



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART VI

#### ENFORCEMENT

##### *Breach of condition notices*

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

- (1) This section applies where planning permission for carrying out any development has been granted subject to conditions.
- (2) The planning authority may, if any of the conditions is not complied with, serve a notice (in this Act referred to as a “breach of condition notice”) on—
  - (a) any person who is carrying out or has carried out the development, or
  - (b) any person having control of the land,requiring him to secure compliance with such of the conditions as are specified in the notice.
- (3) References in this section to the person responsible are to the person on whom the breach of condition notice has been served.
- (4) The conditions which may be specified in a notice served by virtue of subsection (2) (b) 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

*Status: Point in time view as at 12/12/2008.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Breach of condition notices is up to date with all changes known to be in force on or before 01 September 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)*

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—
- (a) that he took all reasonable measures to secure compliance with the conditions specified in the notice, or
  - (b) where the notice was served on him by virtue of subsection (2)(b), that he no longer had control of the land.
- (12) A person who is guilty of an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (13) In this section—
- (a) “conditions” includes limitations; and
  - (b) references to carrying out any development include causing or permitting another to do so.

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

- C1** 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\(6\)](#))
- C2** 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\(1\)\(b\)](#)

**[<sup>F1</sup>145A Fixed penalty notice where breach of condition notice not complied with**

- (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—

*Status: Point in time view as at 12/12/2008.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Breach of condition notices is up to date with all changes known to be in force on or before 01 September 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) 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.
- (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

- F1** S. 145A inserted (12.12.2008 for specified purposes) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. [25\(2\)](#), [59\(2\)](#); [S.S.I. 2008/411](#), art. [2\(2\)\(3\)\(b\)](#)

**Status:**

Point in time view as at 12/12/2008.

**Changes to legislation:**

Town and Country Planning (Scotland) Act 1997, Cross Heading: Breach of condition notices is up to date with all changes known to be in force on or before 01 September 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.