



2011 CHAPTER 25

PART 5

ENFORCEMENT

Introductory

Expressions used in connection with enforcement

131.—(1) For the purposes of this Act—

- (a) carrying out development without the planning permission required; or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted,

constitutes a breach of planning control.

(2) For the purposes of this Act—

- (a) the issue of an enforcement notice; or
- (b) the service of a breach of condition notice,

constitutes taking enforcement action.

Time limits

132.—(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 5 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 dwelling-house, no enforcement action may be taken after the end of the period of 5 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 5 years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

- (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
- (b) taking further enforcement action in respect of any breach of planning control if, during the period of 5 years ending with that action being taken, the council or the Department has taken or purported to take enforcement action in respect of that breach.

Planning contravention notices

Power to require information about activities on land

133.—(1) Where it appears to a council that there may have been a breach of planning control in respect of any land in its district, it 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 estate 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 that person 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;

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- (c) to give the name and postal address of any person known to that person 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 that person holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operations;
 - (e) to state the nature of that person's estate (if any) in the land and the name and postal address of any other person known to the first mentioned person to have an estate 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 that person may wish to make about the notice, will be considered by the council, and the council must give that person 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 failing to respond to the notice and, in particular, that enforcement action may be taken; and
 - (b) of the effect of section 185(5)(b).
- (6) Any requirement of a planning contravention notice must be complied with by giving information in writing to the council.
- (7) The service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control.
- (8) In this section references to operations or activities on land include operations or activities in, under or over the land.

Penalties for non-compliance with planning contravention notice

134.—(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, that person has not complied with any requirement of the notice, that person 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 that person had a reasonable excuse for failing to comply with the requirement.

(4) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 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 that person 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,

that person shall be guilty of an offence.

(6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Temporary stop notices

Temporary stop notice

135.—(1) This section applies if a council thinks—

- (a) that there has been a breach of planning control in relation to any land in its district; and
- (b) that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.

(2) The council may issue a temporary stop notice.

(3) The notice must be in writing and must—

- (a) specify the activity which the council thinks amounts to the breach;
- (b) prohibit the carrying on of the activity (or of so much of the activity as is specified in the notice);
- (c) set out the council's reasons for issuing the notice.

(4) A temporary stop notice may be served on any of the following—

- (a) a person who the council thinks is carrying on the activity;
- (b) a person who the council thinks is an occupier of the land;
- (c) a person who the council thinks has an estate in the land.

(5) The council must display on the land—

- (a) a copy of the notice;
- (b) a statement of the effect of the notice and of section 137.

(6) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of subsection (5).

(7) A temporary stop notice ceases to have effect—

- (a) at the end of the period of 28 days starting on the day the copy notice is so displayed;
- (b) at the end of such shorter period starting on that day as is specified in the notice; or
- (c) if it is withdrawn by the council.

Temporary stop notice: restrictions

136.—(1) A temporary stop notice does not prohibit—

- (a) any person from continuing to use any building, caravan or other structure situated on land to which the temporary stop notice relates as that person's permanent residence whether as owner, occupier, tenant, patient, guest or otherwise;
- (b) the carrying out of an activity of such description or in such circumstances as is prescribed.

(2) A temporary stop notice does not prohibit the carrying out of any activity which has been carried out (whether continuously or not) for a period of 5 years ending with the day on which the copy of the notice is first displayed as mentioned in section 135(5).

(3) Subsection (2) does not prevent a temporary stop notice prohibiting—

- (a) activity consisting of 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 is authorised by planning permission shall be ignored.

(5) A second or subsequent temporary stop notice must not be issued in respect of the same activity unless the council has first 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 injunction under section 156.

Temporary stop notice: offences

137.—(1) A person commits an offence if that person contravenes a temporary stop notice—

- (a) which has been served on that person; or

- (b) a copy of which has been displayed in accordance with section 135(5).
- (2) Contravention of a temporary stop notice includes causing or permitting the contravention of the notice.
- (3) An offence under this section may be charged by reference to a day or a longer period of time.
- (4) A person may be convicted of more than one such offence in relation to the same temporary stop notice by reference to different days or periods of time.
- (5) A person does not commit an offence under this section if that person proves—
 - (a) that the temporary stop notice was not served on him or her; and
 - (b) that that person 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 £100,000;
 - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of the fine the court must have regard in particular to any financial benefit which has accrued or has appeared to accrue to the person convicted in consequence of the offence.

Enforcement notices

Issue of enforcement notice by councils

- 138.**—(1) The council may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to the council—
- (a) that there has been a breach of planning control in relation to any land in its district; and
 - (b) that it is expedient to issue the notice, having regard to the provisions of the local development plan and to any other material considerations.
- (2) A copy of an enforcement notice must 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 estate in the land, being an estate which, in the opinion of the council, is materially affected by the notice.
- (3) The service of the notice must 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.

Issue of enforcement notice by Department

139.—(1) The Department may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to the Department—

- (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 local development plan and to any other material considerations.

(2) The Department must not issue an enforcement notice without consulting the appropriate council.

(3) A copy of an enforcement notice must 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 estate in the land, being an estate which, in the opinion of the Department, is materially affected by the notice.

(4) The service of the notice must 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.

(5) In relation to an enforcement notice issued by the Department, sections 146 and 149 shall apply as if for any reference in those sections to the council there were substituted a reference to the Department.

Contents and effect of enforcement notice

140.—(1) An enforcement notice must state—

- (a) the matters which appear to the council or, as the case may be, the Department to constitute the breach of planning control; and
- (b) the paragraph of section 131(1) within which, in the opinion of the council or Department, 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 must specify the steps which the council or, as the case may be, the Department requires to be taken, or the activities which the council or the Department requires to cease, in order to achieve, wholly or partly, any of the following purposes.

