



# Planning and Compensation Act 1991

## 1991 CHAPTER 34

### PART I

#### TOWN AND COUNTRY PLANNING: ENGLAND AND WALES

##### *New enforcement powers*

#### **1 Planning contravention notices**

In the the Town and Country Planning Act 1990 (referred to in this Act as “the principal Act”) in Part VII (enforcement) before section 172 there is inserted—

##### *“Planning contravention notices*

#### **171C Power to require information about activities on land**

- (1) Where it appears to the local planning authority that there may have been a breach of planning control in respect of any land, they may serve notice to that effect (referred to in this Act as a “planning contravention notice”) on any person who—
  - (a) is the owner or occupier of the land or has any other interest in it; or
  - (b) is carrying out operations on the land or is using it for any purpose.
- (2) A planning contravention notice may require the person on whom it is served to give such information as to—
  - (a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land; and
  - (b) any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted,as may be specified in the notice.
- (3) Without prejudice to the generality of subsection (2), the notice may require the person on whom it is served, so far as he is able—

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- (a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;
  - (b) to state when any use, operations or activities began;
  - (c) to give the name and address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;
  - (d) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operations;
  - (e) to state the nature of his interest (if any) in the land and the name and address of any other person known to him to have an interest in the land.
- (4) A planning contravention notice may give notice of a time and place at which—
- (a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to refrain from carrying out any operations or activities or to undertake remedial works; and
  - (b) any representations which he may wish to make about the notice,
- will be considered by the authority, and the authority shall give him an opportunity to make in person any such offer or representations at that time and place.
- (5) A planning contravention notice must inform the person on whom it is served—
- (a) of the likely consequences of his failing to respond to the notice and, in particular, that enforcement action may be taken; and
  - (b) of the effect of section 186(5)(b).
- (6) Any requirement of a planning contravention notice shall be complied with by giving information in writing to the local planning authority.
- (7) The service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control.
- (8) In this section references to operations or activities on land include operations or activities in, under or over the land.

#### **171D Penalties for non-compliance with planning contravention notice**

- (1) If, at any time after the end of the period of twenty-one days beginning with the day on which a planning contravention notice has been served on any person, he has not complied with any requirement of the notice, he shall be guilty of an offence.
- (2) An offence under subsection (1) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.
- (3) It shall be a defence for a person charged with an offence under subsection (1) to prove that he had a reasonable excuse for failing to comply with the requirement.

- (4) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) If any person—
  - (a) makes any statement purporting to comply with a requirement of a planning contravention notice which he knows to be false or misleading in a material particular; or
  - (b) recklessly makes such a statement which is false or misleading in a material particular,he shall be guilty of an offence.
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

## 2 Enforcement of conditions

After section 187 of the principal Act there is inserted—

### *“Breach of condition*

#### **187A Enforcement of conditions**

- (1) This section applies where planning permission for carrying out any development of land has been granted subject to conditions.
- (2) The local planning authority may, if any of the conditions is not complied with, serve a notice (in this Act referred to as a “breach of condition notice”) on—
  - (a) any person who is carrying out or has carried out the development; or
  - (b) any person having control of the land,requiring him to secure compliance with such of the conditions as are specified in the notice.
- (3) References in this section to the person responsible are to the person on whom the breach of condition notice has been served.
- (4) The conditions which may be specified in a notice served by virtue of subsection (2)(b) are any of the conditions regulating the use of the land.
- (5) A breach of condition notice shall specify the steps which the authority consider ought to be taken, or the activities which the authority consider ought to cease, to secure compliance with the conditions specified in the notice.
- (6) The authority may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve on him a further breach of condition notice in respect of the conditions specified in the earlier notice or any other conditions.
- (7) The period allowed for compliance with the notice is—
  - (a) such period of not less than twenty-eight 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 local planning authority on the person responsible.

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- (8) If, at any time after the end of the period allowed for compliance with the notice—
- (a) any of the conditions specified in the notice is not complied with; and
  - (b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,
- the person responsible is in breach of the notice.
- (9) If the person responsible is in breach of the notice he shall be guilty of an offence.
- (10) An offence under subsection (9) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.
- (11) It shall be a defence for a person charged with an offence under subsection (9) to prove—
- (a) that he took all reasonable measures to secure compliance with the conditions specified in the notice; or
  - (b) where the notice was served on him by virtue of subsection (2)(b), that he no longer had control of the land.
- (12) A person who is guilty of an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (13) In this section—
- (a) “conditions” includes limitations; and
  - (b) references to carrying out any development include causing or permitting another to do so.”

### **3 Injunctions restraining breaches of planning control**

After section 187A of the principal Act (as inserted by section 2 of this Act) there is inserted—

#### *“Injunctions*

##### **187B Injunctions restraining breaches of planning control**

- (1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their 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 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.”

*Other changes relating to enforcement*

**4 Time limits on enforcement action**

(1) At the beginning of Part VII of the principal Act (enforcement) there is inserted—

*“Introductory*

**171A Expressions used in connection with enforcement**

- (1) For the purposes of this Act—
- (a) carrying out development without the required planning permission; or
  - (b) failing to comply with any condition or limitation subject to which planning permission has been granted,
- constitutes a breach of planning control.
- (2) For the purposes of this Act—
- (a) the issue of an enforcement notice (defined in section 172); or
  - (b) the service of a breach of condition notice (defined in section 187A),
- constitutes taking enforcement action.
- (3) In this Part “planning permission” includes permission under Part III of the 1947 Act, of the 1962 Act or of the 1971 Act.

