



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART VI **S**

#### ENFORCEMENT

##### **Modifications etc. (not altering text)**

- C1** Pt. VI applied (with modifications) (1.4.2010) by [The Management of Extractive Waste \(Scotland\) Regulations 2010 \(S.S.I. 2010/60\)](#), regs. 1(1), **30** (with arts. 4, 5)
- C2** Pt. VI modified (16.9.2011) by [The Storage of Carbon Dioxide \(Access to Infrastructure\) Regulations 2011 \(S.I. 2011/2305\)](#), regs. 1, **19(2)**

#### *Application*

### **123 Expressions used in connection with enforcement. **S****

- (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, <sup>F1</sup>or
  - (c) initiating development without giving notice in accordance with section 27A(1) of this Act, or
  - (d) carrying out development without displaying a notice in accordance with section 27C(1) of this Act,]
- constitutes a breach of planning control.
- (2) For the purposes of this Act—
- (a) the issue of an enforcement notice, or
  - (b) the service of a breach of condition notice,

*Status: Point in time view as at 20/12/2019.*

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under this Part constitutes taking enforcement action [<sup>F2</sup>as does the issuing of a notice under section 33A].

- (3) In this Part “planning permission” includes planning permission under Part III of the 1947 Act and Part III of the 1972 Act.

#### Textual Amendments

- F1** S. 123(1)(c)(d) and word inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **6(2)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F2** Words in s. 123(2) added (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **9(2)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**

## 124 Time limits. **S**

- (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 4 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 4 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 10 years beginning with the date of the breach.
- (4) Subsections (1) to (3) 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 4 years ending with that action being taken, the planning authority have taken or purported to take enforcement action in respect of that breach.

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**

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### *Planning contravention notices*

#### **125 Power to require information about activities on land. S**

- (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 interests 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—
  - (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 [<sup>F3</sup>postal] 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 [<sup>F4</sup>postal] 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 143(6).
- (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.

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- (8) In this section references to operations or activities on land include operations or activities in, under or over the land.

#### Textual Amendments

- F3** Word in s. 125(3)(c) inserted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), **5(a)**
- F4** Word in s. 125(3)(e) inserted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), **5(a)**

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**

## 126 Penalties for non-compliance with planning contravention notice. **S**

- (1) If at any time after the end of the period of 21 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 [<sup>F5</sup>level 5] 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 [<sup>F6</sup>the statutory maximum].

#### Textual Amendments

- F5** Words in s. 126(4) substituted (20.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 42(2)(a)**, [63\(2\)](#); [S.S.I. 2019/377](#), [reg. 2](#) (with [regs. 5-10](#)) (as amended by [S.S.I. 2019/411](#), [regs. 1, 2](#))
- F6** Words in s. 126(6) substituted (20.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 42(2)(b)**, [63\(2\)](#); [S.S.I. 2019/377](#), [reg. 2](#) (with [regs. 5-10](#)) (as amended by [S.S.I. 2019/411](#), [regs. 1, 2](#))

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**Modifications etc. (not altering text)**

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

*Enforcement notices*

**127 Issue of enforcement notice. S**

- (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 28 days after its date of issue, and
  - (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

**Modifications etc. (not altering text)**

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

**128 Contents and effect of notice. S**

- (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 123(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

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- 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
  - (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), 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, and
  - (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 131(3), shall take effect on that date.
- (9) An enforcement notice shall specify the period for compliance with the notice 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.
- (10) 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.
- (11) An enforcement notice shall specify such additional matters as may be prescribed.
- (12) Regulations may require every copy of an enforcement notice served under section 127 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 130.
- (13) 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 33 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.

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(14) 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 33 in respect of development consisting of that construction.

**Modifications etc. (not altering text)**

**C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

**129 Variation and withdrawal of enforcement notice. S**

(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 128(9).

(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 reissued, 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.

**Modifications etc. (not altering text)**

**C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

**130 Appeal against enforcement notice. S**

(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—

- <sup>F7</sup>(a) .....
- (b) that [<sup>F8</sup>the matters which, by virtue of section 128(1)(a) have been stated in the notice,] have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;

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- (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 127;
  - (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 128(9) falls short of what should reasonably be allowed.
- (2) An appeal under this section shall be made <sup>F9</sup>...—
- (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 prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date<sup>F10</sup>; or
  - (c) by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date.]
- (3) A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing—
- (a) specifying the grounds on which he is appealing against the enforcement notice, and
  - (b) giving such further information as may be prescribed; or

#### Textual Amendments

- F7** S. 130(1)(a) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with [S.S.I. 2009/222](#), [arts. 9\(2\)\(c\)](#), 15); [S.S.I. 2009/219](#), art. 2, [sch.](#)
- F8** Words in s. 130(1)(b) substituted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(6\)](#), 59(2) (with [S.S.I. 2009/222](#), [arts. 9\(2\)\(c\)](#), 15); [S.S.I. 2009/219](#), art. 2, [sch.](#)
- F9** Word in s. 130(2) omitted (28.7.2004) by virtue of [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), [3\(a\)](#)
- F10** S. 130(2)(c) and word inserted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), [3\(b\)](#)

