CIRCULAR

The Scottish Government

10 2009

PLANNING ENFORCEMENT

circular

Circular 10/2009: Planning Enforcement

INTRODUCTION

1. The Scottish Government is committed to providing a modern, effective and efficient planning system which operates in the interest of the local community and the environment. An important element of the planning system is the range of powers available to planning authorities to enforce planning control. However, those powers are only useful if they are used effectively by planning authorities.

2. This Circular and the attached annexes set out Scottish Government policy on the use of the enforcement powers contained in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006. The general approach to enforcement of planning controls is equally applicable to other related enforcement. Specific enforcement guidance can be found in the following:

- Listed Buildings. Guidance on issuing Listed Building Enforcement Notices can be found on the Historic Scotland website at http://www.historic-scotland.gov.uk/www.historic-scotland.gov.uk/managingchange.
- Conservation Areas (Schedule 4 of the Town and Country Planning (Listed Buildings & Buildings in Conservation Areas) (Scotland) Regulations 1987);
- Advertisements (Scottish Office Development Department Circular 10/1984);
- Special Enforcement Notices (The Town and Country Planning (Special Enforcement Notices) (Scotland) Regulations 1992);
- Hazardous Substances Contravention Notices (The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993); and
- Tree Preservation Orders (Scottish Office Environment Department Circular 9/1992).

3. Previous advice was contained in Circular 4/1999 which covered the powers to enforce planning control given to planning authorities by sections 123 to 158 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act). This Circular replaces Circular 4/1999, and consolidates that guidance with the amendments to existing sections of the 1997 Act and new sections introduced in the Planning etc. (Scotland) Act 2006 (the 2006 Act). Throughout the Circular references to sections of the Act refer to sections within the amended Town and Country Planning (Scotland) Act 1997 unless otherwise stated.

4. Much of this Circular and its Annexes refer to the powers and procedures available to planning authorities in dealing with planning enforcement issues. Detailed guidance on enforcement powers is set out in the annexes to this circular, as follows:

Annex A – Definitions used and time limits on Enforcement Action

Annex B – Initiation and completion of development and display of notice while development is carried out

THE GENERAL APPROACH TO ENFORCEMENT

5. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 grants planning permission to certain specified classes of development, removing the need for a planning application to be made in those cases. Any other class of development is likely to require an application for planning permission. It is for prospective developers to ascertain whether such an application is required and to ensure that an application is submitted where necessary.

6. Undertaking development without appropriate permission generally constitutes a breach of planning control and may result in enforcement action under planning legislation.

7. Nothing in this guidance should be taken as condoning any breach of planning law. Planning authorities have a general discretion to take enforcement action against any breach of planning control if they consider such action to be expedient, having regard to the provisions of the development plan and any other material considerations. When they are considering whether any particular formal enforcement action is an expedient remedy for unauthorised development, planning authorities should be guided by the following considerations:

- Planning authorities, under the provisions of the 1997 Act, have primary responsibility for taking whatever enforcement action may be necessary in the public interest, in their administrative area.
- Decisions in such cases, and any resulting action, should be taken without undue delay. Failure to do so could constitute grounds for a finding of maladministration by the Scottish Public Services Ombudsman.
- In considering any enforcement action, the planning authority, with regard to the Development Plan, should consider whether the breach of control would affect unacceptably either public amenity or the use of land and buildings meriting protection in the public interest.
- Enforcement action should always be commensurate with the breach of planning control to which it relates. For example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of planning control which has no material adverse planning implications (but see paragraph 8 below). However, planning authorities should be aware that failure to take enforcement action against a breach of planning control could be subject to a referral to the Scottish Public Services Ombudsman

8. While it is the case that it may be possible to resolve a breach of planning control through informal negotiations, particularly where the breach is relatively minor and/or unintentional, where such an approach is initially unsuccessful, further negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop. Planning authorities should bear in mind the statutory time limits for taking enforcement action and, in particular, the possibility that a referral to the Procurator Fiscal to determine whether to initiate a criminal prosecution may need to be made promptly in those cases where breaches have to be prosecuted within 6 months of the date on which the offence was committed. This is not the date of the alleged breach of planning control but the last date of failure to comply with the Notice requiring the breach to be remedied.

9. The integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach.

10. Planning authorities have a wide choice of available options for taking enforcement action, whenever they consider it appropriate. Authorities need to assess, in each case, which power (or mix of powers) is best suited to dealing with any particular suspected or actual breach of control to achieve a satisfactory, lasting and cost-effective remedy. Rapid initiation of enforcement action is usually vital to prevent a breach of planning control becoming well established and more difficult to remedy.

WHERE DEVELOPMENT IS CARRIED OUT WITHOUT PERMISSION

11. Section 33 provides that an application for planning permission may be made retrospectively for buildings or works constructed or carried out, or a use of land

instituted, before the date of the application. Furthermore section 33A (introduced by the 2006 Act) allows a planning authority to issue a notice requiring the submission of such an application. Accordingly, where the planning authority's assessment indicates clearly that planning permission should be granted for development which has already taken place, the correct enforcement approach is (assuming an informal request to submit a retrospective planning application has been unsuccessful) to issue to the person responsible for the development a notice under section 33A requiring application for planning permission for development already carried out (together with the appropriate application fee). If such a retrospective application contains unacceptable elements the planning authority may reject it or grant it subject to conditions. It may also be appropriate to consider whether any other public authority (e.g. the roads or environmental health authority) is better able to take remedial action.

WHERE UNAUTHORISED DEVELOPMENT CAN BE MADE ACCEPTABLE BY THE IMPOSITION OF CONDITIONS

12. A planning authority may consider that development has been carried out without the requisite planning permission but that the development could be made acceptable by the imposition of planning conditions (for example, to control the hours, or mode, of operation; or to carry out a landscaping scheme). In such cases the authority should require the owner or occupier of the land to submit an application through the issue of a notice under section 33A. It can be pointed out to the person concerned that the authority does not necessarily wish the activity to cease, but that they have a public duty to safeguard amenity by ensuring that development is carried out, or continued, within acceptable limits, having regard to local circumstances and the relevant planning policies.

13. Planning authorities should bear in mind the need to determine such applications in the normal way and the possible effect of such development on the functions of statutory undertakers.

14. If, after a formal notice to do so, the owner or occupier of the land refuses to submit a planning application, the planning authority should consider whether it is expedient to issue an enforcement notice. Section 128 of the 1997 Act provides that one of the purposes for which the planning authority may, in an enforcement notice, require remedial steps to be taken is for 'remedying any injury to amenity which has been caused by the breach'. For that purpose, section 128(5) provides that an enforcement notice may require, among other things, 'the carrying out of any building or other operations' (paragraph (b)); or 'any activity on the land not to be carried on except to the extent specified in the notice' (paragraph (c)).

15. Accordingly, where an owner or occupier of land refuses to submit a planning application, thereby enabling the planning authority to grant planning permission subject to conditions or limitations, the authority would be justified in issuing an enforcement notice if they consider that the unauthorised development has resulted in injury to amenity, or damage to a statutorily designated site, which can be removed or alleviated by imposing restrictions on the development.

WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE ON THE SITE BUT RELOCATION IS FEASIBLE

16. It is not the planning authority's responsibility to seek out and suggest an alternative site to which an activity might be relocated satisfactorily. However, if, for example as part of their economic development functions, the authority is aware of a suitable alternative site, it may be helpful to suggest it and to encourage removal of the unauthorised development to that site. An authority should not suggest a site outwith its own area unless it has sought agreement from the planning authority responsible for that site. Nor should the planning authority delay the taking of formal enforcement action simply to allow the developer time to locate and propose an alternative site.

17. If an acceptable alternative site has been located, the planning authority should make it clear to the owners or occupiers of the site where unauthorised development has taken place that they are expected to relocate to the alternative site. This may be done through issuing an enforcement notice requiring relocation to the alternative site. The planning authority should set a reasonable time limit within which relocation should be completed. What is reasonable will depend on the particular circumstances, including the nature and extent of the unauthorised development; the time needed to negotiate for, and secure an interest in, the alternative site; and the need to avoid unacceptable disruption in the re-location process. Where an enforcement notice has been issued the compliance period in the notice should specify what the planning authority regards as a reasonable period to complete the relocation, in accordance with section 128(9) of the 1997 Act.

WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE AND RELOCATION IS NOT FEASIBLE

18. Where, in the planning authority's view, unauthorised and unacceptable development has been carried out and there is no realistic prospect of its being relocated to a more suitable site, the owners or occupiers of the land should be informed that the authority is not prepared to allow the operation or activity to continue at its present level of activity, or (if this is the case) at all.

19. If agreement can be reached between the operator and the planning authority about the period to be allowed for the operation or activity to cease, or be reduced to an acceptable level, and the person concerned honours the agreement, the need for formal enforcement action may be avoided. Planning authorities need to be aware, however, of the possibility of resumption or intensification of the operation or activity after expiry of the statutory period for enforcement action. In the event of an agreement being reached close to expiry of the statutory time period for enforcement then an enforcement notice should still be served and an explanation given to the operator as to why this is being done. This will preserve the position under section 124(4)(b), as it will give the planning authority the opportunity to take further enforcement action should this be necessary in the event of the operator subsequently breaching the terms of the agreement which he has entered into with the planning authority.

20. If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic compliance period for the unauthorised operation or activity to cease, or its scale to be acceptably reduced. Any difficulty with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.

WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE AND IMMEDIATE REMEDIAL ACTION IS REQUIRED

21. Where, in the planning authority's view, unauthorised development is unacceptable and remedial action is required, the authority should normally take vigorous enforcement action, usually through issuing an enforcement notice, but also, where appropriate, consider the use of a stop notice, temporary stop notice, or an application for an interdict to remedy the breach.

UNAUTHORISED DEVELOPMENT BY SMALL BUSINESSES OR SELF-EMPLOYED PEOPLE

22 Although some breaches of control are clearly deliberate, a planning authority may find that the owner or operator of a business has carried out unlawful development in good faith believing that no planning permission is needed. The cost of responding to enforcement action may represent a substantial financial burden on a small business, or self-employed person. Planning authorities should take this into consideration when deciding how to handle a particular case. However, where there is clear evidence of a person abusing planning legislation, and the planning authority has been unable to resolve the issue through negotiation, formal enforcement action is justified.

23. The initial aim should be to explore - in discussion with the owner or operator - whether the business can be allowed to continue on the site at its current level of activity, or perhaps less intensively. The planning authority should carefully explain the planning objections to the current operation of the business and, if it is practicable, suggest ways in which they may be overcome.

24. This may result in the grant of a mutually acceptable conditional planning permission, enabling the owner or operator to continue in business at the site without harm to local amenity. If the site's owner or occupier is at first reluctant to negotiate with the planning authority, the service of a planning contravention notice may help to convey the planning authority's determination not to allow the development to go ahead by default.