**171B Time limits**

- (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 four years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four 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 ten 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 four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.”

- (2) If, in the case of any breach of planning control, the time for issuing an enforcement notice has expired, before the coming into force of this section, by virtue of section 172(4)(b) of the principal Act (as originally enacted), nothing in this section enables any enforcement action to be taken in respect of the breach.

## 5 Enforcement notices

- (1) For sections 172 and 173 of the principal Act (power to issue and contents of enforcement notice) there is substituted—

### “172 Issue of enforcement notice

- (1) The local planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them—
- (a) that there has been a breach of planning control; and
  - (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- (2) A copy of an enforcement notice shall be served—
- (a) on the owner and on the occupier of the land to which it relates; and
  - (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
- (3) The service of the notice shall take place—
- (a) not more than twenty-eight days after its date of issue; and
  - (b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.

### 173 Contents and effect of notice

- (1) An enforcement notice shall state—
- (a) the matters which appear to the local planning authority to constitute the breach of planning control; and
  - (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls.
- (2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
- (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
- (4) Those purposes are—
- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has 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.

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- (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 enactment applicable to the construction of buildings;
  - (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;
  - (c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b)).
- (8) An enforcement notice shall specify the date on which it is to take effect and, subject to sections 175(4) and 289(4A), shall take effect on that date.
- (9) An enforcement notice shall 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 shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 174.
- (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 73A 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

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- (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 73A in respect of development consisting of that construction.

### **173A Variation and withdrawal of enforcement notices**

- (1) The local planning authority may—
  - (a) withdraw an enforcement notice issued by them; or
  - (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9).
- (2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The local planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.
- (4) The withdrawal of an enforcement notice does not affect the power of the local planning authority to issue a further enforcement notice.”

## **6 Appeal against enforcement notice**

- (1) For section 174(2) and (3) of the principal Act (grounds of appeal and notice) there is substituted—
  - “(2) 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 172;
    - (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 173(9) falls short of what should reasonably be allowed.
  - (3) An appeal under this section shall be made either—



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- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or
  - (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.”
- (2) In section 175(4) of that Act (enforcement notices of no effect pending final determination or withdrawal of appeals) after “shall” there is inserted “subject to any order under section 289(4A)”.
- (3) After section 177(5) of that Act (appellant deemed to have made an application for planning permission for the development to which the enforcement notice relates) there is inserted—
  - “(5A) Where—
    - (a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;
    - (b) any fee is payable under regulations made by virtue of section 303 in respect of the application deemed to be made by virtue of the appeal; and
    - (c) the Secretary of State 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.”
- (4) In section 289 of that Act (appeals to High Court) after subsection (4) there is inserted—
  - “(4A) In proceedings brought by virtue of this section in respect of an enforcement notice, the High Court or, as the case may be, the Court of Appeal may, on such terms if any as the Court thinks fit (which may include terms requiring the local planning authority to give an undertaking as to damages or any other matter), order that the notice shall have effect, or have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.
  - (4B) Where proceedings are brought by virtue of this section in respect of any notice under section 207, the notice shall be of no effect pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.”
- (5) For subsection (6) of that section there is substituted—
  - “(5A) Rules of court may also provide for the High Court or, as the case may be, the Court of Appeal to give directions as to the exercise, until such proceedings in respect of an enforcement notice are finally concluded and any re-hearing and determination by the Secretary of State has taken place, of any other powers in respect of the matters to which such a notice relates.
  - (6) No proceedings in the High Court shall be brought by virtue of this section except with the leave of that Court and no appeal to the Court of Appeal shall be so brought except with the leave of the Court of Appeal or of the High Court.”

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(6) In section 303(3) of that Act (fees payable to Secretary of State in respect of deemed applications for planning permission) for “to him of a fee of the prescribed amount in respect of an” there is substituted—

- “(a) of fees of prescribed amounts to him and to the local planning authority in respect of any application for planning permission deemed to be made under section 177(5); and
- (b) of a fee of the prescribed amount to him in respect of any other”.

## 7 **Execution of works required by enforcement notice**

(1) For section 178(1) of the principal Act (power to execute works required by enforcement notice) there is substituted—

- “(1) Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority 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 them in doing so.”

(2) For subsections (6) and (7) of that section there is substituted—

- “(6) 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.”

## 8 **Offence where enforcement notice not complied with**

For section 179 of the principal Act (penalties for non-compliance with enforcement notice) there is substituted—

### **“179 Offence where enforcement notice not complied with**

- (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 he shall be guilty of an offence.
- (3) In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
- (4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
- (5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.

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- (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 188,
- it shall be a defence for him to show that he was not aware of the existence of the notice.
- (8) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000; and
  - (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 shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”

## 9 Stop notices

- (1) For section 183(1) to (5) of the principal Act (stop notices) there is substituted—
- “(1) Where the local planning authority consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, they may, when they serve the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a “stop notice”) prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.
  - (2) In this section and sections 184 and 186 “relevant activity” means any activity specified in the enforcement notice as an activity which the local planning authority require to cease and any activity carried out as part of that activity or associated with that activity.
  - (3) A stop notice may not be served where the enforcement notice has taken effect.
  - (4) A stop notice shall not prohibit the use of any building as a dwellinghouse.
  - (5) A stop notice shall not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than four 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.
  - (5A) Subsection (5) does not prevent a stop notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.”
- (2) For section 184(3) of that Act (date on which stop notice takes effect) there is substituted—

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“(3) That date—

- (a) must not be earlier than three days after the date when the notice is served, unless the local planning authority consider that there are special reasons for specifying an earlier date and a statement of those reasons is served with the stop notice; and
- (b) must not be later than twenty-eight days from the date when the notice is first served on any person.”