(4) Those purposes are—

- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
- (b) remedying any injury to amenity which has been caused by the breach.

- (5) An enforcement notice may, for example, require—
- (a) the alteration or removal of any buildings or works;
 - (b) the carrying out of any building or other operations;
 - (c) any activity on the land not to be carried on except to the extent specified in the notice; or
 - (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.

(6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7), is as similar as possible to the demolished building.

- (7) A replacement building—
- (a) must comply with any requirement imposed by any statutory provision applicable to the construction of buildings;
 - (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;
 - (c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b)).

(8) An enforcement notice must specify the date on which it is to take effect and, subject to section 143(7), shall take effect on that date.

(9) An enforcement notice must specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

(10) An enforcement notice must specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 138 or 139 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 143.

- (11) Where—
- (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and
 - (b) all the requirements of the notice have been complied with,

then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 55 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

(12) Where—

- (a) an enforcement notice requires the construction of a replacement building; and
- (b) all the requirements of the notice with respect to that construction have been complied with,

planning permission shall be treated as having been granted by virtue of section 55 in respect of development consisting of that construction.

Variation and withdrawal of enforcement notices by councils

141.—(1) The council may—

- (a) withdraw an enforcement notice issued by it; or
- (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 140(9).

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The council must, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the power of the council to issue a further enforcement notice.

Variation and withdrawal of enforcement notices by Department

142.—(1) The Department may—

- (a) withdraw an enforcement notice issued by it; or
- (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 140(9).

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The Department must, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the power of the Department to issue a further enforcement notice.

Appeal against enforcement notice

143.—(1) A person having an estate in the land to which an enforcement notice relates or a person to whom subsection (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice, whether or not a copy of it has been served on that person.

(2) This subsection applies to a person who—

- (a) on the date on which the enforcement notice is issued occupies the land to which it relates by virtue of a licence; and
- (b) continues to occupy the land as aforesaid when the appeal is brought.

(3) An appeal may be brought on any of the following grounds—

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the enforcement notice were not served as required by section 138 or, as the case may be, section 139;
- (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 140(9) falls short of what should reasonably be allowed.

(4) An appeal under this section must be made by serving written notice of the appeal on the planning appeals commission before the date specified in the enforcement notice as the date on which it is to take effect and such notice must indicate the grounds of the appeal and state the facts on which it is based.

(5) Before determining an appeal under this section, the planning appeals commission must, if either—

- (a) the appellant; or

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(b) the council or, as the case may be, Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(6) Sections 41 and 45(2) shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this section as they apply to an application for planning permission to the council or the Department.

(7) Where an appeal is brought under this section, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(8) Subject to subsection (9), the validity of an enforcement notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(9) Subsection (8) shall not apply to proceedings brought under section 147 against a person who—

- (a) has held an estate in the land since before the enforcement notice was issued;
- (b) was not served with a copy of the enforcement notice; and
- (c) satisfies the court that—
 - (i) that person did not know and could not reasonably have been expected to know that the enforcement notice had been issued; and
 - (ii) that person's interests have been substantially prejudiced by the failure to serve him or her with a copy of it.

Appeal against enforcement notice - general supplementary provisions

144.—(1) On an appeal under section 143 the planning appeals commission must quash the enforcement notice, vary the terms of the notice or uphold the notice.

(2) On such an appeal the planning appeals commission may correct any misdescription, defect or error in the enforcement notice, or vary its terms if it is satisfied that the correction or variation can be made without injustice to the appellant or to the council or, as the case may be, the Department.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the enforcement notice was not so served, the planning appeals commission may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve the copy of the enforcement notice.

Appeal against enforcement notice - supplementary provisions relating to planning permission

145.—(1) On the determination of an appeal under section 143, the planning appeals commission may—

- (a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;
- (b) discharge any condition or limitation subject to which planning permission was granted;
- (c) 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 planning permission was granted was lawful and, if so, issue a certificate under section 169.

(2) The provisions of sections 169 to 172 mentioned in subsection (3) shall apply for the purposes of subsection (1)(c) as they apply for the purposes of section 169, 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 council were references to the planning appeals commission.

(3) Those provisions are sections 169(5) to (7), 171(4) (so far as it relates to the form of the certificate), (6) and (7) and 172.

(4) In considering whether to grant planning permission under subsection (1), the planning appeals commission must have regard to the local development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations; and planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part 3; and where under that subsection the planning appeals commission discharges a condition or limitation, it may substitute another condition or limitation for it, whether more or less onerous.

(5) Where an appeal against an enforcement notice is brought under section 143, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control and, in relation to any exercise by the planning appeals commission of its powers under subsection (1)—

- (a) any planning permission granted under that subsection shall be treated as granted on that application;

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- (b) in relation to a grant of planning permission or a determination under that subsection, the decision of the planning appeals commission shall be final; and
 - (c) subject to paragraph (b), any planning permission granted under that subsection shall have the like effect as a permission granted under Part 3.
- (6) Where—
- (a) the notice under subsection (4) of section 143 indicates the ground mentioned in subsection (3)(a) of that section;
 - (b) any fee is payable under regulations made by virtue of section 223 in respect of the application deemed to be made by virtue of the appeal; and
 - (c) the planning appeals commission gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application, shall lapse at the end of that period.

