

# **TOWN AND COUNTRY PLANNING ACT 1999**

(Chapter 9)

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Received Royal Assent: 19 October 1999

Passed: 19 October 1999

**AN ACT**

**to make new provision with respect to town and country planning, including the protection of buildings and areas of special architectural or historic interest and the control of advertisements; and for connected purposes.**

**PART 1  
DEVELOPMENT PLANS**

*Preparation of development plans*

**1 Surveys**

- (1) The Department of Infrastructure ('the Department')-
- (a) shall keep under review the matters which may be expected to affect the

development of the Island; and

- (b) may at any time institute a survey of the Island or any part of it examining those matters.

**[Subs (1) amended by SD155/10 Sch 5.]**

(2) The matters to be kept under review and examined under subsection (1) include-

- (a) the economy of the Island;
- (b) the principal physical characteristics of the Island (including the principal purposes for which land is used);
- (c) the size, composition and distribution of the population of the Island (whether resident or not);
- (d) the communications, transport system and traffic of the Island (including communications with other countries);
- (e) any considerations not mentioned in paragraphs (a), (b), (c) and (d) which may be expected to affect any matters so mentioned; and
- (f) any changes already projected in any of the matters mentioned in paragraphs (a) to (d) and the effect which those changes are likely to have on the development of the Island or the planning of such development.

## **2 Development plan**

(1) The Department shall prepare and from time to time revise a plan to be known as the Island Development Plan (in this Act referred to as 'the development plan').

(2) The development plan shall consist of the following-

- (a) a strategic plan, that is, a written statement formulating the Department's general policies in respect of the development and other use of land in the Island, together with-
  - (i) a reasoned justification of those policies, and
  - (ii) such diagrams, illustrations or other descriptive or explanatory matter in respect of those policies as the Department thinks appropriate; and
- (b) one or more area plans.

(2A) Where a development plan is prepared or revised, the Department shall take into account the designation of any relevant land as a coastline management zone under the Coastline Management Act 2005.

**[Subs (2A) inserted by Coastline Management Act 2005 Sch 3.]**

(3) An area plan shall relate either to the whole of the Island or to such part of the Island as may be specified therein, and shall consist of-

- (a) a written statement formulating, in such detail as the Department thinks appropriate, its proposals for the development or other use of land in the area to

which the plan relates, or for any description of development or other use of such land;

- (b) a map showing those proposals on a geographical basis;
- (c) a reasoned justification of those proposals; and
- (d) such diagrams, illustrations or other descriptive or explanatory matter in respect of those proposals as the Department thinks appropriate.

(4) The proposals in an area plan shall be in general conformity with the strategic plan; but in case of any inconsistency between the provisions of the strategic plan and the provisions of an area plan, whichever came into force later shall prevail.

(5) A strategic plan or area plan shall not have effect unless-

- (a) it is adopted by the Department by order, and
- (b) the order is approved by Tynwald;

and such an order shall specify the date on which the plan comes into force (which shall not be earlier than, or more than 3 months after, the date of the order).

(6) Schedule 1 shall have effect with respect to the procedure for the preparation and adoption of the development plan.

(7) The preceding provisions of this section and Schedule 1 apply, with any necessary modifications, to the revision of the development plan, and the repeal of it, as they apply to the preparation and adoption of the plan.

### **3 Planning policy statements**

(1) The Department may issue one or more statements of policy, specifying the manner in which the Department intends to deal with such descriptions of application under Part 2 or 3 as are specified in the statement, and may by a further statement vary or withdraw any such statement.

(2) A statement under subsection (1) is in this Act referred to as a 'planning policy statement'.

(2A) Where a planning policy statement is issued or revised, the Department shall take into account the designation of any relevant land as a coastline management zone under the Coastline Management Act 2005.

**[Subs (2A) inserted by Coastline Management Act 2005 Sch 3.]**

(3) As soon as may be after issuing a planning policy statement the Department shall lay it before Tynwald and publish it.

(4) Every planning policy statement shall be in general conformity with the development plan; and in case of any inconsistency between a planning policy statement and the provisions of the development plan, those provisions shall prevail.

### **4 Acquisition of land**

(1) An area plan may designate any land specified therein as an area selected for comprehensive treatment by development, redevelopment or improvement, or partly by one and partly by another method.

(2) If an area is designated under this section by an area plan, the plan shall-

- (a) describe the treatment which is proposed by the Department; and
- (b) specify the period, which shall not exceed 5 years beginning with the date on which the plan is adopted, within which that treatment is to begin.

(3) Where any land is for the time being designated by an area plan under this section, the Department may acquire that land or any part thereof by agreement or compulsorily; and-

- (a) for the purposes of the Acquisition of Land Act 1984 the area plan, this section and the resolution of Tynwald authorising the acquisition shall be deemed to be the special Act; but
- (b) no resolution of Tynwald under section 2(1) of that Act authorising the acquisition may be passed after the expiration of the period specified under subsection (2)(b).

## **5 Validity of plans**

(1) Except in so far as is provided by this section, the validity of-

- (a) the development plan or any strategic plan or area plan comprised in the development plan;
- (b) the revision or repeal of any strategic plan or area plan;

shall not be questioned in any legal proceedings whatsoever.

(2) If any person aggrieved by the development plan or any strategic plan or area plan comprised in the development plan, or by any revision or repeal of a strategic plan or area plan, desires to question the validity of the plan or of the revision or repeal on the ground-

- (a) that it is not within the powers conferred by this Part, or
- (b) that any requirement of this Part has not been complied with in relation to the preparation, adoption, revision or repeal of the plan,

he may, within 6 weeks of the publication of the plan, revision or repeal, apply to the High Court, who-

- (i) may by interim order wholly or in part suspend the operation of the plan, or of the revision or repeal, either generally or in so far as it affects the property of the applicant, until the final determination of the proceedings;
- (ii) if satisfied that the plan or revision or repeal is wholly or to any extent outside the powers conferred by this Part, or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of this Part, may wholly or in part quash the plan or the revision or repeal either generally or in so far as it affects any property of the applicant.

## **PART 2 DEVELOPMENT CONTROL**

### *Meaning of 'development'*

#### **6 Meaning of 'development'**

(1) Subject to the following provisions of this section, in this Act 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(2) For the purposes of this section-

- (a) the use as 2 or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;
- (b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if-
  - (i) the superficial area of the deposit is extended, or
  - (ii) the height of the deposit is extended and exceeds the level of the land adjoining the site;
- (c) subject to subsection (3)(d), the afforestation of land involves a material change in its use;
- (d) the following are engineering operations constituting development-
  - (i) the material alteration of any existing means of access to land from a road;
  - (ii) the provision of a new means of access, and
  - (iii) the execution of any road works preliminary or incidental to the erection of a building;
- (e) the following are building operations constituting development-
  - (i) the demolition of a building which is attached to another building, where the other building is not also demolished; and
  - (ii) the demolition of part of a building, where the rest of the building is not also demolished.

(3) The following operations shall not be taken for the purposes of this Act to involve development-

- (a) the carrying out for the maintenance, improvement or other alteration of any building of works which-
  - (i) affect only the interior of the building, or
  - (ii) do not materially affect the external appearance of the building;

and are not works for the alteration of a building by providing additional space in it underground;

- (b) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;
- (c) the use of any land for purposes of agriculture and the use for any of those purposes of any building occupied together with land so used;
- (d) the use by the Department of Environment, Food and Agriculture of any land for the purpose of forestry (including afforestation) and the use for that purpose of any building occupied together with land so used;

**[Para (d) amended by SD155/10 Sch 3.]**

- (e) in the case of buildings or other land which are used for a purpose of a class specified for the purpose of this paragraph in a development order, the use of the buildings or land or, subject to the provisions of the order, any part of the buildings or land, for any other purpose of the same class; and
- (f) operations of a description specified for the purpose of this paragraph in a development order.

*Requirement for planning approval*

## **7 Planning approval required for development**

(1) Subject to the following provisions of this section, planning approval is required for the carrying out of any development of land.

(2) Where planning approval to develop land has been granted for a limited period, planning approval is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the approval was granted; but for the purpose of this subsection no account shall be taken of any use begun in breach of planning control.

(3) Where an enforcement notice has been issued in respect of any development of land, planning approval is not required for its use for the purpose for which it could lawfully have been used if that development had not taken place.

## **8 Development orders**

(1) The Department shall by order (in this Act called a 'development order') provide for the grant of planning approval.

(2) A development order may either-

- (a) itself grant planning approval for development specified in the order, or for development of a class so specified; or
- (b) in respect of development for which planning approval is not granted by the order itself, provide for the granting of planning approval by the Department on an application made to the Department in accordance with the order.



(3) A development order may be made either-

- (a) as a general order applicable, except so far as the order otherwise provides, to all land, or
- (b) as a special order applicable only to such land or descriptions of land as may be specified in the order.

(4) Planning approval granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order; and in particular may require the approval of the Department to the design or external appearance of buildings.

(5) Where planning approval is granted by a development order for development of a specified class, the order may enable the Department to direct that the permission shall not apply either-

- (a) in relation to development in a particular area, or
- (b) in relation to any particular development.

(6) Planning approval may be granted-

- (a) in respect of buildings or works constructed or carried out, or a use instituted, without planning approval or in accordance with planning approval granted for a limited period, and so as to take effect from the date on which the buildings or works were constructed or carried out or the use was instituted, or from the end of that period, as the case may be; or
- (b) for the retention of buildings or works, or the continuance of the use of land, without complying with some condition subject to which a previous planning approval was granted.

(7) A development order may provide for the granting of planning approval, in such cases as are specified in the order, by a local authority on behalf of the Department; and (subject to any provision to the contrary made by the order) in relation to any application for planning approval which falls to be determined by a local authority in accordance with the order, references in this Act to the Department shall, where the context so requires, be construed as references to the local authority.

### *Planning applications*

## **9 Planning applications**

(1) An application to the Department for planning approval-

- (a) shall be made in such manner as may be prescribed by a development order, and
- (b) shall include such particulars and be verified by such evidence as may be required by the order or by directions given by the Department under the order.

(2) An application for planning approval may relate to buildings or works constructed or carried out, or a use of land instituted, before the date of the application, and may be in respect of any matter specified in section 8(6).

## 10 Determination of planning applications

(1) Where an application is made to the Department for planning approval then, subject to the following provisions of this Part and to the provisions of the development order, the Department may-

- (a) grant planning approval, either unconditionally or subject to such conditions as it thinks fit; or
- (b) refuse planning approval.