25. Before taking formal enforcement action, unless it is urgently needed, the planning authority should seek to resolve the problem through informal discussion about possible means of minimising harm to local amenity caused by the business activity; and, if formal action will clearly be needed, by discussion of the possible relocation of the business to another site. However informal discussion should not be allowed to delay formal action being taken where the planning authority consider such action is required.

26. As explained in paragraph 16, it is not the planning authority's responsibility to take the initiative in finding or providing a suitable alternative site. If formal enforcement action is likely to compel a small business or self-employed person to relocate their trading activities, the planning authority should aim to agree on a timetable for relocation which will minimise disruption to the business and, if possible, avoid any permanent loss of employment as a result of the relocation.

27. Once an enforcement notice has taken effect, planning authorities should bear in mind that, where the circumstances justify it, section 129 enables them to withdraw the notice, or to waive or relax any requirement in it, including the compliance period. A reasonable compliance period, or an extension of the initial period, may make the difference between enabling the business to continue operation, or compelling them to cease trading.

28. The Scottish Government remains committed to supporting business enterprise, provided that the necessary development can take place without unacceptable harm to local amenity. Planning authorities should bear this in mind when considering how best to deal with unauthorised development by small businesses. Nevertheless, effective enforcement action is likely to be the only appropriate remedy if the business activity is causing continuing harm.

UNAUTHORISED DEVELOPMENT BY PRIVATE HOUSEHOLDERS

29. When considering the possibility of enforcement action involving unauthorised development by a private householder, planning authorities should bear in mind that the householder may have been unaware of the need for planning permission, or may have thought the development qualified as permitted development under the provisions of the General Permitted Development Order (GPDO).

30. Planning authorities should not normally take enforcement action in order to remedy a slight variation in excess of what would have been permitted by virtue of the GPDO provisions. However, the planning authority should take into account any third-party representations received in respect of the matter. Where the breach is clearly unacceptable, then the planning authority should generally take formal enforcement action without delay.

ENFORCEMENT OF PLANNING CONTROL OVER MINERAL WORKING

31. The general principles and policies applicable to enforcement apply equally to cases of mineral working. Nevertheless, particular problems may be posed by unauthorised developments of this type. In particular, the issue of an enforcement notice, combined where appropriate with a stop notice, may prevent damage either to the site itself or to the surrounding area, which would otherwise be irreversible or irremediable. A temporary stop notice may be used if the matter is urgent. Where necessary, planning authorities may decide to apply for an interdict.

32. Examples of situations requiring rapid enforcement action might be where a mineral operator is moving soil materials in contravention of planning conditions, so as to jeopardise the restoration and aftercare of the site; or if unauthorised excavations outside the permitted boundary cause concern for the safety and

stability of surrounding land. However, it always remains preferable for liaison and contacts between planning authorities and mineral operators to be sufficiently good to avoid such contraventions, and to resolve any problems through discussion and co-operation.

THE ORGANISATION OF ENFORCEMENT FUNCTIONS BY PLANNING AUTHORITIES

33. It is for each planning authority to decide how they organise the administrative function of enforcing planning control. However, the administration should correspond to the volume and complexity of enforcement casework in each planning authority's area and be sufficiently flexible to adapt to short-term increases in the demand for enforcement.

34. All authorities should ensure that there is a close and co-operative working relationship between the Planning Department and the Solicitor's Department (or equivalent). When appropriate, Planning Departments should also liaise closely with the departments responsible for other regulatory activity, for instance; Building Standards (although the enforcement powers available to planning officials differ considerably from those available to building standards officers) and licensing of houses in multiple occupancy. Without such effective working relationships, formal enforcement action (which often depends for its success upon speed of assessment and process) may be hampered by poor communications and misunderstandings. Public criticism is then likely, especially if administrative delay means that statutory time limits for taking enforcement action have expired.

35. In the light of the changes to enforcement contained in the Planning etc (Scotland) Act 2006, all planning authorities are recommended to carry out a thorough review of their procedural arrangements for planning enforcement and, where necessary, to introduce revised arrangements. For example, consideration should be given to arrangements for issuing temporary stop notices, where these may be required to be issued outside core office hours, such as at weekends or on public holidays.

36. Previous research has indicated that effective arrangements for delegation of enforcement powers make for more effective use of powers. Delegation can be achieved by setting out clear enforcement policies in the development plan, and written procedures for enforcement action. Planning authorities have a legal requirement to prepare and publish enforcement charters which set out written procedures for enforcement.

RESPONDING TO ALLEGED BREACHES OF PLANNING CONTROL

37. Every planning authority is required to maintain an Enforcement Charter setting out their policies for taking enforcement action, as well as information on how the public can report suspected breaches of planning control and the procedure for complaints regarding the taking of enforcement action. Charters are required to be kept up-to-date through regular reviews and to be publicly available on the internet and in local libraries (Annex M).

38. When complaints about alleged breaches of planning control are received they should **always** be properly recorded and investigated. If the planning authority decides to exercise their discretion not to take formal enforcement action following a complaint, they should be prepared to explain their reasons to any organisation or person who has asked for an alleged breach of control to be investigated.

39. Effective enforcement plays a significant part in protecting the rural and urban environment. In responding to complaints against unauthorised development, enforcement action maintains the integrity of the development control system. The range of enforcement powers allows the enforcement response to be more appropriate, speedier and more successful.

RECORDING OF ENFORCEMENT ACTION

40. Planning authorities are required to maintain a register recording information regarding any: enforcement notices, breach of condition notices, stop notices, temporary stop notices, and notices under section 33A (notice requiring retrospective planning application), that they issue. The exact information to be recorded varies slightly according to the type of notice. Detailed information on the information required is set out in The Town and Country Planning (Enforcement of Control) (No.2) (Scotland) Regulations 1992, as amended by The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009.

41. Every register kept by a planning authority is to be kept available for inspection by the public at all reasonable hours.

PREVIOUS CIRCULARS CANCELLED OR AMENDED

42. This Circular supersedes Scottish Executive Development Department (SEDD) Circular 4/1999, which is cancelled.

FURTHER ENQUIRIES

42. Enquiries about the content of this Circular should be addressed to

Directorate for the Built Environment
Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ
planningmailbox@scotland.gsi.gov.uk

ANNEX A

PLANNING ENFORCEMENT

Introduction

1. This annex and the following annexes B-N provide detailed procedural guidance on the use of the powers contained in the amended Town and Country Planning (Scotland) Act 1997. The topics covered include:

- Time limits on enforcement action (Section 124)
- Initiation and completion of development and display of notice while development is carried out (Sections 27A, 27B, 27C)
- Notice requiring application for planning permission for development already carried out (Section 33A)
- Planning contravention notices (Section 125)
- Rights of entry (Section 156)
- Certificates of Lawful Use or Development (Sections 150-155)
- Enforcement notices (Sections 127-139)
- Execution of works required by enforcement notice (Direct Action) (Section 135)
- Stop notices (Sections 140-144)
- Temporary stop notices (Section 144A -144D)
- Breach of Condition Notices (Section 145)
- Fixed penalty notices (Section 136A, 145A)
- Interdicts restraining breaches of planning control (Section 146)
- Land Adversely Affecting Amenity of Neighbourhood (Section 179)
- Enforcement Charters (Section 158A)

2. The information provided does not purport to offer a complete description of the provisions. Nor can it be regarded as an authoritative interpretation of the law. Its purpose is simply to summarise the main features of the legislation and to identify those provisions to which authorities may wish to give their attention.

3. The overall effect of the enforcement provisions now in force should be to enable planning authorities to take effective enforcement action more efficiently and quickly, including the investigation of suspected breaches of control.

Definitions used in connection with enforcement

4. Section 123 of the 1997 Act defines certain expressions used in connection with enforcement:

‘A breach of planning control' is defined as consisting of:

- carrying out any development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted; or

- initiating development without giving notice in accordance with section 27A(1); or carrying out development without displaying a notice in accordance with section 27C(1)

'Taking enforcement action' is defined as issuing;

- an enforcement notice (under section 127); or
- a breach of condition notice (under section 145); or
- a notice requiring application for planning permission for development already carried out (under section 33A)

5. Section 124, which sets out time limits for taking enforcement action, uses certain expressions which require further interpretation. Matters of interpretation are for the Courts, but the following guidance gives an informal interpretation of those expressions.

6. **'Substantially completed'** - no enforcement action may be taken against any breach of planning control consisting of the carrying out without planning permission of building, engineering, mining or other operations after a 4-year period beginning with the date on which operations were substantially completed. What is substantially complete must always be a matter of fact and degree and of the prevailing circumstances in any case. Therefore, it is not possible to define precisely what is meant by the term 'substantially completed'. In the case of a single operation, such as the building of a house, the 4-year period generally would not begin until the entire operation was substantially complete. Arguably, in the case of a house, it is not substantially complete until all the external walls, roof-tiling, woodwork, guttering and glazing are completed; but it might be regarded as substantially complete if only some decorating or internal plastering work remains to be done, particularly if the building has already been put to use for its intended purpose. Each case should be judged on its particular facts, with all the relevant circumstances being taken into account.

7. **'Use as a single dwellinghouse'** - no enforcement action may be taken after a 4-year period beginning with the date of a breach of planning control, where that breach consists of a change of use of any building to use as a single dwellinghouse. However, it is important to recognise that a building does not become a single dwellinghouse simply because its use as such is, by virtue of the 4-year rule, immune from enforcement action. Whatever the length of time a building is used as a single dwellinghouse, it will not necessarily be regarded as being a dwellinghouse in fact: that will depend on a number of other considerations. Although there is no definition of what constitutes a dwellinghouse, it is considered possible for a reasonable person to identify one by sight. If no reasonable person would identify a particular structure as a dwellinghouse, it is justifiable to conclude, as a matter of fact, that it is not a dwellinghouse, even if it is being used as such. This is an important distinction which means that a building may be used lawfully as a dwellinghouse without acquiring the 'permitted development' rights associated with a building that is a dwellinghouse.

8. The above distinction (between use as and being a dwellinghouse) is important in circumstances where people have adapted or used unlikely or unusual

buildings as their houses. However, under the terms of the General Permitted Development Order (GPDO) it may also apply, in certain circumstances, to ordinary flats: a flat may be used as a single dwellinghouse without acquiring 'permitted development' rights, because Article 2 of the GPDO specifically excludes them from the definition of 'dwellinghouse' for GPDO purposes. The criteria for determining whether premises are being used as a single dwellinghouse should include both their physical condition and the manner of the use. For the purposes of the 1997 Act, a single, self-contained set of premises can properly be regarded as being in use as a single dwellinghouse if it meets the following criteria:

- it comprises a unit of occupation, which can be regarded as a 'planning unit' separate from any other part of a building containing it;
- it is designed or adapted for residential purposes, containing the facilities for cooking, eating and sleeping normally associated with use as a dwellinghouse;
- it is used as a permanent or temporary dwelling by a single person, or by persons living together as, or like, a single family.

9. This interpretation would exclude such uses as bed-sitting room accommodation, where the occupants share some communal facilities (eg a bathroom or lavatory) and the 'planning unit' is likely to be the whole building, in use for the purposes of multiple residential occupancy, rather than each individual unit of accommodation.