Execution and cost of works required by enforcement notice

146.—(1) Where any steps required by an enforcement notice to be taken are not taken within the period allowed for compliance with the notice, a person authorised in writing by the council may—

- (a) enter the land and take the steps; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(2) Any expenses incurred by the owner or occupier of any land for the purposes of complying with an enforcement notice in respect of any breach of planning control, and any sums paid by the owner of any land under subsection (1), in respect of expenses incurred by the council in taking steps required to be taken by such a notice, shall be deemed to be incurred for the use and at the request of the person by whom the breach of planning control was committed.

(3) The council may sell any materials which have been removed by it from any land when taking steps under subsection (1) if, before the expiration of 3 days from their removal, they are not claimed and taken away by their owner.

(4) Where the council sells any materials under subsection (3), it must pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by it from that person.

(5) Subsections (3) and (4) do not apply to refuse removed by the council.

(6) Where the council claims to recover any expenses under this section from a person as being the owner of the land in respect of which the expenses were incurred and that person proves that—

- (a) that person is receiving the rent of that land merely as agent or trustee for some other person; and
- (b) has not, and since the date of the service of a demand for payment has not had, on behalf of that other person sufficient money to discharge the whole demand of the council,

that person's liability shall be limited to the total amount of the money which that person has or has had as mentioned in paragraph (b), but the council where it is, or would be, debarred by this subsection from recovering the whole of any such expenses from an agent or trustee may recover the whole of any unpaid balance thereof from the person on whose behalf the agent or trustee receives the rent.

(7) Any expenses recoverable by the council under this section shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the owner of the land and of any person deriving title from the owner.

(8) The charge created by subsection (7) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the council by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the council may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 (c. 41) on mortgagees by deed accordingly.

(9) 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.

Offence where enforcement notice not complied with

147.—(1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

(2) Where the owner of the land is in breach of an enforcement notice that person shall be guilty of an offence.

(3) In proceedings against any person for an offence under subsection (2), it shall be a defence to show that that person did everything that person could be expected to do to secure compliance with the notice.

(4) A person who has control of or an estate 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 242,

it shall be a defence for that person to show that that person 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 £100,000;
- (b) on conviction on indictment, to a fine.

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

Effect of planning permission, etc., on enforcement or breach of condition notice

148.—(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 does not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

Enforcement notice to have effect against subsequent development

149.—(1) Compliance with an enforcement notice whether in respect of—

- (a) the completion, removal or alteration of any buildings or works; or

(b) the discontinuance of any use of land, or in respect of any other requirement contained in the enforcement notice, shall not discharge the enforcement 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 3; 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; and, subject to subsection (4), section 146 shall apply accordingly.

(4) Where, at any time after an enforcement notice takes effect—

- (a) 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 the notice, and
- (b) the council proposes, under section 146(1), to take any steps required by the enforcement notice for the removal or alteration of the buildings or works in consequence of the reinstatement or restoration,

the council must, not less than 28 days before taking any such steps, serve on the owner and occupier of the land a notice of its intention to do so.

(5) 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 £7,500; and no person shall be liable under section 147(2) for failure to take any steps required to be taken by an enforcement notice by way of removal or alteration of what has been so reinstated or restored.

Service of stop notices by councils

150.—(1) Where the council considers it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, it may, when it serves the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a “stop notice”) referring to, and having annexed to it a copy of, the enforcement notice and prohibiting the carrying out

of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.

(2) In this section and section 185 “relevant activity” means any activity specified in the enforcement notice as an activity which the council requires 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 any person from continuing to use any building, caravan or other structure situated upon the land as that person’s permanent residence whether as owner, occupier, tenant, patient, guest or otherwise.

(5) A stop notice shall not take effect until such date as it may specify (and it cannot be contravened until that date).

(6) The date specified in a stop notice must be the date when the notice is served, unless the council considers that there are special reasons for specifying a later date, but the date specified in the notice must, in any case, be a date not later than 28 days from the date when the notice is first served on any person.

(7) 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 5 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.

(8) Subsection (7) 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.

(9) A stop notice shall cease to have effect when—

- (a) the enforcement notice referred to in it is withdrawn or quashed; or
- (b) the period for compliance with the enforcement notice expires; or
- (c) notice of withdrawal of the stop notice is first served under subsection (11);
or
- (d) if or to the extent that the activities prohibited by it cease, on a variation of the enforcement notice referred to in it, to be relevant activities.

(10) A stop notice may be served by the council on any person who appears to it to have an estate in the land or to be engaged in any activity prohibited by the notice; and where a stop notice has been served in respect of any land, the council may display there a notice (in this section referred to as a “site notice”) stating—

- (a) that a stop notice has been served; and

(b) that any person contravening the stop notice may be prosecuted for an offence under this section, giving the date when the stop notice takes effect and indicating its requirements.

(11) The council may at any time withdraw a stop notice (without prejudice to its power to serve another)—

(a) by serving notice to that effect on persons served with the stop notice; and

(b) if a site notice was displayed in respect of the stop notice, displaying a notice of the withdrawal in place of the site notice.

(12) A person who contravenes a stop notice after a site notice has been displayed or the stop notice has been served on that person shall be guilty of an offence.

(13) 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.

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

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

(a) on summary conviction, to a fine not exceeding £100,000;

(b) on conviction on indictment, to a fine.

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

(17) In proceedings for an offence under this section it is a defence for the accused to prove that the stop notice was not served on the accused and that the accused did not know, and could not reasonably have been expected to know, of its existence.

(18) 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 138 or, as the case may be, 139 if it is shown that the council took all such steps as were reasonably practicable to effect proper service.

Service of stop notices by Department

151.—(1) The Department may serve a stop notice.