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C4** S. 130: power to apply conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)](#), 31, 40(2) (with [ss. 9\(3\)](#), 10(5), 38(6))
- C5** Ss. 130-132 applied (with modifications) by [S.I. 1984/467](#), reg. 25(1)(2) (as substituted (30.6.2013) by [The Town and Country Planning \(Control of Advertisements\) \(Scotland\) Amendment Regulations 2013 \(S.S.I. 2013/154\)](#), regs. 1(1), [2\(6\)](#) (with reg. 3))



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### 131 Appeals: supplementary provisions. **S**

- (1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 130 and, in particular, but without prejudice to the generality of the foregoing provisions of this subsection, in so prescribing may—
  - (a) specify the matters on which information is to be given in a statement under section 130(3);
  - (b) require the planning authority to submit, within such time as may be specified, a statement indicating the submissions which they propose to put forward on the appeal;
  - (c) specify the matters to be included in such a statement;
  - (d) require the authority or the appellant to give such notice of an appeal as may be specified to such persons as may be specified;
  - (e) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be specified, a copy of the enforcement notice and a list of the persons served with copies of it.

<sup>F11</sup>(2) .....

- (3) Where an appeal is brought under section 130 the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (4) Schedule 4 applies to appeals under section 130, including appeals under that section as applied by regulations under any other provisions of this Act.

#### Textual Amendments

**F11** S. 131(2) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with S.S.I. 2009/222, arts. 9(2)(d), [15](#)); S.S.I. 2009/219, art. 2, [sch.](#)

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C5** Ss. 130-132 applied (with modifications) by S.I. 1984/467, reg. 25(1)(2) (as substituted (30.6.2013) by [The Town and Country Planning \(Control of Advertisements\) \(Scotland\) Amendment Regulations 2013 \(S.S.I. 2013/154\)](#), regs. 1(1), [2\(6\)](#) (with reg. 3))
- C6** S. 131: power to apply conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)](#), 31, [40\(2\)](#) (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))
- C7** S. 131(4) applied (1.6.2015) by [The Town and Country Planning \(Hazardous Substances\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/181\)](#), regs. 1, [47](#)

### 132 General provisions relating to determination of appeals. **S**

- (1) On the determination of an appeal under section 130, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice.
- (2) On such an appeal the Secretary of State may—
  - (a) correct any defect, error or misdescription in the enforcement notice, or
  - (b) vary the terms of the enforcement notice,

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if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority.

- (3) The Secretary of State may—
  - (a) dismiss an appeal if the appellant fails to comply with section 130(3) within the prescribed time, and
  - (b) allow an appeal and quash the enforcement notice if the planning authority fail to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of section 131(1).
- (4) Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required by section 127(2) to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

**Modifications etc. (not altering text)**

**C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

**C5** Ss. 130-132 applied (with modifications) by S.I. 1984/467, reg. 25(1)(2) (as substituted (30.6.2013) by [The Town and Country Planning \(Control of Advertisements\) \(Scotland\) Amendment Regulations 2013 \(S.S.I. 2013/154\)](#), regs. 1(1), 2(6) (with reg. 3))

**C8** S. 132: power to apply conferred (27.5.1997) by 1997 c. 10, ss. 23(1), 31, 40(2) (with ss. 9(3), 10(5), 38(6))

**133 Grant or modification of planning permission on appeal against enforcement notice. S**

- (1) On the determination of an appeal under section 130, the Secretary of State may—
  - <sup>F12</sup>(a) .....
  - <sup>F12</sup>(b) .....
  - <sup>F12</sup>(c) .....
  - (d) determine whether on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which the permission was granted was lawful and, if so, issue a certificate under section 150.
- (2) The provisions of sections 150 to 153 mentioned in subsection (3) shall apply for the purposes of subsection (1)(d) as they apply for the purposes of section 150, but as if—
  - (a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made, and
  - (b) references to the planning authority were references to the Secretary of State.
- (3) Those provisions are sections 150(5) to (7), 152(4) (so far as it relates to the form of the certificate), (6) and (7) and 153.
- <sup>F13</sup>(4) .....

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- F13(5) .....
- F13(6) .....
- F13(7) .....
- F13(8) .....
- F13(9) .....
- F13(10) .....
- F13(11) .....

#### Textual Amendments

- F12** S. 133(1)(a)-(c) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), **sch.** (with [S.S.I. 2009/222](#), arts. 9(2)(e), **15**); [S.S.I. 2009/219](#), art. 2, sch.
- F13** S. 133(4)-(11) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), **sch.** (with [S.S.I. 2009/222](#), arts. 9(2)(e), **15**); [S.S.I. 2009/219](#), art. 2, sch.

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**
- C9** S. 133: power to apply conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)**, 31, 40(2) (with [ss. 9\(3\)](#), 10(5), 38(6))
- C10** S. 133(1) restricted (1.8.1999) by [S.S.I. 1999/1](#), **reg. 29**

### 134 Validity of enforcement notices. **S**

The validity of an enforcement notice shall not be questioned in any proceedings whatsoever on any of the grounds specified in section 130(1)(b) to (e) except by appeal under that section.