TIME LIMITS ON ENFORCEMENT ACTION

Breaches with a 4-Year Time Limit

10. Where a breach of planning control consists of the carrying out of any form of 'operational development' without planning permission, section 124(1) provides that enforcement action may only be taken within 4 years of the date on which the operations were 'substantially completed'. This provision extends to building, engineering, mining and other operations in, on, over or under the land.

11. Where a breach of planning control consists of a change of use of any building (which, for the purposes of the 1997 Act, includes part of a building) to 'use as a single dwellinghouse', section 124(2) provides that enforcement action may only be taken within 4 years of the date of the breach. This time limit applies both where the change to use as a single dwellinghouse involves development without planning permission, and where it involves a failure to comply with a condition or limitation to which a planning permission is subject.

Breaches with a 10-Year Time Limit

12. Where there is any other breach of planning control – i.e. a breach involving any material change in the use of land (other than a change to use as a single dwellinghouse) either without planning permission, or in breach of a condition or limitation to which a planning permission is subject - section 124(3) provides for the 10 year time limit on enforcement action to apply.

Time Limits on Supplementary Enforcement Action

13. The time limits outlined above apply to the 'first' taking of enforcement action in respect of a breach of planning control. However, in the circumstances described below it is possible to take supplementary enforcement action outwith the normal time limits.

14. Section 124(4)(a) provides that the time limits do not prevent the service of a Breach of Condition Notice if there is already an effective enforcement notice in force in respect of the breach. The planning authority may therefore serve a breach of condition notice in these circumstances, even after the normal time limit for taking enforcement action has expired.

15. Section 124(4)(b) caters for another situation in which enforcement action can be taken outwith the normal time limits. It provides that the time limits do not prevent the taking of further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the planning authority have taken or purported to take previous enforcement action in respect of the same breach. This mainly deals with the situation where earlier enforcement action has been taken, within the relevant time limit but, for whatever reason, further action is required even though the normal time limit for such action has since expired. In this event, the planning authority now has a further 4 years, after their initial, or most recent, enforcement action, in which to take further enforcement action. An example would be where a notice issued under section 33A (requiring submission of a retrospective planning application) has been ignored and the planning authority considers it necessary to issue an enforcement notice.

ANNEX B

NOTIFICATION OF INITIATION AND COMPLETION OF DEVELOPMENT AND DISPLAY OF NOTICES WHILE DEVELOPMENT IS CARRIED OUT

Provisions

1. Section 27A (1) of the 1997 Act (introduced by section 6 of the 2006 Act) requires that a planning authority be notified of the date work is expected to commence before the work actually commences on any development for which planning permission has been granted. It is not a breach of planning control where a developer does not commence work on the exact date specified in the notice but at some point afterwards. There may be a number of reasons (not necessarily under the control of the developer) why work does not commence on the specified date.

2. Section 27A(2) requires the planning authority, when granting permission, to make the applicant aware that they are required to submit such a notice and that failure to do so would be a breach of planning control which might result in enforcement action being taken.

3. Developers are further required to tell the planning authority under section 27B(1) when that work is completed. In addition, section 27B(2) provides that, where the planning application states that the development is to be carried out in phases, then it is to be a condition of any planning approval that a notice of completion is also to be submitted at the completion of each phase.

4. Section 27C requires that for certain types of development, information regarding the development must be displayed on the site. The information would be required to be displayed in such a way that it was accessible for the public, with regulations defining the content and positioning of the sign. It would constitute a breach of planning control not to display such a notice if the nature of the development required it.

5. Further detail as to the submission or display of these notices, and the content of any such notice is set out in The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (regulations 37 & 38) and Circular 4/2009.

Enforcement action in regard of failure to display or submit any notice required under section 27A, section 27B or section 27C

6. Failure to submit a notice of Initiation of Development or to display a notice as required under section 27C constitutes a breach of planning control. Failure to submit Notices of Completion of Development may constitute a breach (or breaches) of condition depending on the development in question.

7. The purpose of requiring these notices to be submitted is to alert the planning authority and, in the case of notices under section 27C the general public, to active development in their area.

8. In considering whether a breach of planning control has been committed, and if so what action it would be appropriate to take, planning authorities are expected to apply the normal considerations as to what is reasonable action in respect of any particular breach. With regard to enforcement action, an informal approach may be sufficient to result in a notice being submitted, albeit late.

9. While in itself a failure to submit or display a notice in accordance with the requirements of the relevant sections may in some cases be considered a relatively minor breach and not meriting formal enforcement action, planning authorities should bear in mind that where notices have not been submitted, there is the potential that further breaches of planning control have occurred. For example, where notification of initiation of development has not been submitted before development has commenced, it may also be the case that suspensive conditions have not been met.

ANNEX C

NOTICE REQUIRING APPLICATION FOR PLANNING PERMISSION FOR DEVELOPMENT ALREADY CARRIED OUT

Provisions

1. Section 33A of the 1997 Act (introduced by section 9 of the 2006 Act) gives planning authorities the power to issue a notice requiring a retrospective planning application to be submitted. Section 33A has effect from 3 August 2009.

Notice requiring application for planning permission for development already carried out

2. Prior to 3 August 2009, where a planning authority determined that development had taken place without planning permission, but that permission if applied for would have been granted (or, where appropriate, granted subject to conditions to make the development acceptable), they could invite a person to submit a retrospective application. However, there was no obligation on the person to do so.

3. The intention in introducing this notice is to encourage the submission of a retrospective planning application, which would then allow the planning authority to consider the grant of planning permission subject to any conditions or limitations that would make the development acceptable in planning terms. It should be noted that the retrospective planning application would be determined in the same manner as a planning application submitted by the developer in the normal manner and would require to be accompanied by the relevant fee.

4. Before issuing a notice under section 33A the planning authority should, as with any enforcement action consider whether the action is commensurate to the breach. There would be no purpose in issuing such a notice where the planning authority were of the view that permission would clearly not be granted.

5. The notice must;

- Describe the development in a way that is sufficient to identify it;
- Specify a date by which the application is to be made; and,
- Set out the terms of section 123(1) stating that carrying out development without the required permission constitutes a breach of planning control.

6. Planning authorities may determine the method used to describe the development (map, written description, etc) and indeed may use different methods in individual cases, however they must be satisfied that the description clearly identifies the development. This may be important if, in the event of no application being submitted, further enforcement action has to be considered.

7. In setting a date by which the application is to be made, the PA should consider the scale of the development and allow a reasonable period for plans to be

prepared, etc. Clearly some applications will be more straightforward than others and this should be reflected in the period allowed.

8. When a notice under section 33A is issued it must, as with other formal enforcement action, be recorded in the planning authority's register of notices maintained under section 147. The information to be recorded is set out in the Town and Country Planning (Enforcement of Control) (No.2) (Scotland) Regulations 1992, as amended by the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009.

If a planning application is not submitted

9. Where a planning application is not submitted to the planning authority by the date specified, the planning authority should consider further enforcement action. Such further action should be considered particularly if the planning authority were of the view that a retrospective application would have been granted only if it were subject to conditions or limitations. In such cases it may be appropriate to issue an enforcement notice imposing restrictions on the use of the land or on activities carried out on the land.

10. Whether or not further action is taken, and regardless of the specific action (if any) taken, the issue of the notice requiring the retrospective planning application constitutes taking enforcement action. This is of particular relevance should a person subsequently seek a certificate of lawful use or development in respect of the development, or where a PA considers further action necessary outwith the normal time restrictions on enforcement (as previously set out in Annex A, paragraph 15).

ANNEX D

PLANNING CONTRAVENTION NOTICES

Provisions

1. Section 125 of the 1997 Act establishes a discretionary procedure which enables planning authorities to obtain information about activities or development where a breach of planning control is suspected.

2. These provisions are intended to supplement, for enforcement purposes, the more limited power to require information about interests in land, which section 272 makes available to planning authorities.

Serving a Planning Contravention Notice

3. Planning authorities may serve a planning contravention notice (PCN) on anyone who is the owner or occupier of the land in question, or is a person with any other interest in the land, or on a person who is using or carrying out operations on the land. They may therefore serve several notices on different people in respect of the same suspected breach.

4. There is no need for the authority to obtain clear evidence of a breach of control before issuing a PCN. It is sufficient for the authority to suspect that a breach may have occurred, for example, because they have received a complaint from a neighbour of the site regarding alleged unlawful activity.

5. Serving a PCN does not constitute 'taking enforcement action' for the purposes of section 123. It is an offence not to comply with any requirement in the notice. It is an entirely discretionary procedure; there is no requirement to serve a notice before taking formal enforcement action, nor does the serving, or not (as the case may be), of a notice affect any other power exercisable in respect of any breach of planning control.

Information Required

6. Recipients of a notice are required to provide such information as the notice may specify regarding:

- any operations being carried out on the land, any use of the land and any other activities being carried out on the land; and
- any matter relating to the conditions or limitations which apply to any planning permission that has been granted in respect of the land.

7. Additionally, recipients may be required to provide to the best of their ability any or all of the following:

- a statement declaring whether the land is subject to any of the operations, activities or uses specified in the notice;
- a statement declaring when any operation, activity or use began;

- the names and addresses of any other persons who use or have used the land, or who carry out or have carried out any operations or activities on the land;
- information regarding any planning permission for any use or operation, or any reason why such permission is not required; and
- a statement declaring the nature of their interest (if any) in the land and the names and addresses of any other persons with an interest in the land.

Opportunity to make Representations

8. At the planning authority's discretion, the notice may allow recipients an opportunity to make a response to the matters it raises, and to make representations, at a specified time and place. Planning authorities should offer this opportunity where they consider that it may assist resolution of an alleged breach. Such discussions are likely to be particularly useful in circumstances where planning authorities consider that formal enforcement action could be avoided if recipients would agree to apply for conditional planning permission to regularise activities, or to cease activities, or to carry out any remedial works.

9. It is not intended that every notice should offer this opportunity. Where planning authorities consider that face-to-face discussions would serve no useful purpose, they are fully entitled to use notices for the limited purpose of obtaining information. (In these circumstances, recipients may still ask to discuss the matter with the planning authority.)

Responses

10. A response to a notice must be made by giving the required information in writing to the planning authority. However, respondents cannot reasonably be expected to provide information they do not possess or could not reasonably find out. Where a response leaves doubt about the use of the land, or any activity taking place on it, it will usually necessitate a site inspection to resolve the doubt and ensure that any subsequent enforcement decision is well-founded.

11. A notice must inform recipients of the possibility of formal enforcement action if they fail to respond and of the effect of the provisions of section 143(5) which establishes that, where a stop notice is served, no financial compensation is payable to claimants in respect of any loss or damage which could have been avoided if they had provided information required by a PCN, or had co-operated with the planning authority when asked to do so. It should also describe the possible penalties for non-compliance which are set out below.

