^{F84}Offence where listed building enforcement notice not complied with.

- (1) Where, after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been taken, the person who is for the time being owner of the land is in breach of the duty under this subsection.
- (2) If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence.
- (3) 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.
- (4) In proceedings against any person for an offence under this section, it shall be a defence for him to show—
 - (a) that he did everything he could be expected to do to secure that all the steps required by the notice were taken; or
 - (b) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence.
- (5) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding £20,0; and
 - (b) on conviction on indictment, to a fine.
- (6) 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.]

Textual Amendments

F84 S. 94 substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 57, [Sch. 10 para.7](#) (with s. 84(5)); S.I. 1992/334, [art. 4](#)

95 Execution and cost of works required by listed building enforcement notice.

- (1) If, within the period allowed for compliance with a listed building enforcement notice, any steps required by the notice to be taken have not been taken, the authority may enter on the land and take those steps, and may recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- (2) Any expenses incurred by the owner, lessee or occupier of a building for the purpose of complying with a listed building enforcement notice, and any sums paid by the owner or lessee of a building under subsection (1) of this section in respect of expenses incurred by the . . . ^{F85} planning authority in taking steps required by such a notice to be taken, 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.
- (3) The provisions of section 88(3) and (4) of this Act shall apply in relation to a listed building enforcement notice as they apply in relation to an enforcement notice; and any regulations made by virtue of this subsection may provide for the charging on the land on which the building stands of any expenses recoverable by a . . . ^{F85} planning authority under subsection (1) of this section.

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Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

[^{F86}(4) 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.]

Textual Amendments

- F85** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)
F86 [S. 95\(4\)](#) inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 57, [Sch. 10 para.8](#) (with s. 84(5)); S.I. 1992/334, [art. 4](#)

[^{F87}95A Effect of listed building consent on listed building enforcement

- (1) If, after the issue of a listed building enforcement notice, consent is granted under section 53(2A) of this Act for the retention of any work to which the listed building enforcement notice relates, the notice shall cease to have effect in so far as it requires steps to be taken which would involve the works not being retained in accordance with the consent.
- (2) If the consent is granted so as to permit the retention of works without complying with some condition subject to which a previous listed building consent was granted, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.
- (3) The preceding provisions of this section shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the listed building enforcement notice before the relevant provisions of that notice ceased to have effect.]

Textual Amendments

- F87** [S. 95A](#) inserted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 50, [Sch. 9 Pt. II para. 19](#)

96 Enforcement by, or by direction of, the Secretary of State.

- (1) If it appears to the Secretary of State, after consultation with the . . . ^{F88} planning authority, to be expedient that a listed building enforcement notice should be served in respect of any land, he . . . ^{F89} may himself serve such a notice; and any notice so served by the Secretary of State shall have the like effect as a notice served by the . . . ^{F88} planning authority.
- (2) In relation to a listed building enforcement notice served by the Secretary of State, the provisions of sections 94(3) and 95 of this Act shall apply as if for any reference therein to the . . . ^{F88} planning authority there were substituted a reference to the Secretary of State.

Textual Amendments

- F88** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)
F89 Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 29](#)

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

[^{F90}97 Urgent works to preserve building.

- (1) Where it appears to the planning authority or the Secretary of State that works are urgently necessary for the preservation of—
 - (a) a listed building, or
 - (b) a building in respect of which a direction has been given by the Secretary of State that this section shall apply,
 they or he may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.
- (2) The ground on which the Secretary of State may give a direction that this section shall apply to a building is that the building is in a conservation area and it appears to him that its preservation is important for maintaining the character or appearance of the conservation area.
- (3) If the building is occupied works may be carried out only to those parts which are not in use; and no action may be taken in respect of an excepted building within the meaning of section 56(2) of this Act.
- (4) The owner of the building shall be given not less than 7 days' notice in writing of the intention to carry out the works and the notice shall describe the works proposed to be carried out.]

Textual Amendments

F90 Ss. 97, 97A substituted for s. 97 by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 50, **Sch. 9 Pt. II para. 20**

[^{F91}97A Recovery of expenses of works under s. 97.