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**
- C11** S. 134: power to apply conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)**, 31, 40(2) (with [ss. 9\(3\)](#), 10(5), 38(6))
- C12** S. 134 applied (with modifications) (1.6.2015) by [The Town and Country Planning \(Hazardous Substances\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/181\)](#), **regs. 1, 48**

### 135 Execution and cost of works required by enforcement notice. **S**

- (1) If any steps which are required by an enforcement notice to be taken have not been taken within the compliance period, the planning authority may—
  - (a) enter the land and take those steps, and
  - (b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.

*Status: Point in time view as at 20/12/2019.*

**Changes to legislation:** *Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) If that person did not appeal to the Secretary of State although entitled to do so, he shall not be entitled to dispute the validity of the action taken by the planning authority under subsection (1) in accordance with the enforcement notice.
- (3) In computing the amount of the expenses which may be recovered by them under subsection (1), a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.
- (4) Where a copy of an enforcement notice has been served in respect of any breach of planning control—
  - (a) any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice, and
  - (b) any sums paid by the owner or lessee of any land under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken,
 shall be recoverable from the person by whom the breach of planning control was committed.
- (5) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by an enforcement notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.
- (6) A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal.
- (7) After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.
- (8) Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—
  - (a) he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
  - (b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
 his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.
- (9) A planning authority who by reason of subsection (8) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.
- (10) 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.
- (11) In this section and in sections 136,<sup>[F14]</sup>136A,] 140 and 141 any reference to the compliance period, in relation to an enforcement notice, is a reference to the period specified in the notice for compliance with it or such extended period as the planning authority may allow for compliance with it.

*Status: Point in time view as at 20/12/2019.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F14** Word in s. 135(11) inserted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(7), 59(2)**; [S.S.I. 2009/219, art. 2, sch.](#)

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**
- C13** S. 135: power to modify conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)(c), 31** (with [ss. 9\(3\), 10\(5\), 38\(6\)](#))
- C14** S. 135 modified (1.6.2015) by [The Town and Country Planning \(Hazardous Substances\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/181\)](#), regs. 1, **49**
- C15** S. 135(5)-(9) applied (with modifications) (1.3.2010) by [The Infrastructure Planning \(Miscellaneous Prescribed Provisions\) Regulations 2010 \(S.I. 2010/105\)](#), regs. 1(1), **6**
- C16** S. 135(5)-(9) applied (with modifications) (6.4.2015) by [The Infrastructure Planning \(Interested Parties and Miscellaneous Prescribed Provisions\) Regulations 2015 \(S.I. 2015/462\)](#), regs. 1, **9**

### 136 Offence where enforcement notice not complied with. **S**

- (1) Where, at any time after the end of the compliance period in respect of 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), 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.
- (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 147,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 [<sup>F15</sup>£50,000,] and
  - (b) on conviction on indictment, to a fine.

*Status: Point in time view as at 20/12/2019.*

**Changes to legislation:** Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

#### Textual Amendments

**F15** Sum in s. 136(8)(a) substituted (20.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 42(3), 63(2)**; [S.S.I. 2019/377](#), **reg. 2** (with **regs. 5-10**) (as amended by [S.S.I. 2019/411](#), **regs. 1, 2**)

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), **arts. 1, 7(1)(b)**
- C17** S. 136: power to modify conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)(c), 31** (with **ss. 9(3), 10(5), 38(6)**)
- C18** S. 136 modified (1.6.2015) by [The Town and Country Planning \(Hazardous Substances\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/181\)](#), **regs. 1, 50**

### <sup>F16</sup> **136A Fixed penalty notice where enforcement notice not complied with** **S**

- (1) Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
- (2) The fixed penalty notice is to specify—
  - (a) the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or
  - (b) the activity so specified which has not ceased.
- (3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
- (4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice.
- (5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
- (6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
- (7) The conditions are that the fixed penalty notice—
  - (a) is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and

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- (b) is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice.
- (8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- (9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- (10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
- (11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.]

#### Textual Amendments

**F16** S. 136A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 25(1), 59(2); S.S.I. 2008/411, art. 2(2)(3)(b); S.S.I. 2009/219, art. 2, sch.

#### 137 Effect of planning permission etc. on enforcement or breach of condition notice. **S**

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

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (S.S.I. 2003/1), arts. 1, 7(1)(b)
- C19** S. 137: power to modify conferred (27.5.1997) by 1997 c. 10, ss. 23(1)(c), 31 (with ss. 9(3), 10(5), 38(6))
- C20** S. 137 modified (1.6.2015) by The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (S.S.I. 2015/181), regs. 1, 51

*Status: Point in time view as at 20/12/2019.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### 138 Enforcement notice to have effect against subsequent development. **S**

- (1) Compliance with an enforcement notice, whether in respect of—
- (a) the removal or alteration of any building or works,
  - (b) the discontinuance of any use of land, or
  - (c) any other requirements contained in the notice,
- shall not discharge the notice.
- (2) Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.
- (3) Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered.
- (4) A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding [<sup>F17</sup>the statutory maximum].
- [<sup>F18</sup>(5) In determining the amount of the fine to be imposed under subsection (4), the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.]

