



Planning and Compensation Act 1991

1991 CHAPTER 34

PART II

TOWN AND COUNTRY PLANNING - SCOTLAND

New enforcement powers

33 Planning contravention notices

In the Town and Country Planning (Scotland) Act 1972 (referred to in this Act as “the 1972 Act”) in Part V (enforcement of controls under Parts III and IV) before section 84 there is inserted—

“Planning contravention notices

83C Power to require information about activities on land

- (1) Where it appears to the 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.

Status: This is the original version (as it was originally enacted).

- (3) Without prejudice to the generality of subsection (2) of this section, the notice may require the person on whom it is served, so far as he 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;
 - (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 operation;
 - (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 166(6) of this Act.
- (6) Any requirement of a planning contravention notice shall be complied with by giving information in writing to the 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.

83D 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) of 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 that subsection by reference to any period of time following the preceding conviction for such an offence.

Status: This is the original version (as it was originally enacted).

- (3) It shall be a defence for a person charged with an offence under subsection (1) of this section 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) of this section 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) of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

34 Enforcement of conditions

Before section 87A of the 1972 Act there is inserted—

“Breach of condition

87AA Enforcement of conditions

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

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- (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 planning authority on the person responsible.
- (8) If, at any time after the end of the period allowed for compliance with the notice.
- (a) any of the conditions specified in the notice is not complied with, and
 - (b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,
- the person responsible is in breach of the notice.
- (9) If the person responsible is in breach of the notice he shall be guilty of an offence.
- (10) An offence under subsection (9) of 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 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) of this section 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) of this section, that he no longer had control of the land.
- (12) A person who is guilty of an offence under subsection (9) of this section 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.”

35 Interdicts relating to breaches of planning control

After section 260 of the 1972 Act there is inserted—

“Interdicts restraining breaches of planning control

260A Interdicts restraining breaches of planning control

- (1) Whether or not they have exercised or propose to exercise any of their other powers under this Act, a planning authority may seek to restrain or prevent any actual or apprehended breach of any of the controls provided for by or under this Act by means of an application for interdict.
- (2) On an application under subsection (1) of this section the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the breach.
- (3) In this section “the court” means the Court of Session or the sheriff.”

Other changes relating to enforcement

36 Time limits on enforcement action

- (1) At the beginning of Part V of the 1972 Act (enforcement of control under Parts III and IV) there is inserted—

“Introductory

83A 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 84 of this Act); or
 - (b) the service of a breach of condition notice (defined in section 87AA of this Act),
- constitutes taking enforcement action.
- (3) In this Part of this Act “planning permission” includes planning permission under Part III of the Town and Country Planning (Scotland) Act 1947.

83B 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

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being taken, the 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 84(3)(b) of the 1972 Act (as originally enacted), nothing in this section enables any enforcement action to be taken in respect of the breach.

37 Enforcement notices

For section 84 of the 1972 Act (power to serve enforcement notice) there is substituted—

“84 Issue of enforcement notice

- (1) The 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.

84AA Contents and effect of notice

- (1) An enforcement notice shall state—
- (a) the matters which appear to the planning authority to constitute the breach of planning control; and
 - (b) the paragraph of section 83A(1) of this Act within which, in the opinion of the authority, the breach falls.
- (2) A notice complies with subsection (1)(a) of this section 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

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- (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) An enforcement notice issued in respect of a breach of planning control consisting of demolition of a building may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7) of this section, is as similar as possible to the demolished building.
- (7) A replacement building—
- (a) must comply with any requirement imposed by or under 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) of this subsection).
- (8) An enforcement notice shall specify the date on which it is to take effect and, subject to section 85(3) of this Act, 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 of this Act 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 84 of this Act to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 85 of this Act.
- (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 under section 29 of this Act 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—

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- (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 under section 29 of this Act in respect of development consisting of that construction.

84AB Variation and withdrawal of enforcement notices

- (1) The 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 84AA(9) of this Act.
- (2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The 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 planning authority to issue a further enforcement notice.”

