

SCHEDULES

SCHEDULE 3

Section 25.

LISTED BUILDINGS, CONSERVATION AREAS AND HAZARDOUS SUBSTANCES

PART I

CHANGES RELATING TO ENFORCEMENT

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

- 1 In section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (offences: penalties)—
- (a) for subsection (4) there is substituted—
- “(4) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.”; and
- (b) in subsection (5) “on indictment” is omitted.
- 2 For section 38(5) and (6) of that Act (withdrawal of notices) there is substituted—
- “(5) The local planning authority may—
- (a) withdraw a listed building enforcement notice (without prejudice to their power to issue another); or
- (b) waive or relax any requirement of such a notice and, in particular, may extend the period specified in accordance with section 38(3), and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.
- (6) The local planning authority shall, immediately after exercising the powers conferred by subsection (5), give notice of the exercise to every person who has been served with a copy of the listed building enforcement notice or would, if the notice were re-issued, be served with a copy of it”.
- 3 (1) Section 39 of that Act (appeals) is amended as follows.
- (2) For subsection (1)(b) and (c) there is substituted—
- “(b) that the matters alleged to constitute a contravention of section 9(1) or (2) have not occurred;
- (c) that those matters (if they occurred) do not constitute such a contravention”.

- (3) For subsection (2) there is substituted—
- “(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 listed building 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.”
- (4) In subsection (3) after “shall” there is inserted “subject to any order under section 65(3A)”.
- 4 For section 41(1) and (2) (power to correct or vary enforcement notice on appeal) there is substituted—
- “(1) On an appeal under section 39 the Secretary of State may—
- (a) correct any defect, error or misdescription in the listed building enforcement notice; or
- (b) vary the terms of the listed building enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
- (2) Where the Secretary of State determines to allow the appeal, he may quash the notice.
- (2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.”
- 5 For section 42(6) of that Act (power to execute works required by listed building enforcement notice) 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.”
- 6 For section 43 of that Act (penalties for non-compliance) there is substituted—
- “43 Offence where listed building enforcement notice not complied with**
- (1) Where, at any time after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been taken, the person who is then owner of the land is in breach of the notice.
- (2) If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence.
- (3) 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.
- (4) In proceedings against any person for an offence under this section, it shall be a defence for him to show—

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- (a) that he did everything he could be expected to do to secure that all the steps required by the notice were taken; or
- (b) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence.

- (5) 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.

- (6) 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.”

7 After section 44 of that Act there is inserted—

“44A Injunctions

- (1) Where a local planning authority consider it necessary or expedient for any actual or apprehended contravention of section 9(1) or (2) 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 contravention.
- (3) Rules of court may, in particular, provide for such an injunction to be issued against a person whose identity is unknown.
- (4) The references in subsection (1) to a local planning authority include, as respects England, the Commission.
- (5) In this section “the court” means the High Court or the county court.”

8 (1) Section 65 of that Act (appeals to High Court) is amended as follows.

(2) After subsection (3) there is inserted—

“(3A) In proceedings brought by virtue of this section, 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 listed building enforcement 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.”

(3) For subsection (5) there is substituted—

“(5) 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.”

9 (1) In section 88 of that Act (rights of entry)—

- (a) in subsection (1) after “on it” there is inserted “or any other land”,

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- (b) in subsection (2)(a) after “surveying it” there is inserted “or any other land”,
- (c) in subsection (2)(b) after “complied with” there is inserted “in relation to the land or any other land”,
- (d) in subsection (2)(c) after “on the land” there is inserted “or any other land”,
- (e) in subsection (2)(d) for “such building” there is substituted “building on the land or any other land”,
- (f) in subsection (3)(a) after “section 59” there is inserted “in relation to the land or any other land”, and
- (g) in subsection (3)(b) and (c) after “the land” there is inserted “or any other land”.

(2) For subsection (7) of that section there is substituted—

“88A Warrants to enter land

- (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 88; 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 the appropriate authority to enter the land.
- (2) In subsection (1) “the appropriate authority” means the person who may authorise entry on the land under section 88 for the purpose in question.
- (3) 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.
- (4) 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.

88B Rights of entry: supplementary provisions

- (1) A person authorised under section 88 to enter any land shall not demand admission as of right to any land which is occupied unless twenty-four hours notice of the intended entry has been given to the occupier.
- (2) A person authorised to enter land in pursuance of a right of entry conferred under or by virtue of section 88 or 88A (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.

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- (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 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.
- (5) 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.
- (6) A person who is guilty of an offence under subsection (4) 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.
- (7) If any damage is caused to land or chattels in the exercise of—
- (a) a right of entry; or
 - (b) a power conferred by virtue of section 88(6) in connection with such a right,
- 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; and section 118 of the principal Act shall apply in relation to compensation under this subsection as it applies in relation to compensation under Part IV of that Act.
- (8) No person shall carry out any works in exercise of a power conferred under section 88 unless notice of his intention to do so was included in the notice required by subsection (1).
- (9) The authority of the appropriate Minister shall be required for the carrying out of works in exercise of a power conferred under section 88 if—
- (a) the land in question is held by statutory undertakers; and
 - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking.
- (10) Section 265(1) and (3) of the principal Act (meaning of “appropriate Minister”) applies for the purposes of subsection (9) as it applies for the purposes of section 325(9) of the principal Act.”

Planning (Hazardous Substances) Act 1990 (c. 10.)

10 In section 23(4) of the Planning (Hazardous Substances) Act 1990 (offences)—

- (a) for “the statutory maximum” there is substituted “£20,000”, and
- (b) for the words following paragraph (b) there is substituted—

“(4A) 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”.