#### Textual Amendments

**F17** Words in s. 138(4) substituted (20.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 42(4)(a)**, 63(2); S.S.I. 2019/377, [reg. 2](#) (with [regs. 5-10](#)) (as amended by S.S.I. 2019/411, [regs. 1, 2](#))

**F18** S. 138(5) inserted (20.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 42(4)(b)**, 63(2); S.S.I. 2019/377, [reg. 2](#) (with [regs. 5-10](#)) (as amended by S.S.I. 2019/411, [regs. 1, 2](#))

#### Modifications etc. (not altering text)

**C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), [arts. 1, 7\(1\)\(b\)](#)

**C21** S. 138: power to modify conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)(c)**, 31 (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

**C22** S. 138 modified (1.6.2015) by [The Town and Country Planning \(Hazardous Substances\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/181\)](#), [regs. 1, 52](#)



*Status: Point in time view as at 20/12/2019.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### 139 Power of Secretary of State to serve enforcement notice. **S**

- (1) If it appears to the Secretary of State that it is expedient that an enforcement notice should be served in respect of any land, he may himself serve such a notice under section 127.
- (2) An enforcement notice served by the Secretary of State shall have the same effect as if it had been served by the planning authority.
- (3) The Secretary of State shall not serve such a notice without consulting the planning authority.
- (4) The provisions of this Act relating to enforcement notices apply, so far as relevant, to an enforcement notice served by the Secretary of State as they apply to an enforcement notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.

#### **Modifications etc. (not altering text)**

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

#### *Stop notices*

### 140 Stop notices. **S**

- (1) Where the planning authority consider it expedient that any relevant activity should cease before the expiry of the compliance period in respect of 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.
- (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 4 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.
- (6) 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.
- (7) A stop notice shall specify the date when it is to come into effect, and that date—

*Status: Point in time view as at 20/12/2019.*

**Changes to legislation:** *Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) must not be earlier than 3 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 28 days from the date when the notice is first served on any person.
- (8) A stop notice may be served by the planning authority on any person who appears to them to have an interest in the land or to be engaged in the relevant activity specified in the enforcement notice.
- (9) The planning authority may at any time withdraw a stop notice (without prejudice to their power to serve another) by notice which shall be—
- (a) served on all persons who were served with the stop notice, and
  - (b) publicised by displaying it for 7 days in place of all or any relative site notices.

**Modifications etc. (not altering text)**

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C23** S. 140: power to modify conferred (27.5.1997) by [1997 c. 10, ss. 23\(1\)\(c\)](#), 31 (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

**141 Stop notices: supplementary provisions. S**

- (1) A stop notice shall cease to have effect when—
- (a) the enforcement notice to which it relates is withdrawn or quashed,
  - (b) the compliance period specified under section 128(9) expires, or
  - (c) notice of the withdrawal of the stop notice is served under section 140(9),
- whichever occurs first.
- (2) Where the enforcement notice to which a stop notice relates is varied so that it no longer relates to any relevant activity, the stop notice shall cease to have effect in relation to that activity.
- (3) Where a stop notice has been served in respect of any land, the planning authority may publicise it by displaying on the land a notice (in this section and section 144 referred to as a “site notice”)—
- (a) stating that a stop notice has been served on a particular person or persons,
  - (b) indicating its requirements, and
  - (c) stating that any person contravening it may be prosecuted for an offence under section 144.
- (4) A stop notice shall not be invalid by reason that a copy of the enforcement notice to which it relates was not served as required by section 127 if it is shown that the planning authority took all such steps as were reasonably practicable to effect proper service.

*Status: Point in time view as at 20/12/2019.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Modifications etc. (not altering text)**

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C24** S. 141: power to modify conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)\(c\)](#), 31 (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

**142 Power of the Secretary of State to serve stop notice. S**

- (1) If it appears to the Secretary of State that it is expedient that a stop notice should be served in respect of any land, he may himself serve such a notice under section 140.
- (2) A stop notice served by the Secretary of State shall have the same effect as if it had been served by the planning authority.
- (3) The Secretary of State shall not serve such a notice without consulting the planning authority.
- (4) The provisions of this Act relating to stop notices apply, so far as relevant, to a stop notice served by the Secretary of State as they apply to a stop notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.

**Modifications etc. (not altering text)**

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)

**143 Compensation for loss due to stop notice. S**

- (1) Subject to the provisions of this section, where a stop notice under section 140 ceases to have effect a person who, when the stop notice is first served, has an interest, whether as owner or occupier or otherwise, in the land to which the notice relates shall be entitled to be compensated by the planning authority in respect of any loss or damage directly attributable to the prohibition contained in the notice or, in a case within subsection (1)(b), the prohibition of such of the activities prohibited by the stop notice as cease to be relevant activities.
- (2) For the purposes of this section a stop notice ceases to have effect when—
  - (a) the enforcement notice is quashed <sup>F19</sup> ...,
  - (b) the enforcement notice is varied <sup>F20</sup> ... so that any activity the carrying out of which is prohibited by the stop notice ceases to be a relevant activity within the meaning of section 140(2),
  - (c) the enforcement notice is withdrawn by the planning authority otherwise than in consequence of the grant by them of planning permission for the development to which the notice relates, or
  - (d) the stop notice is withdrawn.