(2) Without prejudice to the generality of subsection (1)(a), conditions may be imposed on the grant of planning approval-

- (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application is made) or requiring the carrying out of works on any such land, so far as appears to the Department expedient for the purposes of or in connection with the development authorised by the approval;
- (b) for requiring the removal of any buildings or works authorised by the approval, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.

(3) Any person interested in land with respect to which planning approval has been granted subject to conditions may apply to the Department for the variation or discharge of the conditions; and on such an application the Department may-

- (a) vary or discharge the conditions, and
- (b) add new conditions consequential on the variation or discharge.

(4) In dealing with an application for planning approval or an application under subsection (3), the Department shall have regard to-

- (a) the provisions of the development plan, so far as material to the application,
- (b) any relevant statement of planning policy under section 3;
- (c) such other considerations as may be specified for the purpose of this subsection in a development order, so far as material to the application; and
- (d) all other material considerations.

(5) A development order shall make provision for-

- (a) the procedure for the determination of applications for planning approval and applications under subsection (3);
- (b) the exercise of functions in relation to the determination of such applications, and appeals against decisions in relation thereto;
- (c) the giving of notice of any application for planning approval to any person (other than the applicant) who is the owner of the land to which the application relates;

and

(d) the publicity to be given, and the consultations to be carried out, in connection with the determination of applications for planning approval and applications under subsection (3).

(6) A development order may make provision for-

(a) the conduct of proceedings relating to such applications;

(b) the making of orders for the payment of costs in connection with such proceedings;

(c) the refusal by the Department of an application for planning approval or an application under subsection (3) where a similar application has been refused within such period (not exceeding 5 years), ending with the date on which the application is made, as is specified in the order;

(d) the grant of planning approval with the reservation for subsequent approval by the Department of matters not particularised in the application; and

(e) the procedure for the determination of applications for such approval as is mentioned in paragraph (d) or any other approval required by a condition imposed on the grant of planning approval by or under a development order.

(7) Regulations may provide that, where an application for planning approval relates to development which comprises works or activities for which the approval, consent or licence of the Governor in Council, the Council of Ministers or any Department is required under any enactment other than section 7 (including an enactment contained in this Part), any proceedings in connection with the application may be taken concurrently with any proceedings to be taken under that enactment.

## **11 Reference of applications to Council of Ministers**

(1) If it appears to the Council of Ministers that an application made to the Department for planning approval-

(a) raises considerations of general importance to the Island, or

(b) for some other reason ought not to be determined by the Department,

the Council of Ministers may direct that the application shall be referred to and determined by it.

(2) Where the Council of Ministers grant planning approval on an application referred to them under subsection (1)-

(a) the decision of the Council of Ministers shall be laid before Tynwald, and shall not have effect until the end of the next sitting following that before which the decision is first laid; and

(b) Tynwald may, at either of those sittings, resolve that the decision be annulled, whereupon the application shall be deemed to have been refused.

(3) Without prejudice to subsection (1), a development order may provide that-

- (a) an application by the Department for planning approval, and
- (b) an application for planning approval for development of land any interest in which is vested in, or which is occupied or controlled by, the Department,

shall be referred to the Council of Ministers.

(4) In relation to an application the subject of a direction under subsection (1), or an application to which subsection (3) applies, references in this Act to the Department shall, where the context so requires, be construed as references to the Council of Ministers.

(5) Except as provided by subsections (1) to (4), the provisions of this Part and of any relevant development order apply to an application the subject of a direction under subsection (1) or an application to which subsection (3) applies as they apply to any other application for planning approval.

## **12 Effect and duration of planning approval**

(1) Without prejudice to the provisions of this Part as to the duration of planning approval, any grant of planning approval to develop land shall, except in so far as the approval otherwise provides, enure for the benefit of the land and of all persons for the time being interested in it.

(2) Where planning approval is granted for the erection of a building, the approval shall be construed as including approval for the use of the building-

- (a) if a purpose is specified in the approval, for that purpose;
- (b) if no purpose is specified in the approval, and the approval is granted on an application, for any purpose expressly or impliedly specified in the application;
- (c) in any other case, for any purpose for which the building may reasonably be taken as having been designed.

(3) A development order may provide that any planning approval granted otherwise than by a development order shall be granted or deemed to be granted subject to the condition that the development in question must be begun not later than the expiration of-

- (a) in such cases as may be specified in the order, such period as may be specified in or determined in accordance with the order;
- (b) where paragraph (a) does not apply, such period (if any) as may be specified in the approval.

### *Agreements regulating development of land*

## **13 Agreements regulating development of land**

(1) The Department may enter into an agreement with any person interested in land 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; and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the Department to be necessary or expedient for the purposes of the agreement.

- (2) Nothing in this section or in any agreement made thereunder shall be construed-
- (a) as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by the Department or any other authority under this Act; or
  - (b) as requiring the exercise of any such powers otherwise than as mentioned in paragraph (a).

### **PART 3**

## **SPECIAL CONTROLS**

### *Buildings of special architectural or historic interest*

#### **14 The Protected Buildings Register**

(1) The Department shall continue to maintain a register of buildings of special architectural or historic interest, called 'the Protected Buildings Register'.

(2) In considering whether to enter a building in the register the Department may take into account not only the building itself but also-

- (a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part; and
- (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.

(3) Schedule 2 shall have effect with respect to the compilation and amendment of the register.

(4) The Department shall make the register available for inspection by any person at its office free of charge at all reasonable times, and shall supply a copy of any entry in the register to any person on payment of such reasonable charge (if any) as the Department may determine.

#### **15 Control of works affecting registered building**

(1) No works may be executed-

- (a) for the demolition of a registered building, or
- (b) for its alteration or extension in any way which would affect its character as a building of special architectural or historic interest,

unless they are authorised under this Part.

(2) Works for the demolition, alteration or extension of a registered building are authorised under this Part if the Department has granted written consent for the execution of the works ('registered building consent'), and the works are executed in accordance with the terms of the consent and of any conditions attached to it under Schedule 3.

(3) The Department may grant registered building consent for the retention of works for

the alteration or extension of a registered building which have been executed-

- (a) without consent under subsection (1), or
- (b) in contravention of a condition attached to a consent under Schedule 3;

and the works shall be treated as authorised under this Part from the grant of consent under this subsection.

(4) Schedule 3 shall have effect with respect to the grant of registered building consent subject to conditions.

(5) Regulations shall make provision with respect to-

- (a) applications to the Department for registered building consent, and
- (b) applications under paragraph 3 of Schedule 3,

and the determination of such applications; and may make provision for the exercise of functions with respect to such applications, and appeals against decisions in relation thereto.

## **16 Registered buildings: supplementary provisions**

(1) Section 15 does not apply to works for the demolition, alteration or extension of-

- (a) a building for the time being the subject of a preservation order under section 11 of the Manx Museum and National Trust Act 1959, or
- (b) a building for the time being included in the list of monuments prepared under section 13 of that Act.

(2) Regulations may provide for restricting or excluding, in such cases as may be specified in the regulations, the operation of subsection (1)(a) or (b).

(3) In considering-

- (a) whether to grant planning approval for development which affects a registered building or its setting, or
- (b) whether to grant registered building consent for any works,

the Department shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

## **17 Building preservation notices**

(1) If it appears to the Department that a building which is not a registered building-

- (a) is of special architectural or historic interest; and
- (b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest,

it may serve on the owner and the occupier of the building a notice (a 'building preservation

notice').

(2) A building preservation notice shall-

- (a) state that the building appears to the Department to be of special architectural or historic interest and that the Department is considering entering it in the register; and
- (b) explain the effect of subsections (3), (4) and (6).

(3) A building preservation notice shall-

- (a) come into force as soon as it has been served on both the owner and the occupier of the building to which it relates; and
- (b) subject to paragraph (c), remain in force for 4 months from the date when it is served or, as the case may be, last served;
- (c) cease to be in force if the Department-
  - (i) enters the building in the register, or
  - (ii) states in a notice served on the owner and the occupier of the building that the building preservation notice is withdrawn.

(4) While a building preservation notice is in force with respect to a building sections 15 and 16 have effect in relation to the building as if it were a registered building.

(5) If it appears to the Department to be urgent that a building preservation notice should come into force, it may, instead of serving the notice on the owner and the occupier of the building, affix the notice conspicuously to some object on the building; and-

- (a) the affixing of a notice under this subsection shall be treated for all the purposes of this section as service of the notice; and
- (b) a notice so affixed must explain that by virtue of being so affixed it is treated as being served for those purposes.

(6) Where a building preservation notice ceases to be in force (except by virtue of subsection (3)(c)(i)), any proceedings on or arising out of an application for registered building consent with respect to the building made while the notice was in force, and any such consent granted while it was in force, shall lapse.

### *Conservation areas*

## **18 Designation of conservation areas**

(1) The Department shall determine which parts of the Island are areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance, and shall by order designate such areas as conservation areas.

(2) Before making an order under subsection (1) the Department shall consult every local authority in whose district the area in question, or any part of that area, falls.

(3) An order under subsection (1) shall be published as soon as practicable after it is

made.

(4) Where any area is for the time being a conservation area, special attention shall be paid to the desirability of preserving or enhancing its character or appearance in the exercise, with respect to any buildings or other land in the area, of any powers under this Act.

(5) Without prejudice to its powers under section 3, the Department shall from time to time formulate and publish proposals for the preservation and enhancement of conservation areas.

## **19 Control of demolition in conservation areas**

(1) This section applies to all buildings in conservation areas except-

- (a) registered buildings;
- (b) buildings to which section 15 does not for the time being apply by virtue of section 16(1);
- (c) buildings in relation to which a direction under subsection (2) is for the time being in force.

(2) The Department may direct that this section shall not apply to a description of buildings specified in the direction; and section 18(3) applies to a direction under this subsection as it applies to an order under section 18(1).

(3) A building to which this section applies may not be demolished without the consent of the Department; and accordingly sections 15 and 16 apply to such a building as they apply to a registered building, subject to such modifications as may be prescribed by regulations.

(4) Any proceedings on or arising out of an application for registered building consent made while this section applies to a building shall lapse when this section ceases to apply to it (otherwise than by virtue of its entry in the register), but without prejudice to any liability for an offence under section 29(1) committed with respect to the building while this section applied to it.

*Supplemental provisions as to registered buildings etc.*

## **20 Building of Department**

(1) This section applies to buildings-

- (a) any interest in which is vested in the Department, or
- (b) which are occupied or controlled by the Department.