Penalties

12. Failure to comply with a notice within 21 days of it being served is an offence which may be charged by reference to any day or longer period of time. Those found guilty of such an offence will be liable on summary conviction to a fine not exceeding level 3 on the standard scale. An offender may also be convicted of subsequent offences by reference to any period of time (e.g. each additional day) following a preceding conviction for such an offence (section 126).

13. It is a defence for persons charged with such an offence to prove that they had a reasonable excuse for failing to comply.

14. Knowingly or recklessly making a false or misleading statement in response to a notice is an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

ANNEX E

RIGHTS OF ENTRY

Provisions

1. Sections 156-158 of the 1997 Act provide planning authorities with 'rights of entry'.

Rights Of Entry Without A Warrant

2. Section 156 enables planning authorities to authorise a person to enter land, at a reasonable hour, for any of the following purposes:

- to ascertain whether there is, or has been, any breach of planning control on the land, or on any other land;
- to determine whether any of the planning authority's enforcement powers should be exercised in relation to the land, or any other land;
- to determine how any such power should be exercised; and,
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

3. For the purpose of determining whether an enforcement notice should be issued in relation to any land, the Scottish Ministers may also authorise entry, at a reasonable hour, to that land or any other land, provided that they have consulted the relevant planning authority.

4. The powers also allow that if necessary, neighbouring land can be entered, whether or not it is in the same ownership, or is occupied by the person whose land is being investigated.

5. The provisions of section 156 state that there must be 'reasonable grounds for entering [the land] for the purpose in question'. This is interpreted to mean that the planning authority considers that entering the land is an appropriate means of obtaining the information required by the planning authority to fulfil its obligations in regard to planning enforcement.

6. Admission, under these powers, to any building used as a dwellinghouse cannot be demanded, unless the occupier has been given 24 hours notice of the intended entry.

Rights of Entry With a Warrant

7. Section 157 provides that, when there are reasonable grounds for entering land for enforcement purposes, if such entry is refused, or is expected to be refused, or the case is one of urgency, entry by warrant issued by a Sheriff is possible, subject to the following limitations:

- it only authorises entry on one occasion;.

- the entry must be within one month from the date of issue of the warrant;
- and the entry must be at a reasonable hour, unless the case is one of urgency.

Rights Of Entry: Supplementary Provisions

8. Section 158 provides that, on entering any land in pursuance of the right of entry, authorised persons must if so required, produce evidence of their authorisation and state the purpose of their entry before they enter the land.

9. The authorised person may take with them such other persons as may be necessary for the purpose of their entry.

10. It is an offence to wilfully obstruct an authorised person acting in the exercise of a right of entry. Any person found guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

11. If any person who enters any land in exercise of a right of entry discloses any information obtained by them while on the land about any manufacturing process or trade secret, they shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum. On conviction on indictment, the penalty is a term of imprisonment not exceeding 2 years or an unlimited fine, or both. (It is not an offence to disclose information in the course of performing a duty in connection with the purpose for which entry to the land was authorised).

12. If any damage is caused to land (which includes a building) or moveable property (for example, machinery, equipment or livestock), compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry.

13. Planning authorities are expected to take every reasonable precaution to ensure that no damage is caused to land or moveable property as a result of exercising the right of entry. As their investigations for enforcement purposes will normally be confined to a visual inspection, any consequential damage should be most exceptional.

14. On leaving the land, the authorised person must, if the owner or occupier is not then present, leave it as effectively secured against trespassers as it was found.

Rights Of Entry: Agricultural Land

15. Planning authorities should bear in mind that, in the interests of animal and plant health, it is essential that special precautions are observed when the right of entry to agricultural land or fish farms is exercised when there is an outbreak of serious disease in livestock (such as Foot and Mouth disease) or in plants. Entry may be prohibited or inadvisable on disease control grounds. Planning authority officers should contact the appropriate agencies or government departments to check that there are no restrictions in place.

ANNEX F

CERTIFICATES OF LAWFUL USE OR DEVELOPMENT

Provisions

1. Sections 150-153 of the 1997 Act define the concept of 'lawfulness'. They also set out the provisions for certifying the lawfulness of proposed or existing operations, uses or activities in, on, over or under land, by applying to the planning authority for a Certificate of Lawful Use or Development (CLUD).

Purpose of Certificates of Lawful Use or Development

2. The procedure provides a mechanism for establishing the planning status of land; i.e., whether an existing or proposed use or development is considered lawful for planning purposes.

3. In addition, the procedure provides a mechanism for obtaining from the planning authority (or the Scottish Ministers on appeal) a statutory document certifying the lawfulness**,** for planning purposes, of existing operational development or use as a single dwellinghouse.

What Is Lawfulness?

4. Section 150(2) provides that, for the purposes of the Act, uses of land and operations are lawful at any time:

- if no enforcement action may then be taken in respect of them, whether because they did not involve development or require planning permission, or because the time for enforcement action against them has expired, or for any other reason;
- and, furthermore, that they do not contravene any of the requirements of any enforcement notice then in force.

5. Section 150(3) makes similar provision in respect of any failure to comply with a condition or limitation subject to which planning permission was granted.

6. There is no compulsion to apply for a certificate, although a certificate or grant of planning permission may be a pre-requisite for an application for the following licences;

- A caravan site licence under section 3 of the Caravan Sites and Control of Development Act 1960;
- A waste disposal licence under section 5 of the Control of Pollution Act 1974; and,
- A waste management licence under section 36 of the Environmental Protection Act 1990.

Applications for Certificates

7. Section 150(1) of the 1997 Act enables anyone (not just the landowner or a person with an interest in the land) to apply to the planning authority for a decision on whether a specified existing use, operational development, or failure to comply with a planning condition or limitation, which has already taken place, is lawful for planning purposes. Section 151(1) makes similar provision for establishing whether a proposed use or operational development would be lawful for planning purposes.

8. The planning authority is not required to address general questions such as 'what is, or would be, the lawful use of, or operational development on, this parcel of land?' A reasonably precise description of the use, operation or other activity concerned has to be included in the application.

9. The information to be submitted in an application is set out in Part 9 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008. (SSI 2008 No. 432)

Fees for Applications

10. Each application lodged with a planning authority must be accompanied by the appropriate fee as set out in the relevant Regulations currently in force.

Determination of Applications

11. Section 152(6) of the 1997 Act requires that applications and decisions are to be recorded in the planning register by the planning authority. Details of the information to be recorded are set out in Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.

12. Planning authorities must acknowledge applications as soon as reasonably practicable after the application and appropriate fee have been received. If they later consider the application to be invalid, they must notify the applicant of that fact as soon as practicable.

13. When an application has been made under section 150, then under section 150(4), if the planning authority is provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or other matter described in the application, or that description as modified by the planning authority or a description substituted by them (see paragraph 31 below), they must issue a certificate to that effect; in any other case they must refuse the application.

14. Similarly, section 151(2) provides that, when an application has been made under section 151, if the planning authority is provided with information satisfying them that the proposed use or operations described in the application would be lawful, if instituted or begun at the time of the application, it must issue a certificate to that effect; in any other case they must refuse the application.

15. Planning authorities are required to give written notice of their decision to the applicant within 2 months of the date of receipt of the application and any fee required.

16. In determining an application under section 150 the planning authority will have to address the question whether, on the facts of the case and the planning law applicable to the site, the specified use, operational development or failure to comply with a condition is lawful.

17. Similarly, for an application under section 151, the planning authority needs to consider whether the proposed use or operations would be lawful if instituted or carried out in accordance with the terms of the detailed description of the proposal: in doing so, they will need to consider not only whether the proposal would involve development requiring planning permission, but also whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon and which therefore affects what can be done on the land. Where a proposed change of use is involved, it will be necessary for the present, or last, use of the land to be described; and, where the lawfulness of that use is being relied upon to pave the way to implementing the proposed use, the planning authority will need to be satisfied as to the lawfulness of the existing use.

18. The planning authority may, by notice in writing, require an applicant to provide further relevant information in order to enable them to deal with the application. However, it should be borne in mind when requesting information, that information as to the origin or identity of applicants (except to the extent that they may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), the planning merits of the use, operation or activity, is not necessarily relevant to the consideration of the purely legal issues which are involved in determining an application.

The Onus Of Proof In An Application

19. The onus of proof in an application rests on the applicant. Planning authorities should always co-operate with any reasonable request from an applicant who is seeking information they may hold on the planning status of land, by making records readily available.

20. As the matters to be determined are solely matters of evidential fact and law, with the onus of proof on the applicant, there is no requirement for an application under section 150 or 151 to be publicised under the provisions of sections 34 or 35 of the 1997 Act. It is however in the applicants interest to consider whether persons other than the applicant; for example, neighbours, or other persons with an interest in the land, may have evidence which is relevant to that application. If that evidence supports the application, it is up to the applicant to produce it, if they are able to do so. If it might tend to disprove the case, the applicant risks prosecution, and/or revocation of any certificate granted, if they withhold it. If the planning authority considers that a person with an interest in the land, or a neighbour, may have relevant information, it is open to them to canvass that information, if they wish, before determining the application.

21. In appeals to the Scottish Ministers which raise legal issues where the onus of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is 'the balance of probability'. As this test will accordingly be applied by the Scottish Ministers in any appeal against their decisions, planning authorities should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof 'beyond reasonable doubt'. Moreover, the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the planning authority has no evidence to contradict or otherwise make the applicant's version of events less than probable, this is not in itself a valid reason to refuse the application.

22. The fact that a certificate may be refused because the onus of proof is not discharged by the applicant does not preclude the submission of a further application if other evidence subsequently comes to light. A refusal to issue a certificate is not necessarily proof that something is not lawful: it may merely mean that insufficient evidence has been presented to satisfy the planning authority that the use, operation or activity is lawful. For this reason, no useful purpose will be served by applying for a certificate where the applicant's interest is solely to disprove the lawfulness of an existing operation, use or activity, because the applicant objects to it. Unless the planning authority had sufficient evidence that the operation, use or activity was lawful, such an application would be refused as 'not proven on present evidence', and the planning authority would retain the application fee.

The Content Of Certificates Under Section 150

23. Section 150(5) provides for certain matters a certificate must contain. The certificate is particularly valuable because its effect is similar to a grant of planning permission. It is therefore vital that the certificate indicates precisely the area of land to which it relates (normally by means of an attached, scaled site plan); precise details of what use, operations or failure to comply with a condition are found to be lawful, why, and when. For example, if a certificate is for a use of land - unless the use falls within one of the 'use classes' specified in the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order current at the time, or the certificate is granted on the basis that a specific grant of planning permission confers lawfulness on the use - it will be important for it to state the limits of the use at a particular date. These details will not be equivalent to a planning condition or limitation. They will be a yardstick, specifying what was lawful at a particular date, against which any subsequent change may be measured. If the use subsequently intensifies or changes in some way to the point where a "material" change of use takes place, the planning authority may then take enforcement action against that subsequent breach of planning control (which a less precise certificate might well preclude).