*Status: Point in time view as at 20/12/2019.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) A claim for compensation under this section shall be made to the planning authority within the prescribed time and in the prescribed manner.
- (4) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition shall include any sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.
- (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 125, 126 or 272 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.
- (6) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under this Part shall be referred to and determined by the Lands Tribunal.
- (7) In relation to the determination of any such question, the provisions of sections 9 and 11 of the <sup>M1</sup>Land Compensation (Scotland) Act 1963 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

#### Textual Amendments

- F19** Words in s. 143(2)(a) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with [S.S.I. 2009/222](#), arts. 12, [15](#)); [S.S.I. 2009/219](#), art. 2, [sch.](#)
- F20** Words in s. 143(2)(b) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with [S.S.I. 2009/222](#), arts. 12, [15](#)); [S.S.I. 2009/219](#), art. 2, [sch.](#)

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C25** S. 143(1)-(6): power to modify conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)\(c\)](#), 31 (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

#### Marginal Citations

- M1** [1963 c. 51](#).

## 144 Penalties for contravention of stop notice. S

- (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.
- (2) 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.
- (3) It shall be a defence in any proceedings under subsection (1) that—
  - (a) the stop notice was not served on the accused, and

*Status: Point in time view as at 20/12/2019.*

**Changes to legislation:** Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) he had no reasonable cause to believe that the activity was prohibited by the stop notice.
- (4) References in this section to contravening a stop notice include causing or permitting its contravention.
- (5) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding [<sup>F21</sup>£50,000,] and
  - (b) on conviction on indictment, to a fine.
- (6) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

#### Textual Amendments

**F21** Sum in s. 144(5)(a) substituted (20.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\), ss. 42\(5\), 63\(2\)](#); [S.S.I. 2019/377, reg. 2](#) (with [regs. 5-10](#)) (as amended by [S.S.I. 2019/411, regs. 1, 2](#))

#### Modifications etc. (not altering text)

**C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\), arts. 1, 7\(1\)\(b\)](#)

**C26** S. 144: power to modify conferred (27.5.1997) by [1997 c. 10, ss. 23\(1\)\(c\), 31](#) (with [ss. 9\(3\), 10\(5\), 38\(6\)](#))

### <sup>F22</sup>Temporary stop notices

#### Textual Amendments

**F22** Ss. 144A-144D and cross-heading inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\), ss. 26\(1\), 59\(2\)](#); [S.S.I. 2008/411, art. 2\(2\)\(3\)\(b\)](#); [S.S.I. 2009/219, art. 2, sch.](#)

## 144A Temporary stop notices **S**

- (1) If a planning authority consider that—
  - (a) there has been a breach of planning control in relation to any land,
  - (b) the breach consists in engagement in an activity, and
  - (c) it is expedient that the activity (or any part of the activity) is stopped immediately,they may issue a temporary stop notice.
- (2) The notice must be in writing and must—
  - (a) specify the activity in question,
  - (b) prohibit engagement in the activity (or in so much of the activity as is specified in the notice), and
  - (c) set out the authority's reasons for issuing the notice.

*Status: Point in time view as at 20/12/2019.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) A temporary stop notice may be served on any of the following—
  - (a) a person who appears to the authority to be engaged in the activity,
  - (b) a person who appears to the authority to have an interest in the land (whether as owner or occupier or otherwise).
- (4) The authority must display on the land—
  - (a) a copy of the notice, and
  - (b) a statement as to the effect of section 144C.
- (5) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of subsection (4).
- (6) A temporary stop notice ceases to have effect at the end of the period of 28 days starting on the day the copy notice is so displayed.
- (7) Except that if a shorter period starting on that day is specified in the notice, the notice instead ceases to have effect at the end of that shorter period.
- (8) And if the notice is withdrawn by the authority before that period of 28 days, or as the case may be that shorter period, expires the notice ceases to have effect on being so withdrawn.

#### **144B Temporary stop notices: restrictions** S

- (1) A temporary stop notice does not prohibit—
  - (a) the use of a building as a dwellinghouse, or
  - (b) engagement in an activity (either or both)—
    - (i) of such description,
    - (ii) in such circumstances,
 as may be prescribed.
- (2) A temporary stop notice does not prohibit engagement in any activity which has been engaged in (whether continuously or not) for a period of more than 4 years ending with the day on which a copy of the notice is first displayed in pursuance of section 144A(4).
- (3) But subsection (2) does not prevent a temporary stop notice prohibiting—
  - (a) activity consisting in, or incidental to, building, engineering, mining or other operations, or
  - (b) the deposit of refuse or waste materials.
- (4) For the purposes of subsection (2), any period during which the activity in question is authorised by planning permission is to be ignored.
- (5) A second or subsequent temporary stop notice must not be issued in respect of the same activity unless the planning authority have in the meantime taken some other enforcement action in relation to the breach of planning control which is constituted by the activity.
- (6) In subsection (5), “enforcement action” includes obtaining the grant of an interdict under section 146(2).