(2) Regulations may provide for applications for registered building consent with respect to buildings to which this section applies to be made to and determined by the Council of Ministers, and for-

- (a) the procedure for the determination of such applications; and
- (b) the publicity to be given, and the consultations to be carried out, in connection with



the determination of such applications.

(3) Without prejudice to subsection (2)(a), regulations may make further modifications of the foregoing provisions of this Part in their application to buildings to which this section applies.

## **21 Financial assistance**

(1) The Department, after consultation with the Treasury, may give financial assistance towards the cost of any works of repair or improvement of-

- (a) a registered building or a building in a conservation area, or
- (b) any building or structure within, or forming the boundary of, the curtilage of a building mentioned in paragraph (a), or
- (c) the grounds of such a building.

(2) Financial assistance under this section may be given by way of grant or loan or both, and subject to such conditions (including conditions as to the repayment of any grant) as the Department thinks fit; and the Department may require such security for the repayment of any such loan or grant as it thinks fit.

### *Advertisements*

## **22 Regulations controlling display of advertisements**

(1) Regulations may restrict or regulate the display of advertisements so far as it appears to the Department to be expedient in the interests of amenity or public safety.

(2) Without prejudice to the generality of subsection (1), regulations may provide for-

- (a) regulating the dimensions, appearance and position of advertisements which may be displayed, the sites on which advertisements may be displayed and the manner in which they are to be affixed to the land;
- (b) requiring the consent of the Department to be obtained for the display of advertisements, or of advertisements of any prescribed class;
- (c) applications to the Department for such consent;
- (d) the procedure for the determination of such applications;
- (e) the exercise of functions with respect to such applications, and appeals against decisions in relation thereto; and
- (f) applying, with or without modifications, any of the provisions of Part 2 in relation to any such consent and to such applications.

(3) Regulations under this section may make different provision with respect to different areas.

(4) Regulations may in particular make special provision with respect to-

- (a) conservation areas;

- (b) areas defined for the purposes of the regulations as areas of special control, being either rural areas or areas which appear to the Department to require special protection on grounds of amenity;

and may prohibit the display in any such area of special control of all advertisements except advertisements of such classes (if any) as may be prescribed.

(5) Subject to subsection (6), regulations under this section may be made so as to apply to-

- (a) advertisements which are being displayed on the date on which the regulations come into force, or
- (b) the use for the display of the advertisements of any site which was being used for that purpose on that date.

(6) Any regulations made in accordance with subsection (5) shall provide for exempting from them-

- (a) the continued display of any such advertisements as there mentioned; and
- (b) the continued use for the display of advertisements of any such site as there mentioned,

during such period as may be prescribed.

(7) Where the display of an advertisement in accordance with regulations under this section involves development of land, planning approval for that development shall be deemed to be granted by virtue of this subsection.

## **PART 4 ENFORCEMENT OF CONTROL**

### *Breach of planning control*

#### **23 Breach of planning control**

- (1) In this Act references to a breach of planning control are to development carried out-
- (a) without the grant of planning approval required for that development in accordance with Part 2, or
  - (b) without complying with any conditions subject to which planning approval for the development was granted;

and references to development in breach of planning control shall be construed accordingly.

(2) Any person who commences or carries out any development in breach of planning control is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(3) Subsection (2) is without prejudice to any other means of enforcing planning control in accordance with this Part.

## 23A Breach of conditions

(1) Any person who fails to comply with, or causes or permits another to fail to comply with, any condition subject to which planning approval was granted (whether before or after the date on which this section comes into operation) is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(2) Subsection (1) does not apply in respect of failures that occur before the date on which this section comes into operation.

(3) Subsection (1) is without prejudice to section 23(2) and to any other means of enforcing planning control in accordance with this Part.

(4) An offence under subsection (1) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.

(5) In proceedings against a person for an offence under subsection (1) it shall be a defence for that person to show that he or she-

- (a) did not know of the condition with which he or she is alleged to have failed to comply; and
- (b) could not reasonably have been expected to know of that condition.

(6) In proceedings against a person for an offence under subsection (1) it shall be a defence for that person to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

(7) A person shall not be entitled to rely on the defence provided by subsection (6) by reason of his or her reliance on information given by another unless the court is satisfied that it was reasonable in all the circumstances for that person to have relied on the information, having regard in particular-

- (a) to the steps taken, and those which might reasonably have been taken, for the purpose of verifying the information, and
- (b) to whether that person had any reason to disbelieve the information.

(8) Where in any proceedings for an offence under subsection (1) the defence provided by subsection (6) involves an allegation that the commission of the offence was due to reliance on information given by another, the person shall not, without the leave of the court, be entitled to rely on the defence unless that person served a notice under subsection (9) on the Department not less than 7 clear days before the hearing of the proceedings.

(9) A notice under this subsection shall give such information identifying or assisting in the identification of the person who gave the information, as is in the possession of the person serving the notice at the time he serves it.

(10) For the avoidance of doubt, paragraph 3 of Schedule 8 (planning approvals before commencement of Part 2) has effect in respect of this section.

## 24 Certificate of lawfulness of use or development

(1) Regulations may make provision for an application for, and the issue by the Department of, a certificate stating whether or not-

- (a) any existing use of buildings or land is lawful;
- (b) any proposed use of buildings or land would be lawful;
- (c) any operations which have been carried out in, on, over or under land are lawful;
- (d) any operations proposed to be carried out in, on, over or under land would be lawful; or
- (e) any other matter constituting a failure to comply with any condition subject to which planning approval was granted is lawful.

(2) For the purpose of this section-

- (a) uses and operations are lawful at any time if-
  - (i) no enforcement notice may be issued in respect of them; and
  - (ii) they do not constitute a contravention of a requirement of an enforcement notice then in force;
- (b) a matter referred to in subsection (1)(e) is lawful at any time if-
  - (i) the time for issuing an enforcement notice in respect of the failure has expired, and
  - (ii) it does not constitute a contravention of a requirement of an enforcement notice then in force.

(3) A certificate issued under this section in accordance with regulations-

- (a) specifying the land to which it relates;
- (b) describing the use, operations or other matter in question;
- (c) giving the reasons for determining the use, operations or other matter to be lawful; and
- (d) specifying the date of the application for the certificate,

shall be conclusive as to the lawfulness of the use, operations or other matter in question unless, in the case of a use or operations referred to in subsection (1)(b) or (d), there is a material change, before the use is instituted or the operations are begun, in any matter relevant to determining the lawfulness.

(4) Any person who, for the purpose of procuring a particular decision on an application for a certificate under this section-

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

is guilty of an offence and liable-

- (i) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;
- (ii) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both.

(5) Without prejudice to subsection (4), if the Department is satisfied that a certificate under this section was issued in reliance on a statement or document which was false or misleading in a material particular, or that any material information was withheld on the application for such a certificate, it may revoke the certificate.

(6) Regulations may make provision for the exercise of functions with respect to applications for, and the revocation of, certificates under this section, and appeals against decisions in relation thereto.

## **25 Power to require information about activities on land**

(1) Where it appears to the Department that there may have been a breach of planning control in respect of any land, it may serve notice on-

- (a) any person who is the owner or occupier of the land, or has any other interest in it; or
- (b) any person who is carrying out any operations on the land or is using it for any purpose,

requiring him to give to the Department in writing such information as to-

- (i) any operations being carried out on the land, any use of the land and any activities being carried out on the land; and
- (ii) any matter relating to the conditions subject to which any planning approval in respect of the land has been granted,

as may be specified in the notice.

(2) Without prejudice to the generality of subsection (1), a notice under this section may require the person on whom it is served, so far as he can-

- (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 to have used the land for any purpose or to be carrying out or to have carried out any operations

or activities on the land;

- (d) to give any information he holds as to any planning approval for any use or operations or any reason for planning approval not being required for any use or operations;
- (e) to state the nature of his interest (if any) in the land and the name and address of any other person known to him to have an interest in the land.

(3) If, at any time after the end of 21 days beginning with the date on which a notice under this section is served on any person, he has without reasonable excuse failed to comply with any requirement of the notice, he is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

(4) Any person who-

- (a) makes any statement purporting to comply with a requirement of a notice under this section 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;

is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

(5) No statement made in compliance with a requirement of a notice under this section may be given in evidence against the person making it in proceedings for an offence under section 23(2) (breach of planning control).

(6) A notice under this section must state the effect of subsections (3), (4) and (5).

(7) The service of a notice under this section does not affect any other powers exercisable in respect of a breach of planning control.

#### *Enforcement notice*

## **26 Enforcement notice**

(1) Parts 1 and 2 of Schedule 4 have effect with respect to the issue of, and appeals against, enforcement notices.

(2) Where, at any time after the end of the period for compliance with an enforcement notice-

- (a) any steps required by the notice to be taken have not been taken, or
- (b) any activity required by the notice to cease is being carried on,

the person who is then the owner of the land to which the notice relates is guilty of an offence.

(3) Where, at any time after the end of the period for compliance with an enforcement notice, a person who has control of or an interest in land to which the notice relates (other than the owner)-

- (a) carries on on the land any activity required by the notice to cease, or
- (b) causes or permits any such activity to be carried on on the land,

he is guilty of an offence.

(4) A person who is guilty of an offence under subsection (2) or (3) is liable-

- (a) on summary conviction, to a fine not exceeding £20,000, or
- (b) on conviction on information, to a fine;

and in determining the amount of any fine to be imposed on a person convicted of such an offence, 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.

(5) An offence under subsection (2) or (3) may be charged by reference to any period of time, and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction for such an offence.

(6) In proceedings for an offence under subsection (2), it is a defence for the person accused to show that he did everything he could be expected to do to secure compliance with the notice.

(7) In proceedings for an offence under subsection (2) or (3), it is a defence for the person accused to show that-

- (a) he was not served with a copy of the enforcement notice;
- (b) he was not aware of its existence; and
- (c) it was not entered in the appropriate register maintained under section 41.

(8) In proceedings for an offence under subsection (2) or (3), it shall not be open to the person accused to raise any defence on a ground which could have been raised on an appeal under paragraph 10 of Schedule 4.

(9) Part 3 of Schedule 4 has effect with respect to works to remedy non-compliance with an enforcement notice.

