



# Planning and Compensation Act 1991

## 1991 CHAPTER 34

### PART I

#### TOWN AND COUNTRY PLANNING: ENGLAND AND WALES

##### *New enforcement powers*

#### **1 Planning contravention notices**

In the the Town and Country Planning Act 1990 (referred to in this Act as “the principal Act”) in Part VII (enforcement) before section 172 there is inserted—

##### *“Planning contravention notices*

#### **171C Power to require information about activities on land**

- (1) Where it appears to the local 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), the notice may require the person on whom it is served, so far as he is able—

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- (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 operations;
  - (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 186(5)(b).
- (6) Any requirement of a planning contravention notice shall be complied with by giving information in writing to the local 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.

#### **171D 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) 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) 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) 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) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

## 2 Enforcement of conditions

After section 187 of the principal Act there is inserted—

### *“Breach of condition*

#### **187A Enforcement of conditions**

- (1) This section applies where planning permission for carrying out any development of land has been granted subject to conditions.
- (2) The local 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) 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 local planning authority on the person responsible.

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- (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) 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) 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), that he no longer had control of the land.
- (12) A person who is guilty of an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (13) In this section—
- (a) “conditions” includes limitations; and
  - (b) references to carrying out any development include causing or permitting another to do so.”

### **3 Injunctions restraining breaches of planning control**

After section 187A of the principal Act (as inserted by section 2 of this Act) there is inserted—

#### *“Injunctions*

##### **187B Injunctions restraining breaches of planning control**

- (1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
- (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.
- (3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.
- (4) In this section “the court” means the High Court or the county court.”

*Other changes relating to enforcement*

**4 Time limits on enforcement action**

(1) At the beginning of Part VII of the principal Act (enforcement) there is inserted—

*“Introductory*

**171A 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 172); or
  - (b) the service of a breach of condition notice (defined in section 187A),
- constitutes taking enforcement action.
- (3) In this Part “planning permission” includes permission under Part III of the 1947 Act, of the 1962 Act or of the 1971 Act.

**171B 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 local planning authority have taken or purported to take enforcement action in respect of that breach.”

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- (2) If, in the case of any breach of planning control, the time for issuing an enforcement notice has expired, before the coming into force of this section, by virtue of section 172(4)(b) of the principal Act (as originally enacted), nothing in this section enables any enforcement action to be taken in respect of the breach.

## 5 Enforcement notices

- (1) For sections 172 and 173 of the principal Act (power to issue and contents of enforcement notice) there is substituted—

### “172 Issue of enforcement notice

- (1) The local 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.

### 173 Contents and effect of notice

- (1) An enforcement notice shall state—
- (a) the matters which appear to the local planning authority to constitute the breach of planning control; and
  - (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls.
- (2) A notice complies with subsection (1)(a) 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.

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- (5) An enforcement notice may, for example, require—
- (a) the alteration or removal of any buildings or works;
  - (b) the carrying out of any building or other operations;
  - (c) any activity on the land not to be carried on except to the extent specified in the notice; or
  - (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.
- (6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7), is as similar as possible to the demolished building.
- (7) A replacement building—
- (a) must comply with any requirement imposed by 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)).
- (8) An enforcement notice shall specify the date on which it is to take effect and, subject to sections 175(4) and 289(4A), 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 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 172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 174.
- (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 by virtue of section 73A 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

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- (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 by virtue of section 73A in respect of development consisting of that construction.

### **173A Variation and withdrawal of enforcement notices**

- (1) The local 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 173(9).
- (2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The local 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 local planning authority to issue a further enforcement notice.”

## **6 Appeal against enforcement notice**

- (1) For section 174(2) and (3) of the principal Act (grounds of appeal and notice) there is substituted—
- “(2) An appeal may be brought 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 172;
  - (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 173(9) falls short of what should reasonably be allowed.
- (3) An appeal under this section shall be made either—



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- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or
  - (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.”
- (2) In section 175(4) of that Act (enforcement notices of no effect pending final determination or withdrawal of appeals) after “shall” there is inserted “subject to any order under section 289(4A)”.
- (3) After section 177(5) of that Act (appellant deemed to have made an application for planning permission for the development to which the enforcement notice relates) there is inserted—
  - “(5A) Where—
    - (a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;
    - (b) any fee is payable under regulations made by virtue of section 303 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.”
- (4) In section 289 of that Act (appeals to High Court) after subsection (4) there is inserted—
  - “(4A) In proceedings brought by virtue of this section in respect of an enforcement notice, the High Court or, as the case may be, the Court of Appeal may, on such terms if any as the Court thinks fit (which may include terms requiring the local planning authority to give an undertaking as to damages or any other matter), order that the notice shall have effect, or have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.
  - (4B) Where proceedings are brought by virtue of this section in respect of any notice under section 207, the notice shall be of no effect pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.”
- (5) For subsection (6) of that section there is substituted—
  - “(5A) Rules of court may also provide for the High Court or, as the case may be, the Court of Appeal to give directions as to the exercise, until such proceedings in respect of an enforcement notice are finally concluded and any re-hearing and determination by the Secretary of State has taken place, of any other powers in respect of the matters to which such a notice relates.
  - (6) No proceedings in the High Court shall be brought by virtue of this section except with the leave of that Court and no appeal to the Court of Appeal shall be so brought except with the leave of the Court of Appeal or of the High Court.”

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(6) In section 303(3) of that Act (fees payable to Secretary of State in respect of deemed applications for planning permission) for “to him of a fee of the prescribed amount in respect of an” there is substituted—

- “(a) of fees of prescribed amounts to him and to the local planning authority in respect of any application for planning permission deemed to be made under section 177(5); and
- (b) of a fee of the prescribed amount to him in respect of any other”.

## 7 Execution of works required by enforcement notice

(1) For section 178(1) of the principal Act (power to execute works required by enforcement notice) there is substituted—

- “(1) Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may—
  - (a) enter the land and take the steps; and
  - (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.”

(2) For subsections (6) and (7) of that section there is substituted—

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

## 8 Offence where enforcement notice not complied with

For section 179 of the principal Act (penalties for non-compliance with enforcement notice) there is substituted—

### “179 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 an enforcement notice he shall be guilty of an offence.
- (3) In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
- (4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
- (5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.

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- (6) An offence under subsection (2) or (5) 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 188,
- it shall be a defence for him to show that he was not aware of the existence of the notice.
- (8) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000; and
  - (b) on conviction on indictment, to a fine.
- (9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”

## **9 Stop notices**

- (1) For section 183(1) to (5) of the principal Act (stop notices) there is substituted—
- “(1) Where the local planning authority consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, they may, when they serve the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a “stop notice”) prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.
  - (2) In this section and sections 184 and 186 “relevant activity” means any activity specified in the enforcement notice as an activity which the local planning authority require to cease and any activity carried out as part of that activity or associated with that activity.
  - (3) A stop notice may not be served where the enforcement notice has taken effect.
  - (4) A stop notice shall not prohibit the use of any building as a dwellinghouse.
  - (5) 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.
  - (5A) Subsection (5) 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.”
- (2) For section 184(3) of that Act (date on which stop notice takes effect) there is substituted—

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“(3) That date—

- (a) must not be earlier than three days after the date when the notice is served, unless the local 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.”

(3) For section 186(5) of that Act (matters relevant to compensation) there is substituted—

“(5) No compensation is payable under this section—

- (a) in respect of the prohibition in a stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or
- (b) in the case of a claimant who was required to provide information under section 171C or 330 or section 16 of the Local Government (Miscellaneous Provisions) Act 1976, in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the local planning authority when responding to the notice.”

(4) For section 187(1) and (2) of that Act (offences and penalties) there is substituted—

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

(1A) 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.

(1B) References in this section to contravening a stop notice include causing or permitting its contravention.

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding £20,000; and
- (b) on conviction on indictment, to a fine.

(2A) 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.”

## **10 Certificate of lawful use or development**

(1) For sections 191 to 194 of the principal Act (established use certificates) there is substituted—

*“Certificate of lawful use or development*

### **191 Certificate of lawfulness of existing use or development**

(1) If any person wishes to ascertain whether—

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- (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 local 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.
- (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 local 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 local 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 55(2)(f), identifying it by reference to that class);
  - (c) give the reasons for determining the use, operations or other matter to be lawful; and
  - (d) specify the date of the application for the certificate.
- (6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.
- (7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—
  - (a) section 3(3) of the Caravan Sites and Control of Development Act 1960;
  - (b) section 5(2) of the Control of Pollution Act 1974; and
  - (c) section 36(2)(a) of the Environmental Protection Act 1990.

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### **192 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 local planning authority specifying the land and describing the use or operations in question.
- (2) If, on an application under this section, the local 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 55(2)(f), 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) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed 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.

### **193 Certificates under sections 191 and 192: supplementary provisions**

- (1) An application for a certificate under section 191 or 192 shall be made in such manner as may be prescribed by a development order and shall include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the local planning authority.
- (2) Provision may be made by a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by local planning authorities.
- (3) In particular, such an order may provide for requiring the authority—
  - (a) to give to any applicant within such time as may be prescribed by 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 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—

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- (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 matters, for all of them or some one or more of them;
- and shall be in such form as may be prescribed by a development order.
- (5) A certificate under section 191 or 192 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 69 references to applications for planning permission shall include references to applications for certificates under section 191 or 192.
  - (7) A local 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 a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

#### **194 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 191 or 192—
    - (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) 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.
  - (3) Notwithstanding section 127 of the Magistrates' Courts Act 1980, a magistrates' court may try an information in respect of an offence under subsection (1) whenever laid.”
- (2) An order under section 84(2) of this Act may provide for established use certificates to have effect, in such circumstances and to such extent as may be specified in the order, for the purposes of section 191 of the principal Act as substituted by this section.

#### **11 Rights of entry for enforcement purposes**

- (1) At the end of Part VII of the principal Act there is inserted—

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*“Rights of entry for enforcement purposes*

**196A Rights to enter without warrant**

- (1) Any person duly authorised in writing by a local 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 local planning authority by this Part 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 local 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) unless twenty-four hours' notice of the intended entry has been given to the occupier of the building.

**196B Right to enter under warrant**

- (1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 196A(1) or (2); 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,
 the justice may issue a warrant authorising any person duly authorised in writing by a local 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) 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



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- (b) at a reasonable hour, unless the case is one of urgency.

### **196C 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 196A or 196B (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 chattels 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 118 shall apply in relation to compensation under subsection (3) as they apply in relation to compensation under Part IV.
- (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) In sections 196A and 196B and this section references to a local planning authority include, in relation to a building situated in Greater London, a reference to the Historic Buildings and Monuments Commission for England.”
- (2) In section 324(1)(c) of that Act (rights of entry) “Part VII” is omitted.
- (3) In section 325(6) of that Act (compensation in respect of damage caused in exercise of right of entry)—
- (a) for “land is damaged” there is substituted “damage is caused to land or chattels”; and
  - (b) for the words from “in respect of” to “in the land” there is substituted “may be recovered by any person suffering the damage”.

### *Control over development*

## **12 Planning obligations**

- (1) For section 106 of the principal Act (agreements regulating development or use of land) there is substituted—

### **“106 Planning obligations**

- (1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A and 106B as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—
- (a) restricting the development or use of the land in any specified way;
  - (b) requiring specified operations or activities to be carried out in, on, under or over the land;
  - (c) requiring the land to be used in any specified way; or
  - (d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically.
- (2) A planning obligation may—
- (a) be unconditional or subject to conditions;
  - (b) impose any restriction or requirement mentioned in subsection (1) (a) to (c) either indefinitely or for such period or periods as may be specified; and
  - (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.
- (3) Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection (9)(d)—
- (a) against the person entering into the obligation; and
  - (b) against any person deriving title from that person.
- (4) The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.
- (5) A restriction or requirement imposed under a planning obligation is enforceable by injunction.
- (6) Without prejudice to subsection (5), if there is a breach of a requirement in a planning obligation to carry out any operations in, on, under or over the land to which the obligation relates, the authority by whom the obligation is enforceable may—
- (a) enter the land and carry out the operations; and
  - (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.