*Status: Point in time view as at 20/12/2019.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### 144C Temporary stop notices: offences **S**

- (1) A person is guilty of an offence if he contravenes a temporary stop notice—
  - (a) which has been served on him, or
  - (b) a copy of which has been displayed in pursuance of section 144A(4).
- (2) Contravention of a temporary stop notice includes causing or permitting the contravention of it.
- (3) An offence under this section may be charged by reference to a day or to a period longer than a day.
- (4) A person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different days or different periods.
- (5) It is a defence in any proceedings under this section that—
  - (a) the temporary stop notice was not served on the accused, and
  - (b) he did not know, and could not reasonably have been expected to know, of its existence.
- (6) A person convicted of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding [<sup>F23</sup>£50,000,]
  - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of the fine, the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.

##### Textual Amendments

**F23** Sum in s. 144C(6)(a) substituted (20.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\), ss. 42\(6\), 63\(2\); S.S.I. 2019/377, reg. 2 \(with regs. 5-10\) \(as amended by S.S.I. 2019/411, regs. 1, 2\)](#)

#### 144D Temporary stop notices: compensation **S**

- (1) A person who, as at the date on which a temporary stop notice is first displayed in pursuance of section 144A(4), has an interest (whether as owner or occupier or otherwise) in the land to which the notice relates is entitled to be compensated by the planning authority in respect of any loss or damage directly attributable to the prohibition effected by that notice.
- (2) But subsection (1) applies only if the circumstances are as set out in at least one of the following paragraphs—
  - (a) the activity which is specified in the notice is authorised by planning permission granted on or before the date mentioned in that subsection,
  - (b) a certificate in respect of the activity is issued under section 150 or granted under that section by virtue of section 154,
  - (c) the authority withdraws the notice other than following such grant of planning permission as is mentioned in paragraph (a).
- (3) Subsections (3) to (7) of section 143 apply to compensation payable under this section as they apply to compensation payable under that section; and for the purpose of

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that application references in those subsections to a stop notice are to be taken to be references to a temporary stop notice.]

### *Breach of condition notices*

## **145 Enforcement of conditions. S**

- (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) 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 28 days beginning with the date of service of the notice as may be specified in the notice, or
  - (b) that period as extended by a further notice served by the planning authority on the person responsible.
- (8) If, at any time after the end of the period allowed for compliance with the notice—
  - (a) any of the conditions specified in the notice is not complied with, and
  - (b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,the person responsible is in breach of the notice.
- (9) If the person responsible is in breach of the notice he shall be guilty of an offence.
- (10) An offence under subsection (9) 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—



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- (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 [<sup>F24</sup>level 5] on the standard scale.
- [<sup>F25</sup>(12A) In determining the amount of the fine to be imposed under subsection (12), the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.]
- (13) In this section—
- (a) “conditions” includes limitations; and
  - (b) references to carrying out any development include causing or permitting another to do so.

#### Textual Amendments

- F24** Words in s. 145(12) substituted (20.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), [ss. 42\(7\)\(a\)](#), [63\(2\)](#); [S.S.I. 2019/377](#), [reg. 2](#) (with [regs. 5-10](#)) (as amended by [S.S.I. 2019/411](#), [regs. 1, 2](#))
- F25** [S. 145\(12A\)](#) inserted (20.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), [ss. 42\(7\)\(b\)](#), [63\(2\)](#); [S.S.I. 2019/377](#), [reg. 2](#) (with [regs. 5-10](#)) (as amended by [S.S.I. 2019/411](#), [regs. 1, 2](#))

#### Modifications etc. (not altering text)

- C3** [Ss. 123-149](#) functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), [arts. 1, 7\(1\)\(b\)](#)
- C27** [S. 145](#): power to modify conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)\(c\)](#), [31](#) (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

#### [<sup>F26</sup>145A Fixed penalty notice where breach of condition notice not complied with **S**

- (1) Where a planning authority have reason to believe that, by virtue of subsection (8) of section 145, a person is in breach of a breach of condition notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
- (2) The fixed penalty notice is to specify—
  - (a) the step specified, under subsection (5) of section 145, in the breach of condition notice which has not been taken, or
  - (b) the activity so specified which has not ceased.
- (3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
- (4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in that notice, any liability to conviction for an offence under section 145(9) as respects the breach of the breach of condition notice.

*Status: Point in time view as at 20/12/2019.*

**Changes to legislation:** Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
- (6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
- (7) The conditions are that the fixed penalty notice—
  - (a) is served within the period of 6 months which immediately follows the period allowed by section 145(7) for compliance with the breach of condition notice, and
  - (b) is not served after the person has been charged with an offence under section 145(9) as respects the breach of the breach of condition notice.
- (8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 145(9) as respects that breach.
- (9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 145(9) as respects that breach.
- (10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
- (11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.]

