

## SCHEDULE

Regulation 41

### Modifications to the Town and Country Planning Act 1990

1. Part 7 of the Town and Country Planning Act 1990(1) applies—
  - (a) as if the following sections were omitted—
    - (i) section 173ZA (enforcement warning notice: Wales);
    - (ii) section 187A (enforcement of conditions);
    - (iii) section 189 (penalties for contravention of orders under s. 102 and Schedule 9);
    - (iv) section 190 (enforcement of orders under s. 102 and Schedule 9);
    - (v) sections 191 to 196 (certificate of lawful use or development); and
    - (vi) section 196D (offence of failing to obtain planning permission for demolition of unlisted etc buildings in conservation area in England);
  - (b) subject to the modifications set out in the following paragraphs of this Schedule.

### **Modification of section 171A (expressions used in connection with enforcement)**

2. Section 171A(2) applies as if—
  - (a) for subsection (1) there were substituted—

“(1) For the purposes of this Part, carrying out any material operation in contravention of the prohibition in regulation 29 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023, constitutes a breach of planning control.”;
  - (b) for subsection (3), there were substituted—

“(3) In this Part—

“planning permission” includes permission under Part III of the 1947 Act, or of the 1962 Act or of the 1971 Act;

“the prohibition” means the prohibition in regulation 29 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023;

“Responsible Actors Scheme” means the scheme established under regulation 5 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023;”;
  - (c) after subsection (3) there were inserted—

“(4) In this section, “material operation” has the meaning given in section 56(4).”.

### **Modification of section 171C (power to require information about activities on land)**

3. Section 171C(3) applies as if—
  - (a) in subsection (1), for paragraph (b) there were substituted—

“(b) appears to the local planning authority to have breached planning control.”;

- 
- (1) 1990 c. 8. Section 173ZA was inserted by section 43(2) of Planning (Wales) Act 2015 (anaw 4). Section 187A was inserted by section 2 of the Planning and Compensation Act 1991 (c. 34) (“the 1991 Act”). Section 189 was amended by paragraph 11 of Schedule 1 to the 1991 Act. Section 190 was amended by Part I of Schedule 19 to the 1991 Act. Sections 191 to 194 were substituted by section 10(1) of the 1991 Act; section 191 was amended by section 124(3) of the Localism Act 2011 (c. 20). Section 195 was amended by section 32 of the 1991 Act, section 241(3)(4) of the Planning Act 2008 (c. 29) and S.I. 2014/2773. Section 196 was amended by paragraph 33 of Schedule 7 to the 1991 Act. There are other amendments to this Part which are not relevant to this instrument.
  - (2) Section 171A was inserted by section 4(1) of the 1991 Act.
  - (3) Section 171E to 171H were inserted by section 52 of the Planning and Compulsory Purchase Act 2004 (c. 5). Section 171G was also amended by S.I. 2015/664. There are other amendments to these sections which are not relevant to this instrument.

- (b) in subsection (2)—
  - (i) at the end of paragraph (a), “and” were omitted;
  - (ii) at the end of paragraph (b), there were inserted—
    - “and
    - (c) any matter relating to that person’s membership of the Responsible Actors Scheme or the application at any time of the prohibition to that person,”;
- (c) in subsection (4)(a), for the words “to apply for planning permission” to the end, there were substituted “to remedy the breach of planning control”.

**Modification of section 171E (temporary stop notice)**

- 4. Section 171E applies as if in subsection (1)—
  - (a) in paragraph (a), at the end “and” were omitted;
  - (b) paragraph (b) were omitted.

**Modification of section 171F (temporary stop notice: restrictions)**

- 5. Section 171F applies as if—
  - (a) in subsection (1), paragraph (b) were omitted;
  - (b) subsections (2) to (4) were omitted.

**Modification of section 171H (temporary stop notices: compensation)**

- 6. Section 171H applies as if for it there were substituted—
  - “**171H.**—(1) Subject to paragraph (2), this section applies where—
    - (a) a temporary stop notice is issued; and
    - (b) either—
      - (i) it is determined that there has not been a breach of planning control; or
      - (ii) the authority withdraws the notice.
  - (2) This section does not apply in a case where a person is member of the Responsible Actors Scheme on or after the day on which a copy of the notice is first displayed as mentioned in section 171E(6), whether or not their membership has been treated as having retrospective effect.
  - (3) A person who at the time the notice is served has an interest in the land to which the notice relates is entitled to be compensated by the local planning authority in respect of any loss or damage directly attributable to the prohibition effected by the notice.
  - (4) Subsections (3) to (7) of section 186 apply in relation to a claim for compensation payable under this section—
    - (a) as they apply to compensation payable under that section; and
    - (b) reading each reference to a “stop notice” in those subsections as if it were a reference to a temporary stop notice.”.

**Modification of section 172 (issue of enforcement notice)**

- 7. Section 172 applies as if for subsection (1)(b) there were substituted—

“(b) that it is expedient to issue the notice”.