(3) For section 186(5) of that Act (matters relevant to compensation) there is substituted—

“(5) No compensation is payable under this section—

- (a) in respect of the prohibition in a stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or
- (b) in the case of a claimant who was required to provide information under section 171C or 330 or section 16 of the Local Government (Miscellaneous Provisions) Act 1976, in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the local planning authority when responding to the notice.”

(4) For section 187(1) and (2) of that Act (offences and penalties) there is substituted—

“(1) If any person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on him he shall be guilty of an offence.

(1A) 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.

(1B) References in this section to contravening a stop notice include causing or permitting its contravention.

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

- (a) on summary conviction, to a fine not exceeding £20,000; and
- (b) on conviction on indictment, to a fine.

(2A) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”

## **10 Certificate of lawful use or development**

(1) For sections 191 to 194 of the principal Act (established use certificates) there is substituted—

*“Certificate of lawful use or development*

### **191 Certificate of lawfulness of existing use or development**

(1) If any person wishes to ascertain whether—

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- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

- (2) For the purposes of this Act uses and operations are lawful at any time if—
  - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
  - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
- (3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
  - (a) the time for taking enforcement action in respect of the failure has then expired; and
  - (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.
- (4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- (5) A certificate under this section shall—
  - (a) specify the land to which it relates;
  - (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 55(2)(f), 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 enactments, as if it were a grant of planning permission—
  - (a) section 3(3) of the Caravan Sites and Control of Development Act 1960;
  - (b) section 5(2) of the Control of Pollution Act 1974; and
  - (c) section 36(2)(a) of the Environmental Protection Act 1990.

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### **192 Certificate of lawfulness of proposed use or development**

- (1) If any person wishes to ascertain whether—
  - (a) any proposed use of buildings or other land; or
  - (b) any operations proposed to be carried out in, on, over or under land,would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
- (2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- (3) A certificate under this section shall—
  - (a) specify the land to which it relates;
  - (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
  - (c) give the reasons for determining the use or operations to be lawful; and
  - (d) specify the date of the application for the certificate.
- (4) 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.

### **193 Certificates under sections 191 and 192: supplementary provisions**

- (1) An application for a certificate under section 191 or 192 shall be made in such manner as may be prescribed by a development order and shall 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 local planning authority.
- (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 local planning authorities.
- (3) In particular, such an order may provide for requiring the authority—
  - (a) to give to any applicant within such time as may be prescribed by the order such notice as may be so prescribed as to the manner in which his application has been dealt with; and
  - (b) to give to the Secretary of State and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to such applications made to the authority, including information as to the manner in which any application has been dealt with.
- (4) A certificate under either of those sections may be issued—

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- (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 shall be in such form as may be prescribed by a development order.

- (5) A certificate under section 191 or 192 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 69 references to applications for planning permission shall include references to applications for certificates under section 191 or 192.
- (7) A local planning authority 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.

#### **194 Offences**

- (1) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under section 191 or 192—
    - (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,he shall be guilty of an offence.
  - (2) A person guilty of an offence under subsection (1) shall be liable—
    - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
    - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
  - (3) Notwithstanding section 127 of the Magistrates' Courts Act 1980, a magistrates' court may try an information in respect of an offence under subsection (1) whenever laid.”
- (2) An order under section 84(2) of this Act may provide for established use certificates to have effect, in such circumstances and to such extent as may be specified in the order, for the purposes of section 191 of the principal Act as substituted by this section.

## **11 Rights of entry for enforcement purposes**

- (1) At the end of Part VII of the principal Act there is inserted—

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*“Rights of entry for enforcement purposes*

**196A Rights to enter without warrant**

- (1) Any person duly authorised in writing by a local planning authority may at any reasonable hour enter any land—
  - (a) to ascertain whether there is or has been any breach of planning control on the land or any other land;
  - (b) to determine whether any of the powers conferred on a local planning authority by this Part should be exercised in relation to the land or any other land;
  - (c) to determine how any such power should be exercised in relation to the land or any other land;
  - (d) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land,
 if there are reasonable grounds for entering for the purpose in question.
- (2) Any person duly authorised in writing by the Secretary of State may at any reasonable hour enter any land to determine whether an enforcement notice should be issued in relation to the land or any other land, if there are reasonable grounds for entering for that purpose.
- (3) The Secretary of State shall not so authorise any person without consulting the local planning authority.
- (4) Admission to any building used as a dwellinghouse shall not be demanded as of right by virtue of subsection (1) or (2) unless twenty-four hours' notice of the intended entry has been given to the occupier of the building.

**196B Right to enter under warrant**

- (1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 196A(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 justice may issue a warrant authorising any person duly authorised in writing by a local planning authority or, as the case may be, the Secretary of State 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



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- (b) at a reasonable hour, unless the case is one of urgency.