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- (7) Before an authority exercise their power under subsection (6)(a) they shall give not less than twenty-one days' notice of their intention to do so to any person against whom the planning obligation is enforceable.
- (8) Any person who wilfully obstructs a person acting in the exercise of a power under subsection (6)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) A planning obligation may not be entered into except by an instrument executed as a deed which—
  - (a) states that the obligation is a planning obligation for the purposes of this section;
  - (b) identifies the land in which the person entering into the obligation is interested;
  - (c) identifies the person entering into the obligation and states what his interest in the land is; and
  - (d) identifies the local planning authority by whom the obligation is enforceable.
- (10) A copy of any such instrument shall be given to the authority so identified.
- (11) A planning obligation shall be a local land charge and for the purposes of the Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.
- (12) Regulations may provide for the charging on the land of—
  - (a) any sum or sums required to be paid under a planning obligation; and
  - (b) any expenses recoverable by a local planning authority under subsection (6)(b),and this section and sections 106A and 106B shall have effect subject to any such regulations.
- (13) In this section “specified” means specified in the instrument by which the planning obligation is entered into and in this section and section 106A “land” has the same meaning as in the Local Land Charges Act 1975.

### **106A Modification and discharge of planning obligations**

- (1) A planning obligation may not be modified or discharged except—
  - (a) by agreement between the authority by whom the obligation is enforceable and the person or persons against whom the obligation is enforceable; or
  - (b) in accordance with this section and section 106B.
- (2) An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.
- (3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the local planning authority by whom the obligation is enforceable for the obligation—
  - (a) to have effect subject to such modifications as may be specified in the application; or

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- (b) to be discharged.
- (4) In subsection (3) “the relevant period” means—
  - (a) such period as may be prescribed; or
  - (b) if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into.
- (5) An application under subsection (3) for the modification of a planning obligation may not specify a modification imposing an obligation on any other person against whom the obligation is enforceable.
- (6) Where an application is made to an authority under subsection (3), the authority may determine—
  - (a) that the planning obligation shall continue to have effect without modification;
  - (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
  - (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
- (7) The authority shall give notice of their determination to the applicant within such period as may be prescribed.
- (8) Where an authority determine that a planning obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.
- (9) Regulations may make provision with respect to—
  - (a) the form and content of applications under subsection (3);
  - (b) the publication of notices of such applications;
  - (c) the procedures for considering any representations made with respect to such applications; and
  - (d) the notices to be given to applicants of determinations under subsection (6).
- (10) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to a planning obligation.

### **106B Appeals**

- (1) Where a local planning authority—
  - (a) fail to give notice as mentioned in section 106A(7); or
  - (b) determine that a planning obligation shall continue to have effect without modification,the applicant may appeal to the Secretary of State.
- (2) For the purposes of an appeal under subsection (1)(a), it shall be assumed that the authority have determined that the planning obligation shall continue to have effect without modification.

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- (3) An appeal under this section shall be made by notice served within such period and in such manner as may be prescribed.
  - (4) Subsections (6) to (9) of section 106A apply in relation to appeals to the Secretary of State under this section as they apply in relation to applications to authorities under that section.
  - (5) Before determining the appeal the Secretary of State shall, if either the applicant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
  - (6) The determination of an appeal by the Secretary of State under this section shall be final.
  - (7) Schedule 6 applies to appeals under this section.”
- (2) In section 296(2) of that Act (exercise of powers in relation to Crown land) after “authority-” there is inserted—
- “(aa) in relation to land which for the time being is Crown land—
    - (i) a planning obligation shall not be enforced by injunction; and
    - (ii) the power to enter land conferred by section 106(6) shall not be exercised;”.
- (3) After section 299 of that Act there is inserted—

**“299A Crown planning obligations**

- (1) The appropriate authority in relation to any Crown interest or Duchy interest in land in the area of a local planning authority may enter into an obligation falling within any of paragraphs (a) to (d) of section 106(1) (in this section referred to as a “planning obligation”) enforceable to the extent mentioned in subsection (3).
- (2) A planning obligation may not be entered into except by an instrument executed as a deed which—
  - (a) states that the obligation is a planning obligation for the purposes of this section;
  - (b) identifies the land in relation to which the obligation is entered into;
  - (c) identifies the appropriate authority who are entering into the obligation and states what the Crown or Duchy interest in the land is; and
  - (d) identifies the local planning authority by whom the obligation is enforceable.
- (3) A planning obligation entered into under this section is enforceable—
  - (a) against any person with a private interest deriving from the Crown or Duchy interest stated in accordance with subsection (2)(c);
  - (b) by the authority identified in accordance with subsection (2)(d).
- (4) Subject to subsection (5), subsections (2), (4) to (8) and (10) to (13) of section 106 and sections 106A and 106B apply to a planning obligation

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entered into under this section as they apply to a planning obligation entered into under that section.

- (5) The consent of the appropriate authority must be obtained to—
- (a) the enforcement by injunction of a planning obligation against a person in respect of land which is Crown land; and
  - (b) the exercise, in relation to Crown land, of the power to enter land conferred by section 106(6) (as applied by subsection (4)).”

### **13 Demolition of buildings**

- (1) In section 55 of the principal Act (meaning of “development”) after subsection (1) there is inserted—

“(1A) For the purposes of this Act “building operations” includes—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.”

- (2) In subsection (2) of that section after paragraph (f) there is inserted—

“(g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.”

- (3) After section 108(3) of that Act (compensation for refusal or conditional grant of planning permission formerly granted by development order) there is inserted—

“(4) Regulations made by virtue of this subsection may provide that subsection (1) shall not apply where planning permission granted by a development order for demolition of buildings or any description of buildings is withdrawn by the issue of directions under powers conferred by the order.”

### **14 Fish farming**

- (1) After section 55(4) of the principal Act (meaning of “development”) there is inserted—

“(4A) Where the placing or assembly of any tank in any part of any inland waters for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the tank resulted from carrying out engineering operations over that land; and in this subsection—

“fish farming” means the breeding, rearing or keeping of fish or shellfish (which includes any kind of crustacean and mollusc);

“inland waters” means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and

“tank” includes any cage and any other structure for use in fish farming.”

- (2) This section does not apply to the placing or assembly of any structure before this section comes into force.

## **15 Assessment of environmental effects**

After section 71 of the principal Act there is inserted—

### **“71A Assessment of environmental effects**

- (1) The Secretary of State may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.
- (2) The regulations—
  - (a) may make the same provision as, or provision similar or corresponding to, any provision made, for the purposes of any Community obligation of the United Kingdom about the assessment of the likely effects of development on the environment, under section 2(2) of the European Communities Act 1972; and
  - (b) may make different provision for different classes of development.
- (3) Where a draft of regulations made in exercise both of the power conferred by this section and the power conferred by section 2(2) of the European Communities Act 1972 is approved by resolution of each House of Parliament, section 333(3) shall not apply.”

## **16 Notice etc. of applications for planning permission**

- (1) For sections 65 to 68 of the principal Act (publicity for applications for planning permission) there is substituted—

### **“65 Notice etc. of applications for planning permission**

- (1) A development order may make provision requiring—
  - (a) notice to be given of any application for planning permission, and
  - (b) any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used,and provide for publicising such applications and for the form, content and service of such notices and certificates.
- (2) Provision shall be made by a development order for the purpose of securing that, in the case of any application for planning permission, any person (other than the applicant) who on such date as may be prescribed by the order is an owner of the land to which the application relates, or a tenant of any agricultural holding any part of which is comprised in that land, is given notice of the application in such manner as may be required by the order.
- (3) A development order may require an applicant for planning permission to certify, in such form as may be prescribed by the order, or to provide evidence, that any requirements of the order have been satisfied.
- (4) A development order making any provision by virtue of this section may make different provision for different cases or different classes of development.

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- (5) A local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of this section have been satisfied.
- (6) If any person—
- (a) issues a certificate which purports to comply with any requirement imposed by virtue of this section and contains a statement which he knows to be false or misleading in a material particular; or
  - (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,
- he shall be guilty of an offence.
- (7) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) In this section—
- “agricultural holding” has the same meaning as in the Agricultural Holdings Act 1986; and
- “owner” in relation to any land means any person who—
- (a) is the estate owner in respect of the fee simple;
  - (b) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired; or
  - (c) in the case of such applications as may be prescribed by a development order, is entitled to an interest in any mineral so prescribed,
- and the reference to the interests in the land to which an application for planning permission relates includes any interest in any mineral in, on or under the land.
- (9) Notwithstanding section 127 of the Magistrates' Courts Act 1980, a magistrates' court may try an information in respect of an offence under this section whenever laid.”
- (2) For section 71(1) and (2) there is substituted—
- “(1) A development order may provide that a local planning authority shall not determine an application for planning permission before the end of such period as may be prescribed.
- (2) A development order may require a local planning authority—
- (a) to take into account in determining such an application such representations, made within such period, as may be prescribed; and
  - (b) to give to any person whose representations have been taken into account such notice as may be prescribed of their decision.
- (2A) A development order making any provision by virtue of this section may make different provision for different cases or different classes of development.”

## 17 Power of local planning authority to decline to determine applications

- (1) After section 70 of the principal Act there is inserted—



### **“70A Power of local planning authority to decline to determine applications**

- (1) A local planning authority may decline to determine an application for planning permission for the development of any land if—
    - (a) within the period of two years ending with the date on which the application is received, the Secretary of State has refused a similar application referred to him under section 77 or has dismissed an appeal against the refusal of a similar application; and
    - (b) in the opinion of the authority there has been no significant change since the refusal or, as the case may be, dismissal mentioned in paragraph (a) in the development plan, so far as material to the application, or in any other material considerations.
  - (2) For the purposes of this section an application for planning permission for the development of any land shall only be taken to be similar to a later application if the development and the land to which the applications relate are in the opinion of the local planning authority the same or substantially the same.
  - (3) The reference in subsection (1)(a) to an appeal against the refusal of an application includes an appeal under section 78(2) in respect of an application.”
- (2) In section 78(2) of that Act (right to appeal to Secretary of State where local planning authority have failed to take a decision on an application) for “neither” there is substituted “done none of the following” and for “nor” there is substituted—
- “(aa) given notice to the applicant that they have exercised their power under section 70A to decline to determine the application;”.

## **18 Dismissal of appeals in cases of undue delay**

After section 79(6) of the principal Act (determination of appeals) there is inserted—

- “(6A) If at any time before or during the determination of such an appeal it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may—
- (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
  - (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.”

## **19 Receipt and determination of applications**

- (1) After section 74(1) of the principal Act (provisions that may be made by a development order for dealing with applications) there is inserted—

“(1A) Provision may be made by a development order—

  - (a) for determining the persons to whom applications under this Act are to be sent; and
  - (b) for requiring persons to whom such applications are sent to send copies to other interested persons.”

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- (2) In Schedule 1 to that Act (distribution of functions)—
- (a) in paragraph 3(2) (functions which appear to the district planning authority to relate to a county matter to be exercised by the county authority) for “appears to the district planning authority to relate” there is substituted “relates”,
  - (b) paragraphs 3(3) to (6) and 4(1) (all applications to be made to district planning authority) are omitted.

*Controls over particular matters*

## 20 Land of interested planning authorities and development by them

For section 316 of the principal Act (application of certain provisions to local planning authorities) there is substituted—

**“316 Land of interested planning authorities and development by them**

- (1) The provisions of Parts III, VII and VIII of this Act shall apply in relation to—
  - (a) land of interested planning authorities; and
  - (b) the development of any land by interested planning authorities or by such authorities jointly with any other persons,
 subject to regulations made by virtue of this section.
- (2) The regulations may, in relation to such land or such development—
  - (a) provide for any of those provisions to apply subject to prescribed exceptions or modifications or not to apply;
  - (b) make new provision as to any matter dealt with in any of those provisions;
  - (c) make different provision in relation to different classes of land or development.
- (3) Without prejudice to subsection (2), the regulations may provide—
  - (a) subject to subsection (5), for applications for planning permission to develop such land, or for such development, to be determined by the authority concerned, by another interested planning authority or by the Secretary of State; and
  - (b) for the procedure to be followed on such applications,
 and, in the case of applications falling to be determined by an interested planning authority, they may regulate the authority’s arrangements for the discharge of their functions, notwithstanding anything in section 101 of the Local Government Act 1972.
- (4) The regulations shall—
  - (a) provide for section 71(3), and any provision made by virtue of section 65 or 71 by a development order, to apply to applications for planning permission to develop such land, or for such development, subject to prescribed exceptions or modifications, or
  - (b) make corresponding provision.
- (5) In the case of any application for planning permission to develop land of an interested planning authority where—

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- (a) the authority do not intend to develop the land themselves or jointly with any other person; and
- (b) if it were not such land, the application would fall to be determined by another body,

the regulations shall provide for the application to be determined by that other body, unless the application is referred to the Secretary of State under section 77.