(2) The Department must not serve a stop notice without consulting the appropriate council.

(3) A notice served by the Department under subsection (1) shall have the same effect as if it had been served by a council.

(4) The provisions of section 150 shall apply, with any necessary modifications, to the service of a stop notice by the Department as they apply to the service of a stop notice by a council.

Breach of condition notices

Enforcement of conditions

152.—(1) This section applies where planning permission for carrying out any development of land has been granted subject to conditions.

(2) The council 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 that person 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 must specify the steps which the council considers ought to be taken, or the activities which the council considers ought to cease, to secure compliance with the conditions specified in the notice.

(6) The council may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve a further breach of condition notice on that person 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 council 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 that person 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 that person took all reasonable measures to secure compliance with the conditions specified in the notice; or
- (b) where the notice was served under subsection (2)(b), that that person 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.

Fixed penalties

Fixed penalty notice where enforcement notice not complied with

153.—(1) Where on any occasion an authorised officer of a council has reason to believe that a person has committed an offence under section 147 in the district of that council, the officer may give that person a notice offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty to the council.

(2) Where a person is given a notice under this section in respect of an offence—

- (a) no proceedings may be instituted for that offence before the expiration of the period of 28 days following the date of the notice; and
- (b) the person shall not be convicted of that offence if the person pays the fixed penalty before the expiration of that period.

(3) A notice under this section must specify—

- (a) the step specified, under subsection (3) of section 140, in the enforcement notice which has not been taken; or
- (b) the activity so specified which has not ceased.

(4) A notice under this section must also state—

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

- (a) the period during which, by virtue of subsection (2), proceedings will not be taken for the offence;
- (b) the amount of the fixed penalty; and
- (c) the person to whom and the address at which the fixed penalty may be paid.

(5) The council must not serve more than one notice under this section in relation to a particular step or activity.

(6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (4) (c) at the address so mentioned.

(7) Where a letter is sent in accordance with subsection (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(8) The form of a notice under this section shall be such as the Department may prescribe.

(9) The fixed penalty payable to the council under this section is such amount as may be prescribed.

(10) But if payment is made within the first 14 days of the period mentioned in subsection (2) the amount payable is reduced by 25%.

(11) In any proceedings a certificate which—

- (a) purports to be signed on behalf of the clerk of the council, and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(12) In this section “authorised officer”, in relation to a council, means an employee of a council who is authorised in writing by the council for the purpose of giving notices under this section.

Fixed penalty notice where breach of condition notice not complied with

154.—(1) Where on any occasion an authorised officer of a council has reason to believe that a person has committed an offence under subsection (9) of section 152 in the district of that council, the officer may give that person a notice offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty to the council.

(2) Where a person is given a notice under this section in respect of an offence—

- (a) no proceedings may be instituted for that offence before the expiration of the period of 28 days following the date of the notice; and

- (b) the person shall not be convicted of that offence if the person pays the fixed penalty before the expiration of that period.
- (3) A notice under this section must—
 - (a) specify the step specified under subsection (5) of section 152 in the breach of condition notice which has not been taken; or
 - (b) the activity so specified which has not ceased.
- (4) A notice under this section must also state—
 - (a) the period during which, by virtue of subsection (2), proceedings will not be taken for the offence;
 - (b) the amount of the fixed penalty; and
 - (c) the person to whom and the address at which the fixed penalty may be paid.
- (5) The council must not serve more than one notice under this section in relation to a particular step or activity.
- (6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (4) (c) at the address so mentioned.
- (7) Where a letter is sent in accordance with subsection (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (8) The form of a notice under this section shall be such as the Department may prescribe.
- (9) The fixed penalty payable to the council under this section is such amount as may be prescribed.
- (10) But if payment is made within the first 14 days of the period mentioned in subsection (2) the amount payable is reduced by 25%.
- (11) In any proceedings a certificate which—
 - (a) purports to be signed on behalf of the clerk of the council, and
 - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,is evidence of the facts stated.
- (12) In this section “authorised officer”, in relation to a council, means an employee of a council who is authorised in writing by the council for the purpose of giving notices under this section.

Use of fixed penalty receipts

155.—(1) This section applies in relation to amounts paid to a council in pursuance of notices under section 153 or 154 (its “fixed penalty receipts”).

- (2) A council may use its fixed penalty receipts only for the purposes of—
- (a) its functions under this Part;
 - (b) such other of its functions as may be specified in regulations made by the Department.
- (3) Regulations under subsection (2)(b) may, in particular, have the effect that a council may use its fixed penalty receipts for the purposes of any of its functions.
- (4) A council must supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.
- (5) The Department may by regulations—
- (a) make provision for what a council is to do with its fixed penalty receipts—
 - (i) pending their being used for the purposes of functions of the council referred to in subsection (2);
 - (ii) if they are not so used before such time after their receipt as may be specified by the regulations;
 - (b) make provision for accounting arrangements in respect of a council's fixed penalty receipts.
- (6) The provision that may be made under subsection (5)(a)(ii) includes, in particular, provision for the payment of sums to a person (including the Department) other than the council.
- (7) Before making regulations under this section, the Department shall consult—
- (a) councils;
 - (b) such other persons as the Department thinks fit.

Injunctions

Injunctions

- 156.**—(1) Where the council considers it necessary or expedient for—
- (a) any actual or apprehended breach of planning control;
 - (b) any actual or apprehended contravention of sections 85(1) or (5), 126 or 127; or
 - (c) any actual or apprehended contravention of hazardous substances control,
- to be restrained by injunction, it may apply to the court for an injunction, whether or not it has exercised or is proposing to exercise any of its other powers under this Part.