### **196C Rights of entry: supplementary provisions**

- (1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 196A or 196B (referred to in this section as “a right of entry”)—
    - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
    - (b) may take with him such other persons as may be necessary; and
    - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
  - (2) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
  - (3) If any damage is caused to land or chattels in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State.
  - (4) The provisions of section 118 shall apply in relation to compensation under subsection (3) as they apply in relation to compensation under Part IV.
  - (5) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.
  - (6) Subsection (5) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.
  - (7) A person who is guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.
  - (8) In sections 196A and 196B and this section references to a local planning authority include, in relation to a building situated in Greater London, a reference to the Historic Buildings and Monuments Commission for England.”
- (2) In section 324(1)(c) of that Act (rights of entry) “Part VII” is omitted.
- (3) In section 325(6) of that Act (compensation in respect of damage caused in exercise of right of entry)—
  - (a) for “land is damaged” there is substituted “damage is caused to land or chattels”; and
  - (b) for the words from “in respect of” to “in the land” there is substituted “may be recovered by any person suffering the damage”.

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### *Control over development*

## **12 Planning obligations**

- (1) For section 106 of the principal Act (agreements regulating development or use of land) there is substituted—

### **“106 Planning obligations**

- (1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A and 106B as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—
- (a) restricting the development or use of the land in any specified way;
  - (b) requiring specified operations or activities to be carried out in, on, under or over the land;
  - (c) requiring the land to be used in any specified way; or
  - (d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically.
- (2) A planning obligation may—
- (a) be unconditional or subject to conditions;
  - (b) impose any restriction or requirement mentioned in subsection (1) (a) to (c) either indefinitely or for such period or periods as may be specified; and
  - (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.
- (3) Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection (9)(d)—
- (a) against the person entering into the obligation; and
  - (b) against any person deriving title from that person.
- (4) The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.
- (5) A restriction or requirement imposed under a planning obligation is enforceable by injunction.
- (6) Without prejudice to subsection (5), if there is a breach of a requirement in a planning obligation to carry out any operations in, on, under or over the land to which the obligation relates, the authority by whom the obligation is enforceable may—
- (a) enter the land and carry out the operations; and
  - (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.

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- (7) Before an authority exercise their power under subsection (6)(a) they shall give not less than twenty-one days' notice of their intention to do so to any person against whom the planning obligation is enforceable.
- (8) Any person who wilfully obstructs a person acting in the exercise of a power under subsection (6)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) A planning obligation may not be entered into except by an instrument executed as a deed which—
  - (a) states that the obligation is a planning obligation for the purposes of this section;
  - (b) identifies the land in which the person entering into the obligation is interested;
  - (c) identifies the person entering into the obligation and states what his interest in the land is; and
  - (d) identifies the local planning authority by whom the obligation is enforceable.
- (10) A copy of any such instrument shall be given to the authority so identified.
- (11) A planning obligation shall be a local land charge and for the purposes of the Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.
- (12) Regulations may provide for the charging on the land of—
  - (a) any sum or sums required to be paid under a planning obligation; and
  - (b) any expenses recoverable by a local planning authority under subsection (6)(b),and this section and sections 106A and 106B shall have effect subject to any such regulations.
- (13) In this section “specified” means specified in the instrument by which the planning obligation is entered into and in this section and section 106A “land” has the same meaning as in the Local Land Charges Act 1975.

### **106A Modification and discharge of planning obligations**

- (1) A planning obligation may not be modified or discharged except—
  - (a) by agreement between the authority by whom the obligation is enforceable and the person or persons against whom the obligation is enforceable; or
  - (b) in accordance with this section and section 106B.
- (2) An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.
- (3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the local planning authority by whom the obligation is enforceable for the obligation—
  - (a) to have effect subject to such modifications as may be specified in the application; or

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- (b) to be discharged.
- (4) In subsection (3) “the relevant period” means—
  - (a) such period as may be prescribed; or
  - (b) if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into.
- (5) An application under subsection (3) for the modification of a planning obligation may not specify a modification imposing an obligation on any other person against whom the obligation is enforceable.
- (6) Where an application is made to an authority under subsection (3), the authority may determine—
  - (a) that the planning obligation shall continue to have effect without modification;
  - (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
  - (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
- (7) The authority shall give notice of their determination to the applicant within such period as may be prescribed.
- (8) Where an authority determine that a planning obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.
- (9) Regulations may make provision with respect to—
  - (a) the form and content of applications under subsection (3);
  - (b) the publication of notices of such applications;
  - (c) the procedures for considering any representations made with respect to such applications; and
  - (d) the notices to be given to applicants of determinations under subsection (6).
- (10) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to a planning obligation.

### **106B Appeals**

- (1) Where a local planning authority—
  - (a) fail to give notice as mentioned in section 106A(7); or
  - (b) determine that a planning obligation shall continue to have effect without modification,the applicant may appeal to the Secretary of State.
- (2) For the purposes of an appeal under subsection (1)(a), it shall be assumed that the authority have determined that the planning obligation shall continue to have effect without modification.