#### Textual Amendments

**F26** S. 145A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 25(2), 59(2); S.S.I. 2008/411, art. 2(2)(3)(b); S.S.I. 2009/219, art. 2, sch.

#### Interdicts

#### 146 Interdicts restraining breaches of planning control. **S**

- (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) 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.

#### Modifications etc. (not altering text)

**C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (S.S.I. 2003/1), arts. 1, 7(1)(b)

*Status: Point in time view as at 20/12/2019.*

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**C28** S. 146 extended (27.5.1997) by 1997 c. 9, ss. 79(1), 83(2) (with s. 45(4))

### Registers

#### <sup>F27</sup> 147 [<sup>F27</sup> Enforcement etc. : register of notices ] **S**

- (1) Every planning authority shall, with respect to enforcement notices, breach of condition notices [<sup>F28</sup>, notices under section 33A, stop notices and temporary stop notices] which have been served in relation to land in their district, keep a register—
- (a) in such manner, and
  - (b) containing such information,
- as may be prescribed; and there may also be prescribed circumstances in which an entry in the register shall be deleted.
- (2) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

#### Textual Amendments

- F27** S. 147 heading substituted (12.12.2008 for specified purposes, 3.8.3009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 9(4), 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.
- F28** Words in s. 147(1) substituted (12.12.2008 for specified purposes, 3.8.3009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 9(3), 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.

#### Modifications etc. (not altering text)

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)
- C29** S. 147: power to modify conferred (27.5.1997) by 1997 c. 10, ss. 23(1)(c), 31 (with ss. 9(3), 10(5), 38(6))
- C30** S. 147 modified (1.6.2015) by [The Town and Country Planning \(Hazardous Substances\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/181\)](#), regs. 1, 53

### *Enforcement of orders for discontinuance of use, etc.*

#### **148 Penalties for contravention of orders under section 71 and Schedule 8. **S****

- (1) Any person who without planning permission—
- (a) uses land, or causes or permits land to be used—
    - (i) for any purpose for which an order under section 71 or paragraph 1 of Schedule 8 has required that its use shall be discontinued, or
    - (ii) in contravention of any condition imposed by such an order by virtue of subsection (1) of that section or, as the case may be, subparagraph (1) of that paragraph,
  - (b) resumes, or causes or permits to be resumed, development consisting of the winning and working of minerals or involving the depositing of mineral waste

*Status: Point in time view as at 20/12/2019.*

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- the resumption of which an order under paragraph 3 of that Schedule has prohibited, or
- (c) contravenes, or causes or permits to be contravened, any such requirement as is specified in sub-paragraph (3) or (4) of that paragraph,
- shall be guilty of an offence.
- (2) Any person who contravenes any requirement of a suspension order or a supplementary suspension order under paragraph 5 or 6 of Schedule 8 or who causes or permits any requirement of such an order to be contravened shall be guilty of an offence.
- (3) Any person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine.
- (4) It shall be a defence for a person charged with an offence under this section to prove that he took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.
- (5) If in any case the defence provided by subsection (4) involves an allegation that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

**Modifications etc. (not altering text)**

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

**149 Enforcement of orders under section 71 and Schedule 8. S**

- (1) This section applies where—
- (a) any step required by an order under section 71 or paragraph 1 of Schedule 8 to be taken for the alteration or removal of any buildings or works or any plant or machinery,
- (b) any step required by an order under paragraph 3 of that Schedule to be taken—
- (i) for the alteration or removal of plant or machinery, or
- (ii) for the removal or alleviation of any injury to amenity, or
- (c) any step for the protection of the environment required to be taken by a suspension order or a supplementary suspension order under paragraph 5 or 6 of that Schedule,
- has not been taken within the period specified in the order or within such extended period as the planning authority may allow.
- (2) Where this section applies the planning authority may enter the land and take the required step and may recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

*Status: Point in time view as at 20/12/2019.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) A planning authority taking any step under subsection (1) may sell any materials removed by them from any land unless those materials are claimed by the owner within 3 days of their removal by the planning authority.
- (4) Where such materials have been sold the planning authority shall pay the owner the net proceeds of the sale after deducting any expenses recoverable by them from him.

**Modifications etc. (not altering text)**

- C3** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)

*Certificate of lawful use or development*

**150 Certificate of lawfulness of existing use or development. S**

- (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,

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- (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 26(2)(f), identifying it by reference to that class),
  - (c) give the reasons for determining the use, operations or other thing to be lawful, and
  - (d) specify the date of the application for the certificate.
- (6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.
- (7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—
- (a) section 3(3) of the <sup>M2</sup>Caravan Sites and Control of Development Act 1960,
  - (b) section 5(2) of the <sup>M3</sup>Control of Pollution Act 1974, and
  - (c) section 36(2)(a) of the <sup>M4</sup>Environmental Protection Act 1990.