(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court and county court rules may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this section “the court” means the High Court or the county court.

Listed buildings

Issue of listed building enforcement notices by councils

157.—(1) Where it appears to a council that any works have been or are being executed to a listed building in its district and are such as to involve a contravention of section 85(1) or (5), then, subject to subsection (3), the council may, if it considers it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice—

- (a) specifying the alleged contravention; and
- (b) requiring such steps as may be specified in the notice to be taken—
 - (i) for restoring the building to its former state; or
 - (ii) where the council considers that such restoration would not be reasonably practicable, or would be undesirable, for executing such further works specified in the notice as it considers necessary to alleviate the effect of the works which were carried out without listed building consent; or
 - (iii) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.

(2) A notice under this section is referred to in this Act as a “listed building enforcement notice”.

(3) A listed building enforcement notice shall not be served in relation to a contravention of section 85(1) or (5) which occurred before 9th December 1978.

(4) A listed building enforcement notice—

- (a) must specify the date on which it is to take effect and, subject to section 159, shall take effect on that date; and
- (b) must specify the period within which any steps are required to be taken and may specify different periods for different steps,

and where different periods apply to different steps, references in this Part to the period for compliance with a listed building enforcement notice, in relation to any steps, are to the period within which the step is required to be taken.

(5) Where a listed building enforcement notice imposes any such requirement as is mentioned in subsection (1)(b)(ii), listed building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

(6) Sections 138(2) and (3), 141, 146 and 147 shall, with any necessary modifications, apply to a listed building enforcement notice issued by a council as those sections apply to an enforcement notice issued by a council.

Issue of listed buildings enforcement notices by Department

158.—(1) If it appears to the Department to be expedient that a listed building enforcement notice should be issued in respect of any land, it may issue such a notice.

(2) Before the Department issues such a notice under subsection (1), it must consult the appropriate council.

(3) A listed building enforcement notice issued by the Department shall have the same effect as a notice issued by a council.

(4) Sections 139(2) to (4), 142, 146 and 147 shall, with any necessary modifications apply to a listed building enforcement notice issued by the Department as they apply to an enforcement notice issued by the Department.

Appeal against listed building enforcement notice

159.—(1) A person having an estate in the building to which a listed building enforcement notice relates or a person to whom subsection (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice on any of the following grounds—

- (a) that the matters alleged to constitute a contravention of section 85 have not occurred;
- (b) that those matters (if they occurred) do not constitute such a contravention;
- (c) that the contravention of that section alleged in the notice occurred before 9th December 1978;
- (d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged or different conditions substituted;

- (f) that copies of the notice were not served as required by section 138(2) and (3), as applied by section 157(6), or, as the case may be, section 139(2) to (4), as applied by section 158(4);
 - (g) that the period specified in the notice as the period within which any step required thereby is to be taken falls short of what should reasonably be allowed;
 - (h) except in relation to such a requirement as is mentioned in section 157(1)(b)(ii) or (iii), the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
 - (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
 - (j) that steps required to be taken by virtue of section 157(1)(b)(ii) exceed what is necessary to alleviate the effect of the works executed to the building;
 - (k) that steps required to be taken by virtue of section 157(1)(b)(iii) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.
- (2) This subsection applies to a person who—
- (a) on the date on which the listed building enforcement notice is issued occupies the building to which it relates by virtue of a licence; and
 - (b) continues to occupy the building when the appeal is brought.
- (3) Subsections (4) to (7) of section 143 and section 144 shall, with any necessary modifications, apply to an appeal under this section against a listed building enforcement notice as they apply to an appeal under section 143 against an enforcement notice.
- (4) On the determination of an appeal under this section, the planning appeals commission may—
- (a) grant listed building consent for the works to which the listed building enforcement notice relates or for part only of those works;
 - (b) discharge any condition or limitation subject to which listed building consent was granted and substitute any other condition, whether more or less onerous.
- (5) Any listed building consent granted by the planning appeals commission under subsection (4) shall, subject to subsection (6), have the like effect as a listed building consent granted under Part 4.
- (6) The decision of the commission in relation to the grant of listed building consent under subsection (4) shall be final.

(7) The validity of a listed building enforcement notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

Effect of listed building consent on listed building enforcement notice

160.—(1) If, after the issue of a listed building enforcement notice, consent is granted under section 85(3) for the retention of any work to which the listed building enforcement notice relates, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken which would involve the works not being retained in accordance with the consent.

(2) If the consent is granted so as to permit the retention of works without complying with some condition subject to which a previous listed building consent was granted, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.

(3) The preceding provisions of this section shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the listed building enforcement notice before the relevant provisions of that notice ceased to have effect.

Urgent works to preserve building

161.—(1) Where it appears to a council that works are urgently necessary for the preservation of—

- (a) a listed building in its district, or
- (b) a building in respect of which a direction has been given by the Department that this section shall apply,

the council may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.

(2) The ground on which the Department may give a direction that this section shall apply to a building is that the building is in a conservation area and it appears to the Department that its preservation is important for maintaining the character or appearance of the conservation area.

(3) If it appears to the Department that any works are urgently necessary for the preservation of—

- (a) a listed building, or
- (b) a building in respect of which a direction has been given by the Department that this section shall apply,

it may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.

(4) If the building is occupied works may be carried out only to those parts which are not in use.

(5) The owner of the building must be given not less than 7 days' notice in writing of the intention to carry out the works and the notice must describe the works proposed to be carried out.