24. However, by virtue of section 26(2)(f) of the 1997 Act, it is not development to change from one use to another in a 'use class', or to intensify such a use provided it remains within the same class. It is therefore important to specify the 'use class' in any certificate granted in such a case, and to "describe" the operation, use or activity.

25. For example, a description might set out the number and type or size of caravans on a caravan site which are found to be lawful at the application date; the number and size of lorries based at a haulage yard; the range of activities carried on at a particular builder's yard (another 'sui generis' use); the number and category of vehicles displayed for sale on a site; and other details such as the hours of work, the seasonal nature of any use (specifying the months it operates), the machinery or equipment used, the height above ground-level to which goods or materials have been stored, or other method of operation of a use.

26. Where a certificate is granted for one use on a 'planning unit' which is in mixed or composite use, that situation may also need to be reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use on to the whole of the land comprising the unit, to the exclusion of the other uses formerly taking place on some of the land.

The Effect Of Certificates Under Section 150

27. Section 150(6) provides that the lawfulness of any matter for which a certificate is in force shall be conclusively presumed. Once a certificate is issued it is important that nobody should be able to question whether what appears on its face is valid. The statement in a certificate of what is lawful relates only to the state of affairs at the date of the application. If, after a certificate has been issued, development is carried out on the land in breach of planning control, the planning authority may take whatever enforcement action they consider appropriate.

28. If a certificate is issued under section 150 in respect of any use for which a licence is also required, it follows that no planning enforcement action can be taken against the use. However, planning permission (or, in the case of a waste management licence, an Certificate of Lawful Use or Development) is necessary in each case before application can be made for the relevant licence. Section 150(7) accordingly provides that the grant of a certificate in these cases should be equivalent to a grant of planning permission. Although the practical consequence is that the planning merits of the matter may never have been considered, and there has been no opportunity to impose planning conditions on the development, it will still be open to the licensing authority to impose conditions on the licence which are relevant to the purpose for which the licensing control exists; and, except in the case of a caravan site, the licensing authority may still reject the licence application in certain circumstances.

The Content of Certificates under Section 151

29. Section 151(3) is the counterpart, for proposed uses or operations, of Section 150(5). It provides that a certificate granted under section 151 shall specify the land to which it relates; describe the use or operations in question (where appropriate, identifying a use by reference to the relevant 'use class'); give the reason why carrying out the proposal would be lawful; and specify the date of the application. Although this certificate would not be the equivalent, in law, of a grant of planning permission for proposed development, unless any relevant factor has changed since the application date specified in the certificate, it would be lawful to proceed with the

proposal. It is therefore vital to ensure that the terms of the certificate are precise and there is no room for doubt about what is lawful at a particular date.

The Effect of Certificates Under Section 151

30. Section 151(4) provides that the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness. A certificate issued under section 151 is of use to a developer in establishing a legally binding consent (as opposed to relying on informal opinions from planning officers) that the proposed use is lawful.

The Content Of Certificates: General Supplementary Provisions

31. Section 152(4) provides for a Certificate of Lawful Use or Development to be issued in respect of all or part of the land specified in the application and, where the application specifies more than one matter, in respect of all of them or one or more of them; and to be in such form as may be prescribed by a development order. This is intended, along with the planning authority's power under section 150(4) to issue a certificate of a different description from that applied for, to give planning authorities a reasonable degree of flexibility in cases where it would be helpful to the applicants to receive a certificate in terms which may differ slightly from the terms of their application, as an alternative to refusing a certificate altogether. For example, a lesser area of land may be included.

32. Section 152(5) provides that a certificate granted under Sections 150 or 151 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, unless that matter is described in the certificate. This means that, in any case where a certificate is granted on the basis that there is existing planning permission for the development, the fact that the certificate certifies that development to be lawful, does not mean that it can lawfully take place without complying with any conditions or limitations imposed on that grant of permission, unless specifically described in the certificate. Unspecified existing or future breaches will not be covered by the certificate. For example, if the planning permission was subject to a number of conditions, a certificate granted in respect of a breach of one of them could not be regarded as legitimising breaches of any of the others. Moreover, it is possible to breach some individual conditions in different ways; it is the matter constituting the failure to comply with the condition, rather than the condition itself, which the certificate should, where appropriate, describe. If a condition prohibiting open storage on a site has been breached for more than 10 years by storing materials in the open on a particular part of the site, the certificate should describe the extent of the breach which has become lawful. Such a certificate would not then cover a future breach of the condition involving open storage on a different part of the site from that described in the certificate.

Revocation of Certificates

33. Sections 152(7) and (8) provide that a planning authority may revoke a certificate granted under sections 150 or 151 if, on the application, a statement was made, or document used, which was false in a material particular; or any material information was withheld.

34. These powers may be used where it becomes clear that a certificate has been erroneously based on a false statement, or that relevant information was withheld from the planning authority when they considered the application. As it will clearly be a serious matter for the applicant to have a certificate revoked, The Town and Country Planning (Development & Management Procedure) (Scotland) Regulations 2008 (Part 9) provides a statutory procedure which planning authorities should follow in giving notice of revocation and carrying out the revocation. No compensation is payable in the event of revocation. The decision whether to revoke a certificate is entirely for the planning authority, even when the certificate has been granted by the Scottish Ministers. If it proposes to revoke a certificate, it must give notice of its proposal, thus providing an opportunity for the recipients of advance notice to make representations before the planning authority make its decision.

35. Although there is no right of appeal to the Scottish Ministers against the planning authority's decision to revoke a certificate the validity of the decision may be challenged by application to the Court of Session for judicial review. Moreover, there is nothing to prevent a further certificate application being made, following revocation of an earlier certificate. If a planning authority behave 'unreasonably' in revoking a certificate and refusing to grant a fresh certificate upon re-application, they may well be at risk of a successful application for expenses against them in the event of a subsequent certificate appeal to the Scottish Ministers, under section 154 (see paragraph 41 below).

Offences

36. Section 153 creates an offence, which can be prosecuted summarily or on indictment, if any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for a certificate under sections 150 or 151, knowingly or recklessly makes a statement which is false or misleading in a material particular; or, with intent to deceive, uses any document which is false or misleading in a material particular, or withholds any material information. On summary conviction in the Sheriff Court, the penalty is a fine not exceeding the current statutory maximum. On conviction on indictment, the convicted person is liable to imprisonment for a term not exceeding 2 years, or to a fine, or both.

37. In terms of section 136 of the Criminal Procedure (Scotland) Act 1995, the prosecution of such an offence by summary procedure must be brought within 6 months of the commission of the offence.

Right Of Appeal To Scottish Ministers

38. Section 154 makes provision for the right to appeal to the Scottish Ministers, following an unsuccessful application under section 150 or 151. Only the applicant may appeal.

39. An appeal may be made against the planning authority's refusal or partial refusal to issue a certificate or where a planning authority has failed to determine an application within the statutory period. Planning authorities should therefore endeavour to determine applications timeously.

40. Information on submitting an appeal is available from Directorate for Planning and Environmental Appeals.

The Expenses Involved In Making An Appeal

41. The parties to a certificate appeal are normally expected to meet their own expenses. Expenses do not automatically 'follow the event' of the appeal and are only awarded, on an application, against a party who has behaved 'unreasonably' in the appeal process. SODD Circular 6/1990 gives guidance on the policy and procedures for awarding expenses to parties in an appeal. As with enforcement notice appeals, an award of expenses may be made in a certificate appeal whether the appeal has proceeded by written representations or by public local inquiry.

Appeal To The Court of Session

42. The Scottish Ministers' decision on a certificate appeal may be challenged under section 239 of the 1997 Act.

Scottish Ministers' Power Under Section 133(1)(d) To Issue A Certificate Under Section 150

43. Section 133 of the 1997 Act gives the Scottish Ministers certain discretionary powers on the determination of an enforcement notice appeal. Section 133(1)(d), enables them to determine whether, on the date the appeal was made, any existing use of the land was lawful, any operations which had been carried out were lawful, or any matter constituting a failure to comply with a condition or limitation subject to which planning permission was granted was lawful; and, if so, to issue a certificate under section 150.

ANNEX G

ENFORCEMENT NOTICES

Provisions

1. Sections 127-129 of the 1997 Act allow planning authorities to issue enforcement notices in respect of breaches of planning control. Enforcement notices require landowners or developers who have breached planning control to correct the breach and set out the actions or work required to make development acceptable in planning terms. This can include the removal of development.

Issue Of An Enforcement Notice

2. Planning authorities may, at their discretion, issue an enforcement notice (EN) where it appears to them that:

- there has been a breach of planning control as defined in section 123(1) of the 1997 Act (as amended by the Planning etc. (Scotland) Act 2006); and that,
- it is expedient to issue a notice having regard to the development plan and to any other material considerations.

3. Issuing a notice is interpreted as meaning that the planning authority should prepare a properly authorised document, serve it on the appropriate person(s) and retain it in their records. Copies of the notice must be served on:

- the owner and the occupier of the land to which it relates (which may well be the same person); and
- any other person with an interest in the land, if the authority considers that interest to be materially affected by the notice.

4. The notice must be served:

- within 28 days of its date of issue; and
- not less than 28 days before the date on which it is due to take effect (ie the date from which the compliance period starts to run).

5. It is important that details of every enforcement notice issued are entered in the register which planning authorities are required to keep under section 147 of the 1997 Act. Regulation 7 of the Town and Country Planning (Enforcement of Control) (No.2) (Scotland) Regulations 1992 (as amended) sets out the information that must be recorded in the register.

Content of Enforcement Notices - Identification of the Breach

6. An enforcement notice must set out clearly the matters which appear to the planning authority to constitute a breach of planning control. This must be done clearly so that the recipient(s) of the notice know(s) what those matters are.

7. The enforcement notice must also state the paragraph of section 123(1) of the 1997 Act within which the authority considers the breach to fall; i.e. whether the breach was caused by development being carried out without planning permission, or by a failure to comply with a condition or limitation, or that it relates to the failure to submit a notice of initiation of development or to display an on-site notice.

Content of Enforcement Notices - Remedial Action and Its Purpose

8. The notice must specify the steps which the authority requires to be taken**,** or the activities which it requires to cease, in order to wholly or partly achieve the purpose of 'remedying the breach by making any development comply with the terms, conditions and limitations of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or remedying any injury to amenity which has been caused by the breach' (section 128(4)).

9. Examples of remedial action which the notice may require are:

- the alteration/removal of any buildings or works;
- the carrying out of any building or other operations (provided any such remedial action does not have a further detrimental affect on amenity or public interest) ;
- any activity on the land not to be carried on, except to the extent specified in the notice; or
- the modification of the contour of a deposit of refuse or waste materials on land, by altering the gradient(s) of its sides.

10. If the notice does not require the removal of any buildings or works, or the cessation of any activity, which it is entitled to require then those buildings, works or activities are treated as having been granted planning permission, provided that all the requirements which were specified in the notice have been fulfilled.