38 Appeal against enforcement notice

- (1) For section 85(1) and (2) of the 1972 Act (appeal against enforcement notice) there is substituted—

- “(1) A person on whom an enforcement notice is served, or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice 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 84 of this Act;
 - (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;

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- (g) that any period specified in the notice in accordance with section 84AA(9) of this Act falls short of what should reasonably be allowed.
- (2) An appeal under this section shall be made either—
- (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) After section 85(7) 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—
- “(7A) Where—
- (a) the statement under subsection (2A) of section 85 of this Act specifies the ground mentioned in subsection (1)(a) of that section;
 - (b) any fee is payable under regulations made by virtue of section 87 (fees for planning applications etc.) of the Local Government, Planning and Land Act 1980 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.”

39 Execution of works required by enforcement notice

At the end of section 88 of the 1972 Act (execution and cost of works required by enforcement notice) there is inserted—

- “(6) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

40 Offence where enforcement notice not complied with

For section 86 of the 1972 Act (penalties for non-compliance with enforcement notice) there is substituted—

“86 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 the notice he shall be guilty of an offence.

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

- (3) In proceedings against any person for an offence under subsection (2) of this section, 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) of this section shall be guilty of an offence.
- (6) An offence under subsection (2) or (5) of 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 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 87A of this Act,
 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.”

41 Stop notices

- (1) For section 87(1) to (3) of the 1972 Act (stop notices) there is substituted—
 - “(1) Where the 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, “relevant activity” means any activity specified in the enforcement notice as an activity which the planning authority require to cease and any activity carried out as part of that activity or associated with that activity.
 - (2A) A stop notice may not be served where the enforcement notice has taken effect.
 - (2B) A stop notice shall not prohibit the use of any building as a dwellinghouse.

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- (2C) 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.
- (2D) Subsection (2C) of this section 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.
- (3) A stop notice shall specify the date when it is to come into effect, and that date—
- (a) must not be earlier than three days after the date when the notice is served, unless the 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.”
- (2) For section 87(8) of that Act there is substituted—
- “(8) 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.
- (8A) 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.
- (8B) It shall be a defence in any proceedings under subsection (8) of this section that the stop notice was not served on the accused and that he had no reasonable cause to believe that the activity was prohibited by the stop notice.
- (8C) References in this section to contravening a stop notice include causing or permitting its contravention.
- (8D) 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.
- (8E) 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.”
- (3) For section 166(6) of that Act (compensation for loss due to stop notice) there is substituted—
- “(6) 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 83C, 83D or 270 of this Act in respect of any loss or damage suffered by him which could have been avoided if he

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had provided the information or had otherwise co-operated with the planning authority when responding to the notice.”

42 Certificate of lawful use or development

- (1) For section 90 of, and Schedule 12 to, the 1972 Act (certification of established use) there is substituted—

“Certificate of lawful use or development

90 Certificate of lawfulness of existing use or development

- (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,
- he may make an application for the purpose to the 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 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 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 19(2)(f) of this Act, identifying it by reference to that class);

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- (c) give the reasons for determining the use, operations or other thing 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.

90A 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 planning authority specifying the land and describing the use or operations in question.
- (2) If, on an application under this section, the 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 19(2)(f) of this Act, 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) There shall be an irrefutable presumption as to the lawfulness of any use or operations for which a certificate is in force under this section 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.

90B Certificates under sections 90 and 90A: supplementary provisions

- (1) An application for a certificate under section 90 or 90A of this Act shall be made in such manner as may be prescribed by regulations under this Act or a development order and shall include such particulars, and be verified by such evidence, as may be required by such regulations or such an order or by any directions given under such regulations or such an order or by the planning authority.

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- (2) Provision may be made by such regulations or a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by planning authorities.
- (3) In particular, such regulations or such an order may provide for requiring the authority—
 - (a) to give to any applicant within such time as may be prescribed by the regulations or 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 regulations or 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—
 - (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 things, for all of them or some one or more of them,and shall be in such form as may be prescribed by such regulations or a development order.
- (5) A certificate under section 90 or 90A 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 31 of this Act references to applications for planning permission shall include references to applications for certificates under section 90 or 90A of this Act.
- (7) A 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 such regulations or a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

90C 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 90 or 90A of this Act—
 - (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) of this section 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.”
- (2) An order under section 68(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 90 of the 1972 Act as substituted by this section.

43 Rights of entry

- (1) After section 91 of the 1972 Act there is inserted—

“Rights of entry for enforcement purposes

91A Right to enter without warrant

- (1) Any person duly authorised in writing by a 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 planning authority by sections 84 to 91 or 100 of this Act 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 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) of this section unless 24 hours' notice of the intended entry has been given to the occupier of the building.