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- 11 In section 24 of that Act (hazardous substances contravention notices)—
- (a) in subsection (1)(b) after “remedy” there is inserted “wholly or partly”, and
 - (b) in subsection (8) after “before” there is inserted “or after”, and
 - (c) at the end of subsection (9) there is inserted “or would, if the notice were re-issued, be served with a copy of it”.

12 After that section there is inserted—

“24A Variation of hazardous substances contravention notices

- (1) A hazardous substances authority may waive or relax any requirement of a hazardous substances contravention notice issued by them and, in particular, may extend any period specified in accordance with section 24(5)(b) in the notice.
- (2) The powers conferred by subsection (1) may be exercised before or after the notice takes effect.
- (3) The hazardous substances authority shall, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice or would, if the notice were re-issued, be served with a copy of it.”

13 In section 25(2) of that Act (contravention notices: effect of appeal) after “shall” there is inserted “subject to regulations under this section”.

14 After section 26(2) of that Act (transitional exemptions) there is inserted—

“(2A) This section shall have effect until the end of the transitional period.”

15 After section 26 of that Act there is inserted—

“26AA Injunctions

- (1) Where a hazardous substances authority consider it necessary or expedient for any actual or apprehended contravention of hazardous substances 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 Act.
- (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 contravention.
- (3) Rules of court may, in particular, 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.”

16 (1) Section 36 of that Act (rights of entry) is amended as follows.

(2) In subsection (4) after “contravention notice” there is inserted “or a notice under section 183 of the principal Act (as applied by regulations made by virtue of section 25)”.

(3) For subsection (6) there is substituted—

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“36A Warrants to enter land

- (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 36; 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 hazardous substances authority 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.

36B Rights of entry: supplementary provisions

- (1) A person authorised to enter land in pursuance of a right of entry conferred under or by virtue of section 36 or 36A (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 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.
- (4) Subsection (3) 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.
- (5) A person who is guilty of an offence under subsection (3) 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.
- (6) If any damage is caused to land or chattels in the exercise of—
 - (a) a right of entry; or

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- (b) a power conferred by virtue of section 36(5) in connection with such a right,
- 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; and section 118 of the principal Act shall apply in relation to compensation under this section as it applies in relation to compensation under Part IV of that Act.
- (7) The authority of the appropriate Minister shall be required for the carrying out of works in the exercise of a power under section 36 if—
- (a) the land in question is held by statutory undertakers, and
- (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking.
- (8) Section 265(1) and (3) of the principal Act (meaning of “appropriate Minister”) applies for the purposes of subsection (7) as it applies for the purposes of section 325(9) of the principal Act.”

PART II

MINOR AND CONSEQUENTIAL AMENDMENTS

Local Government, Planning and Land Act 1980 (c. 65.)

- 17 In Part I of Schedule 29 to the Local Government, Planning and Land Act 1980, the following are inserted at the appropriate places among the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 there listed: 44A, 88 and 88A.

Housing Act 1988 (c. 50.)

- 18 In section 67(3A) of the Housing Act 1988 for “25 and 36” there is substituted “26AA, 36 and 36A”.

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9.)

- 19 In section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990—
- (a) in subsection (2) “within such period as may be so specified” is omitted,
- (b) for subsection (3) there is substituted—

“(3) A listed building enforcement notice—

- (a) shall specify the date on which it is to take effect and, subject to sections 39(3) and 65(3A), shall take effect on that date, and
- (b) shall specify the period within which any steps are required to be taken and may specify different periods for different steps,

and, where different periods apply to different steps, references in this Part to the period for compliance with a listed building

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- enforcement notice, in relation to any step, are to the period within which the step is required to be taken.”, and
- (c) in subsection (4) for “specified date” there is substituted “date specified in it as the date on which it is to take effect”.
- 20 In section 39(7) of that Act “in writing” is omitted.
- 21 In section 42 of that Act—
- (a) in subsection (1) for “compliance period” there is substituted “period for compliance with the notice”, and
- (b) subsection (7) is omitted.
- 22 In section 46(4) of that Act for “sections 42 and 43” there is substituted “section 42” and for “those sections” there is substituted “that section”.
- 23 Section 55(6) of that Act is omitted.
- 24 In section 82 of that Act—
- (a) in subsection (1) for “39(6), 42(6) and 55(6)” there is substituted “and 39(6)”, and
- (b) in subsection (3) for “sections 39(6) and 42(6)” there is substituted “section 39(6)”.
- 25 In section 88(6) of that Act for “subsection (7)” there is substituted “section 88B(8)” and “or the presence of minerals in it” is omitted.
- 26 In section 90(6)(b) of that Act “and 42(6)” is omitted.
- 27 In section 92(2)(b) of that Act “and 42(6)” is omitted.
- 28 In Schedule 3 to that Act, in paragraph 2(1)(b), after “section 41(1), (2)” there is inserted “(2A)”.
- 29 In Schedule 4 to that Act, in paragraph 5(b) for “and 88(2)(a) and (b)” there is substituted “44A, 88(2)(a) and (b) and 88A”.

Planning (Hazardous Substances) Act 1990 (c. 10)

- 30 In section 25(1) of the Planning (Hazardous Substances) Act 1990—
- (a) in paragraph (b)(v) for “175(1) to (4)” there is substituted “175(1) to (3)”, and
- (b) in paragraph (c) “(1) to (5) and (7)” is omitted.
- 31 In section 31(2) of that Act for “or 24” there is substituted “24 or 26AA”.
- 32 In section 36(5) of that Act “Subject to subsection (6)” is omitted.