- (1) This section has effect for enabling the expenses of works executed under section 97 of this Act to be recovered.
- (2) The planning authority or, as the case may be, the Secretary of State may give notice to the owner of the building requiring him to pay the expenses of the works.
- (3) Where the works consist of or include works for affording temporary support or shelter for the building—
 - (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used, and
 - (b) notices under subsection (2) in respect of any such continuing expenses may be given from time to time.
- (4) The owner may within 28 days of the service of the notice represent to the Secretary of State—
 - (a) that some or all of the works were unnecessary for the preservation of the building,
 - (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time, or
 - (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause him hardship,

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and the Secretary of State shall determine to what extent the representations are justified.

- (5) The Secretary of State shall give notice of his determination, the reasons for it and the amount recoverable—
- (a) to the owner of the building, and
 - (b) to the planning authority, if they carried out the works.]

Textual Amendments

F91 Ss. 97, 97A substituted for s. 97 by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 50, [Sch. 9 Pt. II para. 20](#)

[^{F92}97AB^{F92} Further provision as to rights of entry in relation to listed buildings.

- (1) The provisions of this section and of section 97AC of this Act shall apply, in place of the provisions of section 266 of this Act, to rights of entry exercised under section 265 of this Act in relation to listed buildings and listed buildings control.
- (2) If the sheriff is satisfied—
- (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 265 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.
- (3) For the purposes of subsection (2)(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.
- (4) 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.]

Textual Amendments

F92 Ss. 97AB, 97AC inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF\)](#), s. 57, [Sch. 10 para. 10](#) (with s. 84(5)); [S.I. 1992/334, art. 4](#)

[^{F93}97AC^{F93} Rights of entry in relation to listed buildings: supplementary provisions.

- (1) Subject to subsection (2) of this section, a person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 265 or 97AB 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

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- (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.
- (2) Admission to any land which is occupied shall not be demanded as of right by virtue of section 265 of this section unless 24 hours' notice of the intended entry has been given to the occupier of the land.
- (3) 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.
- (4) 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; and section 168 of this Act shall apply in relation to compensation under this subsection as it applies 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 (5) 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.
- (8) No person shall carry out any works in exercise of a power conferred under section 97 of this Act unless notice of his intention to do so was included in the notice required by subsection (2) of this section.
- (9) The authority of the appropriate Minister shall be required for the carrying out of works in exercise of a power conferred under section 97 of this Act if—
- (a) the land in question is held by statutory undertakers; and
 - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking.
- (10) Section 213(1) of this Act applies for the purposes of subsection (9) of this section as it applies for the purposes of section 266(6)(b) of this Act.]

Textual Amendments

F93 Ss. 97AB, 97AC inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF\)](#), s. 57, [Sch. 10 para.10](#) (with s. 84(5)); [S.I. 1992/334](#), [art.4](#)

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

[^{F94} Hazardous substances]

Textual Amendments

F94 S. 97B and crossheading inserted (18.2.1993 for certain purposes, otherwise 1.5.1993) by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), [s. 36](#); S.I. 1993/273, [arts.3, 5](#)

[^{F95}97B Power to issue hazardous substances contravention notice.

- (1) Subject to subsection (2) below, where it appears to the planning authority that there is or has been a contravention of hazardous substances control they may issue a hazardous substances contravention notice if they consider it expedient to do so having regard to any material consideration.
- (2) A planning authority shall not issue a hazardous substances contravention notice where it appears to them that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.
- (3) In this Act “hazardous substances contravention notice” means a notice—
 - (a) specifying an alleged contravention of hazardous substances control; and
 - (b) requiring such steps as may be specified in the notice to be taken to remedy [^{F96}wholly or partly] the contravention.
- (4) A copy of a hazardous substances contravention notice shall be served—
 - (a) on the owner, the lessee and the occupier of the land to which it relates; and
 - (b) on such other persons as may be prescribed.
- (5) A hazardous substances contravention notice shall also specify—
 - (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect;
 - (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.
- (6) Where a planning authority issue a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of subsection (3) (b) above, if the authority think it expedient, include a requirement that the hazardous substance be removed from the land.
- (7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substance which is required to be removed.
- (8) The planning authority may withdraw a hazardous substances contravention notice (without prejudice to their power to issue another) at any time before [^{F97}or after] it takes effect.
- (9) If they do so, they shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice [^{F98}or would, if the notice were re-issued, be served with a copy of it].
- (10) The Secretary of State may by regulations—

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- (a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by this section;
 - (b) provide—
 - (i) for appeals to him against hazardous substances contravention notices;
 - (ii) for the persons by whom, grounds upon which and time within which such an appeal may be brought;
 - (iii) for the procedure to be followed on such appeals;
 - (iv) for the directions that may be given on such an appeal;
 - (v) for the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of sections 85, 231(3) and 233 of this Act;
 - (c) direct that any of the provisions of sections 86 to 89A [^{F99}and 166] of this Act shall have effect in relation to hazardous substances contravention notices subject to such modifications as he may specify in the regulations;
 - (d) make such other provision as he considers necessary or expedient in relation to hazardous substances contravention notices.
- (11) If any person appeals against a hazardous substances contravention notice, the notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (12) Regulations under this section may make different provisions for different cases or descriptions of cases.]