11. No procedure is specified for this 'deemed grant of planning permission', but the Scottish Ministers suggest that planning authorities should notify recipients that permission is deemed to have been granted at the time when, in the planning authority's view, the requirements of the notice have been complied with fully. The deemed grant of planning permission might also be entered in the enforcement and stop notice register.

12. Where the notice has been issued in respect of a breach of planning control consisting of the demolition of a building, it may require the construction of a 'replacement building' which is as similar as possible to the demolished building, subject to the following:

- it must comply with any requirement imposed by or under any enactment applicable to the construction of buildings;
- it may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control; and,
- it must comply with any regulations which are made for these purposes or which modify these provisions.

13. If the notice requires the construction of a replacement building this is considered as granting planning permission for the replacement.

Content of Enforcement Notices - Timescales

14. The notice must specify the date on which it is to take effect. Subject to the appeal provisions set out in the 1997 Act, the notice will take effect on that specified date. Planning authorities will be aware that the notice must allow at least 28 days between the date on which the notice is served and the date on which the notice specifies it shall take effect (section 128(8)).

15. The notice must specify the period allowed for the required steps to be taken or the specified activities to have ceased. It may specify different periods for different steps or activities. Where different periods are applied to different steps or activities, references in Part VI of the 1997 Act to compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which that step is required to have been taken or activity ceased.

Content of Enforcement Notices - Additional Requirements

16. The notice must specify any additional matters which may be prescribed. Regulation 3 of the Enforcement of Control Regulations requires each notice to specify:

- the reasons why the planning authority considers it expedient to issue the notice. The statement should explain clearly the authority's reasons for issuing the notice and, for example, may include reference to previous correspondence or negotiations over the matters covered by the notice;
- the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. This is best done by means of a plan attached to the notice but, where this is insufficient to identify the boundary exactly, the plan should be supplemented by a brief written description, or by an accurately surveyed drawing on a larger scale. If the precise location of a building is in doubt, the site should be surveyed before the plan is finalised.

17. Regulation 4 of the Town and Country Planning (Enforcement of Control) (No.2) (Scotland) Regulations 1992 requires that every notice served by a planning authority under section 128(12) must include an explanatory note containing:

- a copy of sections 127-129 of the 1997 Act, or summary thereof including information that there is a right of appeal to the Scottish Ministers against the

notice, that such an appeal must be made in writing to the Scottish Ministers before the date on which the notice specifies it is to take effect, and the grounds on which an appeal may be brought;

- notification that appellants must submit to the Scottish Ministers, either when giving notice of appeal or within 14 days from the date on which the Scottish Ministers send them a notice so requiring them, a written statement specifying the grounds on which they are appealing against the enforcement notice and stating briefly the facts on which they propose to rely in support of each of these grounds.

Variation/Withdrawal of Enforcement Notices

18. Whether or not the notice has taken effect, section 129 provides that the planning authority may either withdraw it entirely or waive or relax any particular requirement specified in it. In particular, the planning authority may extend the period specified for compliance. Where it withdraws or varies the notice, the planning authority must immediately give notice of that action to every person who has been served with a copy of the notice or who would be served with a copy of the notice, if it were to be reissued.

19. The withdrawal of the notice does not affect the planning authority's power to issue a further notice.

Appeal against Enforcement Notice

20. Sections 130-132 of the 1997 Act have the intention of facilitating the quick and effective operation of the enforcement notice appeals procedures.

Right of Appeal

21. At any time before the date on which a notice is to take effect, a recipient or any other person with an interest in the land may appeal against the notice on any of the following grounds:

- that those matters stated in the notice have not occurred;
- that those matters stated in the notice (if they occurred) do not constitute a breach of planning control;
- that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- that copies of the enforcement notice were not served as required by section 127;
- that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.

22. An appeal must be made to the Directorate for Planning and Environmental Appeals (DPEA) before the date specified in the enforcement notice as the date on which it is to take effect. It is vital that all intending appellants are made aware of this absolute time limit, which is invariable, because an appeal is usually the only way in which a recipient can challenge the planning authority's action in issuing the notice

23. Previously (under section 130(1)(a) of the 1997 Act) it was permitted for an appeal to be made on the grounds that, in respect of the breach to which the notice referred, planning permission ought to be granted or, as the case may be, the condition or limitation ought to be discharged. This ground for appeal was repealed under the provisions of the Planning etc (Scotland) Act 2006 and appeals can no longer be made on this basis.

24. It is of course the case that a person, on receipt of an enforcement notice may submit an application for retrospective planning permission, however this is not an appeal against an enforcement notice and therefore will not affect the date on which the notice takes effect, or the requirement to comply with the notice.

25. When a person successfully applies for a retrospective planning application, section 33(3) of the 1997 Act allows that the grant of planning permission may be backdated to the date on which the development was carried out. The 2006 Act amends section 33 of the 1997 Act (with the inclusion of section 33(4)) so that, where a retrospective planning application is granted, but an enforcement notice was at the time issued in respect of the development, then the grant of permission cannot be backdated.

Appeals Procedures

26. Detailed guidance on appeals procedures, including how to appeal and what information is to be submitted by the appellant and the planning authority, is contained in Planning Circular 6/2009: Planning Appeals.

27. On appeal, the Scottish Ministers have powers, under section 132(2)(a), to correct any defect, error or misdescription in the notice, or to vary the terms of the notice. However, these powers do not extend to the correction of notices which are so fundamentally defective that their correction would result in a substantially different notice which would cause injustice to the appellant or planning authority.

28. Most enforcement appeals are delegated to Inquiry Reporters for determination. Appeals will normally be determined through written submissions. In some cases disputes about the relevant facts may necessitate the hearing of evidence. In such circumstances, DPEA may make arrangements for an inquiry or hearing session to take place and the Reporter may decide that witnesses should be placed under oath.

29. Once the Scottish Ministers, or a Reporter exercising delegated powers, has decided an appeal, they cannot reconsider or correct it. A further appeal can be made to the Court of Session, under section 239 of the 1997 Act, within 6 weeks of the date of decision, on the ground that the action is not within the powers of the Act

or that any "relevant requirement" as defined in section 239 has not been complied with.

Execution Of Works Required By Enforcement Notice (Direct Action)

30. Where a person does not fully comply with an enforcement notice, planning authorities have ‘default' powers to enter land and carry out any unfulfilled requirements of a notice themselves (section 135).

31. Under section 135(10) it is an offence for any person to wilfully obstruct a person acting in the exercise of those powers. Any person found guilty of such an offence will be liable, on summary conviction, to a fine not exceeding level 3 of the standard scale.

32. The powers enable the planning authority to carry out any steps required by an enforcement notice, including steps to discontinue a use of land (which by virtue of Regulation 2(1) of the Town and Country Planning (Minerals) (Scotland) Regulations 1998, includes the discontinuance of mining operations) and any steps needed to make development comply with the terms of any planning permission which has been granted in respect of the land, or for the purpose of removing or alleviating any injury to amenity which has been caused by the development.

33. This provision does not mean that planning authorities will themselves be able to stop illegal uses of land (because only the person who is actually carrying out the use is capable of stopping it entirely). But where, for example, a storage use is required to be discontinued, and whether or not the notice specifically requires the removal of stored items, it is open to planning authorities to remove those items as a step towards discontinuing the use and continue to remove such items which may appear on the land.

Offence Where Enforcement Notice Not Complied With

34. Section 136 of the 1997 Act makes it an offence for owners of land to be in breach of an enforcement notice, although it will be a defence if they show that they did everything they could be expected to do to secure compliance. It is also an offence for those (other than the owners) who control, or have an interest in, the land to carry on any activity which is required to cease, or cause or permit such an activity to be carried on.

35. Where any persons charged with an offence have not been served with a copy of the notice, and the notice is not contained in the appropriate register kept under section 147 of the 1997 Act, it is a defence for them to show that they were not aware of the existence of the notice.

36. Where a person is in breach of an enforcement notice the planning authority may, at their discretion, take action through either the issue of a fixed penalty notice (Annex K) or by seeking a prosecution.

37. Where a person is prosecuted for an offence they may be charged by reference to any day or longer period, and a person may be convicted of a second or

subsequent offence by reference to any period of time following the preceding conviction. A person guilty of an offence under this section is liable:

- on summary conviction, to a fine not exceeding £20,000;
- or on conviction on indictment to an unlimited fine.

38. In determining the amount of any fine, the Court is to have regard to any financial benefit which has accrued or appears likely to accrue in consequence of the offence. Accordingly, planning authorities should always be ready to make available any known details about the proceeds resulting, or likely to result, from the offence, so that the Court can take account of them in sentencing.

Environmental Assessment

39. The Environmental Impact Assessment (Scotland) Regulations 1999 require that, before issuing an enforcement notice, the planning authority should consider if the development which has led to the breach of planning control comes within a description of development in either Schedule 1 or Schedule 2 of those Regulations. However, enforcement notice appeals can no longer result in planning permission being granted, as a result of the changes made by the 2006 Act. Where it appears to a planning authority that a development does not have planning consent, and furthermore that any application for planning permission might identify a need for EIA, the planning authority should consider issuing a notice under s33A of the 1997 Act requiring the submission of a planning application. On submission of such an application, the usual procedures of the EIA regulations would apply. Further advice on EIA can be found in Circular 8/2007 (Circular 8/2007, as amended by the Addendum to Circular 8/2007; The Environmental Impact Assessment (Scotland) Regulations 1999)

ANNEX H

STOP NOTICES

Purpose Of A Stop Notice

1. Section 140 of the 1997 Act sets out the procedures regarding Stop Notices. Where planning authorities consider it expedient that any 'relevant activity' should cease before the expiry of the compliance period in an enforcement notice, they may serve a stop notice prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land. A 'relevant activity' is any activity required by the enforcement notice to cease, and any activity carried out as part of that activity or associated with it.

2. With the exceptions indicated in paragraph 3 below, a stop notice may prohibit any, or all, of the activities which comprise the alleged breach of planning control in the related enforcement notice. The prohibition may be directed at:

- a use of land which is ancillary, or incidental, to the main use of the land specified in the enforcement notice as a breach of control; or,
- a particular activity taking place only on part of the land specified in the enforcement notice;
- an activity which takes place on the land intermittently or seasonally.

3. A stop notice may not prohibit:

- the use of any building as a dwellinghouse; or
- the carrying out of any activity which has been carried out (whether continuously or not) for a period of more than 4 years ending with the service of the notice, except for any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.

Deciding To Serve A Stop Notice

4. The effect of serving a stop notice will usually be to halt the breach of control, or the specified activity. Planning authorities should therefore ensure that a quick but thorough assessment of the likely consequences of serving a stop notice is available (preferably, when the decision is not delegated to officers, in the form of a report submitted by Planning or Enforcement Officers who are thoroughly familiar with the locality and the detailed operation of the alleged breach of control) to the Committee or officer who will authorise service of the notice. The assessment should examine the foreseeable costs and benefits likely to result from a stop notice.

5. The costs arising from serving a stop notice will usually be confined to the firm, operator or landowner who is thereby prevented from carrying on the activity prohibited by the notice. There may occasionally be some costs to the local economy.