- (6) In this section “interested planning authority”, in relation to any land, means any body which exercises any of the functions of a local planning authority in relation to that land; and for the purposes of this section land is land of an authority if the authority have any interest in it.
- (7) This section applies to any consent required in respect of any land as it applies to planning permission to develop land.
- (8) Subsection (1) does not apply to sections 76, 90(2) and (5) and 223.”

## **21 Mines and waste**

Schedule 1 to this Act (which, among other things, provides for aftercare where permission is given to deposit refuse or waste materials and provides for altering the provisions relating to compensation for restrictions on mineral working and depositing mineral waste) shall have effect.

## **22 Old mining permissions**

- (1) In this section and Schedule 2 to this Act, “old mining permission” means any planning permission for development—
  - (a) consisting of the winning and working of minerals; or
  - (b) involving the depositing of mineral waste,which was deemed to be granted under Part III of the Town and Country Planning Act 1947 by virtue of section 77 of that Act (development authorised under interim development orders after 21st July 1943).
- (2) An old mining permission shall, if an application under that Schedule to determine the conditions to which the permission is to be subject is finally determined, have effect as from the final determination as if granted on the terms required to be registered.
- (3) If no such development has, at any time in the period of two years ending with 1st May 1991, been carried out to any substantial extent anywhere in, on or under the land to which an old mining permission relates, that permission shall not authorise any such development to be carried out at any time after the coming into force of this section unless—
  - (a) the permission has effect in accordance with subsection (2) above; and
  - (b) the development is carried out after such an application is finally determined.
- (4) An old mining permission shall—
  - (a) if no application for the registration of the permission is made under that Schedule, cease to have effect on the day following the last date on which such an application may be made; and
  - (b) if such an application is refused, cease to have effect on the day following the date on which the application is finally determined.

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- (5) An old mining permission shall, if—
- (a) such an application is granted; but
  - (b) an application under that Schedule to determine the conditions to which the permission is to be subject is required to be served before the end of any period and is not so served,
- cease to have effect on the day following the last date on which the application to determine those conditions may be served.
- (6) Subject to subsection (3) above, this section—
- (a) shall not affect any development carried out under an old mining permission before an application under that Schedule to determine the conditions to which the permission is to be subject is finally determined or, as the case may be, the date on which the permission ceases to have effect; and
  - (b) shall not affect any order made or having effect as if made under section 102 of or Schedule 9 to the principal Act (discontinuance, etc. orders).
- (7) This section and that Schedule, and the principal Act, shall have effect as if the section and Schedule were included in Part III of that Act.

## 23 Trees

- (1) In section 207 of the principal Act (enforcement of duties as to replacement of trees) for subsections (3) and (4) there is substituted—
- “(3) A notice under subsection (1) shall specify a period at the end of which it is to take effect.
- (4) The specified period shall be a period of not less than twenty-eight days beginning with the date of service of the notice.”
- (2) In section 208 (appeals against section 207 notices) in subsection (1) after paragraph (a) there is inserted—
- “(aa) that in all the circumstances of the case the duty imposed by section 206(1) should be dispensed with in relation to any tree;”.
- (3) For subsections (2) and (3) of that section there is substituted—
- “(2) An appeal under subsection (1) shall be made either—
- (a) by giving written notice of the appeal to the Secretary of State before the end of the period specified in accordance with section 207(3); 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 the end of that period.”
- (4) For subsections (7) and (8) of that section there is substituted—
- “(7) On such an appeal the Secretary of State may—
- (a) correct any defect, error or misdescription in the notice; or
  - (b) vary any of its requirements,
- if he is satisfied that the correction or variation will not cause injustice to the appellants or the local planning authority.

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- (8) Where the Secretary of State determines to allow the appeal, he may quash the notice.
- (8A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.”
- (5) For section 209(6) there is substituted—
- “(6) Any person who wilfully obstructs a person acting in the exercise of the power under subsection (1)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”
- (6) In section 210 (penalties for non-compliance with tree preservation order)—
- (a) in subsection (2) for paragraph (a) there is substituted—
- “(a) on summary conviction to a fine not exceeding £20,000;”
- (b) in subsection (3) “on indictment” is omitted; and
- (c) subsection (5) is omitted.
- (7) After section 214 there is inserted—

### *“Injunctions*

#### **214A Injunctions**

- (1) Where a local planning authority consider it necessary or expedient for an actual or apprehended offence under section 210 or 211 to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Chapter.
- (2) Subsections (2) to (4) of section 187B apply to an application under this section as they apply to an application under that section.

### *Rights of entry*

#### **214B Rights to enter without warrant**

- (1) Any person duly authorised in writing by a local 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 210 or 211 has been committed on the land; or
- (c) determining whether a notice under section 207 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.

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- (3) Any person who is duly authorised in writing by a local planning authority may enter any land in connection with the exercise of any functions conferred on the authority by or under this Chapter.
- (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 local planning authority under this Chapter (other than section 204).
- (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 this Chapter.
- (6) The Secretary of State shall not authorise any person as mentioned in subsection (2) without consulting the local 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 twenty-four 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.

#### **214C Right to enter under warrant**

- (1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 214B(1) or (2); 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,
 the justice may issue a warrant authorising any person duly authorised in writing by a local 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) 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.

### **214D Rights of entry: supplementary provisions**

- (1) Any power conferred under or by virtue of section 214B or 214C 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 chattels 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.
  - (5) The provisions of section 118 shall apply in relation to compensation under subsection (4) as they apply in relation to compensation under Part IV.”
- (8) In section 324 (rights of entry)—
- (a) in subsection (1), in paragraph (b) “198 to 200” is omitted;
  - (b) in paragraph (c) of that subsection for “or Part VIII” there is inserted “or Chapter 2 or 3 of Part VIII”;
  - (c) subsection (2) is omitted; and
  - (d) in subsection (5) for “Part VIII (other than section 204)” there is substituted “Chapter 2 or 3 of Part VIII”.

## **24 Advertisements**

In section 336(1) of the principal Act (interpretation) in the definition of “advertisement”—

- (a) after “notice” there is inserted “awning, blind”;
- (b) after “used,” there is inserted “or designed”; and
- (c) after “use” there is inserted “and anything else principally used, or designed or adapted principally for use,”.

## **25 Listed buildings, conservation areas and hazardous substances**

Schedule 3 to this Act (which makes amendments in relation to the enforcement of the enactments about listed buildings, conservation areas and hazardous substances) shall have effect.

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

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*Development plans and simplified planning zones*

**26 Status of development plans**

At the end of Part II of the principal Act there is inserted—

**“CHAPTER III**

GENERAL

**54A Status of development plans**

Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise”.

**27 Streamlining of development plan system**

Schedule 4 to this Act (which provides for streamlining the development plan system) shall have effect.

**28 Simplified planning zones**

Schedule 5 to this Act which—

- (a) modifies the procedure for making simplified planning zones, and
- (b) makes minor and consequential amendments of Schedule 7 to the principal Act,

shall have effect.

*Miscellaneous*

**29 Functions of Historic Buildings and Monuments Commission**

- (1) In section 33 of the National Heritage Act 1983 (general functions of Commission) after subsection (2) there is inserted—

“(2A) In relation to England, the Commission may—

- (a) prosecute any offence under Part I of the Ancient Monuments and Archaeological Areas Act 1979 or under the Planning (Listed Buildings and Conservation Areas) Act 1990, or
- (b) institute in their own name proceedings for an injunction to restrain any contravention of any provision of that Part or of that Act of 1990.”

- (2) In section 89 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (application of general provisions of principal Act, including power under section 330 to require information) after subsection (2) there is inserted—

“(3) In the application of section 330 by virtue of this section, references to a local authority include the Commission.”



### **30 Orders as to costs where inquiry or hearing does not take place**

(1) After section 322 of the principal Act there is inserted—

#### **“322A Orders as to costs: supplementary**

(1) This section applies where—

(a) for the purposes of any proceedings under this Act—

(i) the Secretary of State is required, before a decision is reached, to give any person an opportunity, or ask any person whether he wishes, to appear before and be heard by a person appointed by him; and

(ii) arrangements are made for a local inquiry or hearing to be held;

(b) the inquiry or hearing does not take place; and

(c) if it had taken place, the Secretary of State or a person appointed by him would have had power to make an order under section 250(5) of the Local Government Act 1972 requiring any party to pay any costs of any other party.

(2) Where this section applies the power to make such an order may be exercised, in relation to costs incurred for the purposes of the inquiry or hearing, as if it had taken place.”

(2) In section 89(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and section 37(2) of the Planning (Hazardous Substances) Act 1990 (application of provisions of the principal Act) before “323” there is inserted “322A (orders as to costs: supplementary)”.

### **31 Planning compensation repeals**

(1) Part V of the principal Act (compensation for restrictions on new development where land has an unexpended balance of development value) and Schedule 12 to that Act (unexpended balance of development value) are repealed.

(2) Section 114 of that Act (compensation for planning decisions restricting development other than new development) is repealed.

(3) Section 27 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (compensation for refusal of consent to alteration, etc. of listed building) is repealed.

(4) Schedule 6 to this Act (compensation repeals: minor and consequential amendments) shall have effect.

(5) Subsection (1) above shall have effect in relation to any compensation under Part V of the principal Act unless a claim for the compensation has been made in accordance with section 127 of that Act before the repeal of that section comes into force.

(6) Any amount recoverable under section 133 of that Act which has not been paid, including any interest on any such amount, shall cease to be recoverable and any mortgage, covenant or other obligation by which the payment of any such amount, or interest on it, is secured is discharged.

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- (7) The repeal of section 114 of that Act shall have effect, or be treated as having had effect, where the application for planning permission was made on or after 16th November 1990.
- (8) The repeal of section 27 of the Planning (Listed Buildings and Conservation Areas) Act 1990 shall have effect, or be treated as having had effect, where the application for listed building consent was made on or after 16th November 1990.

### **32 Planning: minor and consequential amendments**

Schedule 7 to this Act (which makes minor and consequential amendments of the enactments relating to planning) shall have effect.

## **PART II**

### TOWN AND COUNTRY PLANNING - SCOTLAND

#### *New enforcement powers*

### **33 Planning contravention notices**

In the Town and Country Planning (Scotland) Act 1972 (referred to in this Act as “the 1972 Act”) in Part V (enforcement of controls under Parts III and IV) before section 84 there is inserted—

#### *“Planning contravention notices*

#### **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;

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- (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.
- (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.

### **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—

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- (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.”

### 34 Enforcement of conditions

Before section 87A of the 1972 Act there is inserted—

*“Breach of condition*

#### **87AA 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

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

### **35 Interdicts relating to breaches of planning control**

After section 260 of the 1972 Act there is inserted—

*“Interdicts restraining breaches of planning control*

#### **260A Interdicts restraining breaches of planning control**

- (1) Whether or not they have exercised or propose to exercise any of their other powers under this Act, a planning authority may seek to restrain or prevent any actual or apprehended breach of any of the controls provided for by or under this Act by means of an application for interdict.
- (2) On an application under subsection (1) of this section the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the breach.
- (3) In this section “the court” means the Court of Session or the sheriff.”

*Other changes relating to enforcement*

### **36 Time limits on enforcement action**

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

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*“Introductory*

**83A Expressions used in connection with enforcement**

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

**83B Time limits**

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

### **37 Enforcement notices**

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

#### **“84 Issue of enforcement notice**

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

#### **84AA Contents and effect of notice**

- (1) An enforcement notice shall state—
  - (a) the matters which appear to the planning authority to constitute the breach of planning control; and
  - (b) the paragraph of section 83A(1) of this Act within which, in the opinion of the authority, the breach falls.
- (2) A notice complies with subsection (1)(a) of this section if it enables any person on whom a copy of it is served to know what those matters are.
- (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
- (4) Those purposes are—
  - (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
  - (b) remedying any injury to amenity which has been caused by the breach.
- (5) An enforcement notice may, for example, require—
  - (a) the alteration or removal of any buildings or works;
  - (b) the carrying out of any building or other operations;
  - (c) any activity on the land not to be carried on except to the extent specified in the notice; or

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- (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.