(6) Subsections (7) to (11) have effect for enabling the expenses of works executed under this section to be recovered by the council or, as the case may be, the Department.

(7) The council or, as the case may be, the Department may give notice to the owner of the building requiring the owner to pay the expenses of the works.

(8) Where the works consist of or include works for affording temporary support or shelter for the building—

- (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used; and
- (b) notices under subsection (7) in respect of any such continuing expenses may be given from time to time.

(9) The owner may within 28 days of the service of the notice appeal to the planning appeals commission against the notice on any of the following grounds—

- (a) that some or all of the works were unnecessary for the preservation of the building;
- (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time;
- (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause the owner hardship.

(10) The planning appeals commission must give notice of its determination, the reasons for it and the amount recoverable to the owner of the building and to the council or, as the case may be, the Department and the determination of the appeals commission shall be final.

(11) Any expenses recoverable by the council or the Department under this section shall be a civil debt recoverable summarily.

Hazardous substances

Hazardous substances contravention notice

162.—(1) Subject to subsection (2), where it appears to a council that there is or has been a contravention of hazardous substances control in its district, it may issue a hazardous substances contravention notice if it considers it expedient to do so having regard to any material consideration.

(2) The council must not issue a hazardous substances contravention notice where it appears to the council that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.

(3) In this Act “hazardous substances contravention notice” means a notice—

- (a) specifying an alleged contravention of hazardous substances control; and
- (b) requiring such steps as may be specified in the notice to be taken to remedy wholly or partly the contravention.

(4) A copy of a hazardous substances contravention notice must be served—

- (a) on the owner and on the occupier of the land to which it relates;
- (b) on any person other than the owner or occupier who appears to the council to be in control of that land; and
- (c) on such other persons as may be prescribed.

(5) A hazardous substances contravention notice must also specify—

- (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect;
- (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.

(6) Where the council issues a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of subsection (3)(b), if the council thinks it expedient, include a requirement that the hazardous substance be removed from the land.

(7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substance which is required to be removed.

(8) The council may withdraw a hazardous substances contravention notice (without prejudice to its power to issue another) at any time before or after it takes effect.

(9) If the council does so, it shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice or would, if the notice were re-issued, be served with a copy of it.

(10) The Department must by regulations provide for—

- (a) appeals to the planning appeals commission against hazardous substances contravention notices;
- (b) the persons by whom, grounds upon which and time within which such an appeal may be brought;

- (c) the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of sections 143 to 145.
- (11) If any person appeals against a hazardous substances contravention notice, the notice shall, subject to regulations made under this section, be of no effect pending the final determination or the withdrawal of the appeal.
- (12) The Department may by regulations—
 - (a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by this section;
 - (b) direct that any of the provisions of sections 146 to 150 and 185 of this Act shall have effect in relation to hazardous substances contravention notices subject to such modifications as it may specify in the regulations;
 - (c) make such other provision as it considers necessary or expedient in relation to hazardous substances contravention notices.

Variation of hazardous substances contravention notices

- 163.**—(1) The council may waive or relax any requirement of a hazardous substances contravention notice issued by it and, in particular, may extend any period specified in accordance with section 162(5)(b) in the notice.
- (2) The powers conferred by subsection (1) may be exercised before or after the notice takes effect.
- (3) The council must, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice or would, if the notice were re-issued, be served with a copy of it.

Trees

Enforcement of duties as to replacement of trees

- 164.**—(1) If it appears to a council that—
- (a) the provisions of section 125; or
 - (b) any conditions of a consent given under a tree preservation order which require the replacement of trees,
- are not complied with in the case of any tree or trees in its district, the council may serve on the owner of the land a notice requiring the owner, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified.
- (2) A notice under subsection (1) may only be served within 5 years from the date of the alleged failure to comply with those provisions or conditions.

(3) A notice under subsection (1) must specify a period at the end of which it is to take effect.

(4) The specified period must be a period of not less than 28 days beginning with the date of service of the notice.

(5) The duty imposed by section 125(1) may only be enforced as provided by this section and not otherwise.

Appeals against section 164 notices

165.—(1) A person on whom a notice under section 164(1) is served may appeal to the planning appeals commission against the notice on any of the following grounds—

- (a) that the provisions of section 125 or, as the case may be, the conditions mentioned in section 164(1)(b) are not applicable or have been complied with;
- (b) that in all the circumstances of the case the duty imposed by section 125(1) should be dispensed with in relation to any tree;
- (c) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;
- (d) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;
- (e) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.

(2) An appeal under subsection (1) shall be made by serving written notice of the appeal on the planning appeals commission before the end of the period specified in accordance with section 164(3) and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(3) On any such appeal the planning appeals commission must, if either the appellant or the council so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(4) Where an appeal is brought under this section, the notice under section 164(1) shall be of no effect pending the final determination or the withdrawal of the appeal.

(5) On an appeal under this section the planning appeals commission may—

- (a) correct any defect, error or misdescription in the notice; or
- (b) vary any of its requirements,

if it is satisfied that the correction or variation will not cause injustice to the appellant or the council.

(6) Where the planning appeals commission determines to allow the appeal, it may quash the notice.

(7) The planning appeals commission must give any directions necessary to give effect to its determination on the appeal.

(8) Where any person has appealed to the planning appeals commission under this section against a notice, neither that person nor any other shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

Execution and cost of works required by section 164 notice

166.—(1) If, within the period specified in a notice under section 164(1) for compliance with it, or within such extended period as the council may allow, any trees which are required to be planted by a notice under that section have not been planted, the council may—

- (a) enter the land and plant those trees; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(2) Where such a notice has been served—

- (a) any expenses incurred by the owner of any land for the purpose of complying with the notice; and
- (b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the council in planting trees required by such a notice to be planted,

shall be deemed to be incurred or paid for the use and at the request of any person, other than the owner, responsible for the cutting down, destruction or removal of the original tree or trees.