### *Stop notice*

## **27 Stop notice**

(1) Where the Department-

- (a) issues or has issued an enforcement notice in respect of a breach of planning control on any land, and
- (b) considers it expedient to prevent the carrying on on the land of-
  - (i) any activity specified in the enforcement notice as an activity which the Department requires to cease, and
  - (ii) any activity carried on as part of, or associated with, that activity,

it may, at any time before the expiry of the period for compliance with the notice, serve on any person appearing to it to have an interest in the land or to be engaged in the activity in question a notice (a 'stop notice') prohibiting the carrying on of that activity on the land or on any part of it specified in the notice.

(2) A stop notice may not be served on any person unless a copy of the relevant enforcement notice has been, or is at the same time, served on that person.

(3) A stop notice shall not prohibit-

- (a) the use of any building as a dwellinghouse;
- (b) the taking of any steps specified in the enforcement notice as required to be taken in order to remedy the breach of planning control; or
- (c) an activity which commenced more than 12 months before the service of the notice, unless it is, or is incidental to-
  - (i) building, engineering, mining or other operations, or
  - (ii) the deposit of refuse or waste materials.

(4) A stop notice must-

- (a) refer to the enforcement notice to which it relates; and
- (b) set out the effect of subsections (6) to (8).

(5) Where a stop notice has been served in respect of any land, the Department may also exhibit on the land a notice (a 'site notice')-

- (a) stating that a stop notice has been served;
- (b) indicating its requirements;
- (c) stating that any person contravening it may be prosecuted for an offence under this section; and
- (d) setting out the effect of subsection (6).

(6) If any person contravenes a stop notice-

- (a) after the stop notice was served on him, or
- (b) after a site notice has been displayed,

he is guilty of an offence.

(7) If any person causes or permits the contravention of a stop notice more than 2 days after the stop notice was served on him, he is guilty of an offence.

(8) A person guilty of an offence under subsection (6) or (7) is liable-

- (a) on summary conviction, to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both; or
- (b) on conviction on information, to custody for a term not exceeding 2 years, or to a



fine, or to both.

(9) In proceedings for an offence under subsection (6) it is a defence for the accused to prove-

- (a) that the stop notice was not served on him, and
- (b) that he did not know, and could not reasonably have been expected to know, of its existence.

(10) A stop notice is not affected by an appeal against the enforcement notice to which it relates, but ceases to have effect-

- (a) when the enforcement notice is quashed or withdrawn,
- (b) on the expiration of the period for compliance with the notice;
- (c) when the Department withdraws the stop notice and serves notice of the withdrawal on any person on whom the stop notice was served;
- (d) when the enforcement notice is varied, but only to the extent that the variation relates to an activity the carrying on of which is prohibited by the stop notice;

but this subsection does not affect any liability for an offence committed before the stop notice ceased to have effect.

#### *Agreements regulating development of land*

## **28 Enforcement of agreements**

(1) Any covenant on the part of a person having an interest in land contained in an agreement made under section 13, being a covenant of a kind mentioned in section 30(4) of the Law Reform Act 1997, may be enforced by the Department against persons deriving title under that person in respect of that land, as if-

- (a) the covenant benefited land, and
- (b) the Department were the owner of land benefited,

in like manner as a covenant of that kind is enforceable against the owner for the time being of land burdened by it.

(2) Subsections (3) to (5) apply where-

- (a) a covenant on the part of a person having an interest in land, being a covenant to carry out any works or do any other thing on or in relation to that land, is contained in an agreement made under section 13, and
- (b) the agreement defines the land to which the covenant relates, being land in which that person has an interest at the time when the agreement is made.

(3) Without prejudice to subsection (1), a covenant referred to in subsection (2)(a) shall be enforceable (without any limit of time) against-

- (a) any person deriving title from the person mentioned in subsection (2)(a) in respect

of his interest in any of the land defined as mentioned in subsection (2)(b), and

(b) any person deriving title under him in respect of any lesser interest in that land,

as if the persons mentioned in paragraphs (a) and (b) had also been an original covenanting party in respect of the interest for the time being held by him.

(4) Without prejudice to any other method of enforcement of a covenant referred to in subsection (2)(a), if there is a breach of the covenant in relation to any of the land to which the covenant relates, then, subject to subsection (5), the Department may-

(a) enter on the land concerned and carry out the works or do anything which the covenant requires to be carried out or done or remedy anything which had been done and which the covenant required not to be done; and

(b) recover from any person against whom the covenant is enforceable (whether by virtue of subsection (3) or otherwise) any expenses reasonably incurred by the Department in exercise of its powers under this subsection.

(5) Before the Department exercises its powers under subsection (4)(a), it shall give not less than 21 days' notice in writing of its intention to do so to any person-

(a) who has for the time being any interest in the land on or in relation to which the works are to be carried out or other thing is to be done, and

(b) against whom the covenant is enforceable (whether by virtue of subsection (3) or otherwise).

(6) This section is without prejudice to-

(a) section 29 of the Registration of Deeds Act 1961 (registration of encumbrances affecting unregistered land), and

(b) section 31(4) of the Land Registration Act 1982 (effect of transfer of registered land).

(7) For the purposes of the said Act of 1982, a covenant referred to in subsection (2)(a) shall be treated as falling within Part I of Schedule 6 (registrable burdens) to that Act.

*Enforcement of controls on registered buildings etc.*

## **29 Works affecting registered building**

(1) If any person executes or causes to be executed any works-

(a) for the demolition of a registered building, or

(b) for its alteration or extension in any way which would affect its character as a building of special architectural or historic interest,

and the works are not authorised under Part 3, he is guilty of an offence.

(2) Without prejudice to subsection (1), if a person executing or causing to be executed any works in relation to a registered building under a registered building consent fails to comply with any condition attached to the consent, he is guilty of an offence.

(3) A person guilty of an offence under this section is liable-

- (a) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £20,000, or both; or
- (b) on conviction on information, to custody for a term not exceeding 2 years or a fine, or both;

and in determining the amount of a fine to be imposed on a person convicted of such an offence, the court shall in particular have regard to any financial benefit which has accrued or which appears likely to accrue to him in consequence of the offence.

(4) In proceedings for an offence under this section it is a defence for the person accused to prove-

- (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
- (b) that it was not practicable to secure safety or health or the preservation of the building, as the case may be, by works of repair or works for affording temporary repair or shelter;
- (c) that the works carried out were limited to the minimum measures immediately necessary; and
- (d) that notice in writing justifying in detail the carrying out of the works was given to the Department as soon as reasonably practicable.

### **30 Acts likely to damage registered building**

(1) If any person, who apart from this section would be entitled to do so, with the intention of causing such damage, does or permits the doing of any act which causes or is likely to result in damage to a registered building, he is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(2) This section does not apply to-

- (a) a building referred to in section 16(1), or
- (b) works authorised by planning approval, or
- (c) works for which registered building consent has been granted.

### **31 Registered building enforcement notice**

(1) Parts 1 and 2 of Schedule 5 have effect with respect to the issue of, and appeals against, registered building enforcement notices.

(2) Where, at any time after the end of the period for compliance with a registered building enforcement notice, any steps required by the notice to be taken have not been taken, the person who is then the owner of the building to which it relates is in breach of the notice.

(3) If at any time the owner of a building is in breach of a registered building enforcement

notice, he is guilty of an offence and liable-

- (a) on summary conviction, to a fine not exceeding £20,000, or
- (b) on conviction on information, to a fine;

and in determining the amount of any fine to be imposed on a person convicted of such an offence, 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.

(4) An offence under subsection (3) may be charged by reference to any period of time, and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction for such an offence.

(5) In proceedings for an offence under subsection (3) it is a defence for the person accused to show-

- (a) that he did everything he could be expected to do to secure compliance with the registered building enforcement notice; or
- (b) that he was not served with a copy of the notice and was not aware of its existence.

(6) In proceedings for an offence under subsection (3), it shall not be open to the accused to raise any defence on a ground which could have been raised on an appeal under paragraph 8 of Schedule 5.

(7) Where an appeal is brought against a registered building enforcement notice, no proceedings may be taken under this section in respect of the notice until the appeal is determined or withdrawn.

(8) Part 3 of Schedule 5 has effect with respect to works to remedy non-compliance with a registered building enforcement notice.

### **32 Urgent works to preserve unoccupied buildings**

(1) Subject to subsections (2) and (3), the Department may carry out any works which appear to it to be urgently necessary for the preservation of-

- (a) a registered building;
- (b) a building in a conservation area which appears to it to be important for maintaining the character or appearance of the area.

(2) No works may be carried out under this section to a building which is occupied, except to a part which is not in use.

(3) The works which may be carried out under this section may consist of or include works for affording temporary support or shelter for the building.

(4) Schedule 6 shall have effect with respect to works carried out under this section.

### **33 Compulsory acquisition of registered building in need of repair**

Schedule 7 shall have effect for the purpose of enabling the compulsory acquisition of a registered building which is in need of repair.

### **34 Application to other buildings**

(1) Section 31 and Schedule 5 apply to-

- (a) a building subject to a building preservation notice, and
- (b) a building in a conservation area,

as they apply to a registered building, subject in the case of a building in a conservation area to such modifications as may be prescribed.

(2) Where a building preservation notice ceases to be in force (except by virtue of section 17(3)(c)(i))-

- (a) that shall not affect the liability of any person to be prosecuted and punished for an offence under this Part committed with respect to the building while it was in force;
- (b) any registered building enforcement notice served while the building preservation notice was in force shall cease to have effect, and any proceedings on it under section 31 and Schedule 5 shall lapse;
- (c) paragraph 9 of Schedule 5 or paragraphs 2 and 3 of Schedule 6 shall continue to have effect as respects any expenses incurred by the Department as mentioned in those paragraphs.

#### *Enforcement of control of advertisements*

### **35 Enforcement of control of advertisements**

(1) Regulations may make provision for enabling the Department to require-

- (a) the removal of any advertisement which is displayed in contravention of the regulations, or
- (b) the discontinuance of the use for the display of advertisements of any site which is being so used in contravention of the regulations.

(2) For that purpose regulations may apply with or without modifications any of the provisions of this Part with respect to enforcement notices.

(3) Without prejudice to any provisions of regulations under subsection (1) or (2), if any person displays an advertisement in contravention of regulations under section 22 he is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

(4) Without prejudice to the generality of subsection (3), a person shall be deemed to display an advertisement for the purposes of that subsection if-

- (a) he is the owner or occupier of the land on which the advertisement is displayed; or
- (b) the advertisement gives publicity to his goods, trade, business or other concerns.

(5) A person is not guilty of an offence under subsection (3) by reason only of subsection (4) if he proves that it was displayed without his knowledge or consent.