### **84AB Variation and withdrawal of enforcement notices**

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

## **38 Appeal against enforcement notice**

- (1) For section 85(1) and (2) of the 1972 Act (appeal against enforcement notice) there is substituted—
  - “(1) A person on whom an enforcement notice is served, or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds—
    - (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
    - (b) that those matters have not occurred;
    - (c) that those matters (if they occurred) do not constitute a breach of planning control;
    - (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
    - (e) that copies of the enforcement notice were not served as required by section 84 of this Act;
    - (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
    - (g) that any period specified in the notice in accordance with section 84AA(9) of this Act falls short of what should reasonably be allowed.
- (2) An appeal under this section shall be made either—

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- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or
  - (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.”
- (2) After section 85(7) of that Act (appellant deemed to have made an application for planning permission for the development to which the enforcement notice relates) there is inserted—

“(7A) Where—

- (a) the statement under subsection (2A) of section 85 of this Act specifies the ground mentioned in subsection (1)(a) of that section;
  - (b) any fee is payable under regulations made by virtue of section 87 (fees for planning applications etc.) of the Local Government, Planning and Land Act 1980 in respect of the application deemed to be made by virtue of the appeal; and
  - (c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,
- then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.”

### **39 Execution of works required by enforcement notice**

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

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

### **40 Offence where enforcement notice not complied with**

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

#### **“86 Offence where enforcement notice not complied with**

- (1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
- (2) Where the owner of the land is in breach of the notice he shall be guilty of an offence.
- (3) In proceedings against any person for an offence under subsection (2) of this section, it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
- (4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is

required by the notice to cease or cause or permit such an activity to be carried on.

- (5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) of this section shall be guilty of an offence.
- (6) An offence under subsection (2) or (5) of this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.
- (7) Where—
- (a) a person charged with an offence under this section has not been served with a copy of the enforcement notice; and
  - (b) the notice is not contained in the appropriate register kept under section 87A of this Act,
- it shall be a defence for him to show that he was not aware of the existence of the notice.
- (8) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000; and
  - (b) on conviction on indictment, to a fine.
- (9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”

#### **41 Stop notices**

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

- “(1) Where the planning authority consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, they may, when they serve the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a “stop notice”) prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.
- (2) In this section, “relevant activity” means any activity specified in the enforcement notice as an activity which the planning authority require to cease and any activity carried out as part of that activity or associated with that activity.
- (2A) A stop notice may not be served where the enforcement notice has taken effect.
- (2B) A stop notice shall not prohibit the use of any building as a dwellinghouse.
- (2C) A stop notice shall not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than four years ending with the service of the notice; and for the purposes of this subsection no account is to be taken of any period during which the activity was authorised by planning permission.
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- (2D) Subsection (2C) of this section does not prevent a stop notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.
- (3) A stop notice shall specify the date when it is to come into effect, and that date—
- (a) must not be earlier than three days after the date when the notice is served, unless the planning authority consider that there are special reasons for specifying an earlier date and a statement of those reasons is served with the stop notice; and
  - (b) must not be later than twenty-eight days from the date when the notice is first served on any person.”
- (2) For section 87(8) of that Act there is substituted—
- “(8) If any person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on him he shall be guilty of an offence.
- (8A) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.
- (8B) It shall be a defence in any proceedings under subsection (8) of this section that the stop notice was not served on the accused and that he had no reasonable cause to believe that the activity was prohibited by the stop notice.
- (8C) References in this section to contravening a stop notice include causing or permitting its contravention.
- (8D) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000; and
  - (b) on conviction on indictment, to a fine.
- (8E) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”
- (3) For section 166(6) of that Act (compensation for loss due to stop notice) there is substituted—
- “(6) No compensation is payable under this section—
- (a) in respect of the prohibition in a stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or
  - (b) in the case of a claimant who was required to provide information under section 83C, 83D or 270 of this Act in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the planning authority when responding to the notice.”

## **42 Certificate of lawful use or development**

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

### *“Certificate of lawful use or development*

#### **90 Certificate of lawfulness of existing use or development**

- (1) If any person wishes to ascertain whether—
- (a) any existing use of buildings or other land is lawful;
  - (b) any operations which have been carried out in, on, over or under land are lawful; or
  - (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,
- he may make an application for the purpose to the planning authority specifying the land and describing the use, operations or other matter.
- (2) For the purposes of this Act, uses and operations are lawful at any time if—
- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
  - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
- (3) For the purposes of this Act, any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
- (a) the time for taking enforcement action in respect of the failure has then expired; and
  - (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.
- (4) If, on an application under this section, the planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- (5) A certificate under this section shall—
- (a) specify the land to which it relates;
  - (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 19(2)(f) of this Act, identifying it by reference to that class);
  - (c) give the reasons for determining the use, operations or other thing to be lawful; and
  - (d) specify the date of the application for the certificate.

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- (6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.
- (7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—
  - (a) section 3(3) of the Caravan Sites and Control of Development Act 1960;
  - (b) section 5(2) of the Control of Pollution Act 1974; and
  - (c) section 36(2)(a) of the Environmental Protection Act 1990.

### **90A Certificate of lawfulness of proposed use or development**

- (1) If any person wishes to ascertain whether—
  - (a) any proposed use of buildings or other land; or
  - (b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the planning authority specifying the land and describing the use or operations in question.
- (2) If, on an application under this section, the planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- (3) A certificate under this section shall—
  - (a) specify the land to which it relates;
  - (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 19(2)(f) of this Act, identifying it by reference to that class);
  - (c) give the reasons for determining the use or operations to be lawful; and
  - (d) specify the date of the application for the certificate.
- (4) There shall be an irrefutable presumption as to the lawfulness of any use or operations for which a certificate is in force under this section unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

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

- (1) An application for a certificate under section 90 or 90A of this Act shall be made in such manner as may be prescribed by regulations under this Act or a development order and shall include such particulars, and be verified by such evidence, as may be required by such regulations or such an order or by any directions given under such regulations or such an order or by the planning authority.
- (2) Provision may be made by such regulations or a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by planning authorities.

- (3) In particular, such regulations or such an order may provide for requiring the authority—
  - (a) to give to any applicant within such time as may be prescribed by the regulations or the order such notice as may be so prescribed as to the manner in which his application has been dealt with; and
  - (b) to give to the Secretary of State and to such other persons as may be prescribed by or under the regulations or the order, such information as may be so prescribed with respect to such applications made to the authority, including information as to the manner in which any application has been dealt with.
- (4) A certificate under either of those sections may be issued—
  - (a) for the whole or part of the land specified in the application; and
  - (b) where the application specifies two or more uses, operations or other things, for all of them or some one or more of them,and shall be in such form as may be prescribed by such regulations or a development order.
- (5) A certificate under section 90 or 90A shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.
- (6) In section 31 of this Act references to applications for planning permission shall include references to applications for certificates under section 90 or 90A of this Act.
- (7) A planning authority may revoke a certificate under either of those sections if, on the application for the certificate—
  - (a) a statement was made or document used which was false in a material particular; or
  - (b) any material information was withheld.
- (8) Provision may be made by such regulations or a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

### **90C Offences**

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

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.”
- (2) An order under section 68(2) of this Act may provide for established use certificates to have effect, in such circumstances and to such extent as may be specified in the order, for the purposes of section 90 of the 1972 Act as substituted by this section.

### **43 Rights of entry**

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

*“Rights of entry for enforcement purposes*

#### **91A Right to enter without warrant**

- (1) Any person duly authorised in writing by a planning authority may at any reasonable hour enter any land—
  - (a) to ascertain whether there is or has been any breach of planning control on the land or any other land;
  - (b) to determine whether any of the powers conferred on a planning authority by sections 84 to 91 or 100 of this Act should be exercised in relation to the land or any other land;
  - (c) to determine how any such power should be exercised in relation to the land or any other land;
  - (d) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land,
 if there are reasonable grounds for entering for the purpose in question.
- (2) Any person duly authorised in writing by the Secretary of State may at any reasonable hour enter any land to determine whether an enforcement notice should be issued in relation to the land or any other land, if there are reasonable grounds for entering for that purpose.
- (3) The Secretary of State shall not so authorise any person without consulting the planning authority.
- (4) Admission to any building used as a dwellinghouse shall not be demanded as of right by virtue of subsection (1) or (2) of this section unless 24 hours' notice of the intended entry has been given to the occupier of the building.

#### **91B Right to enter under warrant**

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



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he may issue a warrant authorising any person duly authorised in writing to enter the land.

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

### **91C Rights of entry: supplementary provisions**

- (1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 91A or 91B of this Act (referred to in this section as “a right of entry”)—
    - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
    - (b) may take with him such other persons as may be necessary; and
    - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
  - (2) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
  - (3) If any damage is caused to land or moveable property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State.
  - (4) The provisions of section 168 of this Act shall apply in relation to compensation under subsection (3) of this section as they apply in relation to compensation under Part VIII of this Act.
  - (5) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.
  - (6) Subsection (4) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.
  - (7) A person who is guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.”
- (2) In section 266(4) of the 1972 Act (compensation for damage caused in exercise of right of entry)—
- (a) for “land is damaged” there is substituted “damage is caused to land or moveable property”; and
  - (b) for the words from “in respect of” to “in the land” there is substituted “may be recovered by any person suffering the damage”.

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### *Control over development*

#### **44 Demolition of buildings**

- (1) In section 19 of the 1972 Act (meaning of “development”) after subsection (1) there is inserted—

“(1A) For the purposes of this Act “building operations” includes—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.”

- (2) In subsection (2) of that section after paragraph (f) there is inserted—

“(g) the demolition of any description of building specified in a direction given by the Secretary of State to planning authorities generally or to a particular planning authority.”

- (3) After section 154(3) of the 1972 Act (compensation for refusal or conditional grant of planning permission formerly granted by development order) there is inserted—

“(3A) Regulations made by virtue of this subsection may provide that subsections (1) and (2) of this section shall not apply where planning permission granted by a development order for demolition of buildings or any description of buildings is withdrawn by the issue of directions under powers conferred by the order.”

#### **45 Fish farming**

- (1) After subsection (3A) of section 19 (meaning of “development”) of the 1972 Act there is inserted—

“(3B) Where the placing or assembly of any tank in any part of any inland waters for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the tank resulted from carrying out engineering operations over that land; and in this subsection—

“fish farming” means the breeding, rearing or keeping of fish or shellfish (which includes any kind of crustacean or mollusc);

“inland waters” means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and

“tank” includes any cage and any other structure for use in fish farming.”

- (2) This section does not apply to the placing or assembly of any structure before this section comes into force.

#### **46 Notice etc. of applications to owners and agricultural tenants**

- (1) For section 24 of the 1972 Act (notification of applications for planning permission) there is substituted—

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### **“24 Notice etc. of applications to owners and agricultural tenants**

- (1) A development order or regulations under this Act shall make provision—
- (a) as to the notice of any application for planning permission to be given to any person (other than the applicant) who at the beginning of the period of twenty-one days ending with the date of the application was—
    - (i) the owner of, or
    - (ii) the tenant of any agricultural holding any part of which was comprised in,any of the land to which the application relates; and
  - (b) requiring any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used,
- and provide for publicising such applications and for the form, content and service of such notices and certificates.
- (2) A development order or such regulations may require an applicant for planning permission to certify, in such form as may be prescribed by the order or the regulations, or to provide evidence, that any requirements of the order or the regulations have been satisfied.
- (3) A development order or such regulations making any provision by virtue of this section may make different provision for different cases or different classes of development.
- (4) A planning authority shall not entertain any application for planning permission unless any requirements imposed by virtue of this section have been satisfied.
- (5) If any person—
- (a) issues a certificate which purports to comply with any requirement imposed by virtue of this section and contains a statement which he knows to be false or misleading in a material particular; or
  - (b) recklessly issues a certificate which purports to comply with any such requirement and contains 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 this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) In this section—
- “agricultural holding” has the same meaning as in the Agricultural Holdings (Scotland) Act 1991; and
  - “owner” in relation to any land means any person who—
    - (a) under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired period of which is not less than seven years; or

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(b) in the case of such applications as may be prescribed by a development order or by regulations, is entitled to an interest in any mineral so prescribed,

and the reference to the interests in the land to which an application for planning permission relates includes any interest in any mineral in, on or under the land.