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- (3) An appeal under this section shall be made by notice served within such period and in such manner as may be prescribed.
  - (4) Subsections (6) to (9) of section 106A apply in relation to appeals to the Secretary of State under this section as they apply in relation to applications to authorities under that section.
  - (5) Before determining the appeal the Secretary of State shall, if either the applicant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
  - (6) The determination of an appeal by the Secretary of State under this section shall be final.
  - (7) Schedule 6 applies to appeals under this section.”
- (2) In section 296(2) of that Act (exercise of powers in relation to Crown land) after “authority-” there is inserted—
- “(aa) in relation to land which for the time being is Crown land—
    - (i) a planning obligation shall not be enforced by injunction; and
    - (ii) the power to enter land conferred by section 106(6) shall not be exercised;”.
- (3) After section 299 of that Act there is inserted—

**“299A Crown planning obligations**

- (1) The appropriate authority in relation to any Crown interest or Duchy interest in land in the area of a local planning authority may enter into an obligation falling within any of paragraphs (a) to (d) of section 106(1) (in this section referred to as a “planning obligation”) enforceable to the extent mentioned in subsection (3).
- (2) A planning obligation may not be entered into except by an instrument executed as a deed which—
  - (a) states that the obligation is a planning obligation for the purposes of this section;
  - (b) identifies the land in relation to which the obligation is entered into;
  - (c) identifies the appropriate authority who are entering into the obligation and states what the Crown or Duchy interest in the land is; and
  - (d) identifies the local planning authority by whom the obligation is enforceable.
- (3) A planning obligation entered into under this section is enforceable—
  - (a) against any person with a private interest deriving from the Crown or Duchy interest stated in accordance with subsection (2)(c);
  - (b) by the authority identified in accordance with subsection (2)(d).
- (4) Subject to subsection (5), subsections (2), (4) to (8) and (10) to (13) of section 106 and sections 106A and 106B apply to a planning obligation

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entered into under this section as they apply to a planning obligation entered into under that section.

- (5) The consent of the appropriate authority must be obtained to—
- (a) the enforcement by injunction of a planning obligation against a person in respect of land which is Crown land; and
  - (b) the exercise, in relation to Crown land, of the power to enter land conferred by section 106(6) (as applied by subsection (4)).”

### **13 Demolition of buildings**

- (1) In section 55 of the principal Act (meaning of “development”) after subsection (1) there is inserted—

“(1A) For the purposes of this Act “building operations” includes—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.”

- (2) In subsection (2) of that section after paragraph (f) there is inserted—

“(g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.”

- (3) After section 108(3) of that Act (compensation for refusal or conditional grant of planning permission formerly granted by development order) there is inserted—

“(4) Regulations made by virtue of this subsection may provide that subsection (1) shall not apply where planning permission granted by a development order for demolition of buildings or any description of buildings is withdrawn by the issue of directions under powers conferred by the order.”

### **14 Fish farming**

- (1) After section 55(4) of the principal Act (meaning of “development”) there is inserted—

“(4A) Where the placing or assembly of any tank in any part of any inland waters for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the tank resulted from carrying out engineering operations over that land; and in this subsection—

“fish farming” means the breeding, rearing or keeping of fish or shellfish (which includes any kind of crustacean and mollusc);

“inland waters” means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and

“tank” includes any cage and any other structure for use in fish farming.”

- (2) This section does not apply to the placing or assembly of any structure before this section comes into force.

## **15 Assessment of environmental effects**

After section 71 of the principal Act there is inserted—

### **“71A Assessment of environmental effects**

- (1) The Secretary of State may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.
- (2) The regulations—
  - (a) may make the same provision as, or provision similar or corresponding to, any provision made, for the purposes of any Community obligation of the United Kingdom about the assessment of the likely effects of development on the environment, under section 2(2) of the European Communities Act 1972; and
  - (b) may make different provision for different classes of development.
- (3) Where a draft of regulations made in exercise both of the power conferred by this section and the power conferred by section 2(2) of the European Communities Act 1972 is approved by resolution of each House of Parliament, section 333(3) shall not apply.”

## **16 Notice etc. of applications for planning permission**

- (1) For sections 65 to 68 of the principal Act (publicity for applications for planning permission) there is substituted—

### **“65 Notice etc. of applications for planning permission**

- (1) A development order may make provision requiring—
  - (a) notice to be given of any application for planning permission, and
  - (b) any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used,and provide for publicising such applications and for the form, content and service of such notices and certificates.
- (2) Provision shall be made by a development order for the purpose of securing that, in the case of any application for planning permission, any person (other than the applicant) who on such date as may be prescribed by the order is an owner of the land to which the application relates, or a tenant of any agricultural holding any part of which is comprised in that land, is given notice of the application in such manner as may be required by the order.
- (3) A development order may require an applicant for planning permission to certify, in such form as may be prescribed by the order, or to provide evidence, that any requirements of the order have been satisfied.
- (4) A development order making any provision by virtue of this section may make different provision for different cases or different classes of development.

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- (5) A local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of this section have been satisfied.
- (6) If any person—
- (a) issues a certificate which purports to comply with any requirement imposed by virtue of this section and contains a statement which he knows to be false or misleading in a material particular; or
  - (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,
- he shall be guilty of an offence.
- (7) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) In this section—
- “agricultural holding” has the same meaning as in the Agricultural Holdings Act 1986; and
- “owner” in relation to any land means any person who—
- (a) is the estate owner in respect of the fee simple;
  - (b) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired; or
  - (c) in the case of such applications as may be prescribed by a development order, is entitled to an interest in any mineral so prescribed,
- and the reference to the interests in the land to which an application for planning permission relates includes any interest in any mineral in, on or under the land.
- (9) Notwithstanding section 127 of the Magistrates' Courts Act 1980, a magistrates' court may try an information in respect of an offence under this section whenever laid.”
- (2) For section 71(1) and (2) there is substituted—
- “(1) A development order may provide that a local planning authority shall not determine an application for planning permission before the end of such period as may be prescribed.
- (2) A development order may require a local planning authority—
- (a) to take into account in determining such an application such representations, made within such period, as may be prescribed; and
  - (b) to give to any person whose representations have been taken into account such notice as may be prescribed of their decision.
- (2A) A development order making any provision by virtue of this section may make different provision for different cases or different classes of development.”