### **36 Power to remove or obliterate placards and posters**

(1) Subject to subsections (2) and (3), the Department or a local authority may remove or obliterate any placard or poster which appears to it to be displayed in contravention of regulations under section 22.

(2) Subsection (1) does not authorise the removal or obliteration of a placard or poster displayed within a building.

(3) Subject to subsection (4), where a placard or poster identifies the person who displayed it or caused it to be displayed, the Department or a local authority shall not exercise any power conferred by subsection (1) unless it has first given him notice in writing-

- (a) that it appears to the Department or local authority that it is displayed in contravention of regulations under section 22; and
- (b) that it intends to remove or obliterate it on the expiry of a period specified in the notice, not being less than 2 days from the date of service of the notice.

(4) Subsection (3) does not apply if-

- (a) the placard or poster does not give that person's address, and
- (b) the Department or local authority does not know it and is unable to ascertain it after reasonable inquiry.

#### *High Court proceedings*

### **37 Injunctions**

(1) Where the Department considers it necessary or expedient for-

- (a) any actual or apprehended breach of planning control, or
- (b) any actual or apprehended contravention of section 29(1) or (2) (works affecting registered building),

to be restrained by injunction, it may apply to the High Court for an injunction, whether or not it has exercised or proposes to exercise any of its other powers under this Part.

(2) On an application under subsection (1) the Court may grant such an injunction as it thinks appropriate for the purpose of-

- (a) restraining the breach or contravention; and
- (b) in the case of an actual breach or contravention, restoring the land or the registered building to the state in which it would have been but for the breach or contravention.

**[Subs (2) amended by Town and Country Planning (Amendment) Act 2008 s 1(2)(a) and (b). Para (b) added by Town and Country Planning (Amendment) Act 2008 s 1(2)(b).]**

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

#### *Offences: general*

### **38 Restrictions on proceedings**

(1) Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Department or the Attorney General.

(2) Proceedings for an offence under this Act may be commenced at any time within-

- (a) the period of 6 months from the date on which evidence, sufficient in the opinion of the prosecutor to justify a prosecution for the offence, comes to his knowledge, or
- (b) 12 months of the commission of the offence,

whichever period last expires.

(3) For the purposes of subsection (2), a certificate signed by or on behalf of the prosecutor as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof; and a certificate purporting to be so signed shall be deemed to be so signed until the contrary is proved.

### **39 Offences by corporations**

(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who is purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### **39A Additional powers of court on conviction**

(1) This section applies where any person is convicted of an offence committed (after it comes into operation) under -

- (a) section 23 (breach of planning control);
- (b) section 29 (breach of registered building control); or
- (c) section 35 (breach of advertisement control).

(2) Where this section applies, the court by which a person is sentenced may, in addition to any penalty imposed for the offence, make such of the orders specified in subsections (3) to (5) as is appropriate in the circumstances of the case.

(3) If the offence relates to a development, the court may order the person convicted, within such period as the court specifies -

- (a) to cease any development to which the conviction relates;
- (b) to remove any building done or other works carried out in connection with that development;

- (c) to restore any land affected by such development to its original condition;
- (d) to do such other things in relation to such land as the court considers proper in the circumstances.

(4) If the offence relates to demolition of, or damage to, a registered building, or the alteration or extension of a registered building in a way which affects its character as a building of special architectural or historic interest, the court may order the person convicted, within such period as the court specifies -

- (a) to restore the building to its former state;
- (b) where the Department considers such restoration would not be reasonably practicable, or would be undesirable, to execute such other works as may be necessary to alleviate the effect of the works carried out without registered building consent;
- (c) to bring the building to the state in which it would have been if the terms and conditions of any registered building consent which had been granted had been met.

(5) If the offence is one committed under section 35 and relates to an advertisement displayed in contravention of regulations under section 22, the court may order the person convicted, within such time as the court specifies, to remove or obliterate the advertisement.

(6) Subsection (7) applies if the person convicted fails to comply with an order -

- (a) under subsection (3) which required that person to do any act; or
- (b) under subsection (4) or (5).

(7) If this subsection applies the court may authorise the Department -

- (a) to do whatever the person convicted has failed to do; and
- (b) to recover the costs of so doing from the person convicted.

(8) The Department may recover the costs mentioned in subsection (7)(b) summarily as a civil debt.

[S 39A inserted by Town and Country Planning (Amendment) Act 2008 s 1(3).]

## **PART 5 MISCELLANEOUS AND SUPPLEMENTAL**

### *Miscellaneous*

#### **40 Involvement of outside organisations in planning**

(1) The Council of Ministers shall in accordance with regulations establish a body for the purpose of obtaining the views of organisations in the Island appearing to the Council of Ministers to be concerned with any of the following matters-

- (a) the environment,



- (b) the economy of the Island, or
- (c) the planning of development.

(2) The Department shall consult with the said body on all matters on which it appears to the Department that its advice would be desirable, and in exercising its functions under this Act shall have regard to any advice given by the said body, whether pursuant to such consultations or otherwise.

(3) Without prejudice to subsections (1) and (2), a development order or regulations under this Act shall-

- (a) provide for the designation by the Department of voluntary organisations in the Island appearing to the Department to be concerned with the environment, and
- (b) require the Department, in exercising any functions under this Act to which the order or regulations relate, to have regard to any representations which are made, in such circumstances as are specified in the order or regulations, by organisations so designated.

#### **41 Registers of applications etc**

(1) The Department shall keep registers containing prescribed information with respect to-

- (a) applications for planning approval;
- (b) applications for consent to the demolition or alteration of registered buildings, buildings the subject of building preservation notices and buildings in conservation areas;
- (c) applications for any such approval as is mentioned in section 10(6)(d), any other approval required by a condition imposed on the grant of planning approval, or any approval required by a condition imposed on the grant of registered building consent;
- (d) applications under section 10(3) and paragraph 3 of Schedule 3;
- (e) the manner in which applications referred to in paragraphs (a) to (d) have been dealt with;
- (f) building preservation notices;
- (g) certificates issued under section 24;
- (h) enforcement notices, stop notices and registered building enforcement notices.

(2) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

(3) A register under this section may be kept otherwise than in documentary form; and where such a register is so kept, the requirement of subsection (2) is satisfied if the Department makes any part of which any person wishes to inspect available for inspection in visible and legible form.

## 42 Computerisation and microfilming of documents

(1) The Department may record in electronic form or on microfilm any document belonging to or permanently in the possession of the Department relating to any of its functions under this Act.

(2) Subject to the provisions of the Public Records Act 1999, but notwithstanding any enactment or rule of law to the contrary-

- (a) the Department may destroy any documents of the Department which it has recorded under subsection (1);
- (b) a legible copy in printed or enlarged form, as the case may be, of any document so recorded shall be receivable in evidence for any purpose for which the original would have been receivable in evidence in any proceedings in any court, if the copy bears a certificate signed by an officer of the Department that-
  - (i) the original has been destroyed;
  - (ii) the document has been recorded in electronic form or on microfilm, as the case may be; and
  - (iii) the copy is a printed copy or enlarged copy, as the case may be, of the record;and a certificate purporting to be so signed shall be deemed to be so signed until the contrary is proved.

**[Subs (2) amended by Public Records Act 1999 Sch 3.]**

(3) The Department shall provide facilities for any person to inspect any document recorded under subsection (1) in visible and legible form to the like extent and in no less convenient a manner as if the original had not been destroyed; but nothing in this subsection requires such a document to be recorded, copied or reproduced otherwise than in monochrome.

(4) In this section-

'document' includes the whole or part of a register, book, record, letter, map, plan, drawing, photograph or other document, and any notice, licence, certificate, scheme or order made, passed or granted by the Department;

'microfilm' means a film or other material bearing a reproduction of a document which is in general beyond legibility with the naked eye, and references to a record of a document on microfilm include references to a copy subsequently made of such a reproduction.

(5) Nothing in this section affects the duty of the Department under section 2 of the Filing of Statutory Documents Act 1937.

*Supplemental*

## 43 Rights of entry

(1) Any person duly authorised in writing by the Department may at any reasonable time enter any land for any of the following purposes-

- (a) carrying out a survey under section 1;
- (b) surveying that or any other land in connection with the preparation or revision of a strategic plan or area plan;
- (c) surveying that or any other land in connection with an application for any planning approval, consent or other determination under this Act to be given or made in connection with the land in question;
- (d) surveying any building on that or any other land in connection with a proposal to include the building in, or exclude it from, the register;
- (e) ascertaining whether any offence under Part 4 has been committed in relation to that or any other land;
- (f) determining whether and, if so, how any of the powers conferred on the Department by Part 4 should be exercised in relation to that or any other land;
- (g) ascertaining whether any requirement imposed in the exercise of any such power in relation to that or any other land has been complied with;
- (h) exhibiting a site notice under section 27(5);
- (i) carrying out on that or any other land any works under section 28(4)(a) or 32(1), paragraph 11 of Schedule 4 or paragraph 9 of Schedule 5.

(2) A person authorised under this section to enter any land-

- (a) shall, if so required before or after entering on the land, produce evidence of his authority to enter;
- (b) may take with him on to the land such other persons and such equipment as are necessary for the purpose in question;
- (c) shall not, if the land is occupied, demand admission to the land as of right unless notice of the intended entry has been served on the occupier not less than 24 hours before the demand;
- (d) shall, if the land is unoccupied when he enters or the occupier is then temporarily absent, leave the land as effectually secured against trespassers as he found it; and
- (e) shall not (except in pursuance of a warrant under subsection (3)) enter any dwelling on the land which is occupied.

(3) If it is shown to the satisfaction of a justice of the peace that-

- (a) admission to any land has been refused; or
- (b) refusal of admission is apprehended; or
- (c) the land is unoccupied; or
- (d) the occupier of the land is temporarily absent; or

(e) an application for admission would defeat the object of the entry;

and there is reasonable ground for entry on the land for a purpose mentioned in subsection (1), the justice may by a warrant authorise a person authorised by the Department to enter on the land, by force if need be.

(4) No warrant under subsection (3) shall be issued on the ground mentioned in subsection (3)(a) or (b) unless the justice is satisfied that notice of the Department's intention to apply for the warrant has been given to the occupier.

(5) A warrant under subsection (3) shall continue in force until-

(a) the expiration of one month from the date it is issued, or

(b) the purpose for which entry is necessary has been satisfied,

whichever is the sooner.

(6) Section 36 of the Local Government Act 1985 (offences in connection with entry) applies to entry by virtue of this section as it applies to entry by virtue of section 35 of that Act.