91B Right to enter under warrant

- (1) If the sheriff is satisfied —
 - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 91A(1) or (2) of this Act; and
 - (b) that—

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- (i) admission to the land has been refused, or a refusal is reasonably apprehended; or
 - (ii) the case is one of urgency,
- he may issue a warrant authorising any person duly authorised in writing to enter the land.
- (2) For the purposes of subsection (1)(b)(i) of this section 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.

91C 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 91A or 91B of this Act (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 moveable property 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 168 of this Act shall apply in relation to compensation under subsection (3) of this section as they apply in relation to compensation under Part VIII of this Act.
 - (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 (4) 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.”
- (2) In section 266(4) of the 1972 Act (compensation for damage caused in exercise of right of entry)—

- (a) for “land is damaged” there is substituted “damage is caused to land or moveable property”; 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”.

Control over development

44 Demolition of buildings

- (1) In section 19 of the 1972 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 planning authorities generally or to a particular planning authority.”

- (3) After section 154(3) of the 1972 Act (compensation for refusal or conditional grant of planning permission formerly granted by development order) there is inserted—

“(3A) Regulations made by virtue of this subsection may provide that subsections (1) and (2) of this section 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.”

45 Fish farming

- (1) After subsection (3A) of section 19 (meaning of “development”) of the 1972 Act there is inserted—

“(3B) 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 or 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.

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

46 Notice etc. of applications to owners and agricultural tenants

- (1) For section 24 of the 1972 Act (notification of applications for planning permission) there is substituted—

“24 Notice etc. of applications to owners and agricultural tenants

- (1) A development order or regulations under this Act shall make provision—
- (a) as to the notice of any application for planning permission to be given to any person (other than the applicant) who at the beginning of the period of twenty-one days ending with the date of the application was—
 - (i) the owner of, or
 - (ii) the tenant of any agricultural holding any part of which was comprised in,
 any of the land to which the application relates; and
 - (b) requiring 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) A development order or such regulations may require an applicant for planning permission to certify, in such form as may be prescribed by the order or the regulations, or to provide evidence, that any requirements of the order or the regulations have been satisfied.
- (3) A development order or such regulations making any provision by virtue of this section may make different provision for different cases or different classes of development.
- (4) A planning authority shall not entertain any application for planning permission unless any requirements imposed by virtue of this section have been satisfied.
- (5) 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.
- (6) 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.
- (7) In this section—
- “agricultural holding” has the same meaning as in the Agricultural Holdings (Scotland) Act 1991; and
- “owner” in relation to any land means any person who—
- (a) under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes

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any person entitled to possession of the land as lessee under a lease the unexpired period of which is not less than seven years;
or

- (b) in the case of such applications as may be prescribed by a development order or by regulations, 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.

- (8) Proceedings for an offence under this section may be brought at any time within the period of two years following the commission of the offence.”

(2) For section 26(3) of the 1972 Act there is substituted—

“(3) Where an application for planning permission is accompanied by such a certificate as is mentioned in subsection (1)(b) or (3) of section 24 of this Act a development order or regulations under this Act may—

- (a) provide that a planning authority shall not determine an application for planning permission before the end of such period as may be prescribed;
- (b) require a planning authority—
- (i) to take into account in determining such an application such representations, made within such period, as may be prescribed; and
- (ii) to give to any person whose representations have been taken into account such notice as may be prescribed of their decision.

(3A) A development order or regulations making any provision by virtue of this section may make different provision for different cases or different classes of development.”

47 Power of planning authority to decline to determine applications

(1) After section 26 of the 1972 Act there is inserted—

“26A Power of planning authority to decline to determine applications

(1) A 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 32 of this Act 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) of this subsection 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

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if the development and the land to which the applications relate are in the opinion of the planning authority the same or substantially the same.

(3) The reference in subsection (1)(a) of this section to an appeal against the refusal of an application includes an appeal under section 34 in respect of an application.”.

(2) In section 34 (appeal in default of planning decision) of the 1972 Act—

(a) the word “either” is omitted; and

(b) after paragraph (a) there is inserted—

“(ab) give notice to the applicant that they have exercised their power under section 26A of this Act to decline to determine the application; or”.