6. The costs to a firm may vary from having to modify a production process, at little or no additional cost (at one extreme), to the complete cessation of a business (at the other), with consequent loss of jobs, failure to complete contracts, or bankruptcy. The effect of prohibiting a particular activity should always be carefully examined. Since a stop notice may be directed at any activity, part of an activity or associated activity specified in the enforcement notice, planning authorities should ensure that a stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

7. Before deciding to serve a stop notice, the planning authority should consider, whenever practicable, whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally acceptable way. If an acceptable alternative would require the grant of planning permission, in order to carry it on lawfully, the planning authority should consider issuing a notice under section 33A requiring application for planning permission (see Annex C); and, if possible, in co-ordinating a suitable grant of permission with the service of the stop notice. However, since the purpose of a stop notice is to compel the activities specified in it to cease, any delay should be minimised.

8. The benefits of serving a stop notice will usually be readily apparent as an improvement in amenity in the neighbourhood. Planning authorities should consider how many people are likely to benefit, and how adversely their amenities will be affected if a stop notice is not served (on the assumption that the enforcement notice will eventually take effect on expiry of the compliance period specified in it).

Serving A Stop Notice

9. Once a planning authority has decided to serve a stop notice, it is essential to implement the decision speedily and effectively; action to implement it must have top priority.

10. A stop notice must be issued before the enforcement notice to which it relates takes effect, i.e.: it may be issued at the same time as the enforcement notice or at any time within the 28 days (or, if appropriate, whatever longer period the planning authority may have set) notice period between the enforcement notice being issued and coming into effect (but see paragraph 16 below).

11. A stop notice may be served on any person who appears to have an interest in the land to which the notice relates, or who appears to be engaged in any activity prohibited by the notice. The planning authority must attach as an annex to the stop notice a copy of the related enforcement notice.

12. A stop notice must specify the 'relevant activity' which is required to cease. A stop notice must also specify the date when it is to take effect. Section 140(7) specifies that the effective date must normally not be earlier than 3 days (or later than 28 days) after the date when the notice is served. But, when there are special reasons for specifying an earlier date, a stop notice may take effect before 3 days, or immediately. If the notice is to take effect earlier than 3 days, a statement of reasons must be served with it. For example, it may be considered essential to protect an

area of special landscape value, or a conservation area, from operational development (such as buildings, roadways or other hard surfaces) which, if it continued, would be especially harmful. The authority must remember that the stop notice must be issued in conjunction with an enforcement notice.

13. Where there is a need to stop an activity with immediate effect, a planning authority will generally find it more effective to issue a Temporary Stop Notice, as this will allow them to stop the activity from the point at which the temporary stop notice is displayed on the site, allowing time for preparation of a stop notice and enforcement notice and for serving these on individuals.

14. The service of a stop notice should always be recorded immediately in the enforcement register which authorities are required to maintain under section 148.

15. The procedures for service of notices specified in section 271 of the 1997 Act apply to the service of a stop notice. In particular, if the notice is served by postal delivery, the envelope containing it should clearly state that it is an urgent and important communication; and it should be sent by recorded delivery service.

16. Section 140(3) provides that a stop notice may not be served where the related enforcement notice has already taken effect. (Section 128(8) requires the authority to specify the date on which the enforcement notice shall take effect). However, if there is an enforcement appeal to the Scottish Ministers, section 131(3) suspends the effect of the enforcement notice until the appeal against it is finally determined or withdrawn. It follows therefore that, when there is an appeal against the related enforcement notice, the authority may serve a stop notice at any time before the appeal, including any further appeal, under section 239, to the Court of Session, is determined.

Effective Service of a Stop Notice

17. The validity of a stop notice cannot be challenged on the ground that it has not been served on someone who ought to be served with it. Section 140(8) enables the planning authority to serve a stop notice on any person who appears to them to have an interest in the land, or to be engaged in any activity prohibited by the notice. Thus, for example, where the owner of land cannot be contacted, the planning authority may serve the stop notice on anyone who is actually engaged in carrying out works prohibited by the notice. Normal administrative practice should be to trace the owner or occupier of the land and arrange for the stop notice to be served on them also.

18. A stop notice is not invalid because a copy of the related enforcement notice was not served as required by section 127, if it can be shown that the planning authority took all such steps as were reasonably practicable to serve the notice.

Public Notification of Service of a Stop Notice

19. Planning authorities may publicise the fact that a stop notice has been served by displaying a 'site notice' on the land to which the stop notice relates. If a site notice is displayed, it extends the effect of the stop notice to any person

contravening it (section 141(3)). Displaying a site notice is complementary to, and does not constitute, serving a stop notice.

20. A site notice must state; the requirements of the stop notice, that the stop notice has been served on a particular person or persons, the date the notice was served, and the consequences under section 144 of contravention of the stop notice.

Challenging a Stop Notice

21. There is no right of appeal to the Scottish Ministers against a stop notice. The merits of the planning authority's decision to serve a stop notice cannot be examined in the course of an appeal to the Scottish Ministers, under section 130, against the related enforcement notice. The validity of a stop notice, and the propriety of the authority's decision to issue a notice, may be challenged by applying to the Court of Session for judicial review, or in proceedings under section 140.

Penalties for Contravention

22. When a site notice has been displayed for a stop notice, it is an immediate offence for anyone to contravene, or to cause or permit the contravention of, the prohibition in a stop notice, once the stop notice takes effect. When a site notice has not been displayed and the stop notice has been served on a person, it is an offence for that person to contravene, or to cause or permit the contravention of, the prohibition in the stop notice.

23. An offence may be charged to any day or longer 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. A person guilty of this offence is liable, on summary conviction, to a fine not exceeding £20,000; or, on conviction on indictment, to an unlimited fine. In determining the amount of any fine to be imposed, the Court may take into account any financial benefit which has been, or may be, gained in consequence of the offence. Therefore, planning authorities should always be ready to make available any known details about the proceeds resulting from, or likely to result from, the offence, so that the Court can take account of them in sentencing the offender.

24. It is a defence for those prosecuted for an offence under section 140 to prove that the stop notice was not served on them and that had no reasonable cause to believe the activity was prohibited. It is important therefore that, when a site notice is displayed, it is displayed prominently, for example at any entrance to the site.

Power to Withdraw a Stop Notice

25. A planning authority may withdraw a stop notice at any time (without prejudice to their power to serve another notice) by giving notification of the withdrawal to everyone who was served with the stop notice. If a site notice was displayed on the land specified in the stop notice, a notice of the withdrawal is to be displayed in place of the site notice.

Cessation of Effect of a Stop Notice

26. A stop notice ceases to have effect when either:

- The related enforcement notice is withdrawn by the planning authority or is quashed on appeal by the Scottish Ministers;
- The period the planning authority has allowed for compliance with the related enforcement notice expires (at that point, instead of being an offence to contravene the prohibition in the stop notice, it will become an offence not to comply with the requirements specified by the planning authority in the enforcement notice);
- Notification is first given of the planning authority's decision to withdraw the stop notice;
- When an enforcement notice is varied (for example, on appeal to the Scottish Ministers under section 132), so that the alleged breach of planning control no longer includes a particular activity which is prohibited in the related stop notice. The prohibition in the stop notice ceases to have effect in so far as it relates to that particular activity.

Planning Authority Liability for Compensation

27. The circumstances under which planning authorities may be liable to pay compensation are set out in section 143(1)-(4). If, at any time when the stop notice is in force, the activity prohibited by it was a breach of planning control, the planning authority are not liable to pay compensation for any consequent loss or damages (section 143(5)(a)). Moreover, under the provisions of section 143(5)(b), anyone who failed to respond to a planning contravention notice, or other statutory notice requiring information, cannot obtain compensation from the planning authority in respect of any loss or damage which could have been avoided if they had provided the information requested, or had otherwise co-operated with the planning authority when responding to the notice.

ANNEX I

TEMPORARY STOP NOTICES

Provision

1. Sections 144A to 144D of the 1997 Act (introduced by the 2006 Act) allow a planning authority to issue a temporary stop notice which takes effect immediately it is issued and, unlike a stop notice, does not require the issue of an enforcement notice. The provisions regarding temporary stop notices came into effect on 3 August 2009.

2. A temporary stop notice requires the immediate cessation of an activity from the moment it is displayed on a site.

3. Typically, a temporary stop notice would be used to stop an activity that would, in the planning authority's view, cause damage to the environment and/or local amenity. The temporary stop notice might not prohibit the activity over the entire site; for example, it might instead restrict it to certain areas or times.

Temporary stop notice: contents and service

4. If a planning authority considers that;

- there has been a breach of planning control in relation to any land in it's area; and,
- the breach consists of engagement in an activity; and
- it is expedient that the activity is stopped immediately,

the planning authority may issue a temporary stop notice (TSN).

5. This notice must be in writing and must:

- specify the activity in question;
- prohibit engagement in the activity (or in so much of the activity as is specified in the notice); and
- set out the authority's reason for issuing the notice.

6. Much of what has been said regarding the consideration of the effect on business of issuing a stop notice (paragraphs 4-8, Annex H) apply in equal measure, if not more so, to temporary stop notices. As with a stop notice there is no right of appeal, but in addition there is no 3-day 'notice period'. TSNs should only be used when a planning authority is satisfied that there is a clear and immediate need for such action.

7. In order to maximise the potential for TSNs to be used effectively and expeditiously, planning authorities should consider devolving authority to issue a notice to enforcement teams or officers, particularly in regard to arrangements for issuing TSNs outside core working hours, where it may be difficult to arrange speedy

approval from more senior officers or the committee, and the benefit of a TSN would therefore be lost.

8. To serve a TSN, the planning authority must display a copy of it on the land, along with a notice stating that it is an offence (section 144B) to contravene the temporary stop notice. The notice takes effect from the time that it is so displayed, even if it is later removed. It is therefore important to ensure sufficient proof (for example, using a digital camera that displays the date and time on the image) is recorded that the notice was correctly displayed.

9. Copies of the notice may also be served on any person who, in the view of the planning authority, has an interest in the land or is engaged in the activity. Planning authorities should serve such notices wherever possible to ensure that any such person is fully aware that a temporary stop notice is in place.

Duration of Temporary Stop Notice

10. Temporary stop notices are time-limited. The maximum period a temporary stop notice can be in effect for is 28 days. The period can be shorter at the discretion of the issuing authority. Additionally, the authority can withdraw the notice at any time before it is due to expire.

11. It is not possible to issue a second or subsequent notice after the first one expires, unless between the issue of the notices the planning authority has taken some other form of enforcement action. This action must relate to the same activity as the temporary stop notice. Generally this would be through the issue of an enforcement notice and associated stop notice, but could alternatively be the granting of an interdict.

Temporary stop notices: restrictions

12. As with a stop notice, a temporary stop notice does not prohibit the use of a building as a dwellinghouse. It may be used to stop additional development of the building.

