



# Town and Country Planning (Scotland) Act 1972

## 1972 CHAPTER 52

### PART V

#### ENFORCEMENT OF CONTROL UNDER PARTS III AND IV

##### *Development requiring planning permission*

#### **84 Power to serve enforcement notice**

- (1) Where it appears to the local planning authority that there has been a breach of planning control after the end of 1964, then, subject to any directions given by the Secretary of State and to the following provisions of this section, the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may serve a notice under this section (in this Act referred to as an "enforcement notice") requiring the breach to be remedied.
- (2) There is a breach of planning control if development has been carried out, whether before or after the commencement of this Act, without the grant of planning permission required in that behalf in accordance with Part III of this Act, or if any conditions or limitations subject to which planning permission was granted have not been complied with.
- (3) Where an enforcement notice relates to a breach of planning control consisting in—
  - (a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land; or
  - (b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or
  - (c) the making without planning permission of a change of use of any building to use as a single dwelling-house,

it may be served only within the period of four years from the date of the breach.

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- (4) If any dispute arises under subsection (3) of this section as to the date on which the breach of planning control occurred, the onus of proof as to that date shall rest on the person claiming the benefit of that subsection.
- (5) An enforcement notice shall be served on the owner, lessee and occupier of the land to which it relates and on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.
- (6) Where planning permission has effect subject to a condition to which section 80 of this Act applies, and by reason of anything done in a particular part of a building that condition is contravened, any enforcement notice relating to the contravention shall be taken to be served on the owner, lessee and occupier of the land to which it relates if it is served on the owner, lessee and occupier of that part of the building, whether it is also served on any other person or not.
- (7) An enforcement notice shall specify—
  - (a) the matters alleged to constitute a breach of planning control;
  - (b) the steps required by the authority to be taken in order to remedy the breach, that is to say steps for the purpose of restoring the land to its condition before the development took place or (according to the particular circumstances of the breach) of securing compliance with the conditions or limitations subject to which planning permission was granted; and
  - (c) the period for compliance with the notice, that is to say the period (beginning with the date when the notice takes effect) within which those steps are required to be taken.
- (8) The steps which may be required by an enforcement notice to be taken include the demolition or alteration of any buildings or works, the discontinuance of any use of land, or the carrying out on land of any building or other operations.
- (9) Subject to section 85 of this Act, an enforcement notice shall take effect at the end of such period, not being less than twenty-eight days after the service of the notice, as may be specified in the notice.
- (10) The local planning authority may withdraw an enforcement notice (without prejudice to their power to serve another) at any time before it takes effect; and, if they do so, they shall forthwith give notice of the withdrawal to every person who was served with the notice.
- (11) The validity of a notice purporting to be an enforcement notice shall not depend on whether any non-compliance to which the notice relates was a non-compliance with conditions, or with limitations, or with both; and any reference in such a notice to non-compliance with conditions or limitations (whether both expressions are used in the notice or only one of them) shall be construed as a reference to non-compliance with conditions, or with limitations, or both with conditions and limitations, as the case may require.

## **85 Appeal against enforcement notice**

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

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- (a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged ;
  - (b) that the matters alleged in the notice do not constitute a breach of planning control;
  - (c) in the case of a notice which, by virtue of section 84(3) of this Act, may be served only within the period of four years from the date of the breach of planning control to which the notice relates, that that period has elapsed at the date of service;
  - (d) in the case of a notice not falling within paragraph (c) of this subsection, that the breach of planning control alleged by the notice occurred before the beginning of 1965;
  - (e) that the enforcement notice was not served as required by section 84(5) of this Act;
  - (f) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control;
  - (g) that the specified period for compliance with the notice falls short of what should reasonably be allowed.
- (2) An appeal under this section shall be made by notice in writing to the Secretary of State, which shall indicate the grounds of the appeal and state the facts on which it is based; and on any such appeal the Secretary of State shall, if either the appellant or the local 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.
- (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—
- (a) the Secretary of State may correct any informality, defect or error in the enforcement notice if he is satisfied that the informality, defect or error is not material;
  - (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 84(5) 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 or for varying the terms of the notice in favour of the appellant; and the Secretary of State may—
- (a) grant planning permission for the development to which the enforcement notice relates or, as the case may be, discharge any condition or limitation subject to which planning permission for that development was granted;
  - (b) determine any purpose for which the land may, in the circumstances obtaining at the time of the determination, be lawfully used having regard to any past use thereof and to any planning permission relating to the land.
- (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

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other material considerations; and any planning permission granted by him under that subsection may—

- (a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;
  - (b) be granted subject to such conditions as the Secretary of State thinks fit;
- and where under that subsection he discharges a condition or limitation, 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 for the development to which the notice relates 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 local planning authority.
- (8) On an appeal under this section against an enforcement notice relating to anything done in contravention of a condition to which section 69 or 80 of this Act applies, the Secretary of State shall not be required to entertain the appeal in so far as the appellant claims that planning permission free from that condition ought to be granted.
- (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.
- (11) Subsection (10) of this section shall not apply to proceedings brought under section 86 of this Act against a person who—
- (a) has held an interest in the land since before the enforcement notice was served under section 84 of this Act; and
  - (b) did not have the enforcement notice served on him thereunder; and
  - (c) satisfies the court that—
    - (i) he did not know and could not reasonably have been expected to know that the enforcement notice had been served ; and
    - (ii) his interests have been substantially prejudiced by the failure to serve him.