(8) Proceedings for an offence under this section may be brought at any time within the period of two years following the commission of the offence.”

(2) For section 26(3) of the 1972 Act there is substituted—

“(3) Where an application for planning permission is accompanied by such a certificate as is mentioned in subsection (1)(b) or (3) of section 24 of this Act a development order or regulations under this Act may—

(a) provide that a planning authority shall not determine an application for planning permission before the end of such period as may be prescribed;

(b) require a planning authority—

(i) to take into account in determining such an application such representations, made within such period, as may be prescribed; and

(ii) to give to any person whose representations have been taken into account such notice as may be prescribed of their decision.

(3A) A development order or regulations making any provision by virtue of this section may make different provision for different cases or different classes of development.”

#### **47 Power of planning authority to decline to determine applications**

(1) After section 26 of the 1972 Act there is inserted—

##### **“26A Power of planning authority to decline to determine applications**

(1) A planning authority may decline to determine an application for planning permission for the development of any land if—

(a) within the period of two years ending with the date on which the application is received, the Secretary of State has refused a similar application referred to him under section 32 of this Act or has dismissed an appeal against the refusal of a similar application; and

(b) in the opinion of the authority there has been no significant change since the refusal or, as the case may be, dismissal mentioned in paragraph (a) of this subsection in the development plan, so far as material to the application, or in any other material considerations.

(2) For the purposes of this section an application for planning permission for the development of any land shall only be taken to be similar to a later application if the development and the land to which the applications relate are in the opinion of the planning authority the same or substantially the same.

- (3) The reference in subsection (1)(a) of this section to an appeal against the refusal of an application includes an appeal under section 34 in respect of an application.”.
- (2) In section 34 (appeal in default of planning decision) of the 1972 Act—
  - (a) the word “either” is omitted; and
  - (b) after paragraph (a) there is inserted—
    - “(ab) give notice to the applicant that they have exercised their power under section 26A of this Act to decline to determine the application; or”.

#### **48 Assessment of environmental effects**

After section 26 of the 1972 Act there is inserted—

##### **“26B Assessment of environmental effects**

- (1) The Secretary of State may by regulations under this Act make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.
- (2) The regulations—
  - (a) may make the same provision as, or provision similar or corresponding to, any provision made, for the purposes of any Community obligation of the United Kingdom about the assessment of the likely effects of development on the environment, under section 2(2) of the European Communities Act 1972; and
  - (b) may make different provisions for different classes of development.
- (3) Where a draft of regulations made in exercise both of the power conferred by this section and the power conferred by section 2(2) of the European Communities Act 1972 is approved by resolution of each House of Parliament, no statutory instrument containing such regulations shall be subject to annulment by virtue of subsection (2) of section 273 (regulations and orders) of this Act.”

#### **49 Agreements relating to Crown land**

- (1) In subsection (2) of section 50 (agreements regulating development or use of land) of the 1972 Act, after “Sasines” there is inserted “or, as the case may be, registered in the Land Register of Scotland,”.
- (2) In subsection (1) of section 254 (agreements relating to Crown land) of the 1972 Act—
  - (a) after “agreements” there is inserted “(a)”; and
  - (b) after “thereto” there is inserted—
    - “and
    - (b) for the purpose of restricting or regulating the development or use of the land,

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either permanently or during such period as may be prescribed by the agreement.”

(3) After subsection (1) of that section there is inserted—

“(1A) Subject to subsection (1B) of this section an agreement made under subsection (1)(b) of this section may, if it has been recorded in the appropriate Register of Sasines or, as the case may be, registered in the Land Register of Scotland, be enforceable at the instance of the planning authority against persons deriving title to the land from the appropriate authority.

(1B) An agreement made under subsection (1)(b) of this section shall not be enforceable against a third party who has in good faith and for value acquired right (whether completed by infestment or not) to the land prior to the agreement being recorded or, as the case may be, registered as aforesaid or against any person deriving title from such a third party.”

## **50 Dismissal of appeals in cases of undue delay**

(1) After section 33(7) of the 1972 Act (appeals against planning decisions) there is inserted—

“(7A) If at any time before or during the determination of an appeal under this section it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may—

- (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
- (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.”

(2) In paragraph 2(1)(a) of Schedule 7 to that Act (powers and duties of person determining appeals) for “subsections (3) and (5)” there is substituted “subsections (3), (5), and (7A)”.

### *Controls over particular matters*

## **51 Mines and waste**

Schedule 8 to this Act (which, among other things, provides for after-care where permission is given to deposit refuse or waste materials and provides for altering the provisions relating to compensation for restrictions on mineral working and depositing mineral waste) shall have effect.

## **52 Old mining permissions**

After section 49G of the 1972 Act there is inserted

### **“49H Old mining permissions**

(1) In this section and Schedule 10A to this Act, “old mining permission” means any planning permission for development—

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- (a) consisting of the winning and working of minerals, or
  - (b) involving the depositing of mineral waste,
- which is deemed to have been granted by virtue of paragraph 77 of Schedule 22 to this Act (development authorised under interim development orders after 10th November 1943).
- (2) An old mining permission shall, if an application under that Schedule to determine the conditions to which the permission is to be subject is finally determined, have effect as from the final determination as if granted on the terms required to be registered.
- (3) If no such development has, at any time in the period of two years ending with 16th May 1991, been carried out to any substantial extent anywhere in, on or under the land to which an old mining permission relates, that permission shall not authorise any such development to be carried out after the coming into force of this section unless—
- (a) the permission has effect in accordance with subsection (2) above; and
  - (b) the development is carried out after such an application is finally determined.
- (4) An old mining permission shall—
- (a) if no application for the registration of the permission is made under that Schedule, cease to have effect on the day following the last date on which such an application may be made, and
  - (b) if such an application is refused, cease to have effect on the day following the date on which the application is finally determined.
- (5) An old mining permission shall, if—
- (a) such an application is granted; but
  - (b) an application under that Schedule to determine the conditions to which the permission is to be subject is required to be served before the end of any period and is not so served,
- cease to have effect on the day following the last date on which the application to determine those conditions may be served.
- (6) Subject to subsection (3) above, this section—
- (a) shall not affect any development carried out under an old mining permission before an application under that Schedule to determine the conditions to which the permission is to be subject is finally determined or, as the case may be, the date on which the permission ceases to have effect; and
  - (b) shall not affect any order made or having effect as if made under section 49 or 49A to 49F of this Act (discontinuance, etc., orders).”.

### **53 Transitional provision as to compensation regulations**

Without prejudice to section 17(2) of the Interpretation Act 1978, any regulations made, or having effect as if made, by virtue of section 167A (regulations as to mineral compensation) of the 1972 Act shall, to the extent that they are in force on the coming into force of paragraph 13 of Schedule 8 to this Act, have effect as if made under section 167A of that Act as substituted by that paragraph.

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## 54 Trees

- (1) In section 98 of the 1972 Act (penalties for non-compliance with tree preservation order), in subsection (1)—
- (a) for paragraph (a) there is substituted—
 

“(a) on summary conviction to a fine not exceeding £20,000;”
  - (b) the words “on indictment”, where second occurring, are omitted; and
  - (c) subsection (3) is omitted.
- (2) In section 99 of the 1972 Act (enforcement of duties as to replacement of trees)—
- (a) for subsection (2) there is substituted—
 

“(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.”;
  - (b) in subsection (3)—
    - (i) for the words from “at any time” to “take effect” there is substituted “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,”; and
    - (ii) after paragraph (a) there is inserted—
 

“(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;”;
  - (c) at the end there is inserted—
 

“(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.”
- (3) After section 99 there is inserted—

### *“Rights of entry*

#### **99A 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
  - (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



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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.

#### **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.
- (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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### **99C 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.”

### **55 Control over advertisements**

In section 275 of the 1972 Act (interpretation), in subsection (1), in the definition of “advertisement”—

- (a) after “notice” there is inserted “awning, blind”;
- (b) after “used” there is inserted “or designed”; and
- (c) after “use” there is inserted “and anything else used, or designed or adapted principally for use,”.

### **56 Power to remove or obliterate placards and posters**

After section 101 of the 1972 Act there is inserted—

#### **“101A 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.
- (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—

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- (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.”.

## **57 Listed buildings, conservation areas and hazardous substances**

Schedule 10 to this Act, which makes amendments to the 1972 Act in respect of listed buildings, conservation areas and hazardous substances, shall have effect.

### *Development plans and simplified planning zones*

## **58 Status of development plans**

At the end of Part II of the 1972 Act (development plans) there is inserted—

### *“General*

#### **18A Status of development plans**

—Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.”.

## **59 Simplified planning zones**

Schedule 11 to this Act which—

- (a) modifies the procedure for making simplified planning zones, and
- (b) makes minor and consequential amendments to Schedule 6A to the 1972 Act, shall have effect.

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### *Miscellaneous*

#### **60 Repeal of certain compensation provisions of the 1972 Act**

- (1) Part VII of the 1972 Act (which provides for compensation in respect of planning decisions restricting new development) is (with the exception of section 145 (determination of claims)) repealed.
- (2) Section 158 of the 1972 Act (compensation for planning decisions restricting development other than new development) is repealed.
- (3) Section 160 of the 1972 Act (compensation for refusal of consent to alteration, etc. of listed building) is repealed.
- (4) Schedules 13, 14 and 15 of the 1972 Act are repealed.
- (5) The repeal of sections 158 and 160 of the 1972 Act shall have effect, or be treated as having effect, where the application for planning permission or, as the case may be, listed building consent was made on or after 16th November 1990.
- (6) Schedule 12 to this Act shall have effect.
- (7) Subsection (1) of this section shall have effect in relation to any compensation under Part VII of the 1972 Act unless a claim for the compensation has been made in accordance with section 143 of this Act before the repeal of that section comes into force.
- (8) Any amount recoverable under section 148 of the 1972 Act which has not been paid, including any interest on any such amount, shall cease to be recoverable and any security by which the payment of any such amount, or interest on it, is secured is discharged.

#### **61 Planning: minor and consequential amendments - Scotland**

Schedule 13 to this Act (which makes minor and consequential amendments of the enactments relating to planning in Scotland) shall have effect.

## **PART III**

### LAND COMPENSATION, ETC: ENGLAND AND WALES

#### *Acquisition of land*

#### **62 Powers to acquire land which will be affected by public works**

- (1) After section 26(2) of the Land Compensation Act 1973 (responsible authority may acquire land by agreement where enjoyment of land affected by public works) there is inserted—
  - “(2A) Where the responsible authority—
    - (a) propose to carry out works on blighted land for the construction or alteration of any public works, and
    - (b) are, in relation to the land, the appropriate authority,

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they may, subject to the provisions of this section, acquire by agreement land the enjoyment of which will in their opinion be seriously affected by the carrying out of the works or the use of the public works if the interest of the vendor is a qualifying interest.

(2B) In this section—

“qualifying interest” has the meaning given in section 149(2) of the Town and Country Planning Act 1990, taking references to the relevant date as references to the date on which the purchase agreement is made, and

“appropriate authority” and “blighted land” have the meanings given respectively in sections 169(1) and 149(1) of that Act.”

(2) After section 246(2) of the Highways Act 1980 (acquisition of land by agreement where enjoyment of land affected by works) there is inserted—

“(2A) Where the highway authority propose to carry out works on blighted land for the construction or improvement of a highway, they may acquire by agreement land the enjoyment of which will in their opinion be seriously affected by the carrying out of the works or the use of the highway if the interest of the vendor is a qualifying interest.

(2B) In this section—

“qualifying interest” has the meaning given in section 149(2) of the Town and Country Planning Act 1990, taking references to the relevant date as references to the date on which the purchase agreement is made, and

“blighted land” has the meaning given in section 149(1) of that Act.”

### **63 Advance payments of compensation and interest**

(1) In section 52 of the Land Compensation Act 1973 (right to advance payment of compensation) for subsection (5) there is substituted—

“(4A) Where, at any time after an advance payment has been made on the basis of the acquiring authority’s estimate of the compensation, it appears to the acquiring authority that their estimate was too low, they shall, if a request in that behalf is made in accordance with subsection (2) above, pay to the claimant the balance of the amount of the advance payment calculated as at that time.