(3) Subsections (3) to (9) of section 146 shall with any necessary modifications apply to a notice under this section as those subsections apply to an enforcement notice.

Enforcement of controls as respects trees in conservation areas

167.—(1) If any tree to which section 127 applies—

- (a) is removed, uprooted or destroyed in contravention of that section; or
- (b) is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of the provisions of such regulations under subsection (1) of section 128 as are mentioned in subsection (3) of that section,

it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as the owner reasonably can.

(2) The duty imposed by subsection (1) does not apply to an owner if on application by the owner the council dispenses with it.

(3) The duty imposed by subsection (1) on the owner of any land attaches to the person who is from time to time the owner of the land and may be enforced as provided by section 164 and not otherwise.

Discontinuance orders

Enforcement of orders under section 73

168.—(1) Any person who, without the grant of planning permission in that behalf, uses land, or causes or permits land to be used—

- (a) after the expiry of the period allowed for compliance with an order under section 73, for any purpose for which an order under that section has required that its use shall be discontinued; or
- (b) in contravention of any condition imposed by such an order by virtue of subsection (1)(a) of that section,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If the use is continued after the conviction of a person of an offence under subsection (1), that person shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the use is so continued.

(3) It shall be a defence for a person charged with an offence under subsection (1) or (2) to prove that that person took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or herself or by any person under his or her control.

(4) If in any case the defence provided by subsection (3) 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 days before the hearing, that person 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 the first mentioned person's possession.

(5) If any steps required by an order under section 73 to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, a person authorised in writing by the council may enter the land and take those steps, and the council may recover

from the person who is then the owner of the land any expenses reasonably incurred by it in that behalf; and those expenses shall be a civil debt recoverable summarily.

(6) Where a copy of an order under section 73 has been served on the person who, at the time when the copy was served on that person, was the owner of the land to which the order relates, then, if any steps required by the order to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) If a person against whom proceedings are brought under subsection (6) has, at some time before the end of the period allowed for compliance with the order, ceased to be the owner of the land, that person shall, upon a complaint duly made and on giving to the prosecution not less than 3 days' notice of his or her intention, be entitled to have the person who then became the owner of the land (in subsection (8) referred to as "the subsequent owner") brought before the court in the proceedings.

(8) If after it has been proved, in a case to which subsection (7) applies, that any steps required by the order under section 73 have not been taken within the period allowed for compliance with the order, the original defendant proves that the failure to take those steps was attributable, in whole or in part, to the default of the subsequent owner—

- (a) the subsequent owner may be convicted of the offence; and
- (b) the original defendant, if that person further proves that he or she took all reasonable steps to secure compliance with the order, shall be acquitted of the offence.

(9) If after a person has been convicted of an offence under subsections (6) to (8) that person does not as soon as practicable do everything in his or her power to secure compliance with the order under section 73 in so far as it requires steps to be taken for the alteration or removal of any buildings or works, that person shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day following the first conviction on which any requirements of the order remain unfulfilled.

(10) Any reference in this section to the period allowed for compliance with an order under section 73 is a reference to the period specified in the order for compliance with it or such extended period as may be allowed by the council or, as the case may be, by the Department for compliance with the order.

Certificate of lawful use or development

Certificate of lawfulness of existing use or development

- 169.**—(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,
- that person may make an application for the purpose to the appropriate council 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 council is provided with information satisfying it 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 council or a description substituted by it, the council must issue a certificate to that effect; and in any other case it must refuse the application.
- (5) A certificate under this section must—
- (a) specify the land to which it relates;
 - (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 23(3)(e), identifying it by reference to that class);
 - (c) give the reasons for determining the use, operations or other matter to be lawful; and
 - (d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following statutory provisions, as if it were a grant of planning permission—

- (a) section 3(3) of the Caravans Act (Northern Ireland) 1963 (c. 17);
- (b) Article 8(3) of the [Waste and Contaminated Land \(Northern Ireland\) Order 1997 \(NI 19\)](#).

Certificate of lawfulness of proposed use or development

170.—(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, that person may make an application for the purpose to the appropriate council specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the council is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it must issue a certificate to that effect; and in any other case it shall refuse the application.

(3) A certificate under this section must—

- (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 23(3)(e), identifying it by reference to that class);
- (c) give the reasons for determining the use or operations to be lawful; and
- (d) specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

Certificates under sections 169 and 170: supplementary provisions

171.—(1) An application for a certificate under section 169 or 170 must be made in such manner as may be specified by a development order and must include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the council.

(2) Provision may be made by a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by councils.

(3) In particular, such an order may provide for requiring the council—

- (a) to give to any applicant within such time as may be specified by the order such notice as may be so specified as to the manner in which the applicant's application has been dealt with; and
- (b) to give to such persons as may be specified by or under the order, such information as may be so specified with respect to such applications, including information as to the manner in which any application has been dealt with.

(4) A certificate under either of those sections may be issued—

- (a) for the whole or part of the land specified in the application; and
- (b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and must be in such form as may be specified by a development order.

(5) A certificate under section 169 or 170 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 242 (planning register) references to applications for planning permission shall include references to applications for certificates under section 169 or 170.

(7) The council may revoke a certificate under either of those sections if, on the application for the certificate—

- (a) a statement was made or document used which was false in a material particular; or
- (b) any material information was withheld.