Textual Amendments

- F95** S. 97B inserted (18.2.1993 for certain purposes, otherwise 1.5.1993) by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\), s. 36; S.I. 1993/273, arts.3, 5](#)
- F96** Words in s. 97B(3)(b) inserted (18.2.1993) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 57, Sch. 10, para. 9\(1\)\(a\) \(with s. 84\(5\)\); S.I. 1993/275, art. 2](#)
- F97** Words in s. 97B(8) inserted (18.2.1993) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 57, Sch. 10, para. 9\(1\)\(b\) \(with s. 84\(5\)\); S.I. 1993/275, art.2](#)
- F98** Words in s. 97B(9) inserted (18.2.1993) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 57, Sch. 10, para. 9\(1\)\(c\) \(with s. 84\(5\)\); S.I. 1993/275, art. 2](#)
- F99** Words in s. 97B(10)(c) inserted (18.2.1993) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\), s. 144, Sch. 13 para. 11\(11\); S.I. 1993/274, art. 2](#)

Modifications etc. (not altering text)

- C18** S. 97B amended (27.8.1993) by [1993 c. 12, ss. 40\(1\), 51\(2\), Sch. 3 Pt. II para.14 \(with ss. 42, 46\)](#)

[^{F100}97BA^{F100} Variation of hazardous substances contravention notices.

- (1) A planning authority may waive or relax any requirement of a hazardous substances contravention notice issued by them and, in particular, may extend any period specified in accordance with section 97B(5)(b) of this Act in the notice.
- (2) The powers conferred by subsection (1) of this section may be exercised before or after the notice takes effect.
- (3) The planning authority shall, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous

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substances contravention notice or would, if the notice were re-issued, be served with a copy of it.]

Textual Amendments

F100 Ss. 97BA-97BC inserted (1.5.1993) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 57, [Sch. 10 para.11](#) (with s. 84(5)); S.I. 1993/275, [art.3](#)

[^{F101F101}97BB] **Other provision as to rights of entry in relation to hazardous substances control.**

- (1) The provisions of this section and of section 97BC of this Act apply, in place of the provisions of section 266 of this Act, to rights of entry exercised under section 265 of this Act in relation to applications for hazardous substances consent and hazardous substances control.
- (2) If the sheriff is satisfied—
 - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 265 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 (2)(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.]

Textual Amendments

F101 Ss. 97BA- 97BC inserted (1.5.1993) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 57, [Sch. 10 para.11](#) (with s. 84(5)); S.I. 1993/275, [art.3](#)

[^{F102F102}97BB] **Rights of entry in relation to hazardous substances control: supplementary provisions.**

- (1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 265 or 97BB 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; and section 168 of this Act shall apply in relation to compensation under this subsection as it applies in relation to compensation under Part VIII of this Act.
- (4) 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.
- (5) 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.
- (6) A person who is guilty of an offence under subsection (4) 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.
- (7) The authority of the appropriate Minister shall be required for the carrying out of works in exercise of a power conferred under section 265(8) of this Act if—
 - (a) the land in question is held by statutory undertakers; and
 - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking.
- (8) Section 213(1) of this Act applies for the purposes of subsection (7) of this section as it applies for the purposes of section 266(6)(b) of this Act.]

Textual Amendments

F102 Ss. 97BA-97BC inserted after s. 97B (1.5.1993) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 57, [Sch. 10 para. 11](#) (with s. 84(5)); S.I. 1993/275, [art. 3](#)

Trees

98 Penalties for non-compliance with tree preservation order.

- [^{F103}(1) If any person, in contravention of a tree preservation order, cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it, he shall be guilty of an offence and shall be liable—
- [^{F104}(a) on summary conviction to a fine not exceeding £20,0;]
 - (b) on conviction on indictment, to a fine,
- and, in determining the amount of any fine to be imposed on a person convicted ^{F105} . . . , 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.]