(5) Where the amount, or aggregate amount, of any payment under this section made on the basis of the acquiring authority’s estimate of the compensation exceeds the compensation as finally determined or agreed, the excess shall be repaid; and if after any payment under this section has been made to any person it is discovered that he was not entitled to it, the amount of the payment shall be recoverable by the acquiring authority.”

(2) After that section there is inserted—

#### **“52A Right to interest where advance payment made**

(1) This section applies where the compensation to be paid by the acquiring authority for the compulsory acquisition of any interest in land would (apart

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from this section) carry interest under section 11(1) of the Compulsory Purchase Act 1965 or any bond under Schedule 3 to that Act or section 85 of the Lands Clauses Consolidation Act 1845.

- (2) If the authority make a payment under section 52(1) above to any person on account of the compensation—
  - (a) they shall at the same time make a payment to that person of accrued interest, for the period beginning with the date of entry, on the amount by reference to which the payment under section 52(1) above was calculated; and
  - (b) the difference between the amount of the payment under section 52(1) above and the amount by reference to which it was calculated is an unpaid balance for the purposes of this section.
- (3) If the authority make a payment under section 52(4A) above to any person on account of the compensation, they shall at the same time make a payment to him of accrued interest, for the period beginning with the date of entry, on—
  - (a) the amount by reference to which the payment under section 52(4A) above was calculated; less
  - (b) the amount by reference to which the preceding payment under section 52(1) or (4A) above was calculated.
- (4) Where the authority make a payment under section 52(4A) above on account of the compensation, the difference between—
  - (a) the amount of the payment; and
  - (b) the amount by reference to which it was calculated less the amount by reference to which the preceding payment under section 52(1) or (4A) above was calculated,is an unpaid balance for the purposes of this section.
- (5) If, on an anniversary of the date on which the authority made a payment to any person under section 52(1) above on account of the compensation—
  - (a) the amount of accrued interest on the unpaid balance under subsection (2) above or, as the case may be,
  - (b) the aggregate amount of the accrued interest on any unpaid balances, exceeds £1,000, the authority shall make a payment to the claimant of the amount or aggregate amount.
- (6) The acquiring authority shall, on paying the outstanding compensation, pay the amount of the accrued interest on the unpaid balance under subsection (2) above or, as the case may be, the aggregate amount of the accrued interest on any unpaid balances.
- (7) For the purposes of subsections (5) and (6) above, interest accrues on any unpaid balance for the period beginning with—
  - (a) the making of the payment under section 52(1) or, as the case may be, 52(4A) above; or
  - (b) if any payment has already been made in respect of that balance under subsection (5) above, the date of the preceding payment under that subsection.
- (8) For the purposes of this section—

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- (a) interest accrues at the rate prescribed under section 32 of the Land Compensation Act 1961 or, in the case of a bond under section 85 of the Lands Clauses Consolidation Act 1845, at the rate specified in section 85; and
  - (b) the amount by reference to which a payment under section 52(1) or (4A) was calculated is the amount referred to in section 52(3)(a) or (b) for the purposes of that calculation.
- (9) Where any payment has been made under section 52(1) above on account of any compensation, the acquiring authority is not required to pay interest under section 11(1) of the Compulsory Purchase Act 1965 or any bond under Schedule 3 to that Act or under section 85 of the Lands Clauses Consolidation Act 1845.
- (10) Where the amount, or aggregate amount, of any payment under section 52 above made on the basis of the acquiring authority's estimate of the compensation is greater than the compensation as finally determined or agreed and, accordingly, the interest paid under this section is excessive, the excess shall be repaid.
- (11) If after any interest has been paid to any person under this section on any amount it is discovered that he was not entitled to the amount, the interest shall be recoverable by the acquiring authority.
- (12) The Secretary of State may from time to time by order substitute another sum for the sum specified in subsection (5) above; and the power to make orders under this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

#### **64 Planning assumptions in connection with highway schemes**

At the end of section 14 of the Land Compensation Act 1961 (assumptions as to planning permission) there is added—

- “(5) If, in a case where—
- (a) the relevant land is to be acquired for use for or in connection with the construction of a highway, or
  - (b) the use of the relevant land for or in connection with the construction of a highway is being considered by a highway authority,
- a determination mentioned in subsection (7) of this section falls to be made, that determination shall be made on the following assumption.
- (6) The assumption is that, if the relevant land were not so used, no highway would be constructed to meet the same or substantially the same need as the highway referred to in paragraph (a) or (b) of subsection (5) of this section would have been constructed to meet.
- (7) The determinations referred to in subsection (5) of this section are—
- (a) a determination, for the purpose of assessing compensation in respect of any compulsory acquisition, whether planning permission might reasonably have been expected to be granted for any development if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers, and

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- (b) a determination under section 17 of this Act as to the development for which, in the opinion of the local planning authority, planning permission would or would not have been granted if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers.

(8) The references in subsections (5) and (6) of this section to the construction of a highway include its alteration or improvement.”

## **65 Certification of appropriate alternative development**

- (1) For section 17(1) of the Land Compensation Act 1961 (certificate of appropriate alternative development may be issued only if land is not in an area defined in development plan as an area of comprehensive development or shown in the plan as allocated for residential, commercial or industrial use) there is substituted—

“(1) Where an interest in land is proposed to be acquired by an authority possessing compulsory purchase powers, either of the parties directly concerned may, subject to subsection (2) of this section, apply to the local planning authority for a certificate under this section.”

- (2) In subsection (4) of that section (certificate stating that permission for development would or would not be granted) for paragraphs (a) and (b) there is substituted—

- “(a) that planning permission would have been granted for development of one or more classes specified in the certificate (whether specified in the application or not) and for any development for which the land is to be acquired, but would not have been granted for any other development; or
- (b) that planning permission would have been granted for any development for which the land is to be acquired, but would not have been granted for any other development,

and for the purposes of this subsection development is development for which the land is to be acquired if the land is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for that development.”

- (3) After subsection (9) of that section there is inserted—

“(9A) In assessing the compensation payable to any person in respect of any compulsory acquisition, there shall be taken into account any expenses reasonably incurred by him in connection with the issue of a certificate under this section (including expenses incurred in connection with an appeal under section 18 of this Act where any of the issues on the appeal are determined in his favour).”

## **66 Compensation where permission for additional development granted after acquisition**

- (1) Schedule 14 to this Act (which revives Part IV of the Land Compensation Act 1961) shall have effect.
- (2) This section applies to an acquisition or sale of an interest in land if the date of completion (within the meaning of that Part) falls on or after the day on which this section comes into force.



## 67 Time limit on validity of notice to treat

In section 5 of the Compulsory Purchase Act 1965 (notice to treat) after subsection (2) there is inserted—

“(2A) A notice to treat shall cease to have effect at the end of the period of three years beginning with the date on which it is served unless—

- (a) the compensation has been agreed or awarded or has been paid or paid into court,
- (b) a general vesting declaration has been executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981,
- (c) the acquiring authority have entered on and taken possession of the land specified in the notice, or
- (d) the question of compensation has been referred to the Lands Tribunal.

(2B) If the person interested in the land, or having power to sell and convey or release it, and the acquiring authority agree to extend the period referred to in subsection (2A) of this section, the notice to treat shall cease to have effect at the end of the period as extended unless—

- (a) any of the events referred to in that subsection have then taken place, or
- (b) the parties have agreed to a further extension of the period (in which case this subsection shall apply again at the end of the period as further extended, and so on).

(2C) Where a notice to treat ceases to have effect by virtue of subsection (2A) or (2B) of this section, the acquiring authority—

- (a) shall immediately give notice of that fact to the person on whom the notice was served and any other person who, since it was served, could have made an agreement under subsection (2B) of this section, and
- (b) shall be liable to pay compensation to any person entitled to such a notice for any loss or expenses occasioned to him by the giving of the notice and its ceasing to have effect.

(2D) The amount of any compensation payable under subsection (2C) shall, in default of agreement, be determined by the Lands Tribunal.

(2E) Compensation payable to any person under subsection (2C) shall carry interest at the rate prescribed under section 32 of the Land Compensation Act 1961 from the date on which he was entitled to to be given notice under that subsection until payment.”

### *Home loss payments*

## 68 Home loss payments

(1) For section 29(2) of the Land Compensation Act 1973 (home loss payment where person displaced from dwelling: period and nature of occupation) there is substituted—

“(2) A person shall not be entitled to a home loss payment unless the following conditions have been satisfied throughout the period of one year ending with the date of displacement—

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- (a) he has been in occupation of the dwelling, or a substantial part of it, as his only or main residence; and
- (b) he has been in such occupation by virtue of an interest or right to which this section applies,

but, if those conditions are satisfied on the date of displacement, a payment (referred to in this section and sections 32 and 33 below as a “discretionary payment”) may be made to him of an amount not exceeding the amount to which he would have been entitled if he had satisfied those conditions throughout that period.”

- (2) Subsection (5) of that section (no payments where acquisition is in pursuance of blight notice) is omitted.
- (3) For section 30 of that Act (amount of home loss payment in England and Wales) there is substituted—

**“30 Amount of home loss payment in England and Wales**

- (1) In the case of a person who on the date of displacement is occupying, or is treated for the purposes of section 29 above as occupying, the dwelling by virtue of an interest in it which is an owner’s interest, the amount of the home loss payment shall be 10 per cent. of the market value of his interest in the dwelling or, as the case may be, the interest in the dwelling vested in trustees, subject to a maximum of £15,000 and a minimum of £1,500.
- (2) In any other case, the amount of the home loss payment shall be £1,500.
- (3) For the purposes of this section and section 32 below the market value of an interest in a dwelling—
  - (a) in a case where the interest is compulsorily acquired, is the amount assessed for the purposes of the acquisition as the value of the interest; and
  - (b) in any other case, is the amount which, if the interest were being compulsorily acquired in pursuance of a notice to treat served on the date of displacement, would be assessed for the purposes of the acquisition as the value of the interest,
 and any dispute as to the amount referred to in paragraph (b) above shall be determined by the Lands Tribunal.
- (4) In determining for the purposes of this section and section 32 below the market value of an interest in a dwelling, the dwelling shall be taken to include any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that dwelling.
- (5) The Secretary of State may from time to time by regulations prescribe a different maximum or minimum for the purposes of subsection (1) above and a different amount for the purposes of subsection (2) above.
- (6) The power to make regulations under subsection (5) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section “owner’s interest” means the interest of a person who is an owner as defined in section 7 of the Acquisition of Land Act 1981.”

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(4) For section 32(1) to (3) of that Act (supplementary provisions about home loss payments) there is substituted—

“(1) No home loss payment or discretionary payment shall be made except on a claim in writing made by the claimant giving such particulars as the authority responsible for making the payment may reasonably require for the purpose of determining whether the payment should be made and, if so, its amount.

(2) Where a person is entitled to a home loss payment, the payment shall be made on or before the latest of the following dates—

- (a) the date of displacement;
- (b) the last day of the period of three months beginning with the making of the claim; and
- (c) where the amount of the payment is to be determined in accordance with section 30(1) above, the day on which the market value of the interest in question is agreed or finally determined.

(2A) Where the amount of the payment is to be determined in accordance with section 30(1) above—

- (a) the acquiring authority may at any time make a payment in advance; and
- (b) if, on the later of the dates referred to in subsection (2)(a) and (b) above, the market value of the interest in question has not been agreed or finally determined, the acquiring authority shall make a payment in advance (where they have not already done so).

(2B) The amount of the payment in advance shall be the lesser of—

- (a) the maximum amount for the purposes of section 30(1) above,
- (b) 10 per cent. of the amount agreed to be the market value of the interest in question or, if there is no such agreement, 10 per cent. of the acquiring authority’s estimate of that amount.

(2C) Where the amount of a payment in advance differs from the amount of the home loss payment, the shortfall or excess shall be paid by or, as the case may be, repaid to the acquiring authority when the market value of the interest in question is agreed or finally determined.

(3) Where the claimant has satisfied, throughout any period, the conditions mentioned in section 29(2) above, that period shall be treated for the purposes of that subsection as including any immediately preceding period throughout which—

- (a) he has resided in the dwelling as his only or main residence but without satisfying those conditions, and
  - (b) another person or other persons have satisfied those conditions,
- and references in this subsection and subsection (3A) below to a dwelling include a reference to a substantial part of it.