## 17 Power of local planning authority to decline to determine applications

- (1) After section 70 of the principal Act there is inserted—



### **“70A Power of local planning authority to decline to determine applications**

- (1) A local planning authority may decline to determine an application for planning permission for the development of any land if—
    - (a) within the period of two years ending with the date on which the application is received, the Secretary of State has refused a similar application referred to him under section 77 or has dismissed an appeal against the refusal of a similar application; and
    - (b) in the opinion of the authority there has been no significant change since the refusal or, as the case may be, dismissal mentioned in paragraph (a) in the development plan, so far as material to the application, or in any other material considerations.
  - (2) For the purposes of this section an application for planning permission for the development of any land shall only be taken to be similar to a later application if the development and the land to which the applications relate are in the opinion of the local planning authority the same or substantially the same.
  - (3) The reference in subsection (1)(a) to an appeal against the refusal of an application includes an appeal under section 78(2) in respect of an application.”
- (2) In section 78(2) of that Act (right to appeal to Secretary of State where local planning authority have failed to take a decision on an application) for “neither” there is substituted “done none of the following” and for “nor” there is substituted—
- “(aa) given notice to the applicant that they have exercised their power under section 70A to decline to determine the application;”.

## **18 Dismissal of appeals in cases of undue delay**

After section 79(6) of the principal Act (determination of appeals) there is inserted—

- “(6A) If at any time before or during the determination of such an appeal it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may—
- (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
  - (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.”

## **19 Receipt and determination of applications**

- (1) After section 74(1) of the principal Act (provisions that may be made by a development order for dealing with applications) there is inserted—

“(1A) Provision may be made by a development order—

  - (a) for determining the persons to whom applications under this Act are to be sent; and
  - (b) for requiring persons to whom such applications are sent to send copies to other interested persons.”

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- (2) In Schedule 1 to that Act (distribution of functions)—
- (a) in paragraph 3(2) (functions which appear to the district planning authority to relate to a county matter to be exercised by the county authority) for “appears to the district planning authority to relate” there is substituted “relates”,
  - (b) paragraphs 3(3) to (6) and 4(1) (all applications to be made to district planning authority) are omitted.

*Controls over particular matters*

**20 Land of interested planning authorities and development by them**

For section 316 of the principal Act (application of certain provisions to local planning authorities) there is substituted—

**“316 Land of interested planning authorities and development by them**

- (1) The provisions of Parts III, VII and VIII of this Act shall apply in relation to—
  - (a) land of interested planning authorities; and
  - (b) the development of any land by interested planning authorities or by such authorities jointly with any other persons,
 subject to regulations made by virtue of this section.
- (2) The regulations may, in relation to such land or such development—
  - (a) provide for any of those provisions to apply subject to prescribed exceptions or modifications or not to apply;
  - (b) make new provision as to any matter dealt with in any of those provisions;
  - (c) make different provision in relation to different classes of land or development.
- (3) Without prejudice to subsection (2), the regulations may provide—
  - (a) subject to subsection (5), for applications for planning permission to develop such land, or for such development, to be determined by the authority concerned, by another interested planning authority or by the Secretary of State; and
  - (b) for the procedure to be followed on such applications,
 and, in the case of applications falling to be determined by an interested planning authority, they may regulate the authority’s arrangements for the discharge of their functions, notwithstanding anything in section 101 of the Local Government Act 1972.
- (4) The regulations shall—
  - (a) provide for section 71(3), and any provision made by virtue of section 65 or 71 by a development order, to apply to applications for planning permission to develop such land, or for such development, subject to prescribed exceptions or modifications, or
  - (b) make corresponding provision.
- (5) In the case of any application for planning permission to develop land of an interested planning authority where—

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- (a) the authority do not intend to develop the land themselves or jointly with any other person; and
- (b) if it were not such land, the application would fall to be determined by another body,

the regulations shall provide for the application to be determined by that other body, unless the application is referred to the Secretary of State under section 77.

- (6) In this section “interested planning authority”, in relation to any land, means any body which exercises any of the functions of a local planning authority in relation to that land; and for the purposes of this section land is land of an authority if the authority have any interest in it.
- (7) This section applies to any consent required in respect of any land as it applies to planning permission to develop land.
- (8) Subsection (1) does not apply to sections 76, 90(2) and (5) and 223.”

## **21 Mines and waste**

Schedule 1 to this Act (which, among other things, provides for aftercare where permission is given to deposit refuse or waste materials and provides for altering the provisions relating to compensation for restrictions on mineral working and depositing mineral waste) shall have effect.