**Modifications etc. (not altering text)**

**C31** S. 150 modified (28.9.2000) by [S.S.I. 2000/323](#), **reg. 7(5)**

**Marginal Citations**

**M2** 1960 c. 62.

**M3** 1974 c. 40.

**M4** 1990 c. 43.

**151 Certificate of lawfulness of proposed use or development. S**

- (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 26(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) 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.

*Status: Point in time view as at 20/12/2019.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part VI is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## **152 Certificates under sections 150 and 151: supplementary provisions. S**

- (1) An application for a certificate under section 150 or 151 shall be made in such manner as may be prescribed by regulations 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 section 150 or 151 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 150 or 151 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 36 references to applications for planning permission shall include references to applications for certificates under section 150 or 151.
- (7) A planning authority may revoke a certificate under section 150 or 151 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.

## **153 Offences. S**

- (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 150 or 151 of this Act—
  - (a) knowingly or recklessly makes a statement which is false or misleading in a material particular,

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- (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, and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

#### 154 Appeals against refusal or failure to give decision on application. **S**

- (1) Where an application is made to a planning authority for a certificate under section 150 or 151 and—
- (a) the application is refused or is refused in part, or
  - (b) the planning authority do not give notice to the applicant of their decision on the application within such period as may be prescribed by regulations or a development order or within such extended period as may at any time be agreed in writing by the applicant and the authority,
- the applicant may appeal to the Secretary of State.
- (2) An appeal under subsection (1) shall be by notice given within such period (not being less than 28 days) as may be prescribed by regulations or a development order.
- (3) On any such appeal, if and so far as the Secretary of State is satisfied—
- (a) in the case of an appeal under subsection (1)(a), that the authority’s refusal is not well-founded, or
  - (b) in the case of an appeal under subsection (1)(b), that, if the planning authority had refused the application, their refusal would not have been well-founded,
- he shall grant the appellant a certificate under section 150 or 151 accordingly or, in the case of a refusal in part, modify the certificate granted by the authority on the application.
- (4) If and so far as the Secretary of State is satisfied that the authority’s refusal is or, as the case may be, would have been well-founded, he shall dismiss the appeal.
- (5) Schedule 4 applies to appeals under this section.

#### 155 Further provisions as to appeals to the Secretary of State. **S**

<sup>F29</sup>(1) . . . . .

- (2) Where the Secretary of State or a person appointed by him under Schedule 4 to determine an appeal grants a certificate under section 150 or 151, the Secretary of State or that person shall give notice to the planning authority of that fact.

##### Textual Amendments

**F29** S. 155(1) repealed (3.8.2009) by *Planning etc. (Scotland) Act 2006* (asp 17), s. 59(2), **sch.** (with S.S.I. 2009/222, **art. 9(2)(f)**); S.S.I. 2009/219, art. 2, **sch.**



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### *Rights of entry for enforcement purposes*

#### **156 Right to enter without warrant. S**

- (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 127 to 138, 140, 141, 144,<sup>[F30144A,]</sup> 145 and 147 to 155 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) unless 24 hours' notice of the intended entry has been given to the occupier of the building.

#### **Textual Amendments**

**F30** Word in s. 156(1)(b) inserted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 54(8), 59(2); S.S.I. 2009/219, art. 2, sch.

#### **Modifications etc. (not altering text)**

**C32** Ss. 156-158 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

#### **157 Right to enter under warrant. S**

- (1) If the sheriff is satisfied—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 156(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,he may issue a warrant authorising any person duly authorised in writing to enter the land.

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- (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.

**Modifications etc. (not altering text)**

**C32** Ss. 156-158 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

**158 Rights of entry: supplementary provisions. S**

- (1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 156 or 157 (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 86 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—
  - (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 2 years or a fine or both.

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#### Modifications etc. (not altering text)

- C32** Ss. 156-158 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

### *<sup>F31</sup> Enforcement charters*

#### Textual Amendments

- F31** S. 158A and cross-heading inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 27, 59(2); S.S.I. 2007/130, art. 2(2), sch.

## **158A Enforcement charters** **S**

- (1) A planning authority are to prepare an enforcement charter; that is to say, a document in which are set out—
  - (a) a statement of the authority's policies as regards their taking enforcement action for the purposes of this Act,
  - (b) an account of how members of the public are to bring any ostensible breach of planning control to the attention of the authority, and
  - (c) an account—
    - (i) of how any complaint to the authority as regards the taking by them of enforcement action is to be made, and
    - (ii) of their procedures for dealing with any such complaint.
- (2) The Scottish Ministers may issue guidance to a planning authority for the purposes of this section and an authority must have regard to any guidance so issued.
- (3) A planning authority must keep their enforcement charter under review and must update and re-publish it—
  - (a) whenever required to do so by the Scottish Ministers, and
  - (b) (subject to paragraph (a)) whenever they think it appropriate to do so but in any event within 2 years after last publishing (or re-publishing) it.
- (4) When they publish, or re-publish, their enforcement charter, the authority are to—
  - (a) send two copies of it to the Scottish Ministers, and
  - (b) place a copy of it in each public library in their district,and such publication, or re-publication, is to include by electronic means (as for example by means of the internet).]

**Status:**

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