Status: Point in time view as at 01/01/1997.

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(2) If any person contravenes the provisions of a tree preservation order otherwise than as mentioned in subsection (1) of this section, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [^{F106}level 4 on the standard scale].

^{F107}(3)

[^{F108}(4) This section shall apply to an offence under section 59A above as it applies to a contravention of a tree preservation order.]

Textual Amendments

F103 S. 98(1) substituted by [Town and Country Amenities Act 1974 \(c. 32\), s. 11\(3\)\(7\)](#)

F104 S. 98(1)(a) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 54\(1\)\(a\)](#) (with s. 84(5)); S.I. 1992/334, [art. 4](#).

F105 Words in s. 98(1) repealed (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), ss. 54\(1\)\(b\), 84\(6\), Sch. 19, Pt.IV](#) (with s. 84(5)); S.I. 1992/334, [art. 4, Sch. 1](#).

F106 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\), ss. 289F, 289G](#) (as inserted by [Criminal Justice Act 1982 \(c. 48\), s. 54](#))

F107 S. 98(3) repealed (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), ss. 54\(1\)\(c\), 84\(6\), Sch. 19, Pt.IV](#) (with s. 84(5)); S.I. 1992/334, [art. 4, Sch. 1](#).

F108 S. 98(4) added by [Town and Country Amenities Act 1974 \(c. 32\), s. 11\(6\)\(7\)](#)

99 Enforcement of duties as to replacement of trees.

(1) If it appears to the . . . ^{F109} planning authority that the provisions of section 60 of this Act, or any conditions of a consent given under a tree preservation order which require the replacement of trees, are not complied with in the case of any tree or trees, that authority may, at any time within two years from the date on which the failure to comply with the said provisions or conditions came to their knowledge, serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified.

[^{F110}(2) A notice under subsection (1) of this section shall specify a period at the end of which it is to take effect, being a period of not less than twenty-eight days beginning with the date of service of the notice.]

(3) a person on whom a notice under this section is served may, [^{F111}either by giving written notice to the Secretary of State before the end of the period specified in accordance with subsection (2) of this section, or 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 the end of that period,], appeal to the Secretary of State against the notice on any of the following grounds—

(a) that the provisions of the said section 60 or the conditions aforesaid are not applicable or have been complied with;

[^{F112}(ab) that in all the circumstances of the case the duty imposed by the said section 60(1) should be dispensed with in relation to any tree;]

(b) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified therein;

(c) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;

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- (d) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose;
- and the provisions of section 85(2) [^{F113}to (2D)], (3) and (4)(a) of this Act, and of so much of section 85(5) of this Act as enables the Secretary of State to give directions, shall apply in relation to any such appeal as they apply in relation to an appeal against an enforcement notice.
- (4) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under subsection (3) of this section.
- (5) In section 88 of this Act, and in regulations in force under that section, references to an enforcement notice and an enforcement notice served in respect of any breach of planning control shall include references to a notice under this section; and in relation to such a notice the reference in subsection (2) of that section to the person by whom the breach of planning control was committed shall be construed as a reference to any person, other than the owner, responsible for the cutting down, destruction or removal of the original tree or trees.
- [^{F114}(6) Any person who wilfully obstructs a person acting in the exercise of the power under section 88(1) of this Act (as applied by subsection (5) 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.]

Textual Amendments

- F109** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)
- F110** S. 99(2) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 54\(2\)\(a\)](#) (with s. 84(5)); S.I. 1992/334, [art. 4](#).
- F111** Words in s. 99(3) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 54\(2\)\(b\)\(i\)](#) (with s. 84(5)); S.I. 1992/334, [art. 4](#).
- F112** S. 99(ab) inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 54\(2\)\(b\)\(ii\)](#), (with s. 84(5)); S.I. 1992/334, [art. 4](#).
- F113** Words inserted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\), s. 53\(1\), Sch. 11 Pt. II para. 46](#)
- F114** S. 99(6) inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 54\(2\)\(c\)](#), (with s. 84(5)); S.I. 1992/334, [art. 4](#).

[^{F115} Rights of entry]

Textual Amendments

- F115** Ss. 99A-99C and cross heading inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 54\(3\)](#) (with s. 84(5)); S.I. 1992/334, [art. 4](#).