## **22 Old mining permissions**

- (1) In this section and Schedule 2 to this Act, “old mining permission” means any planning permission for development—
  - (a) consisting of the winning and working of minerals; or
  - (b) involving the depositing of mineral waste,which was deemed to be granted under Part III of the Town and Country Planning Act 1947 by virtue of section 77 of that Act (development authorised under interim development orders after 21st July 1943).
- (2) An old mining permission shall, if an application under that Schedule to determine the conditions to which the permission is to be subject is finally determined, have effect as from the final determination as if granted on the terms required to be registered.
- (3) If no such development has, at any time in the period of two years ending with 1st May 1991, been carried out to any substantial extent anywhere in, on or under the land to which an old mining permission relates, that permission shall not authorise any such development to be carried out at any time after the coming into force of this section unless—
  - (a) the permission has effect in accordance with subsection (2) above; and
  - (b) the development is carried out after such an application is finally determined.
- (4) An old mining permission shall—
  - (a) if no application for the registration of the permission is made under that Schedule, cease to have effect on the day following the last date on which such an application may be made; and
  - (b) if such an application is refused, cease to have effect on the day following the date on which the application is finally determined.

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- (5) An old mining permission shall, if—
- (a) such an application is granted; but
  - (b) an application under that Schedule to determine the conditions to which the permission is to be subject is required to be served before the end of any period and is not so served,
- cease to have effect on the day following the last date on which the application to determine those conditions may be served.
- (6) Subject to subsection (3) above, this section—
- (a) shall not affect any development carried out under an old mining permission before an application under that Schedule to determine the conditions to which the permission is to be subject is finally determined or, as the case may be, the date on which the permission ceases to have effect; and
  - (b) shall not affect any order made or having effect as if made under section 102 of or Schedule 9 to the principal Act (discontinuance, etc. orders).
- (7) This section and that Schedule, and the principal Act, shall have effect as if the section and Schedule were included in Part III of that Act.

## 23 Trees

- (1) In section 207 of the principal Act (enforcement of duties as to replacement of trees) for subsections (3) and (4) there is substituted—
- “(3) A notice under subsection (1) shall specify a period at the end of which it is to take effect.
- (4) The specified period shall be a period of not less than twenty-eight days beginning with the date of service of the notice.”
- (2) In section 208 (appeals against section 207 notices) in subsection (1) after paragraph (a) there is inserted—
- “(aa) that in all the circumstances of the case the duty imposed by section 206(1) should be dispensed with in relation to any tree;”.
- (3) For subsections (2) and (3) of that section there is substituted—
- “(2) An appeal under subsection (1) shall be made either—
- (a) by giving written notice of the appeal to the Secretary of State before the end of the period specified in accordance with section 207(3); or
  - (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before the end of that period.”
- (4) For subsections (7) and (8) of that section there is substituted—
- “(7) On such an appeal the Secretary of State may—
- (a) correct any defect, error or misdescription in the notice; or
  - (b) vary any of its requirements,
- if he is satisfied that the correction or variation will not cause injustice to the appellants or the local planning authority.

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

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- (8) Where the Secretary of State determines to allow the appeal, he may quash the notice.
- (8A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.”
- (5) For section 209(6) there is substituted—
- “(6) Any person who wilfully obstructs a person acting in the exercise of the power under subsection (1)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”
- (6) In section 210 (penalties for non-compliance with tree preservation order)—
- (a) in subsection (2) for paragraph (a) there is substituted—
- “(a) on summary conviction to a fine not exceeding £20,000;”
- (b) in subsection (3) “on indictment” is omitted; and
- (c) subsection (5) is omitted.
- (7) After section 214 there is inserted—

#### *“Injunctions*

##### **214A Injunctions**

- (1) Where a local planning authority consider it necessary or expedient for an actual or apprehended offence under section 210 or 211 to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Chapter.
- (2) Subsections (2) to (4) of section 187B apply to an application under this section as they apply to an application under that section.

#### *Rights of entry*

##### **214B Rights to enter without warrant**

- (1) Any person duly authorised in writing by a local planning authority may enter any land for the purpose of—
- (a) surveying it in connection with making or confirming a tree preservation order with respect to the land;
- (b) ascertaining whether an offence under section 210 or 211 has been committed on the land; or
- (c) determining whether a notice under section 207 should be served on the owner of the land,
- if there are reasonable grounds for entering for the purpose in question.
- (2) Any person duly authorised in writing by the Secretary of State may enter any land for the purpose of surveying it in connection with making, amending or revoking a tree preservation order with respect to the land, if there are reasonable grounds for entering for that purpose.

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

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- (3) Any person who is duly authorised in writing by a local planning authority may enter any land in connection with the exercise of any functions conferred on the authority by or under this Chapter.
- (4) Any person who is an officer of the Valuation Office may enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation in respect of any land which is payable by the local planning authority under this Chapter (other than section 204).
- (5) Any person who is duly authorised in writing by the Secretary of State may enter any land in connection with the exercise of any functions conferred on the Secretary of State by or under this Chapter.
- (6) The Secretary of State shall not authorise any person as mentioned in subsection (2) without consulting the local planning authority.
- (7) Admission shall not be demanded as of right—
  - (a) by virtue of subsection (1) or (2) to any building used as a dwellinghouse; or
  - (b) by virtue of subsection (3), (4) or (5) to any land which is occupied, unless twenty-four hours' notice of the intended entry has been given to the occupier.
- (8) Any right to enter by virtue of this section shall be exercised at a reasonable hour.