### **Modification of section 173 (contents and effect of notice)**

#### **8. Section 173 applies as if—**

- (a) for subsection (1) there were substituted—
  - “(1) Subject to subsection (10), an enforcement notice must state the matters which appear to the local planning authority to constitute the breach of planning control.”;
- (b) in subsection (2), for “subsection (1)(a)” substitute “subsection (1)”;
- (c) for subsection (4), there were substituted—
  - “(4) Those purposes are—
    - (a) ensuring compliance with the prohibition;
    - (b) remedying any injury to amenity which has been caused by the breach.”;
- (d) for subsection (10) there were substituted—
  - “(10) An enforcement notice must—
    - (a) specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise;
    - (b) contain a list of the names and addresses of the persons on whom a copy of the enforcement notice has been served;
    - (c) be accompanied by an explanatory note providing information relating to—
      - (i) any relevant right of appeal;
      - (ii) the grounds on which an appeal may be brought under this Part.”.

### **Modification of section 174 (appeal against enforcement notice)**

#### **9. Section 174(4) applies as if—**

- (a) in subsection (2), paragraphs (a) and (f) were omitted;
- (b) subsections (2A), (2B) and (2D) to (2F) were omitted;
- (c) in subsection (4)—
  - (i) in the opening words, for “prescribed time” there were substituted “time specified in subsection (4A)”;
  - (ii) for paragraph (b), there were substituted—
    - “(b) setting out briefly the facts on which the person proposes to rely in support of each of those grounds.”;
- (d) after subsection (4), there were inserted—
  - “(4A) If the statement in writing referred to in subsection (4) is not included with the notice of appeal, it must be delivered to the Secretary of State not later than 14 days after the date on which the Secretary of State sends the person concerned a notice requiring that person to do so.”;
- (e) in subsection (5), for “prescribed time” there were substituted “time specified in subsection (4A)”.

---

(4) Section 174 has been amended by section 61 of the 1991 Act, [S.I. 2003/956](#), section 123(4) of the Localism Act 2011, paragraph 5 of Schedule 17 to the Enterprise and Regulatory Reform Act 2013 (c. 24).

**Modification of section 175 (appeals: supplementary provisions)**

10. Section 175 applies as if—

(a) for subsections (1), there were substituted—

“(1) The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 apply to appeals under section 174 as if—

- (a) Part 2 were omitted;
- (b) regulation 9(1)(b) were omitted.”;

(b) subsections (2) were omitted;

(c) at the end there were inserted—

“(8) The following Regulations and rules apply to appeals under section 174—

- (a) the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002(5);
- (b) the Town and Country Planning (Enforcement) (Determination by inspectors) (Inquiries Procedure) (England) Rules 2002(6);
- (c) the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002(7);
- (d) the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002(8), but as if regulation 7(4)(b) were omitted.”.

**Modification of section 176 (general provisions relating to determination of appeals)**

11. Section 176 applies as if—

(a) in subsection (1), for “On an appeal” there were substituted “Subject to subsection (1A), on an appeal”;

(b) after subsection (1), there were inserted—

“(1A) Nothing in subsection (1) permits the Secretary of State to determine the question of whether the appellant is eligible to be a member of the Responsible Actors Scheme if that question has already been determined in accordance with regulation 14 and 16 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023.”;

(c) in subsection (3)(a), for “prescribed time” there were substituted “time specified in section 174(4A)”.

**Modification of section 177 (grant or modification of planning permission on appeals against enforcement notices)**

12. Section 177 applies as if for it there were substituted—

“177. On the determination of an appeal under section 174, the Secretary of State may determine whether, on or before the date on which the appeal was made, major development of land in England was being carried out in breach of the prohibition.”.

---

(5) [S.I. 2002/2686](#).

(6) [S.I. 2002/2685](#).

(7) [S.I. 2002/2684](#).

(8) [S.I. 2002/2683](#).

### **Modification of section 180 (effect of planning permission, etc, on enforcement or breach of condition notice)**

13. Section 180 applies as if—

(a) for subsection (1) there were substituted—

“(1) Where after the service of a copy of an enforcement notice the person undertaking development to which the notice applies ceases to be a prohibited person within the meaning of regulation 29 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 (“the 2023 Regulations”), the notice ceases to have effect so far as it is inconsistent with the 2023 Regulations.”;

(b) subsection (2) were omitted;

(c) in subsection (3), “or breach of condition notice” were omitted.

### **Modifications of section 181 (enforcement notice to have effect against subsequent development)**

14. Section 181 applies as if for it there were substituted—

“**181.** Compliance with any requirements in an enforcement notice does not discharge the notice, and accordingly, any resumption of major development after they have been discontinued in compliance with the enforcement notice will be in contravention of the enforcement notice”.

### **Modification of section 183 (stop notices)**

15. Section 183 applies as if paragraphs (5) and (5A) were omitted.

### **Modification of section 186 (compensation for loss due to stop notice)**

16. Section 186 applies as if—

(a) in subsection (1)—

(i) paragraph (a) were omitted;

(ii) in paragraph (b), the words “(otherwise than” to in “that paragraph)” were omitted;

(iii) in paragraph (c), the words “otherwise than in consequence” to “notice relates” were omitted;

(b) in subsection (3), for the words “within the prescribed time and in the prescribed manner” there were substituted “in accordance with regulation 12 of the Town and Country Planning General Regulations 1992(9)”.

### **Modification of section 188 (Register of enforcement and stop notices)**

17. Section 188 applies to enforcement action taken under these Regulations as if the references in that section—

(a) to planning enforcement orders included a reference to planning enforcement orders issued under these Regulations;

(b) to enforcement notices included a reference to enforcement notices issued under these Regulations;

(c) to stop notices included a reference to stop notices issued under these Regulations.

---

(9) [S.I. 1992/1492](#). Regulation 12 was amended by [S.I. 1996/525](#).

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 No. 753