48 Assessment of environmental effects

After section 26 of the 1972 Act there is inserted—

“26B Assessment of environmental effects

(1) The Secretary of State may by regulations under this Act 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 provisions 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, no statutory instrument containing such regulations shall be subject to annulment by virtue of subsection (2) of section 273 (regulations and orders) of this Act.”

49 Agreements relating to Crown land

(1) In subsection (2) of section 50 (agreements regulating development or use of land) of the 1972 Act, after “Sasines” there is inserted “or, as the case may be, registered in the Land Register of Scotland,”.

(2) In subsection (1) of section 254 (agreements relating to Crown land) of the 1972 Act—

(a) after “agreements” there is inserted “(a)”; and

(b) after “thereto” there is inserted—

“and

(b) for the purpose of restricting or regulating the development or use of the land,

either permanently or during such period as may be prescribed by the agreement.”

(3) After subsection (1) of that section there is inserted—

“(1A) Subject to subsection (1B) of this section an agreement made under subsection (1)(b) of this section may, if it has been recorded in the appropriate Register of Sasines or, as the case may be, registered in the Land Register of Scotland, be enforceable at the instance of the planning authority against persons deriving title to the land from the appropriate authority.

(1B) An agreement made under subsection (1)(b) of this section shall not be enforceable against a third party who has in good faith and for value acquired right (whether completed by infestment or not) to the land prior to the agreement being recorded or, as the case may be, registered as aforesaid or against any person deriving title from such a third party.”

50 Dismissal of appeals in cases of undue delay

(1) After section 33(7) of the 1972 Act (appeals against planning decisions) there is inserted—

“(7A) If at any time before or during the determination of an appeal under this section 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.”

(2) In paragraph 2(1)(a) of Schedule 7 to that Act (powers and duties of person determining appeals) for “subsections (3) and (5)” there is substituted “subsections (3), (5), and (7A)”.

Controls over particular matters

51 Mines and waste

Schedule 8 to this Act (which, among other things, provides for after-care 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.

52 Old mining permissions

After section 49G of the 1972 Act there is inserted

“49H Old mining permissions

(1) In this section and Schedule 10A to this Act, “old mining permission” means any planning permission for development—

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- (a) consisting of the winning and working of minerals, or
 - (b) involving the depositing of mineral waste,
- which is deemed to have been granted by virtue of paragraph 77 of Schedule 22 to this Act (development authorised under interim development orders after 10th November 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 16th 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 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.
- (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 49 or 49A to 49F of this Act (discontinuance, etc., orders).”.

53 Transitional provision as to compensation regulations

Without prejudice to section 17(2) of the Interpretation Act 1978, any regulations made, or having effect as if made, by virtue of section 167A (regulations as to mineral compensation) of the 1972 Act shall, to the extent that they are in force on the coming into force of paragraph 13 of Schedule 8 to this Act, have effect as if made under section 167A of that Act as substituted by that paragraph.

54 Trees

- (1) In section 98 of the 1972 Act (penalties for non-compliance with tree preservation order), in subsection (1)—
- (a) for paragraph (a) there is substituted—
 - “(a) on summary conviction to a fine not exceeding £20,000;”
 - (b) the words “on indictment”, where second occurring, are omitted; and
 - (c) subsection (3) is omitted.
- (2) In section 99 of the 1972 Act (enforcement of duties as to replacement of trees)—
- (a) for subsection (2) there is substituted—
 - “(2) A notice under subsection (1) of this section shall specify a period at the end of which it is to take effect, being a period of not less than twenty-eight days beginning with the date of service of the notice.”;
 - (b) in subsection (3)—
 - (i) for the words from “at any time” to “take effect” there is substituted “either by giving written notice to the Secretary of State before the end of the period specified in accordance with subsection (2) of this section, or 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,”; and
 - (ii) after paragraph (a) there is inserted—
 - “(ab) that in all the circumstances of the case the duty imposed by the said section 60(1) should be dispensed with in relation to any tree;”;
 - (c) at the end there is inserted—
 - “(6) Any person who wilfully obstructs a person acting in the exercise of the power under section 88(1) of this Act (as applied by subsection (5) of this section) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”
- (3) After section 99 there is inserted—

“Rights of entry

99A Rights to enter without warrant

- (1) Any person duly authorised in writing by a 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 59A or 98 of this Act has been committed on the land; or
 - (c) determining whether a notice under section 99 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

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or revoking a tree preservation order with respect to the land if there are reasonable grounds for entering for that purpose.