#### **44 Tynwald control of orders and regulations**

(1) Development orders and regulations under this Act shall not have effect unless they are approved by Tynwald.

(2) An order under section 18(1) (conservation areas) shall be laid before Tynwald as soon as practicable after it is made.

#### **45 Interpretation**

(1) In this Act-

**'advertisement'** means any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the foregoing) includes any hoarding or similar structure used, or designed or adapted for use, and anything else principally used, or designed or adapted principally for use, for the display of advertisements, and references to the display of advertisements shall be construed accordingly;

**'agriculture'** includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and **'agricultural'** shall be construed accordingly;

**'area plan'** means such a plan as is described in section 2(3);

**'breach of planning control'** has the meaning given by section 23;

**'building'** includes any structure or erection, and any part of a building, as so defined,

but does not include any plant or machinery comprised in a building;

**'building preservation notice'** means a notice under section 17(1);

**'condition'** includes a limitation;

**'the Department'** means the Department of Infrastructure;

[Definition of 'the Department' amended by SD155/10 Sch 5.]

**'development'** has the meaning given by section 6, and **'develop'** has a corresponding meaning;

**'development order'** means an order under section 8;

**'the development plan'** means the Island Development Plan prepared or revised under section 2;

**'enforcement notice'** means a notice issued under paragraph 1 of Schedule 4;

**'erection'**, in relation to buildings, includes extension, alteration and re-erection;

**'land'** includes land covered by water;

**'owner'**, in relation to any land, means a person who, whether in his own right or as trustee of any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let;

**'planning approval'** means approval authorising the carrying out of development and granted by or under a development order;

**'planning policy statement'** means a statement under section 3(1);

**'prescribed'** means prescribed by regulations;

**'the register'** means the Protected Buildings Register maintained under section 14(1);

**'registered building'** means a building for the time being entered in the register;

**'registered building consent'** means (subject to regulations under section 20(2)) the written consent of the Department to works for the demolition, alteration or extension of a registered building;

**'registered building enforcement notice'** means a notice issued under paragraph 1 of Schedule 5;

**'regulations'** means regulations made by the Department;

**'stop notice'** means a notice served under section 27(1);

**'strategic plan'** means such a plan as is described in section 2(2)(a).

(2) Any requirement under this Act that the Department publish any document is complied with if-

(a) notice of it is given in one or more newspapers published and circulating in the

Island;

- (b) a copy of it is made available for public inspection at the Department's offices free of charge; and
- (c) copies of it are made available for sale to members of the public at such reasonable price as the Department may determine.

#### **46 Transitional provisions, amendments and repeals**

(1) The transitional provisions in Schedule 8 have effect.

(2) The enactments specified in Schedule 9 are amended in accordance with that Schedule.

(3) The enactments specified in Schedule 10 are repealed to the extent specified in column 3 of that Schedule.

#### **47 Extent of Act**

(1) This Act extends to the whole of the Island.

(2) This Act shall not extend to the territorial seas of the Island except to such extent, and subject to such exceptions and modifications, as may be prescribed.

#### **48 Short title and commencement**

(1) This Act may be cited as the Town and Country Planning Act 1999.

(2) This Act shall come into operation on such day or days as the Department may by order appoint.

[ADO (Part 1 (ss 1 to 5 and including Sch 1), ss 43 (except (1)(c) to (j)), 44, 45, 47, 48) 1/4/2000 (SD152/00); (remainder of Act) 1/11/2005 (SD256/05).]

### **Schedule 1 Development Plan Procedure**

#### *Interpretation*

1. In this Schedule '**plan**' means a strategic plan or an area plan.

#### *Preliminary publicity*

2. When preparing a plan and before finally determining its content, the Department shall take such steps as will in its opinion secure-

- (a) that adequate publicity is given to the matters with which it intends that the proposals in the plan should deal;
- (b) that persons who may be expected to desire an opportunity of making representations to the Department with respect to those matters are made aware that they may do so; and

- (c) that such persons are given an adequate opportunity of making such representations.

*Publication of draft plan*

3. (1) After complying with the requirements of paragraph 2 and considering any representations made with respect to the matters there referred to, the Department shall publish a draft of any plan.

(2) A draft plan may not be published more than 12 months after the steps referred to in paragraph 2 with respect to the plan have been completed.

(3) Where a draft of a plan is published, the notice under section 45(2)(a) shall state-

- (a) that copies of the plan may be inspected and obtained as mentioned in section 45(2)(b) and (c); and
- (b) that within such period as may be specified in the notice (not being less than 42 days beginning with the date on which it is first published), any person may make objections or representations in writing with respect to any proposal in the draft plan.

*Inquiry*

4. (1) After the expiry of the period specified under paragraph 3(3)(b), the Department shall cause an inquiry to be held.

(2) The inquiry shall be conducted by a person or persons appointed by the Governor for the purpose; and-

- (a) the Inquiries (Evidence) Act 2003 applies to such an inquiry with the omission, in section 1(1), of the words from 'where Tynwald' onwards, and of section 3; and
- (b) any person shall be entitled to be heard (in person or by a representative) at the inquiry.

**[Subpara (2) substituted by Inquiries (Evidence) Act 2003 Sch 1.]**

*Publicity for report of appointed person*

5. As soon as may be after it receives the report of the person or persons by whom the inquiry was conducted, the Department shall publish the report.

*Adoption of draft plan*

6. (1) After considering the report of the person or persons by whom the inquiry is held, the Department may by order adopt the plan in the terms of the draft, with or without modifications; and the plan as adopted shall be annexed to the order.

(2) Where the Department proposes to adopt the plan with modifications-

- (a) it shall publish a notice stating-
- (i) the general effect of the proposed modifications, and
- (ii) that within such period as may be specified in the notice (not being less than

21 days beginning with the date on which it is first published), any person may make objections or representations in writing with respect to any of the modifications;

- (b) it shall not adopt the plan before the expiration of the period so specified; and
- (c) before doing so it shall consider any objections and representations duly made with respect to the modifications and not withdrawn.

*Publication of plan after approval*

7. As soon as practicable after a plan has been approved by Tynwald, the Department shall publish it.

## **Schedule 2**

### **The Protected Buildings Register**

*Consultations*

1. Before entering any building in the register, or amending the register by removing a building from it, the Department shall consult such persons or bodies of persons as appear to it appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.

*Notification of entries on register etc.*

2. (1) As soon as may be after a building has been entered in the register, or the register has been amended by the removal of a building from it, the Department shall serve a notice on the owner and the occupier of the building stating that it has been entered in or removed from the register.

(2) The owner or the occupier of, and any other person having an interest in, a building which has been entered in the register may apply to the Department to remove the building from the register-

- (a) within the prescribed period after service on him of a notice under sub-paragraph (1);
- (b) after the expiration of the prescribed period after the decision of the Department on a previous request under this subsection in relation to the building.

*Regulations*

3. Regulations shall make provision with respect to-

- (a) entries in and amendments of the register, and
- (b) applications under paragraph 2 and the determination of such applications;

and may make provision for the exercise of functions with respect to those matters, and appeals against decisions in relation thereto.

## **Schedule 3**



## Conditions of Registered Building Consent

### *Grant of consent subject to conditions*

1. (1) Registered building consent may be granted subject to conditions.

(2) Without prejudice to the generality of sub-paragraph (1), the conditions subject to which registered building consent may be granted include conditions with respect to-

- (a) the preservation of particular features of the building, either as part of it or after severance from it;
- (b) the making good, after the works are completed, of any damage caused to the building by the works;
- (c) the reconstruction of the building or any part of it following the execution of any works, with the use of original materials so far as practicable and with such alterations of the interior of the building as may be specified in the conditions.

(3) Registered building consent may be granted subject to a condition reserving specified details of the works (whether or not set out in the application) for subsequent approval by the Department.

(4) Registered building consent may be granted subject to a condition requiring the building to be recorded in accordance with a specification prepared by the Department, and the record to be furnished to the Department.

### *Conditions as to timing of works*

2. (1) Registered building consent for the demolition of a registered building may be granted subject to a condition that the building shall not be demolished before-

- (a) a contract for the carrying out of works of redevelopment of the site has been made, and
- (b) planning approval has been granted for the redevelopment for which the contract provides.

(2) Registered building consent may be granted subject to conditions-

- (a) that the works to which it relates must be begun not later than the expiration of such period as may be specified therein, and
- (b) that the said works must be completed not later than the expiration of such period as may be so specified.

(3) Any registered building consent granted without a condition under sub-paragraph (2)(a) shall be deemed to be granted subject to a condition that the works to which it relates must be begun not later than the expiration of 5 years beginning with the date on which it is granted.

(4) A registered building consent shall cease to have effect if the works to which it relates are not begun before the expiration of the period specified under sub-paragraph (2)(a), or of

the period of 5 years referred to in sub-paragraph (3), as the case may be.

(5) Sub-paragraphs (2) to (4) do not apply to a registered building consent granted under section 15(3).

*Variation or discharge of conditions*

3. Any person interested in a registered building with respect to which registered building consent has been granted subject to conditions may apply to the Department for the variation or discharge of the conditions; and on such an application the Department may-

- (a) vary or discharge the conditions attached to the consent, and
- (b) add new conditions consequential on the variation or discharge.

**Schedule 4**  
**Enforcement Notices**

**PART 1**  
**ISSUE OF ENFORCEMENT NOTICES**

*Issue of enforcement notice*

1. Where it appears to the Department that any development is being or has been carried out in breach of planning control, it may, if it considers it expedient to do so having regard to the provisions of the development plan and to any other material considerations, issue a notice (an 'enforcement notice')-

- (a) specifying the matter which is alleged to constitute a breach of planning control;
- (b) specifying the grounds on which it is alleged to constitute a breach of planning control;
- (c) requiring such steps as may be specified in the notice to be taken in order to remedy the breach-
  - (i) by making the development comply with the terms (including conditions) of any planning approval which has been granted in respect of the land;
  - (ii) by discontinuing any use of the land;
  - (iii) by restoring the land to its condition before the breach took place;

or in order to remedy any injury to amenity which has been caused by the breach.

*Time for compliance with notice*

2. (1) An enforcement notice shall specify the period by 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.

(2) References in this Act to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period by the end of which the step is required to

have been taken or the activity to have ceased.