(3A) Where the claimant has satisfied, throughout any period, the conditions mentioned in section 29(2) above, that period (or that period as extended under subsection (3) above) shall be treated for the purposes of section 29(2) above as including any immediately preceding period, or successive periods, throughout which he satisfied the conditions mentioned in section 29(2) above in relation to another dwelling or, as the case may be, other dwellings

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(applying subsection (3) above to determine the length of any period or periods).”

- (5) In section 32(4) of that Act for “five years” there is substituted “one year”.
- (6) In section 32(5) of that Act, for “(3) and (4)” there is substituted “(3) to (4)”.
- (7) In section 32(7) and (7B) of that Act, after “home loss payment” (in both places) there is inserted “or discretionary payment” and after “required” (in both places) there is inserted “or authorised”.
- (8) In section 33 of that Act (caravan dwellers)—
  - (a) in subsection (2) after “home loss payment” there is inserted “or discretionary payment”,
  - (b) in subsection (3), for the words following “substituted” (in the second place) there is substituted—
    - “(a) he has been in occupation of the caravan site by using a caravan stationed on it as his only or main residence; and
    - (b) he has been in such occupation of the site by virtue of an interest or right to which this section applies.”,
  - (c) for subsection (4) there is substituted—
    - “(4) Section 30 above shall have effect as if the references to a person occupying a dwelling by virtue of an interest in it and to his interest in the dwelling were to a person occupying a caravan site by virtue of an interest in it and to that interest.”,
  - (d) in subsection (5), for paragraph (a) there is substituted—
    - “(a) as if in subsections (3) and (3A) the references to a dwelling were to a caravan site;”, and in paragraph (c) for “(3) and (4)” there is substituted “(3) to (4)”.
- (9) This section shall have effect in relation to displacements occurring on or after 16th November 1990 but, in the case of claims made before the date on which this section comes into force, no amount is required or authorised to be paid by virtue only of this section before the expiry of the period of one month beginning with the date on which this section comes into force.

## 69 Home loss payments: spouses having statutory rights of occupation

After section 29 of the Land Compensation Act 1973 there is inserted—

### “29A Spouses having statutory rights of occupation.1983 c. 19

- (1) This section applies where, by reason of the entitlement of one spouse (“A”) to occupy a dwelling by virtue of an interest or right to which section 29 above applies, the other spouse (“B”) acquires rights of occupation (within the meaning of the Matrimonial Homes Act 1983).
- (2) So long as—
  - (a) those rights of occupation continue,
  - (b) B is in occupation of the dwelling and A is not, and
  - (c) B is not, apart from this section, treated as occupying the dwelling by virtue of an interest or right to which that section applies,

B shall be treated for the purposes of that section as occupying the dwelling by virtue of such an interest (but not an owner's interest within the meaning of section 30 below).

- (3) References in this section to a dwelling include a reference to a substantial part of it.”

### *General*

## **70 Further amendments relating to land compensation**

Schedule 15 to this Act, of which—

- (a) Part I contains miscellaneous amendments, and
- (b) Part II contains minor and consequential amendments, relating to land compensation, shall have effect.

## **PART IV**

### LAND COMPENSATION - SCOTLAND

## **71 Home loss payments**

- (1) For section 27(2) of the Land Compensation (Scotland) Act 1973 (home loss payment where person displaced from dwelling) there is substituted—

“(2) A person shall not be entitled to a home loss payment unless the following conditions have been satisfied throughout the period of one year ending with the date of displacement—

- (a) he has been in occupation of the dwelling, or a substantial part of it, as his only or main residence; and
- (b) he has been in such occupation by virtue of an interest or right to which this section applies,

but, if those conditions are satisfied on the date of displacement, a payment (referred to in this section and sections 29 and 30 below as a “discretionary payment”) may be made to him of an amount not exceeding the amount to which he would have been entitled if he had satisfied those conditions throughout that period.”

- (2) Subsection (5) of that section (no payments where acquisition is in pursuance of blight notice) is omitted.
- (3) For section 28 of that Act (amount of home loss payment) there is substituted—

### **“28 Amount of home loss payment**

- (1) In the case of a person who on the date of displacement is occupying, or is treated for the purposes of section 27 above as occupying, the dwelling by virtue of an interest in it which is an owner's interest, the amount of the home loss payment shall be 10 per cent. of the market value of his interest in the dwelling or, as the case may be, the interest in the dwelling vested in trustees, subject to a maximum of £15,000 and a minimum of £1,500.

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- (2) In any other case, the amount of the home loss payment shall be £1,500.
- (3) For the purposes of this section and section 29 below the market value of an interest in a dwelling—
- (a) in a case where the interest is compulsorily acquired, is the amount assessed for the purposes of the acquisition as the value of the interest; and
  - (b) in any other case, is the amount which, if the interest were being compulsorily acquired in pursuance of a notice to treat served on the date of displacement, would be assessed for the purposes of the acquisition as the value of the interest,
- and any dispute as to the amount referred to in paragraph (b) above shall be determined by the Lands Tribunal.
- (4) In determining for the purposes of this section and section 29 below the market value of an interest in a dwelling, the dwelling shall be taken to include any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that dwelling.
- (5) The Secretary of State may from time to time by regulations prescribe a different maximum or minimum for the purposes of subsection (1) above and a different amount for the purposes of subsection (2) above.
- (6) The power to make regulations under subsection (5) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section “owner’s interest” means the interest of a person who is an owner as defined in section 45(1) of the Land Compensation (Scotland) Act 1963.”
- (4) For section 29(1) to (3) of that Act (supplementary provisions about home loss payments) there is substituted—
- “(1) No home loss payment or discretionary payment shall be made except on a claim in writing made by the person entitled thereto (“the claimant”) giving such particulars as the authority responsible for making the payment may reasonably require for the purpose of determining whether the payment should be made and, if so, its amount.
  - (2) Where a person is entitled to a home loss payment, the payment shall be made on or before the latest of the following dates—
    - (a) the date of displacement;
    - (b) the last day of the period of three months beginning with the making of the claim; and
    - (c) where the amount of the payment is to be determined in accordance with section 28(1) above, the day on which the market value of the interest in question is agreed or finally determined.
  - (2A) Where the amount of the payment is to be determined in accordance with section 28(1) above—
    - (a) the acquiring authority may at any time make a payment in advance; and

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- (b) if, on the later of the dates referred to in subsection (2)(a) and (b) above, the market value of the interest in question has not been agreed or finally determined, the acquiring authority shall make a payment in advance (where they have not already done so).
- (2B) The amount of the payment in advance shall be the lesser of—
  - (a) the maximum amount for the purposes of section 28(1) above,
  - (b) 10 per cent. of the amount agreed to be the market value of the interest in question or, if there is no such agreement, 10 per cent. of the acquiring authority’s estimate of that amount.
- (2C) Where the amount of a payment in advance differs from the amount of the home loss payment, the shortfall or excess shall be paid by or, as the case may be, repaid to the acquiring authority when the market value of the interest in question is agreed or finally determined.
- (3) Where the claimant has satisfied, throughout any period, the conditions mentioned in section 27(2) above, that period shall be treated for the purposes of that subsection as including any immediately preceding period throughout which—
  - (a) he has resided in the dwelling as his only or main residence but without satisfying those conditions, and
  - (b) another person or other persons have satisfied those conditions,and references in this subsection and subsection (3A) below to a dwelling include a reference to a substantial part of it.
- (3A) Where the claimant has satisfied, throughout any period, the conditions mentioned in section 27(2) above, that period (or that period as extended under subsection (3) above) shall be treated for the purposes of section 27(2) above as including any immediately preceding period, or successive periods, throughout which he satisfied the conditions mentioned in section 27(2) above in relation to another dwelling or, as the case may be, other dwellings (applying subsection (3) above to determine the length of any period or periods).”
- (5) In section 29(4) of that Act, for “five years” there is substituted “one year”.
- (6) In section 29(5) of that Act, for “(3) and (4)” there is substituted “(3) to (4)”.
- (7) In section 29(7) and (7AA), after “home loss payment” (in both places) there is inserted “or discretionary payment” and after “required” (in both places) there is inserted “or authorised”.
- (8) In section 30 of that Act (caravan dwellers)—
  - (a) in subsection (2) after “home loss payment” there is inserted “or discretionary payment”,
  - (b) in subsection (3), for the words following “substituted” (in the second place) there is substituted—
    - “(a) he has been in occupation of the caravan site by using a caravan stationed on it as his only or main residence; and
    - (b) he has been in such occupation of the site by virtue of an interest or right to which this section applies”,
  - (c) for subsection (4) there is substituted—

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“(4) Section 28 above shall have effect as if the references to a person occupying a dwelling by virtue of an interest in it and to his interest in the dwelling were to a person occupying a caravan site by virtue of an interest in it and to that interest.”,

(d) in subsection (5), for paragraph (a) there is substituted—

“(a) as if in subsections (3) and (3A) the references to a dwelling were to a caravan site;” and in paragraph (c) for “(3) and (4)” there is substituted “(3) to (4)”.

(9) This section shall have effect in relation to displacements occurring on or after 16th November 1990 but, in the case of claims made before the date on which this section comes into force, no amount is required or authorised to be paid by virtue only of this section before the expiry of the period of one month beginning with the date on which this section comes into force.

## 72 Home loss payments: spouses having statutory occupancy rights

After section 27 of the Land Compensation (Scotland) Act 1973 there is inserted—

### “27A Spouses having statutory occupancy rights

(1) This section applies where, by reason of the entitlement of one spouse (“A”) to occupy a dwelling by virtue of an interest or right to which section 27 above applies, the other spouse (“B”) acquires occupancy rights (within the meaning of the Matrimonial Homes (Family Protection) (Scotland) Act 1981).

(2) So long as—

- (a) those occupancy rights continue;
- (b) B is in occupation of the dwelling and A is not; and
- (c) B is not, apart from this section, treated as occupying the dwelling by virtue of an interest or right to which that section applies,

B shall be treated for the purposes of that section as occupying the dwelling by virtue of such an interest (but not an owner’s interest within the meaning of section 28 below).

(3) References in this section to a dwelling include a reference to a substantial part of it.”

## 73 Advance payments of compensation and interest

(1) In section 48 of the Land Compensation (Scotland) Act 1973 (right to advance payment of compensation) for subsection (5) there is substituted—

“(4A) Where, at any time after an advance payment has been made on the basis of the acquiring authority’s estimate of the compensation, it appears to the acquiring authority that their estimate was too low, they shall, if a request in that behalf is made in accordance with subsection (2) above, pay to the claimant the balance of the amount of the advance payment calculated as at that time.

(5) Where the amount, or aggregate amount, of any payment under this section made on the basis of the acquiring authority’s estimate of the compensation exceeds the compensation as finally determined or agreed, the excess shall



be repaid; and if after any payment under this section has been made to any person it is discovered that he was not entitled to it, the amount of the payment shall be recoverable by the acquiring authority”.

(2) After that section there is inserted—

**“48A Right to interest where advance payment made**

- (1) This section applies where the compensation to be paid by the acquiring authority for the compulsory acquisition of any interest in land would (apart from this section) carry interest under paragraph 3(1) of the second Schedule to the Acquisition of Land (Authorisation Procedures) (Scotland) Act 1947 or any bond under section 84 (promoters to be allowed to enter on lands before purchase on giving bond etc.) of the Lands Clauses Consolidation (Scotland) Act 1845.
- (2) If the authority make a payment under section 48(1) above to any person on account of the compensation—
  - (a) they shall at the same time make a payment to that person of accrued interest, for the period beginning with the date of entry, on the amount by reference to which the payment under section 48(1) above was calculated; and
  - (b) the difference between the amount of the payment under section 48(1) above and the amount by reference to which it was calculated is an unpaid balance for the purposes of this section.
- (3) If the authority make a payment under section 48(4A) above to any person on account of the compensation, they shall at the same time make a payment to him of accrued interest, for the period beginning with the date of entry, on—
  - (a) the amount by reference to which the payment under section 48(4A) above was calculated; less
  - (b) the amount by reference to which the preceding payment under section 48(1) or (4A) above was calculated.
- (4) Where the authority make a payment under section 48(4A) above on account of the compensation, the difference between—
  - (a) the amount of the payment; and
  - (b) the amount by reference to which it was calculated less the amount by reference to which the preceding payment under section 48(1) or (4A) above was calculated,is an unpaid balance for the purposes of this section.
- (5) If, on an anniversary of the date on which the authority made a payment to any person under section 48(1) above on account of the compensation—
  - (a) the amount of accrued interest on the unpaid balance under subsection (2) above or, as the case may be,
  - (b) the aggregate amount of the accrued interest on any unpaid balances, exceeds £1,000, the authority shall make a payment to the claimant of the amount or aggregate amount.
- (6) The acquiring authority shall, on paying the compensation, pay the amount of the accrued interest on the unpaid balance under subsection (2) above or, as

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the case may be, the aggregate amount of the accrued interest on any unpaid balances.