[^{F116}~~F116~~ Rights to enter without warrant.

- (1) Any person duly authorised in writing by a planning authority may enter any land for the purpose of—
- (a) surveying it in connection with making or confirming a tree preservation order with respect to the land;
 - (b) ascertaining whether an offence under section 59A or 98 of this Act has been committed on the land; or

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- (c) determining whether a notice under section 99 should be served on the owner of the 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 enter any land for the purpose of surveying it in connection with making, amending or revoking a tree preservation order with respect to the land if there are reasonable grounds for entering for that purpose.
- (3) Any person who is duly authorised in writing by a planning authority may enter any land in connection with the exercise of any functions conferred on the authority by or under sections 57 to 60 and 99 of this Act.
- (4) Any person who is an officer of the Valuation Office may enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation in respect of any land which is payable by the planning authority under section 163 of this Act.
- (5) Any person who is duly authorised in writing by the Secretary of State may enter any land in connection with the exercise of any functions conferred on the Secretary of State by or under section 58 or 99 of this Act.
- (6) The Secretary of State shall not authorise any person as mentioned in subsection (2) without consulting the planning authority.
- (7) Admission shall not be demanded as of right—
(a) by virtue of subsection (1) or (2) to any building used as a dwellinghouse; or
(b) by virtue of subsection (3), (4) or (5) to any land which is occupied,
unless 24 hours' notice of the intended entry has been given to the occupier.
- (8) Any right to enter by virtue of this section shall be exercised at a reasonable hour.]

Textual Amendments

F116 Ss. 99A-99C and crossheading inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), [s. 54\(3\)](#) (with [s. 84\(5\)](#)); [S.I. 1992/334](#), [art. 4](#)

[^{F117}~~F117~~ **99B** **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 99A(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 by a planning authority or, as the case may be, the Secretary of State 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.

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- (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.]

Textual Amendments

F117 Ss. 99A-99C and crossheading inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), **s. 54(3)** (with s. 84(5)); S.I. 1992/334, **art.4**

[^{F118}F118] 99 Rights of entry: supplementary provisions.

- (1) Any power conferred under or by virtue of section 99A or 99B to enter land (referred to in this section as “a right of entry”) shall be construed as including power to take samples from any tree and samples of the soil.
- (2) A person authorised to enter land in the exercise of 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.
- (3) 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.
- (4) 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.]

Textual Amendments

F118 Ss. 99A-99C and crossheading inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), **s. 54(3)** (with s. 84(5)); S.I. 1992/334, **art.4**

Other controls

[^{F119}100 Enforcement of orders under sections 49, 49A and 49B.

- (1) Any person who, without the grant of planning permission in that behalf,—
 - (a) uses land, or causes or permits land to be used,—
 - (i) for any purpose for which an order under section 49 of this Act has required that its use shall be discontinued; or
 - (ii) in contravention of any condition imposed by such an order by virtue of subsection (1) of that section; or
 - (b) resumes, or causes or permits to be resumed, development consisting of the winning and working of minerals [^{F120}or involving the depositing of mineral

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- waste] the resumption of which an order under section 49A of this Act has prohibited; or
- (c) contravenes, or causes or permits to be contravened, any such requirement as is specified in section 49A(3) or (4) of this Act,
- shall be guilty of an offence.
- (2) Any person who contravenes any requirement of a suspension order or a supplementary suspension order or who causes or permits any requirement of such an order to be contravened shall be guilty of an offence.
- (3) Any person guilty of an offence under this section shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to a fine.
- (4) If—
- (a) any step required by an order under section 49 of this Act to be taken for the alteration or removal of any buildings or works or any plant or machinery; or
- (b) any step required by an order under section 49A of this Act to be taken—
- (i) for the alteration or removal of plant or machinery; or
- (ii) for the removal or alleviation of any injury to amenity; or
- (c) any step for the protection of the environment required to be taken by a suspension order or a supplementary suspension order,
- has not been taken within the period specified in the order, or within such extended period as the planning authority may allow, the planning authority may enter the land and take that step, and may recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.
- (5) A planning authority taking any step in terms of subsection (4) of this section may sell any materials removed by them from any land unless those materials are claimed by the owner within three days of their removal by the planning authority; and where such materials have been sold the planning authority shall, after deducting therefrom any expenses recoverable by them from the owner, pay him the proceeds of such sale.
- (6) It shall be a defence for a person charged with an offence under this section to prove that he took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.
- (7) If any person charged with an offence under this section alleges that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.]