(8) Provision may be made by a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

Offences

172.—(1) If any person, for the purpose of procuring a particular decision on an application (whether by that person or another) for the issue of a certificate under section 169 or 170—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;

(b) with intent to deceive, uses any document which is false or misleading in a material particular; or

(c) with intent to deceive, withholds any material information,

that person 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;

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

(3) Notwithstanding Article 19 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#), a magistrates' court may hear and determine a complaint in respect of an offence under subsection (1) whenever made.

Appeals against refusal or failure to give decision on application

173.—(1) Where an application is made to a council for a certificate under section 169 or 170 and—

(a) the application is refused or is refused in part; or

(b) the council does not give notice to the applicant of its decision on the application within such period as may be specified by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the council,

the applicant may by notice appeal to the planning appeals commission—

(i) in the case described in paragraph (a), within the period of 4 months from the date on which the application is refused or is refused in part or such other period as may be prescribed;

(ii) in the case described in paragraph (b), within the period of 4 months from the end of the period referred to in that paragraph or such other period as may be prescribed.

(2) On any such appeal, if and so far as the planning appeals commission is satisfied—

(a) in the case of an appeal under subsection (1)(a), that the council's refusal is not well-founded; or

(b) in the case of an appeal under subsection (1)(b), that if the council had refused the application its refusal would not have been well-founded,

the planning appeals commission must grant the appellant a certificate under section 169 or, as the case may be, 170 accordingly or, in the case of a refusal in part, modify the certificate granted by the council on the application.

(3) If and so far as the planning appeals commission is satisfied that the council's refusal is or, as the case may be, would have been well-founded, the commission must dismiss the appeal.

(4) References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.

Further provisions as to appeals under section 173

174.—(1) Before determining an appeal to it under section 173(1), the planning appeals commission must, if either the appellant or the council so wish, afford to each of them an opportunity of appearing before, and being heard by, the planning appeals commission.

(2) Where the planning appeals commission grants a certificate under section 169 or 170 on such an appeal, it shall give notice to the council of that fact.

(3) The decision of the planning appeals commission on such an appeal shall be final.

Advertisements

Enforcement of advertisement control

175.—(1) The matters for which provision may be made by regulations under section 130 shall include provision for enabling a council to require the removal of any advertisement which is being displayed in contravention of the regulations, or the discontinuance of the use for the display of advertisements of any site which is being so used in contravention of the regulations, and for that purpose for applying any of the provisions of this Act with respect to enforcement notices, subject to such adaptations and modifications as may be specified in the regulations.

(2) Without prejudice to any provision included in regulations made under section 130 by virtue of subsection (1), if any person displays an advertisement in contravention of the regulations that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and, in the case of a continuing offence, to a fine not exceeding one-tenth of level 4 on the standard scale for each day during which the offence continues after conviction.

(3) For the purposes of subsection (2) and without prejudice to the generality of that subsection, a person shall be deemed to display an advertisement if—

- (a) the advertisement is displayed on land of which that person is the owner or occupier; or
- (b) the advertisement gives publicity to that person's goods, trade, business or other concerns,

but a person shall not be guilty of an offence under subsection (2) by reason only that an advertisement is displayed on land of which that person is the owner or occupier, or that that person's goods, trade, business or other concerns are given publicity by the advertisement, if that person proves either of the matters specified in subsection (4).

- (4) The matters are that—
- (a) the advertisement was displayed without the person's knowledge; or
 - (b) the person took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal.

Rights of entry for enforcement purposes

Rights to enter without warrant

176.—(1) Any person duly authorised in writing by a council may at any reasonable time 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 ascertain whether an offence has been, or is being, committed with respect to any building on the land or any other land, under section 85, section 85 as applied by section 105(6), section 103 or 147 or section 147, as applied by section 157(6);
- (c) to ascertain whether an offence has been committed under section 117, 126 or 127;
- (d) for the purpose of exercising any of the functions conferred by section 161;
- (e) to determine whether any of the powers conferred on the council by this Part should be exercised in relation to the land or any other land;
- (f) to determine how any such power should be exercised in relation to the land or any other land;
- (g) 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 Department may at any reasonable hour enter any land to determine whether an enforcement notice, a stop notice or a listed building 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 Department must not so authorise any person without consulting the council.

(4) Admission to any building used as a dwelling-house 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.

Right to enter under warrant

177.—(1) If it is shown to the satisfaction of a lay magistrate on a complaint on oath—

- (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 176(1) or (2); and
- (b) that—
 - (i) admission to the land has been refused, or a refusal is reasonably apprehended; or
 - (ii) the case is one of urgency,

the lay magistrate may issue a warrant authorising any person duly authorised in writing by the council or, as the case may be, the Department to enter the land.

(2) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.

(3) A warrant authorises entry on one occasion only and that entry must be—

- (a) within one month from the date of the issue of the warrant; and
- (b) at a reasonable time, unless the case is one of urgency.

Rights of entry: supplementary provisions

178.—(1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 176 or 177 (referred to in this section as “a right of entry”)—

- (a) must, if so required, produce evidence of his or her authority and state the purpose of entry before so entering;
- (b) may be accompanied by such other persons as may be necessary; and
- (c) on leaving the land must, if the owner or occupier is not then present, leave it as effectively secured against trespassers as that person 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 property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the council or, as the case may be, the Department.

(4) Any question of disputed compensation recoverable under subsection (3) shall be determined by the Lands Tribunal.

(5) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by that person while on the land as to any manufacturing process or trade secret, that person 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 a duty in connection with the purpose for which that person 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;
- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine, or both.