

PLANNING ACT 2008

EXPLANATORY NOTES

COMMENTARY

Part 8: Enforcement

Section 160: Offence: development without development consent

263. This section provides that a person commits an offence if he carries out development for which development consent is required without development consent. A person who is found guilty of this offence is liable to a fine. The maximum fine which may be imposed varies depending on whether the case is tried in the Magistrates' court or the Crown Court.

Section 161: Offence: breach of terms of order granting development consent

264. This section provides that a person commits an offence if without reasonable excuse he carries out development in breach of the terms of an order granting development consent or if he does not comply with the terms of such a consent. There are two exceptions to this offence: a person does not commit an offence under this section for failing to comply with the terms of any consent under the Coast Protection Act 1949 (CPA) or licence under the Food and Environmental Protection Act 1972 (FEPA) that is deemed to be granted or issued by a development consent order. This is because the CPA and FEPA have separate enforcement regimes. A person has a defence if the breach or failure occurred because of an error or omission in the order, which was subsequently corrected through the mechanism in Schedule 4. A person who is found guilty of this offence is liable to a fine. The provisions regarding the level of the fine match those under section 160.

Section 162: Time limits

265. This provision sets out time limits for bringing charges in relation to the offences created by sections 160 and 161.

Section 163: Right to enter without warrant

266. This section gives the relevant local planning authority the power to authorise a person to enter land, if it has reasonable grounds to suspect an offence is being, or has been, committed under sections 160 or 161. Entry may take place only at a reasonable hour and where the property to be entered is a building used as a dwelling house 24 hours' notice of entry must be given to the occupier.

Section 164: Right to enter under warrant

267. This section provides that a justice of the peace may issue a warrant authorising a person, authorised by the relevant local planning authority, to enter land. The conditions of this are:

- a) there are reasonable grounds for suspecting that an offence is being, or has been, committed under section 160 or 161; and
 - b) either entry has been, or is likely to be, refused or this is an urgent case.
268. The warrant will authorise entry on one occasion only. The entry must take place within one month of the date of issue of the warrant. Generally entry is permitted only at a reasonable hour, but an exception may be made in urgent cases.

Section 165: Rights of entry: supplementary provisions

269. This section requires an authorised person entering land under section 163 or 164 to produce evidence, if requested, of the authority and state the purpose for entry before entering the land. It also allows an authorised person to take other persons as necessary and, if when the authorised person leaves, the owner or occupier is not present, the section requires the authorised person to take steps to ensure the land is left as effectively secured against trespassers as it was found.
270. This section provides that an offence is committed if someone wilfully obstructs a person authorised to enter land under section 163 or 164. Compensation for any damage caused by an authorised person on the land may be recovered from the authority that authorised the right of entry.

Section 166: Rights of entry: Crown land

271. This section provides that the rights of entry powers at sections 163 and 164 do not apply to Crown land.

Section 167: Power to require information

272. This section enables the relevant local planning authority to serve an information notice on the owner or occupier of land or anyone carrying out work on land or using it for any purpose. The power may be exercised where the authority suspects an offence under section 160 or 161 has been committed in respect of the land. The information notice may require the recipient to provide information about operations being carried out, the use of the land and any other activities. The notice may also require details about any development consent order applying to the land. The notice must set out the likely consequences of failing to respond. The recipient must send the information required in writing to the local planning authority.

Section 168: Offences relating to information notices

273. This section provides that a person commits an offence if, without reasonable excuse, he fails to comply with any requirement of an information notice, within a period of 21 days beginning on the day the notice is served. The offence is punishable with a fine. In addition, a person commits an offence if he makes a statement in response to the notice that he knows to be false or misleading in a material respect or is reckless as to whether it is true or false. This offence is also punishable by a fine.

Section 169: Notice of unauthorised development

274. This section provides that where a person has been found guilty of an offence under section 160, the relevant local planning authority may serve a notice requiring the person to remove the unauthorised development and return the land to its previous condition. Where a person has been found guilty of an offence under section 161 the local planning authority may serve a notice requiring the person to remedy the breach or failure to comply. Both types of notice of unauthorised development must specify the period within which any steps must be taken, and different periods may be specified for different steps.

Section 170: Execution of works required by unauthorised development notice

275. This section applies where steps have not been taken to comply with a notice of unauthorised development within the stipulated period for compliance. In such a case, the relevant local planning authority may enter the relevant land and carry out the works required in the notice and recover any expenses reasonably incurred in doing so from the owner of the land. This section provides for such expenses and other amounts to be deemed to be incurred or paid for the use and at the request of the person found guilty of the offence under section 160 or 161. The section contains a power to apply certain provisions of the Public Health Act 1936. It also provides that a person commits an offence if the person wilfully obstructs a person acting under powers conferred by the section.

Section 171: Injunctions

276. This provision enables the relevant local planning authority to apply to the County Court or to the High Court for an injunction when it considers it necessary or expedient to prevent an actual or anticipated offence under section 160 or 161.

Section 172: Isles of Scilly

277. This section allows the Secretary of State to make an Order enabling the Council of the Isles of Scilly to carry out any functions set out in Part 8 that are exercisable by a local planning authority. The Secretary of State must consult the Council of the Isles of Scilly before making such an Order.

Section 173: The relevant local planning authority

278. This section explains what is meant by the expression “relevant local planning authority” when it is used in Part 8.