- (7) For the purposes of subsections (5) and (6) above, interest accrues on any unpaid balance for the period beginning with—
- (a) the making of the payment under section 48(1) or, as the case may be, 48(4A) above; or
  - (b) if any payment has already been made in respect of that balance under subsection (5) above, the date of the preceding payment under that subsection.
- (8) For the purposes of this section—
- (a) interest accrues at the rate prescribed under section 40 of the Land Compensation (Scotland) Act 1963 or, in the case of a bond under section 84 of the Lands Clauses Consolidation (Scotland) Act 1845, at the rate specified in that section; and
  - (b) the amount by reference to which a payment under section 48(1) or (4A) was calculated is the amount referred to in section 48(3)(a) or (b) for the purposes of that calculation.
- (9) Where any payment has been made under section 48(1) above on account of any compensation, the acquiring authority is not required to pay interest under paragraph 3(1) of the second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or any bond under section 84 (promoters to be allowed to enter on lands before purchase on giving bond etc.) of the Lands Clauses Consolidation (Scotland) Act 1845.
- (10) Where the amount, or aggregate amount, of any payment under section 48 above made on the basis of the acquiring authority's estimate of the compensation is greater than the compensation as finally determined or agreed and, accordingly, the interest paid under this section is excessive, the excess shall be repaid.
- (11) If after any interest has been paid to any person under this section on any amount it is discovered that he was not entitled to the amount, the interest shall be recoverable by the acquiring authority.
- (12) The Secretary of State may by order increase the sum specified in subsection (5) above; and the power to make orders under this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

#### **74 Planning assumptions in connection with acquisition of land by roads authorities**

At the end of section 22 (assumptions as to planning permission) of the Land Compensation (Scotland) Act 1963 there is added—

“(5) If, in a case where—

- (a) the relevant land is to be acquired for use for, or in connection with, providing, altering or improving a public road; or
- (b) that use, or its use in that connection, is being considered by the roads authority,

a determination mentioned in subsection (7) of this section falls to be made, that determination shall be made on the following assumption.

- (6) The assumption is that, if the relevant land were not so used, no public road would be provided, altered or improved to meet the same or substantially the same need as would have been met by the provision, alteration or improvement of the public road referred to in paragraph (a) or (b) of subsection (5) of this section.
- (7) The determinations referred to in subsection (5) of this section are—
- (a) a determination, for the purpose of assessing compensation in respect of any compulsory acquisition, whether planning permission might reasonably have been expected to be granted for any development if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers, and
  - (b) a determination under section 25 of this Act as to the development for which, in the opinion of the planning authority, planning permission would or would not have been granted if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers .”

## **75 Certification of appropriate alternative development**

- (1) For section 25(1) of the Land Compensation (Scotland) Act 1963 (certificate of appropriate alternative development may be issued only if land is not in an area defined in development plan as an area of comprehensive development or shown in the plan as allocated for residential, commercial or industrial use) there is substituted—

“(1) Where an interest in land is proposed to be acquired by an authority possessing compulsory purchase powers, either of the parties directly concerned may, subject to subsection (2) of this section, apply to the planning authority for a certificate under this section”.

- (2) In subsection (4) of that section (certificate stating that permission for development would or would not be granted) for paragraphs (a) and (b) there is substituted—

- “(a) planning permission would have been granted for development of one or more classes specified in the certificate (whether specified in the application or not) and for any development for which the land is to be acquired, but would not have been granted for any other development; or
- (b) planning permission would have been granted for any development for which the land is to be acquired, but would not have been granted for any other development,

and for the purposes of this subsection development is development for which the land is to be acquired if the land is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for that development.”

- (3) After subsection (9) of that section there is inserted—

“(9A) In assessing the compensation payable to any person in respect of any compulsory acquisition, there shall be taken into account any expenses reasonably incurred by him in connection with the issue of a certificate under this section (including expenses incurred in connection with an appeal under section 26 of this Act where any of the issues on the appeal are determined in his favour)”.

**76 Powers to acquire land whose enjoyment will be affected by public works**

- (1) After section 24(2) of the Land Compensation (Scotland) Act 1973 (acquisition of land in connection with public works) there is inserted—

“(2A) Where the responsible authority—

- (a) propose to carry out works on land to which this subsection applies for the construction or alteration of any public works, and
- (b) are, in relation to the land, the appropriate authority,

they may, subject to the provisions of this section, acquire by agreement land the enjoyment of which will in their opinion be seriously affected by the carrying out of the works or the use of the public works if the interest of the seller is an interest such as is mentioned in subsection (3) to (5) of section 181 (interests qualifying for protection under blight provisions) of the Town and Country Planning (Scotland) Act 1972.

(2B) Subsection (2A) above applies to any land such as is mentioned in subsection (1) of the said section 181.

(2C) In this section—

“appropriate authority” has the meaning given in section 194(1) of the said Act.”.

- (2) After section 106(2) of the Roads (Scotland) Act 1984 (acquisition of land for mitigating adverse effects of construction of road) there is inserted—

“(2A) Where the roads authority propose to carry out works on land to which this subsection applies for the construction or improvement of a road, they may acquire by agreement land the enjoyment of which will in their opinion be seriously affected by the carrying out of the works or the use of the road if the interest of the seller is an interest such as is mentioned in subsections (3) to (5) of section 181 (interests qualifying for protection under blight provisions) of the Town and Country Planning (Scotland) Act 1972.

(2B) Subsection (2A) above applies to any land such as is mentioned in subsection (1) of the said section 181.”

**77 Compensation where permission for additional development granted after acquisition**

- (1) Schedule 16 to this Act (which revives Part V of the Land Compensation (Scotland) Act 1963) shall have effect.
- (2) This section applies to an acquisition or sale of an interest in land if the date of completion (within the meaning of that Part) falls on or after the day on which this section comes into force.

**78 Time limit on validity of notice to treat**

- (1) A notice to treat under section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 shall, for the purposes of any compulsory purchase to which the provisions of the first Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 apply, cease to have effect at the end of the period of three years beginning with the date on which it is served unless—

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- (a) the compensation has been agreed or awarded or has been paid or paid into a bank;
  - (b) a general vesting declaration has been executed under paragraph 1 of Schedule 24 to the Town and Country Planning (Scotland) Act 1972;
  - (c) the acquiring authority have entered on and taken possession of the land specified in the notice; or
  - (d) the question of compensation has been referred to the Lands Tribunal for Scotland.
- (2) If the person interested in the land, or having power to sell and convey it, and the acquiring authority agree to extend the period referred to in subsection (1) of this section, the notice to treat shall cease to have effect at the end of the period as extended unless—
- (a) any of the events referred to in that subsection have then taken place; or
  - (b) the parties have agreed to a further extension of the period (in which case this subsection shall apply again at the end of the period as further extended, and so on).
- (3) Where a notice to treat ceases to have effect by virtue of subsection (1) or (2) of this section, the acquiring authority—
- (a) shall immediately give notice of that fact to the person on whom the notice was served and any other person who, since it was served, could have made an agreement under subsection (2) of this section, and
  - (b) shall be liable to pay compensation to any person entitled to such a notice for any loss or expenses occasioned to him by the giving of the notice and its ceasing to have effect.
- (4) The amount of any compensation payable under subsection (3) of this section shall, in default of agreement, be determined by the Lands Tribunal for Scotland.
- (5) Compensation payable to any person under subsection (3) of this section shall carry interest at the rate prescribed under section 40 (rate of interest after entry on land) of the Land Compensation (Scotland) Act 1963 from the date on which he was entitled to be given notice under that subsection until payment.

## **79 Further amendments relating to land compensation in Scotland**

Schedule 17 to this Act—

- (a) Part I of which contains miscellaneous amendments; and
  - (b) Part II of which contains minor and consequential amendments,
- relating to land compensation in Scotland shall have effect.

## **PART V**

### **MISCELLANEOUS AND GENERAL**

## **80 Interest on compensation and payments on account**

- (1) Compensation payable under any provision mentioned in column 1 of an entry in Part I of Schedule 18 to this Act shall carry interest at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or, in relation to

Scotland, section 40 of the Land Compensation (Scotland) Act 1963 from the date shown against that provision in column 2 of the entry until payment.

- (2) If it appears to any person that he may become liable to pay to another—
- (a) compensation under any provision mentioned in Schedule 18 to this Act, or
  - (b) interest under subsection (1) above, under any provision mentioned in Part II of Schedule 18 to this Act or under any bond under section 85 of the Lands Clauses Consolidation Act 1845 or Schedule 3 to the Compulsory Purchase Act 1965,
- he may, if the other person requests him in writing to do so, make one or more payments on account of such compensation or interest.
- (3) If after a payment has been made by any person under subsection (2) above—
- (a) it is agreed or determined that he is not liable to pay the compensation or interest, or
  - (b) by reason of any agreement or determination, any payment under that subsection is shown to have been excessive,
- the payment or, as the case may be, excess shall be recoverable by that person.
- (4) The Secretary of State may by order amend that Schedule by adding further entries or provisions to Part I or Part II.
- (5) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **81 Abolition of new street byelaws**

- (1) Part X of the Highways Act 1980 (new street byelaws) is repealed.
- (2) Nothing in this section affects—
- (a) any order made before the day on which this section comes into force under section 188 of that Act (new street orders) or under any enactment from which that section is derived; or
  - (b) any powers of a local authority exercisable under Part X of that Act in respect of such an order.
- (3) The Secretary of State may by order made by statutory instrument repeal any local enactment so far as it makes provision having similar effect to any provision of Part X of that Act.

## **82 Home loss payments: Northern Ireland**

An order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (exercise of legislative functions for Northern Ireland) which states that it is made only for purposes corresponding to the purposes of sections 68 and 69 of this Act—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution procedure and procedure in cases of urgency), but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**83 Consequential amendment of section 91A of Income and Corporation Taxes Act 1988**

In section 91A of the Income and Corporation Taxes Act 1988 (waste disposal: restoration payments)—

- (a) in subsection (4)(b) for “any term of a relevant agreement” there is substituted “any relevant obligation”; and
- (b) for subsection (7) there is substituted—

“(7) For the purposes of this section a relevant obligation is—

- (a) an obligation arising under an agreement made under—
  - (i) section 106 of the Town and Country Planning Act 1990, as originally enacted;
  - (ii) section 50 of the Town and Country Planning (Scotland) Act 1972;
- (b) a planning obligation entered into under section 106 of the Act of 1990, as substituted by section 12 of the Planning and Compensation Act 1991, or under section 299A of the Act of 1990;
- (c) an obligation arising under or under an agreement made under any provision—
  - (i) corresponding to section 106 of the Town and Country Planning Act 1990, as originally enacted or as substituted by the Act of 1991 or to section 299A of the Act of 1990; and
  - (ii) for the time being in force in Northern Ireland.”

**84 Short title, commencement, etc**

- (1) This Act may be cited as the Planning and Compensation Act 1991.
- (2) Subject to subsection (4) below, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different provisions and for different purposes.
- (3) An order under subsection (2) above may contain such supplementary, incidental, consequential and transitional provisions as the Secretary of State thinks fit.
- (4) Sections 31(2), (3), (7) and (8) and 60(2), (3) and (5), paragraphs 1, 5 and 13 of Schedule 6 and the related repeals shall come into force on the day on which this Act is passed.
- (5) Nothing in any provision of this Act affects the punishment for an offence committed before the provision comes into force.
- (6) The enactments mentioned in Schedule 19 to this Act are repealed to the extent specified in the third column.
- (7) Parts I and III of this Act and section 81 extend to England and Wales only.
- (8) Parts II and IV of this Act extend to Scotland only.
- (9) This Act, apart from sections 82 and 83, does not extend to Northern Ireland.