

Status: Point in time view as at 27/05/1997.

Changes to legislation: Town and Country Planning (Scotland) Act 1997, SCHEDULE 17 is up to date with all changes known to be in force on or before 22 June 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)

SCHEDULES

SCHEDULE 17 **S**

Section 251(5).

ENFORCEMENT AS RESPECTS WAR-TIME BREACHES BY THE CROWN OF PLANNING CONTROL

Preliminary

- 1 In this Schedule—
- “authority” means an authority responsible for enforcing planning control,
 - “compliance determination application” means an application under section 251(3), and
 - “compliance determination” means a determination given on such an application.

Making of compliance determination applications

- 2 (1) A compliance determination application may be made with respect to any land—
- (a) by the owner or occupier of the land, or
 - (b) by any person who proves that he has or intends to acquire an interest in the land which will be affected by a compliance determination or that he has borne any of the cost of carrying out works on the land during the war period.
- (2) In the case of land owned or occupied by or on behalf of the Crown, or leased to, or to a person acting on behalf of, the Crown, or land with respect to which it is proved that there is held, or intended to be acquired, by or on behalf of the Crown an interest in the land which will be affected as mentioned in sub-paragraph (1) or that any of the cost there mentioned has been borne by the Crown, a compliance determination application may be made by any person acting on behalf of the Crown.
- 3 A compliance determination application shall be accompanied by such plans and other information as are necessary to enable the application to be determined.
- 4 (1) The authority to whom a compliance determination application is made shall within 14 days from the receipt of the application publish notice of it in one or more local newspapers circulating in the area in which the land is situated and serve notice of it on any person appearing to the authority to be specially affected by the application.
- (2) The authority shall take into consideration any representations made to them in connection with the application within 14 days from the publication of the notice.

Determination of applications

- 5 (1) Where a compliance determination application is made to an authority the authority shall determine whether the works or use in question fail to comply with any planning control which the authority are responsible for enforcing and, if so, shall specify the control in question.

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- (2) Where the authority determine that works or a use fail so to comply they shall further determine whether having regard to all relevant circumstances the works or use shall, notwithstanding the failure, be deemed so to comply, either unconditionally or subject to such conditions as to the time for which the works or use may be continued, the carrying out of alterations, or other matters, as the authority think expedient.

Appeals against compliance determinations or failure to make such determinations

- 6 (1) Where the applicant is aggrieved by a compliance determination, or where a person by whom representations have been made as mentioned in paragraph 4 is aggrieved by such a determination, he may appeal to the Secretary of State.
- (2) The applicant may also appeal if he is aggrieved by the failure of the authority to determine the application within 2 months from the last day on which representations under paragraph 4 may be made and has served notice on the authority that he appeals to the Secretary of State.
- (3) An appeal under this paragraph must be made within the period of 28 days after the applicant has notice of the determination or, in the case of an appeal under subparagraph (2), after the applicant has served notice on the authority of the appeal, or within such extended period as the Secretary of State may allow.
- 7 (1) On such an appeal the Secretary of State may give, in substitution for the determination, if any, given by the authority, such determination as appears to him to be proper having regard to all relevant circumstances, or, if he is satisfied that the applicant was not a person entitled to make the application, may decide that the application is not to be entertained.
- (2) At any stage of the proceedings on such an appeal to him the Secretary of State may, and shall if so directed by the Court of Session, state in the form of a special case for the opinion of the Court of Session any question of law arising in connection with the appeal.
- 8 Subject to paragraph 9 and to any determination or decision of the Secretary of State on an appeal under paragraph 7, any compliance determination shall be final and any such failure to give a determination as mentioned in paragraph 6(2) shall be taken on the service of the notice there mentioned as a final refusal by the authority to entertain the application, and any determination or decision of the Secretary of State on an appeal under paragraph 7 shall be final.

Fresh applications where alteration in circumstances

- 9 Where a compliance determination has been given that works on land or a use of land shall not be deemed to comply with planning control or shall be deemed to comply with it subject to conditions, then if a person entitled to make a compliance determination application with respect to the land satisfies the authority or on appeal the Secretary of State that there has been a material change of circumstances since the previous application was determined, he may make a subsequent application and on such an application the authority or on appeal the Secretary of State may substitute for the compliance determination such determination as appears proper having regard to all relevant circumstances.