*Time limits for issue of notice*

3. No enforcement notice may be issued-

- (a) in respect of a breach of planning control consisting of the carrying out without planning approval of building, engineering, mining or other operations in, on, over or under land, after the end of the period of 4 years beginning with the date on which the operations were substantially completed;
- (b) in respect of a breach of planning control consisting of the change of use of any building to use as a single dwellinghouse, after the end of the period of 4 years beginning with the date of the breach;
- (c) in respect of any other breach of planning control, after the end of the period of 10 years beginning with the date of the breach.

*Time at which notice takes effect*

4. An enforcement notice shall take effect, in relation to-

- (a) any person on whom a copy of it is served, and
- (b) any successor in title of such a person,

on the expiration of such period (not being less than 28 days) after service on the person mentioned in sub-paragraph (a) as may be specified in the notice.

*Service of notice*

5. A copy of an enforcement notice shall be served, not later than 28 days after the date of its issue-

- (a) on the owner and 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 Department's opinion is materially affected by the notice;

but the validity of the notice shall not be affected by any failure to serve a copy of it on any person upon whom it is required to be served, except as against that person and a successor in title of his.

*Withdrawal or variation of notice*

6. The Department may at any time-

- (a) withdraw an enforcement notice (without prejudice to its power to issue another), or
- (b) vary an enforcement notice by waiving or relaxing any requirement of the notice, or extending any period specified under paragraph 2,

and shall give notice of the exercise of any power under this paragraph to every person on whom a copy of the enforcement notice was served or on whom, if the notice were re-issued, a copy of it would be served.

*Deemed grant of planning approval*

7. Where-

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

then, so far as the notice did not so require, planning approval shall be deemed to be granted in respect of the development consisting of the construction of the building or works, or the carrying out of the activities, as the case may be.

*Continuing effect of notice*

8. (1) Compliance with an enforcement notice, whether in respect of the completion, demolition or alteration of any buildings or works, the discontinuance of any use of land, or any other requirements of the notice, does not discharge the notice.

(2) In particular-

- (a) a requirement of an enforcement notice that a use of land be discontinued is a requirement that it be discontinued permanently (so a resumption of that use at any time after it has been discontinued in compliance with the notice is a contravention of the notice); and
- (b) the notice applies to any development carried out by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with the notice as it applied to the buildings or works before they were demolished or altered, although its terms may not be apt for the purpose.

*Effect of subsequent planning approval*

9. If, after the issue of an enforcement notice, planning approval is granted-

- (a) for the retention on land of buildings or works,
- (b) for the continuance of a use of land, or
- (c) for the retention on land of buildings or works or the continuance of a use of land without compliance with some condition subject to which a previous planning approval was granted,

the enforcement notice shall cease to have effect in so far as it requires steps to be taken for demolishing or altering those buildings or works, discontinuing that use or complying with that condition, as the case may be, but without prejudice to any liability for an offence in respect of a previous failure to comply with the notice.

**PART 2**  
**APPEALS AGAINST ENFORCEMENT NOTICES**

10. (1) Any person having an interest in the land to which an enforcement notice relates may, at any time before it takes effect in relation to him, appeal to the High Bailiff against

the notice on any of the following grounds-

- (a) that the matters alleged in the notice do not constitute a breach of planning control;
- (b) that the breach of planning control alleged in the notice has not taken place;
- (c) that the issue of the enforcement notice was precluded by paragraph 3;
- (d) that the period specified in the notice as the period within which any step required is to be taken falls short of what should reasonably be allowed;
- (e) that the steps required by the notice to be taken exceed what is necessary for the purposes specified in paragraph 1(c).

(2) On the determination of an appeal under this paragraph, the High Bailiff may-

- (a) give directions for giving effect to the determination, including (where appropriate) directions for quashing the notice or for varying its terms; or
- (b) correct any defect, error or misdescription in the notice, or vary its terms, if he is satisfied that the correction or variation can be made without injustice to the appellant or the Department.

(3) Where an appeal is brought against an enforcement notice, the notice is of no effect pending the final determination or the withdrawal of the appeal.

(4) The validity of an enforcement notice shall not, except by way of an appeal under this paragraph, be questioned in any proceedings whatever on any of the grounds on which such an appeal may be brought.

### **PART 3**

#### **WORKS TO REMEDY NON-COMPLIANCE WITH ENFORCEMENT NOTICE**

11. (1) Where any steps required by an enforcement notice to be taken have not been taken within the period for compliance with the notice, the Department may itself take those steps, and may recover from any person having an interest in the land the expenses reasonably incurred by it in so doing.

(2) In proceedings for the recovery of any expenses under sub-paragraph (1), the court-

- (a) after giving each person concerned who has an interest in the land an opportunity of being heard, may make such order as it thinks just and equitable as to-
  - (i) the proportions in which any such expenses are to be borne by any of those persons, and
  - (ii) the contribution which any of those persons is to make towards the expenses to be borne by any other such person; and
- (b) shall have regard, as between any of those persons, to the nature of their respective interests and to the terms and conditions of any lease or other agreement or arrangement between them.

(3) In any such proceedings it shall not be open to the person accused to raise any

defence on a ground which could have been raised on an appeal under paragraph 10.

## **Schedule 5**

### **Registered Building Enforcement Notices**

#### **PART 1**

#### **ISSUE OF REGISTERED BUILDING ENFORCEMENT NOTICES**

##### *Issue of registered building enforcement notice*

1. Where it appears to the Department that any works have been or are being executed to a registered building and are such as to involve a contravention of section 29(1) or (2), it may, if it considers it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice (a 'registered building enforcement notice')-

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

##### *Time for compliance with notice*

2. A registered building enforcement notice shall specify the period by the end of which any steps are required to have been taken, and may specify different periods for different steps; and references in this Act to the period for compliance with a registered building enforcement notice, in relation to any step, are to the period by the end of which the step is required to have been taken.

##### *Time at which notice takes effect*

3. A registered building enforcement notice shall take effect, in relation to-

- (a) any person on whom a copy of it is served in accordance with paragraph 4, and
- (b) any successor in title of such a person,

on the expiration of such period (not being less than 28 days) after service on the person mentioned in sub-paragraph (a) as may be specified in the notice.

##### *Service of notice*

4. A copy of an enforcement notice shall be served, not later than 28 days after the date of its issue-

- (a) on the owner and the occupier of the building to which it relates; and
- (b) on any other person having an interest in the building, being an interest which in the Department's opinion is materially affected by the notice;

but the validity of the notice shall not be affected by any failure to serve a copy of it on any person upon whom it is required to be served, except as against that person and a successor in title of his.

*Withdrawal or variation of notice*

5. The Department may at any time-

- (a) withdraw a registered building enforcement notice (without prejudice to its power to issue another), or
- (b) vary the notice by waiving or relaxing any requirement of it, or extending any period specified under paragraph 2,

and shall give notice of the exercise of any power under this paragraph to every person on whom a copy of the registered building enforcement notice was served or on whom, if the notice were re-issued, a copy of it would be served.

*Deemed grant of registered building consent*

6. Where a registered building enforcement notice imposes a requirement under paragraph 1(b)(ii), registered building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

*Effect of subsequent consent*

7. If, after the issue of a registered building enforcement notice, registered building consent is granted-

- (a) for the retention of works for the alteration or extension of the building in question, or
- (b) for the retention of such works without compliance with some condition subject to which a previous registered building consent was granted,

the notice shall cease to have effect in so far as it requires steps to be taken for restoring the building to its former state, but without prejudice to any liability for an offence in respect of a previous failure to comply with the notice.

**PART 2**  
**APPEALS AGAINST REGISTERED BUILDING ENFORCEMENT NOTICE**

8. (1) Any person having an interest in a building to which a registered building enforcement notice relates may, at any time before it takes effect in relation to him, appeal to the High Bailiff against the notice on any of the following grounds-

- (a) that the matters alleged to constitute a contravention of section 29(1) or (2) have not occurred;
  - (b) that those matters (if they occurred) do not involve such a contravention;
  - (c) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or the preservation of the building, as the case may be, by works of repair or works for affording temporary repair or shelter and that the works carried out were limited to the minimum measures immediately necessary;
  - (d) that the period specified in the notice as the period within which any step required is to be taken falls short of what should reasonably be allowed;
  - (e) in relation to a requirement under paragraph 1(b)(i), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out, or that the steps required by the notice would not serve the purpose of restoring the building to that condition;
  - (f) in relation to a requirement under paragraph 1(b)(ii), that the steps required by the notice exceed what is necessary to alleviate the effect of the works executed to the building;
  - (g) in relation to a requirement under paragraph 1(b)(iii), that the steps required by the notice exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the registered building consent had been complied with.
- (2) Where an appeal is brought under this paragraph, the High Bailiff may-
- (a) give directions for giving effect to the determination, including (where appropriate) directions for quashing the notice or for varying its terms; or
  - (b) correct any defect, error or misdescription in the notice, or vary its terms, if he is satisfied that the correction or variation can be made without injustice to the appellant or the Department.

(3) Where an appeal is brought against a registered building enforcement notice, the notice is of no effect pending the final determination or the withdrawal of the appeal.

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

### **PART 3**

#### **WORKS TO REMEDY NON-COMPLIANCE WITH REGISTERED BUILDING ENFORCEMENT NOTICE**

9. (1) Where any steps required by a registered building enforcement notice to be taken have not been taken within the period for compliance with the notice, the Department may itself take those steps, and may recover from any person having an interest in the building the expenses reasonably incurred by it in so doing.



- (2) In proceedings for the recovery of any expenses under sub-paragraph (1), the court-
- (a) after giving each person concerned who has an interest in the building an opportunity of being heard, may make such order as it thinks just and equitable as to-
    - (i) the proportions in which any such expenses are to be borne by any of those persons, and
    - (ii) the contribution which any of those persons is to make towards the expenses to be borne by any other such person; and
  - (b) shall have regard, as between any of those persons, to the nature of their respective interests and to the terms and conditions of any lease or other agreement or arrangement between them.
- (3) In any such proceedings it shall not be open to the person accused to raise any defence on a ground which could have been raised on an appeal under paragraph 8.

## **Schedule 6**

### **Urgent Works to Preserve Unoccupied Buildings**

#### *Notice of proposed works*

1. Before carrying out any works under section 32, the Department shall give to the owner not less than 7 days' notice of its intention to do so, describing the proposed works.

#### *Recovery of expenses*

2. (1) The Department may give notice to any person having an interest in the building requiring him to pay the expenses of works carried out under section 32(1), in an amount specified in the notice; and where the works consist of or include works mentioned in section 32(3)-

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

(2) Subject to any direction under paragraph 3(2), the Department may recover such expenses from any person having an interest in the building in accordance with a notice under sub-paragraph (1).