#### **214C Right to enter under warrant**

- (1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 214B(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 justice may issue a warrant authorising any person duly authorised in writing by a local planning authority or, as the case may be, the Secretary of State 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 hour, unless the case is one of urgency.

### **214D Rights of entry: supplementary provisions**

- (1) Any power conferred under or by virtue of section 214B or 214C to enter land (referred to in this section as “a right of entry”) shall be construed as including power to take samples from any tree and samples of the soil.
  - (2) A person authorised to enter land in the exercise of a right of entry—
    - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
    - (b) may take with him such other persons as may be necessary; and
    - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
  - (3) 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.
  - (4) If any damage is caused to land or chattels in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State.
  - (5) The provisions of section 118 shall apply in relation to compensation under subsection (4) as they apply in relation to compensation under Part IV.”
- (8) In section 324 (rights of entry)—
- (a) in subsection (1), in paragraph (b) “198 to 200” is omitted;
  - (b) in paragraph (c) of that subsection for “or Part VIII” there is inserted “or Chapter 2 or 3 of Part VIII”;
  - (c) subsection (2) is omitted; and
  - (d) in subsection (5) for “Part VIII (other than section 204)” there is substituted “Chapter 2 or 3 of Part VIII”.

## **24 Advertisements**

In section 336(1) of the principal Act (interpretation) in the definition of “advertisement”—

- (a) after “notice” there is inserted “awning, blind”;
- (b) after “used,” there is inserted “or designed”; and
- (c) after “use” there is inserted “and anything else principally used, or designed or adapted principally for use,”.

## **25 Listed buildings, conservation areas and hazardous substances**

Schedule 3 to this Act (which makes amendments in relation to the enforcement of the enactments about listed buildings, conservation areas and hazardous substances) shall have effect.

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

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*Development plans and simplified planning zones*

**26 Status of development plans**

At the end of Part II of the principal Act there is inserted—

**“CHAPTER III**

GENERAL

**54A Status of development plans**

Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise”.

**27 Streamlining of development plan system**

Schedule 4 to this Act (which provides for streamlining the development plan system) shall have effect.

**28 Simplified planning zones**

Schedule 5 to this Act which—

- (a) modifies the procedure for making simplified planning zones, and
- (b) makes minor and consequential amendments of Schedule 7 to the principal Act,

shall have effect.

*Miscellaneous*

**29 Functions of Historic Buildings and Monuments Commission**

- (1) In section 33 of the National Heritage Act 1983 (general functions of Commission) after subsection (2) there is inserted—

“(2A) In relation to England, the Commission may—

- (a) prosecute any offence under Part I of the Ancient Monuments and Archaeological Areas Act 1979 or under the Planning (Listed Buildings and Conservation Areas) Act 1990, or
- (b) institute in their own name proceedings for an injunction to restrain any contravention of any provision of that Part or of that Act of 1990.”

- (2) In section 89 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (application of general provisions of principal Act, including power under section 330 to require information) after subsection (2) there is inserted—

“(3) In the application of section 330 by virtue of this section, references to a local authority include the Commission.”



### **30 Orders as to costs where inquiry or hearing does not take place**

(1) After section 322 of the principal Act there is inserted—

#### **“322A Orders as to costs: supplementary**

(1) This section applies where—

(a) for the purposes of any proceedings under this Act—

(i) the Secretary of State is required, before a decision is reached, to give any person an opportunity, or ask any person whether he wishes, to appear before and be heard by a person appointed by him; and

(ii) arrangements are made for a local inquiry or hearing to be held;

(b) the inquiry or hearing does not take place; and

(c) if it had taken place, the Secretary of State or a person appointed by him would have had power to make an order under section 250(5) of the Local Government Act 1972 requiring any party to pay any costs of any other party.

(2) Where this section applies the power to make such an order may be exercised, in relation to costs incurred for the purposes of the inquiry or hearing, as if it had taken place.”

(2) In section 89(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and section 37(2) of the Planning (Hazardous Substances) Act 1990 (application of provisions of the principal Act) before “323” there is inserted “322A (orders as to costs: supplementary)”.

### **31 Planning compensation repeals**

(1) Part V of the principal Act (compensation for restrictions on new development where land has an unexpended balance of development value) and Schedule 12 to that Act (unexpended balance of development value) are repealed.

(2) Section 114 of that Act (compensation for planning decisions restricting development other than new development) is repealed.

(3) Section 27 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (compensation for refusal of consent to alteration, etc. of listed building) is repealed.

(4) Schedule 6 to this Act (compensation repeals: minor and consequential amendments) shall have effect.

(5) Subsection (1) above shall have effect in relation to any compensation under Part V of the principal Act unless a claim for the compensation has been made in accordance with section 127 of that Act before the repeal of that section comes into force.

(6) Any amount recoverable under section 133 of that Act which has not been paid, including any interest on any such amount, shall cease to be recoverable and any mortgage, covenant or other obligation by which the payment of any such amount, or interest on it, is secured is discharged.

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

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- (7) The repeal of section 114 of that Act shall have effect, or be treated as having had effect, where the application for planning permission was made on or after 16th November 1990.
- (8) The repeal of section 27 of the Planning (Listed Buildings and Conservation Areas) Act 1990 shall have effect, or be treated as having had effect, where the application for listed building consent was made on or after 16th November 1990.

## **32 Planning: minor and consequential amendments**

Schedule 7 to this Act (which makes minor and consequential amendments of the enactments relating to planning) shall have effect.