



Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997)

1972 CHAPTER 52

PART V

ENFORCEMENT OF CONTROL UNDER PARTS III AND IV

[^{F1} Certificate of lawful use or development]

Textual Amendments

- F1** 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).

90 Certification of established use.

- (1) For the purposes of this Part of this Act, a use of land is established if—
- it was begun before the beginning of 1965 without planning permission in that behalf and has continued since the end of 1964; or
 - it was begun before the beginning of 1965 under a planning permission in that behalf granted subject to conditions or limitations, which either have never been complied with or have not been complied with since the end of 1964; or
 - it was begun after the end of 1964 as the result of a change of use not requiring planning permission and there has been, since the end of 1964, no change of use requiring planning permission.
- (2) Where a person having an interest in land claims that a particular use of it has become established, he may apply to the . . . ^{F2} planning authority for a certificate (in this Act referred to as an “established use certificate”) to that effect:

Status: Point in time view as at 24/02/1992. This version of this cross heading contains provisions that are not valid for this point in time.

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Provided that no such application may be made in respect of the use of land as a single dwellinghouse, or of any use not subsisting at the time of the application.

- (3) An established use certificate may be granted (either by the . . . ^{F2} planning authority or, under section 91 of this Act, by the Secretary of State)—
- (a) either for the whole of the land specified in the application, or for a part of it;
 - (b) in the case of an application specifying two or more uses, either for all those uses or for some one or more of them.
- (4) On an application to them under this section, the . . . ^{F2} planning authority shall, if and so far as they are satisfied that the applicant's claim is made out, grant to him an established use certificate accordingly; and if and so far as they are not so satisfied, they shall refuse the application.
- (5) Where an application is made to a . . . ^{F2} planning authority for an established use certificate, then unless within such period as may be prescribed by a development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the . . . ^{F2} planning authority, the authority give notice to the applicant of their decision on the application, then, for the purposes of section 91(2) of this Act, the application shall be deemed to be refused.
- (6) Schedule 12 to this Act shall have effect with respect to established use certificates and applications therefor and to appeals under section 91 of this Act.
- (7) An established use certificate shall, as respects any matters state therein, be conclusive for the purposes of an appeal to the Secretary of State against an enforcement notice served in respect of any land to which the certificate relates, but only where the notice is served after the date of the application on which the certificate was granted.
- (8) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for an established use certificate or on an appeal arising out of such an application—
- (a) knowingly or recklessly makes a statement which is false in a material particular; or
 - (b) with intent to deceive, produces, furnishes, sends or otherwise makes use of any document which is false in a material particular; or
 - (c) with intent to deceive, withholds any material information,
- he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

Textual Amendments

F2 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)

VALID FROM 10/08/1992

^{F3F3}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

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

- F3** 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](#)).

VALID FROM 10/08/1992

[^{F4F4}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,

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including information as to the manner in which any application has been dealt with.

- (4) A certificate under either of those sections may be issued—
- (a) for the whole or part of the land specified in the application; and
 - (b) where the application specifies two or more uses, operations or other things, for all of them or some one or more of them,
- and shall be in such form as may be prescribed by such regulations or a development order.
- (5) A certificate under section 90 or 90A shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.
- (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

- F4** 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).

VALID FROM 10/08/1992

^{F5F5}90C Offences.

- (1) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under section 90 or 90A of this Act—
- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
 - (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
 - (c) with intent to deceive, withholds any material information,
- he shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) of this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.]

Textual Amendments

F5 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](#)).

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

- (1) ^{F6}
- (2) Where an application is made to a . . . ^{F7} planning authority for an established use certificate 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.
- (3) On . . . ^{F8} an appeal to him under subsection (2) of this section, the Secretary of State may, in respect of any use of land for which an established use certificate is not granted (either by him or by the . . . ^{F7} planning authority), grant planning permission for that use or, as the case may be, for the continuance of that use without complying with some condition subject to which a previous planning permission was granted.
- (4) Before determining an . . . ^{F8} appeal under this section the Secretary of State shall, if either the . . . ^{F8} appellant . . . ^{F8} or the . . . ^{F7} 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.
- (5) In the case of any use of land for which the Secretary of State has power to grant planning permission under this section, the . . . ^{F8} appellant shall be deemed to have made an application for such planning permission; and any planning permission so granted shall be treated as granted on the said application.
- (6) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section.

Textual Amendments

F6 Ss. 91(1), 111, 112 repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), [Sch. 4](#)

F7 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [s. 172\(2\)](#)

F8 Words repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), [Sch. 4](#)

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