## **86 Penalties for non-compliance with enforcement notice**

Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person, without the grant of planning permission, uses the land or causes or permits it to be

used, or carries out those operations or causes or permits them to be carried out, in contravention of the notice, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £400, or on conviction on indictment to a fine; and if the use is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £50 for each day on which the use is so continued, or on conviction on indictment to a fine.

## **87 Power to stop further development pending proceedings on enforcement notice**

- (1) Where in respect of any land the local planning authority have served an enforcement notice, they may at any time before the notice takes effect serve a further notice (in this Act referred to as a " stop notice ") referring to, and having annexed to it a copy of, the enforcement notice and prohibiting any person on whom the stop notice is served from carrying out or continuing any specified operations on the land, being operations either alleged in the enforcement notice to constitute a breach of planning control or so closely associated therewith as to constitute substantially the same operations.
- (2) The operations which may be the subject of a stop notice shall include the deposit of refuse or waste materials on land where that is a breach of planning control alleged in the enforcement notice.
- (3) A stop notice may be served by the local planning authority on any person who appears to them to have an interest in the land or to be concerned with the carrying out or continuance of any operations thereon.
- (4) A stop notice—
  - (a) shall specify the date (not being earlier than three nor later than fourteen days from the day on which the notice is first served on any person) when it is to take effect;
  - (b) in relation to any person served with it, shall have effect as from that date or the third day after the date of service on him, whichever is the later; and
  - (c) shall, without prejudice to subsection (7) of this section, cease to have effect when the enforcement notice takes effect or is withdrawn or quashed.
- (5) If while a stop notice has effect in relation to him a person carries out, or causes or permits to be carried out, any operations prohibited by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400, or on conviction on indictment to a fine; and if the offence is continued after conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £50 for each day on which the offence is continued, or on conviction on indictment to a fine.
- (6) A stop notice shall not be invalid by reason that the enforcement notice to which it relates was not served as required by section 84(5) of this Act if it is shown that the local planning authority took all such steps as were reasonably practicable to effect proper service.
- (7) The local planning authority may at any time withdraw a stop notice (without prejudice to their power to serve another) by serving notice to that effect on persons who were served with the stop notice ; and the stop notice shall cease to have effect as from the date of service of the notice under this subsection.

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(8) Where a person (in this subsection called "the contractor ") is under contract to another person (in this subsection called " the developer ") to carry out any operations on land and—

- (a) a stop notice takes effect (whether in relation to the developer or the contractor, or both) prohibiting the carrying out or continuance of those operations; and
- (b) the operations are countermanded, or discontinued by the contractor accordingly,

then, unless and in so far as the contract makes provision explicitly to the contrary of this subsection, the developer shall be under the same liability in contract as if the operations had been countermanded or discontinued on instructions given by him in breach of the contract.

This subsection applies only to contracts entered into before the end of 1969.

## **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 local planning authority may allow, any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken, the local 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 local planning authority.
- (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 (as defined in section 84(2) of this Act) 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 local 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.
- (3) Regulations made under this Act may provide that, in relation to any steps required to be taken by an enforcement notice, either or both of the enactments specified in subsection (4) of this section shall apply, subject to such adaptations and modifications as may be specified in the regulations.
- (4) The said enactments are the following provisions of the Water (Scotland) Act 1946, that is to say—
  - (a) section 57 (which limits the liability of persons holding premises as agents or trustees in respect of the expenses recoverable under Part III of that Act); and
  - (b) section 68 (which confers power to require the occupier of premises to permit works to be executed by the owner of the premises).

## **89 Enforcement notice to have effect against subsequent development**

- (1) Compliance with an enforcement notice, whether in respect of—
  - (a) the demolition 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 demolished 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 demolished 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 demolished 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 £100.

## **90 Certification of established use**

- (1) For the purposes of this Part of this Act, a use of land is established if—
  - (a) it was begun before the beginning of 1965 without planning permission in that behalf and has continued since the end of 1964 ; or
  - (b) 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
  - (c) 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 local planning authority for a certificate (in this Act referred to as an " established use certificate ") to that effect:

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 local 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 local 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 local planning authority for an established use certificate, then unless within such period as may be prescribed by a development

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order, or within such extended period as may at any time be agreed upon in writing between the applicant and the local 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 stated 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.

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

- (1) The Secretary of State may give directions requiring applications for established use certificates to be referred to him instead of being dealt with by local planning authorities; and, on any such application being referred to him in accordance with such directions, section 90(4) of this Act shall apply in relation to the Secretary of State as it applies in relation to the local planning authority in the case of an application determined by them.
- (2) Where an application is made to a local 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 an application referred to him under subsection (1) of this section or on 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 local 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.



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- (4) Before determining an application or appeal under this section the Secretary of State shall, if either the applicant or appellant (as the case may be) or the local 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 applicant or 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.