#### *Appeal*

3. (1) A person on whom a notice under paragraph 2(1) is served may appeal to the High Bailiff against the notice on any of the following grounds-

- (a) that some or all of the works were unnecessary for the preservation of the building;
- (b) in the case of a building in a conservation area (not being a registered building), that the building is not important for maintaining the character or appearance of

that area;

- (c) in the case of works consisting of or including works mentioned in section 32(3), that the temporary arrangements have continued for an unreasonable length of time;
- (d) that the amount specified in the notice is unreasonable;
- (e) that the recovery of the expenses would cause him hardship;
- (f) that the expenses should be borne or contributed to by some other person having an interest in the building, having regard to the nature of the respective interests of the appellant and that person and the terms and conditions of any lease or other agreement or arrangement between them.

(2) On the determination of an appeal under sub-paragraph (1), the High Bailiff may give directions for giving effect to the determination, including (where appropriate) directions for quashing the notice or varying its terms, but not so as to require any person other than the appellant to pay the expenses or a proportion of them unless that person has been given an opportunity of being heard.

## **Schedule 7**

### **Compulsory Acquisition of Building in Need of Repair**

#### *Repairs notice*

1. (1) If it appears to the Department that reasonable steps are not being taken for properly preserving a registered building, the Department may serve on the owner of the building a notice (a 'repairs notice')-

- (a) specifying the works which the Department considers reasonably necessary for the proper preservation of the building; and
- (b) explaining the effect of this Schedule.

(2) Any person having an interest in a registered building may, within 21 days of the service of a repairs notice, appeal to the High Bailiff against the notice on any of the following grounds-

- (a) that reasonable steps are, or have been, taken properly to preserve the building;
- (b) that the works specified in the notice exceed what is necessary for properly preserving the building;
- (c) that any of the works specified in the notice would not serve the purpose of properly preserving the building.

(3) On the determination of an appeal under sub-paragraph (2), the High Bailiff may give directions for giving effect to the determination, including (where appropriate) directions for quashing the repairs notice or varying its terms.

#### *Withdrawal of repairs notice*

2. (1) Where the Department has served a repairs notice in relation to a registered building and it appears to it that the steps required by the notice have been taken, the Department shall by notice to the owner of the building withdraw the repairs notice.

(2) If the Department, after a request in writing by a person having an interest in the building, refuses to withdraw the repairs notice, that person may within 21 days of notification of the refusal, or if no such refusal is notified, within 42 days of the request, appeal to the High Bailiff.

(3) On an appeal under sub-paragraph (2), if the High Bailiff is satisfied that the steps required by the repairs notice have been taken, he shall direct that the notice shall be deemed to have been withdrawn.

(4) A repairs notice may be withdrawn, or a direction given under sub-paragraph (3), at any time before the service of a notice to treat in relation to the building in question.

#### *Compulsory purchase of building*

3. (1) Subject to any order made on appeal, where a repairs notice has been served in relation to a registered building and has not been withdrawn, the Department may, not less than 2 months after the service of the notice, acquire compulsorily-

- (a) the building, and
- (b) any land comprising or contiguous or adjacent to it which appears to the Department to be required for preserving the building or its amenities, or for affording access to it, or for its proper management.

(2) Where-

- (a) a building is demolished (otherwise than in pursuance of registered building consent) after a repairs notice has been served in relation to it, but
- (b) the Department is satisfied that it would have acquired the building compulsorily under sub-paragraph (1) had it not been demolished,

the Department may acquire the site of the building compulsorily.

(3) On the withdrawal of a repairs notice the authorising resolution for the compulsory acquisition of land under this paragraph shall cease to have effect.

(4) Where the Department acquires a building or other land under this paragraph, it may make such arrangements as it thinks fit as to the management, custody, use or disposal of the building or land.

#### *Compensation for compulsory acquisition*

4. (1) This paragraph applies where the Department is satisfied that a registered building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development or redevelopment of the site or any adjoining site.

(2) Where this paragraph applies there may be included in the authorising resolution for the compulsory acquisition of the building under paragraph 3 a direction that, for the purpose of assessing compensation it is to be assumed that-

- (a) planning approval would not be granted for any development or redevelopment of the site of the building, and
- (b) registered building consent would not be granted for any works for the demolition, alteration or extension of the building other than development or works necessary for restoring it to and maintaining it in a proper state of repair.

(3) Where a direction under sub-paragraph (2) is included in the authorising resolution, the compensation in respect of the compulsory acquisition shall be assessed in accordance with the direction.

#### *Interpretation*

5. In this Schedule '**the authorising resolution**', in relation to any compulsory acquisition, means the resolution under section 2(1) of the Acquisition of Land Act 1984 authorising the acquisition.

### **Schedule 8 Transitional Provisions**

#### *Development plan*

1. The following, as they have effect immediately before the commencement of Part 1, shall have effect as an area plan for the purposes of Part 1, and may be varied or repealed accordingly-

- (a) articles 7, 8, 10 and 11 of the Isle of Man Planning Scheme (Development Plan) Order 1982;
- (b) articles 2 and 3 of that Order, so far as they relate to those articles,
- (c) any special order as defined in the said article 3, and
- (d) the Plan as defined in the said article 3.

#### *Planning applications*

2. A development order may make provision for the determination of an application for planning approval made, but not finally determined, under Schedule 1 to the Isle of Man Planning Scheme (Development Plan) Order 1982 before the commencement of Part 2.

#### *Planning approvals*

3. A planning approval granted, and any conditions imposed on the grant of planning approval, under Schedule 1 to the Isle of Man Planning Scheme (Development Plan) Order 1982 or under Part I of the Town and Country Planning Act 1981 before the commencement of Part 2 shall have effect as if the approval had been granted and the conditions had been imposed under a development order.

#### *Special inquiries*

4. Where immediately before the commencement of Part 2-

- (a) a direction of the Council of Ministers under section 1(1) or (4)(b) of the Town and Country Planning Act 1981 has been given, and
- (b) a final decision (as defined in section 1(5) of that Act) has not been given on the application in question,

the application shall be dealt with in accordance with Part I of that Act as if this Act had not been passed; and any planning approval granted on such an application after the commencement of Part 2 shall have effect as if granted under a development order.

#### *Breach of planning control*

5. Where development was carried out after the commencement of the Isle of Man Planning Scheme (Development Plan) Order 1982 and before the commencement of Part 2-

- (a) without the grant of approval required for that development by that Order, or
- (b) without complying with any conditions subject to which approval for the development was granted pursuant to that Order,

that development shall be treated for the purposes of Part 4 as in breach of planning control.

#### *Planning agreements*

6. (1) Section 28(1) shall not apply, and section 18(2) of the Town and Country Planning Act 1991 shall continue to apply, to an agreement under the said section 18 which was made before the commencement of section 28.

(2) For the purpose of the application of the said section 18(2) to an agreement mentioned in sub-paragraph (1), section 30 of the Law Reform Act 1997 shall be deemed to have come into operation on the same day as section 28.

#### *Savings*

7. (1) Where an enactment repealed by this Act amends another enactment which is not repealed by this Act, the amendment shall continue to have effect notwithstanding the repeal.

(2) Notwithstanding the repeal by this Act of the Town and Country Planning Act 1991, Schedule 2 to that Act (transitional provisions) shall continue to have effect, with any necessary modifications, after the commencement of this Act.

**[Editorial note: Despite its repeal Schedule 2 to the Town and Country Planning Act 1991 is set out below for the convenience of users.**

### **Schedule 2 Transitional Provisions**

#### *The register*

1. Subject to paragraph 2, every building entered in the register maintained under section 12 of the Town and Country Planning Act 1981 immediately before the commencement of this Act shall be entered in the register, and section 1(4) does not apply to a building so

entered by virtue of this paragraph.

2. When the Department designates a conservation area, it shall as soon as may be consider every group of buildings within that area which are entered in the register by virtue of paragraph 1 and determine, as respects each building within the group, whether it ought to be retained in the register.

*Pending applications etc.*

3. Notwithstanding the repeal of paragraph 2 of Schedule 2 to the said Act of 1981, any application for consent under sub-paragraph (1)(b) of that paragraph which is pending at the commencement of this Act shall be continued and may be determined as if this Act had not been passed.

*Existing consents*

4. Any consent to works affecting a registered building granted before the commencement of this Act under paragraph 2(1)(b) of the said Schedule 2, or granted after such commencement by virtue of paragraph 3, shall continue to have effect as if granted under section 2(2)(a) (including that provision as applied by section 12(3)).

*Previous offences*

5. The repeal of paragraph 2(1) of the said Schedule 2 does not affect any liability for an offence under that provision committed before the commencement of this Act, which may be prosecuted and punished as if this Act had not been passed.

*Financial assistance*

6. Any financial assistance provided under paragraph 4 of the said Schedule 2 shall be treated as provided by the Department under section 15.]

## **Schedule 9 Amendment of Enactments**

[Sch 9 amends the following Acts-

**Local Government Act 1963 q.v.**

**Housing Improvement Act 1975 q.v.**

**Land Registration Act 1982 q.v.**

**Conveyancing Act 1983 q.v.**

**Local Government (Miscellaneous Provisions) Act 1984 q.v.**

**Acquisition of Land Act 1984 q.v.**

**Highways Act 1986 q.v.**

**Public Health Act 1990 q.v.**

**Building Control Act 1991 q.v.**

**Care of Churches and Ecclesiastical Jurisdiction Measure (Isle of Man) 1992 (GC 485/92)**

Tree Preservation Act 1993 q.v.

Electricity Act 1996 q.v.]

## **Schedule 10 Enactments Repealed**

[Sch 10 repeals the following Acts and Order wholly-

Advertisements Regulation Act 1925

Town and Country Planning Act 1934

Town and Country Planning Amendment Act 1936

Town and Country Planning Act 1973

Town and Country Planning Act 1981

Town and Country Planning Act 1991

Transfer of Functions (Planning) Order 1992 (GC244/92)

and the following Acts and Orders in part-

Local Government Consolidation Act 1916

Local Government Act 1950

Statute Law Revision Act 1983

Statute Law Revision Act 1983

Acquisition of Land Act 1984

Treasury Act 1985

Fines Act 1986

Statute Law Revision Act 1992

Department of Local Government and the Environment Order 1986 (GC192/86)

Transfer of Functions (Governor in Council) Order 1991 (GC155/91).

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