Textual Amendments

F119 S. 100 substituted by Town and Country Planning (Minerals) Act 1981 (c. 36), ss. 28, 35

F120 Words in s. 100(1)(b) inserted (24.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), s. 51, Sch. 8 para.9 (with s. 84(5)); S.I. 1992/71, art. 2

Status: Point in time view as at 01/01/1997.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

101 Enforcement of control as to advertisements.

[^{F121}(1) The matters for which provision may be made by regulations under section 61 of this Act shall include provision for enabling the . . . ^{F122} planning authority to require the removal of any advertisement which is being displayed in contravention of the regulations, or the discontinuance of the use for the display of advertisements of any site which is being so used in contravention of the regulations, and for that purpose for applying any of the provisions of this Part of this Act with respect to enforcement notices or the provisions of section 166 of this Act, subject to such adaptations and modifications as may be specified in the regulations.]

[^{F123}(2) Without prejudice to any provisions included in regulations made under section 61 of this Act by virtue of subsection (1) of this section,] if any person displays an advertisement in contravention of the provisions of the regulations he shall be guilty of an offence and liable on summary conviction to a fine of such amount as may be prescribed by the regulations, not exceeding [^{F124}level 3 on the standard scale] and, in the case of a continuing offence, [^{F125}one-tenth of level 3 on the standard scale] for each day during which the offence continues after conviction.

- (3) For the purposes of subsection (2) of this section, and without prejudice to the generality thereof, a person shall be deemed to display an advertisement if—
- (a) the advertisement is displayed on land of which he is the owner or occupier; or
 - (b) the advertisement gives publicity to his goods, trade, business or other concerns:

Provided that a person shall not be guilty of an offence under that subsection by reason only that an advertisement is displayed on land of which he is the owner or occupier, or that his goods, trade, business or other concerns are given publicity by the advertisement, if he proves that it was displayed without his knowledge or consent.

Textual Amendments

F121 S. 101(1) repealed (prosp.) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 84(2)(6), [Sch. 19 Pt.IV](#) (with s. 84(5))

F122 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), s. 172(2)

F123 Words in s. 101(2) repealed (prosp.) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 84(2)(6), [Sch. 19 Pt.IV](#) (with s. 84(5))

F124 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), ss. 289F, 289G (as inserted by [Criminal Justice Act 1982 \(c. 48\)](#), s. 54)

F125 Words in s. 101(2) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 61, [Sch. 13 para. 27](#) (with s. 84(5)); S.I. 1992/334, [art.4](#)

Modifications etc. (not altering text)

C19 S. 101(2) extended by S.I. 1984/467, [reg. 7](#)

[^{F126}101A^{F126} Power to remove or obliterate placards and posters.

- (1) Subject to the provisions of this section, a planning authority may remove or obliterate any placard or poster—
- (a) which is displayed in their area; and
 - (b) which in their opinion is so displayed in contravention of regulations made under section 61 of this Act.

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Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V. (See end of Document for details)

- (2) Subsection (1) of this section does not authorise the removal or obliteration of a placard or poster displayed within a building to which there is no public right of access.
- (3) Subject to subsection (4) of this section, where a placard or poster identifies the person who displayed it or caused it to be displayed, the planning authority shall not exercise any power conferred by subsection (1) of this section unless they have first given him notice in writing—
 - (a) that in their opinion it is displayed in contravention of regulations made under section 61 of this Act; and
 - (b) that they intend to remove or obliterate it on the expiry of a period specified in the notice.
- (4) Subsection (3) of this section does not apply if—
 - (a) the placard or poster does not give his address; and
 - (b) the authority do not know it and are unable to ascertain it after reasonable inquiry.
- (5) The period specified in a notice under subsection (3) of this section must be not less than two days from the date of service of the notice.
- (6) Any person duly authorised in writing by the planning authority may at any reasonable time enter any land for the purpose of exercising a power conferred by this section if—
 - (a) the land is unoccupied; and
 - (b) it would be impossible to exercise the power without entering the land.]

Textual Amendments

F126 S. 101A inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), **s.56** (with s. 84(5)); S.I. 1992/334, **art.4**

Status:

Point in time view as at 01/01/1997.

Changes to legislation:

There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part V.