

# PLANNING ETC. (SCOTLAND) ACT 2006

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## EXPLANATORY NOTES

### THE ACT – SECTION BY SECTION

#### Part 4 – Enforcement

##### *Section 25 – Fixed penalty notices*

146. **Subsection (1)** inserts **new section 136A** into the 1997 Act. This establishes powers for planning authorities to issue fixed penalty notices as an alternative to prosecution in cases where a person is in breach of an enforcement notice. In the new section 136A, subsection (1) allows a planning authority to issue a fixed penalty notice provided certain conditions, as set out in subsection (7), are met. The conditions of subsection (7) are that the fixed penalty notice must be issued within 6 months of the failure to comply with the enforcement notice, and that a fixed penalty notice cannot be issued where a person has already been charged with an offence in respect of the breach of the enforcement notice.
147. Subsections (4), (5) and (6) of new section 136A set out that a person who receives a fixed penalty notice has 30 days to pay the penalty, and that the penalty is reduced by 25% if payment is made within 15 days.
148. Subsection (10) of new section 136A provides that any payment received by a planning authority in respect of a fixed penalty notice is retained by the authority.
149. Subsection (11) of new section 136A allows Scottish Ministers to prescribe in secondary legislation different levels of fine for different cases. This will allow Ministers to set out in regulations an incremental scale of fines related to previous fixed penalty notices or prosecutions.
150. **Subsection (2)** inserts **new section 145A** into the 1997 Act. This establishes a similar power to that of section 136A, allowing planning authorities to issue fixed penalty notices in respect of breaches of breach of condition notices. The various subsections of new section 145A make the same provision as those of 136A with regard to payment and the introduction of a scale of fines as set out by Ministers in regulations.

##### *Section 26 – Temporary stop notices*

151. **Subsection (1)** inserts **new sections 144A, 144B, 144C and 144D** into the 1997 Act, which cover the operation of the new system of temporary stop notices. In **new section 144A**, subsection (1) sets out the circumstances in which planning authorities may issue temporary stop notices. The planning authority have to consider that there has been a breach of planning control which comprises an activity, and to consider that there is a valid reason for stopping it immediately.
152. Subsection (2) of new section 144A requires that the notice must be in writing and specify the activity which is to stop, prohibit its continuation and set out the authority's reasons for issuing the notice.

153. Subsection (3) of new section 144A states that notice may be served on a person who either appears to be engaged in the activity and/or a person who has an interest in the land.
154. Subsection (4) of new section 144A states that the authority must display a copy of the notice and a statement on the effect of section 144C (relating to offences) on the land in question.
155. Subsections (5) to (7) of new section 144A set out when the notice starts and ceases to have effect. It may only have effect for a maximum of 28 days. Subsection (8) of new section 144A provides that if the notice is withdrawn it ceases to have effect at that point.
156. In **new section 144B** (restrictions to temporary stop notices) subsection (1) sets out that such notices do not prohibit the use of a building as a dwelling house or the engagement in any activity which is prescribed in regulations. Subsection (2) states that such notices do not apply where the activity has been carried out for more than 4 years prior to the notice being displayed, and subsection (3) disapplies this where the activity relates to building, engineering, mining or the deposit of refuse or waste materials.
157. Subsections (5) and (6) of new section 144B prohibit the issue of a further temporary stop notice unless another enforcement action has been taken.
158. In **new section 144C** (offences) subsections (1) to (4) set out the circumstances in which a person is guilty of an offence for contravening a temporary stop notice, and allow for convictions to be made for any number of offences with reference to different days or periods.
159. Subsection (5) of new section 144C sets out the statutory defences under this section, which are that the notice was not served on the accused and that he did not know, and could not reasonably have known of its existence.
160. Subsections (6) and (7) set out the penalties for offences under these new sections, including a requirement for the court to have regard to any financial benefit which might accrue to the convicted person as a result of the activity which constituted the offence.
161. In **new section 144D** (compensation) subsections (1) and (2) set out who is entitled to compensation in respect of any loss or damage which can be directly attributed to the notice being served. Subsection (3) applies subsections (3) to (7) of section 143 of the 1997 Act to compensation under this section. These provisions cover how the claim for compensation is to be made, give further details of what the compensation may cover and provide that any question of disputed compensation shall be referred to and determined by the Lands Tribunal.
162. **Subsection (2)** gives persons duly authorised by the planning authority rights of entry in relation to the service of temporary stop notices.

### ***Section 27 – Enforcement charters***

163. This section inserts **new section 158A** into the 1997 Act. It places a duty on the planning authority to prepare an enforcement charter, setting out the contents for such a document. The planning authority are obliged to have regard to any guidance issued by the Scottish Ministers concerning this section. The section also places a duty on the planning authority to update and re-publish their enforcement charter, to issue copies to the Scottish Ministers and make it publicly available.