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References of application to Secretary of State

- 10 (1) If it appears to the Secretary of State that it is expedient, having regard to considerations affecting the public interest (whether generally or in the locality concerned), that any compliance determination application to an authority, or any class or description of such applications, should instead of being determined by the authority be referred to him for decision, he may give directions to the authority requiring that application, or applications of that class or description, to be so referred.
- (2) This Schedule shall apply to any such reference as if it were an appeal under paragraph 6(2) following the failure of the authority to determine the application.

Information

- 11 The Secretary of State may give directions to any authority requiring them to furnish him with such information with respect to compliance determination applications received by them as he considers necessary or expedient in connection with the exercise of his functions under this Schedule.

Opportunity for hearing

- 12 (1) On a compliance determination application the applicant may require the authority to give him an opportunity before the application is determined of appearing before and being heard by a person appointed by the authority for the purpose.
- (2) In the case of—
- (a) a compliance determination application referred to the Secretary of State for decision, or
 - (b) an appeal under this Schedule,
- the applicant or the authority may require the Secretary of State to give him or them an opportunity before the application or appeal is determined of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

Notice of proposed enforcement

- 13 (1) This paragraph applies where before the relevant date any person proposes to take steps for enforcing a planning control in the case of such works or such a use as is mentioned in section 251(1).
- (2) Subject to sub-paragraph (4), unless a compliance determination application has been made in relation to the land which has not been finally determined, that person shall serve on every owner and occupier of the land not less than 28 days' notice of the proposal, and if within that period any person makes such an application in relation to the land and within 7 days of making it serves on the person proposing to take steps as aforesaid notice that the application has been made, no steps for enforcing the control shall be taken until the final determination of the application.
- (3) If such an application has been made which has not been finally determined, no such steps shall be taken until the final determination of it.
- (4) No notice shall be required under sub-paragraph (2) if steps for enforcing a planning control in the case of any works on land are begun within 28 days of the final determination of a compliance determination application in relation to the land.

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- (5) For the purpose of this paragraph a compliance determination application shall be treated as having been finally determined notwithstanding that a subsequent application may be made under paragraph 9.

Power of entry

- 14 (1) At any time before the relevant date any officer of an authority shall, on producing, if so required, some duly authenticated document showing his authority to act for the purposes of this paragraph, have a right, subject to the provisions of this paragraph, to enter any premises at all reasonable hours—
- (a) for the purpose of ascertaining whether there are on the premises any works carried out during the war period which do not comply with planning control, or whether a use of the premises continues which was begun during that period and does not comply with it;
 - (b) where a compliance determination application has been made to the authority, for the purpose of obtaining any information required by the authority for the exercise of their functions under section 251 and this Schedule in relation to the application.
- (2) Admission to any premises which are occupied shall not be demanded as of right unless 24 hours' notice of the intended entry has been served on the occupier.
- (3) Any person who wilfully obstructs any officer of an authority acting in the exercise of his powers under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (4) If any person who in compliance with this paragraph is admitted into a factory, workshop or workplace discloses to any person any information obtained by him in it with regard to any manufacturing process or trade secret, he shall, unless such disclosure was made in the performance of his duty, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months.

Service of notices

- 15 (1) Any notice or other document required or authorised to be served under this Schedule may be served on any person either by delivering it to him, or by leaving it at his proper address, or by post.
- (2) Any such document required or authorised to be served upon an incorporated company or body shall be duly served if it is served upon the secretary or clerk of the company or body.
- (3) For the purposes of this paragraph and of section 7 of the ^{M1}Interpretation Act 1978, the proper address of any person upon whom any such document is to be served is—
- (a) in the case of the secretary or clerk of any incorporated company or body, that of the registered or principal office of the company or body, and
 - (b) in any other case, the last known address of the person to be served.
- (4) If it is not practicable after reasonable enquiry to ascertain the name or address of an owner or occupier of land on whom any such document is to be served, the document may be served by addressing it to him by the description of “owner” or “occupier” of the premises (describing them) to which it relates, and by delivering it to some

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person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

Marginal Citations

M1 1978 c. 30.

Supplementary provisions

16 Parts XIII and XIV do not apply to section 251 and this Schedule.

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