- (3) Any person who is duly authorised in writing by a planning authority may enter any land in connection with the exercise of any functions conferred on the authority by or under sections 57 to 60 and 99 of this Act.
- (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 planning authority under section 163 of this Act.
- (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 section 58 or 99 of this Act.
- (6) The Secretary of State shall not authorise any person as mentioned in subsection (2) without consulting the 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 24 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.

99B Right to enter under warrant

- (1) If the sheriff is satisfied—
 - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 99A(1) or (2) of this Act; 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,
 he may issue a warrant authorising any person duly authorised in writing by a 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) of this section 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.

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

99C Rights of entry: supplementary provisions

- (1) Any power conferred under or by virtue of section 99A or 99B 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 moveable property 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.”

55 Control over advertisements

In section 275 of the 1972 Act (interpretation), in subsection (1), 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 used, or designed or adapted principally for use,”.

56 Power to remove or obliterate placards and posters

After section 101 of the 1972 Act there is inserted—

“101A Power to remove or obliterate placards and posters

- (1) Subject to the provisions of this section, a planning authority may remove or obliterate any placard or poster—
 - (a) which is displayed in their area; and
 - (b) which in their opinion is so displayed in contravention of regulations made under section 61 of this Act.
- (2) Subsection (1) of this section does not authorise the removal or obliteration of a placard or poster displayed within a building to which there is no public right of access.
- (3) Subject to subsection (4) of this section, where a placard or poster identifies the person who displayed it or caused it to be displayed, the planning authority shall not exercise any power conferred by subsection (1) of this section unless they have first given him notice in writing—

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- (a) that in their opinion it is displayed in contravention of regulations made under section 61 of this Act; and
 - (b) that they intend to remove or obliterate it on the expiry of a period specified in the notice.
- (4) Subsection (3) of this section does not apply if—
- (a) the placard or poster does not give his address; and
 - (b) the authority do not know it and are unable to ascertain it after reasonable inquiry.
- (5) The period specified in a notice under subsection (3) of this section must be not less than two days from the date of service of the notice.
- (6) Any person duly authorised in writing by the planning authority may at any reasonable time enter any land for the purpose of exercising a power conferred by this section if—
- (a) the land is unoccupied; and
 - (b) it would be impossible to exercise the power without entering the land.”.

57 Listed buildings, conservation areas and hazardous substances

Schedule 10 to this Act, which makes amendments to the 1972 Act in respect of listed buildings, conservation areas and hazardous substances, shall have effect.

Development plans and simplified planning zones

58 Status of development plans

At the end of Part II of the 1972 Act (development plans) there is inserted—

“General

18A 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.”.

59 Simplified planning zones

Schedule 11 to this Act which—

- (a) modifies the procedure for making simplified planning zones, and
- (b) makes minor and consequential amendments to Schedule 6A to the 1972 Act, shall have effect.

Miscellaneous

60 Repeal of certain compensation provisions of the 1972 Act

- (1) Part VII of the 1972 Act (which provides for compensation in respect of planning decisions restricting new development) is (with the exception of section 145 (determination of claims)) repealed.
- (2) Section 158 of the 1972 Act (compensation for planning decisions restricting development other than new development) is repealed.
- (3) Section 160 of the 1972 Act (compensation for refusal of consent to alteration, etc. of listed building) is repealed.
- (4) Schedules 13, 14 and 15 of the 1972 Act are repealed.
- (5) The repeal of sections 158 and 160 of the 1972 Act shall have effect, or be treated as having effect, where the application for planning permission or, as the case may be, listed building consent was made on or after 16th November 1990.
- (6) Schedule 12 to this Act shall have effect.
- (7) Subsection (1) of this section shall have effect in relation to any compensation under Part VII of the 1972 Act unless a claim for the compensation has been made in accordance with section 143 of this Act before the repeal of that section comes into force.
- (8) Any amount recoverable under section 148 of the 1972 Act which has not been paid, including any interest on any such amount, shall cease to be recoverable and any security by which the payment of any such amount, or interest on it, is secured is discharged.

61 Planning: minor and consequential amendments - Scotland

Schedule 13 to this Act (which makes minor and consequential amendments of the enactments relating to planning in Scotland) shall have effect.