13. A temporary stop notice does not prohibit engagement in any activity which has been engaged in (whether continuously or not) for a period of more than 4 years ending with the day on which a copy of the notice is first displayed. However if the activity in question is;

- activity consisting in, or incidental to, building, engineering, mining or other operations; or
- the deposit of waste materials

then this restriction does not apply and a temporary stop notice can be issued even if the activity has been carried out on the site for more than 4 years.

14. Scottish Ministers have the power to prescribe other activities which may not be prohibited by a temporary stop notice. Planning legislation contains a commitment to equality and fairness (section 270B, introduced by the 2006 Act). Scottish

Ministers are aware that for certain sections of the community, notably Gypsies and Travellers, the main residence may, for all or part of the year, be a caravan, not a building. Accordingly the Town and Country Planning (Temporary Stop Notice) (Scotland) Regulations 2009 set out that a temporary stop notice may not prohibit stationing of a caravan on land provided that:

- the caravan is stationed on the land immediately prior to the issue of the temporary stop notice; and
- the caravan is at that time occupied by a person as his main residence.

15. While a notice may not be served on a caravan already on a site, it would be possible to serve a notice prohibiting any other caravans moving onto the site. This could be seen as analogous to using a temporary stop notice to prevent construction of an extension to a dwellinghouse (where the activity being prohibited is the building of the extension, not the use of the existing structure as a dwellinghouse)

Temporary Stop Notices: offences

16. It is an offence for a person to contravene a temporary stop notice which has been served on them, or, as required for the notice to come into effect, has been displayed on the land. It is also an offence to permit or cause a contravention of the notice. For example if a landowner allowed a person to carry out an activity prohibited by a temporary stop notice, then both would be guilty of an offence.

17. An offence may be charged by reference to a day or to a period of more than a day. A person may be convicted of more than one offence if they repeatedly breach the temporary stop notice over a period of days.

18. It is a defence to prove that the temporary stop notice was not served on the person accused of contravening the notice and that he did not, and could not reasonably be expected to know of the existence of the notice. Therefore it is important that the notice is displayed in a prominent place (for example the site entrance) and to record proof that it was correctly displayed. On larger sites the planning authority may want to consider displaying several copies of the notice. As noted in paragraph 8 above it is also good practice to serve copies of the notice on individuals.

19. A person convicted of contravening a temporary stop notice is liable

- on summary conviction, to a fine not exceeding £20,000
- on conviction on indictment, to a fine

20. In determining the amount of the fine, the court will take into account any financial benefit which the convicted person has made from the activity which constituted the offence.

Temporary stop notices: compensation

21. A person who at the time the temporary stop notice is issued has an interest in the land, whether as owner or occupier or otherwise, to which the notice relates

may be entitled to compensation for any loss or damage directly attributable to the prohibition effected by the notice.

22. However this only applies if either;

- the activity specified in the notice had already been granted planning permission by the planning authority; or
- a certificate of lawful use or development applied to the activity; or
- the planning authority withdraws the notice (unless the notice is withdrawn as a result of planning permission being granted after the notice had been served).

23. The likelihood of the planning authority being liable for compensation is therefore low and can be further minimised by simple checks of the planning authority's records to ascertain whether there is any current planning permission in respect of the site, and if so what activities the permission allows. In addition the provisions of section 143(3)-(7) which apply to compensation in respect of a stop notice apply also to TSNs, namely;

- If, at any time when the TSN is in force, the activity prohibited by it was a breach of planning control, the planning authority are not liable to pay compensation for any consequent loss or damages (section 143(5)(a)).
- Anyone who failed to respond to a planning contravention notice, or other statutory notice requiring information, cannot obtain compensation from the planning authority in respect of any loss or damage which could have been avoided if they had provided the information requested, or had otherwise co-operated with the planning authority when responding to the notice. (section 143(5)(b))

24. While there is a minimal risk that issuing a TSN might prompt a claim for compensation, planning authorities should not let this consideration prevent the issue of a TSN where they consider it expedient to do so to ensure compliance with planning control.

ANNEX J

BREACH OF CONDITION NOTICES

Provisions

1. Section 145 of the 1997 Act makes provision for enforcing the conditions to which any planning permission is subject. For the purposes of Section 145, the reference to conditions includes those limitations which are statutorily imposed by certain of the provisions for permitted development rights in the GPDO.

Purpose Of A Breach Of Condition Notice

2. A breach of condition notice (BCN) may be used as an alternative to (or, if considered necessary, in conjunction with) an enforcement notice, where action is required to remedy a breach of planning control consisting of a failure to comply with any condition.

3. It is important that any conditions imposed on a planning permission should reflect the current guidance on the use of conditions (see SODD Circular 4/1998), particularly with regard to clarity and precision. Applicants for planning permission have the right to appeal to the Scottish Ministers against any conditions at the time they are imposed. They may also apply at a later stage to have the conditions varied, although they should adhere to the original conditions until such time as their application is approved.

Deciding To Serve A Breach of Condition Notice

4. Enforcement action should always be commensurate with the breach of planning control to which it relates and the decisive issue for the planning authority should be whether public amenity or the use of land and buildings meriting protection in the public interest is unacceptably affected. As a planning condition should only have been imposed out of necessity, it is likely that a failure to comply with it will be damaging and justify enforcement action. However, circumstances may have changed since the original condition was imposed and the planning authority will need to assess the current situation.

5. A BCN may normally only be served within 10 years of the breach of planning control to which it relates having occurred (paragraph 12, Annex A). However, these immunity provisions are qualified by section 124(4) of the 1997 Act which provides that, even when the standard time limits have expired, a BCN may still be served if:

- an enforcement notice relating to the same breach is in effect; or
- in the preceding 4 years, the planning authority have taken or purported to take enforcement action in respect of that breach.

When deciding whether to serve a BCN, the planning authority should first make certain that the condition in question is both valid and enforceable. This should help to avoid protracted litigation and ensure that this procedure operates, as intended, as

a swift and simple means of securing compliance with planning conditions and limitations.

6. The planning authority will also need to consider whether it would be more appropriate, in the particular circumstances of any case, to issue an enforcement notice instead of, or in addition to, a BCN. For example, where it is necessary to secure immediate compliance with a condition, an enforcement notice may enable a stop notice to be served, in appropriate circumstances. Moreover, an enforcement notice enables the planning authority to take direct action under section 136 if the recipient of the notice fails to comply with its requirements.

Serving A Breach Of Condition Notice

7. Where any condition is not complied with, the planning authority may serve a BCN requiring the person on whom it is served to secure compliance with the conditions which it specifies. Those on whom a notice may be served are:

- any person who is carrying out or has carried out the subject development;
- or any person having control of the land (as long as the conditions specified in the notice relate only to the regulation of the use of land).

8. For example, where a developer has carried out residential development subject to a condition that a landscaping scheme should be completed and that condition has been contravened, it will not be possible to serve a BCN on the individual home owners who now control the land comprising the curtilage of each residence. As a landscaping condition does not regulate the use of the land, the notice can only be used against the original developer. (However, this does not mean that enforcement action can only be taken against the original developer when this type of breach of condition occurs: it may be possible to remedy the breach by serving an enforcement notice on those persons having control of the land provided that the relevant time limit has not expired).

9. Because recipients of a BCN are responsible for securing compliance with the conditions specified in it and they have no right of appeal, the planning authority should take all reasonable steps to ensure that notices are served only on appropriate persons. Normally, a notice will have only one recipient. However, when a notice is served on a person who has carried out development but who no longer controls the land (as in the example in paragraph 10 above), it is advisable for the planning authority to take reasonable steps to inform the current owners and occupiers of the action being taken.

Content Of A Breach Of Condition Notice

10. A BCN should specify the planning permission to which it relates and the conditions which have been contravened, in order to establish the reasons for its service. It is helpful for a plan of the land concerned to be appended to the notice.

11. A BCN must specify the steps which the authority requires to be taken, or the activities which they require to cease, for the purpose of securing compliance with the condition(s) specified in the notice. Thus, a notice may be drafted in terms of:

- positive steps (e.g., requiring a landscaping scheme to be carried out and completed in accordance with the terms of a landscaping condition imposed on a grant of permission); and/or
- prohibitions (e.g., requiring a restaurant, or take-away food shop, to stop opening to customers outwith the times specified in a planning condition).

12. A BCN must specify the compliance period within which the recipient must comply, or secure compliance, with the condition(s) to which the notice relates. The period allowed for compliance must be at least 28 days from the date of service of the notice. That period may, if required, subsequently be extended by a further notice served by the planning authority on the person responsible.

13. As with an enforcement notice, the planning authority should ensure that the time allowed for compliance is reasonable in relation to the requirements of the notice. An unreasonable compliance period may result in the failure of a subsequent prosecution for non-compliance.

14. A single BCN may be directed at a number of conditions. However, for the purpose of clarity, it may be more satisfactory to serve a separate notice for each contravention (e.g., where the compliance periods for the conditions differ). Planning authorities will need to assess what is necessary for the avoidance of doubt about what is required by the notice.

Registration of a Breach of Condition Notice

15. The provisions of section 147 of the 1997 Act require the planning authority to enter details of each BCN they serve in the register of enforcement action.

Challenging a Breach of Condition Notice

16. There is no right of appeal to the Scottish Ministers against a BCN. However, recipients may make representations to the planning authority if they believe the notice to be unreasonable, although they should be clear that such representations and discussions do not postpone the running of the compliance period. The planning authority has the discretionary power to withdraw a notice, by serving a withdrawal notice on recipients of the original BCN, at anytime (including after the expiry of the compliance period). The withdrawal of a notice does not affect the planning authority's power to serve a further notice.

17. The validity of a notice, or the validity of the planning authority's decision to serve it, may be challenged through judicial review, or by defence submissions in the Sheriff Court in the event of prosecution. It is therefore important that a Breach of Condition Notice should only be served where the planning authority is satisfied that the condition in question:

- is legally valid;

- satisfies the criteria for the imposition of conditions stated in Circular 4/1998; and
- has clearly been breached, on the available evidence.

Non-Compliance with a Breach of Condition Notice

18. Section 145(9) provides that it is an offence for a responsible person (i.e. a recipient of a notice) to be in breach of a BCN. A notice is breached if, at any time after the expiry of the compliance period:

- any condition specified in the notice has not been complied with; and
- the specified steps have not been taken, or the specified activities have not ceased.

19. Section 137 provides that, where planning permission is subsequently granted so as to authorise any activity which a BCN specified as being a contravention of a planning condition, or where a condition specified in the notice is discharged, the notice ceases to have effect in so far as it requires anyone to secure compliance with that condition. But section 137(3) also specifically provides that, when a BCN ceases to have effect, wholly or partly, in these circumstances, that does not discharge any person's liability for an offence of previously failing to comply, or not securing compliance, with the notice. In other words, a person can be prosecuted for a contravention of a BCN occurring during any period prior to the date when the subsequent planning permission is granted or the relevant condition is discharged.

Penalties for Contravention

20. The planning authority may issue a fixed penalty notice. The person would then have the option to pay, within 30 days, the fixed penalty, which would indemnify them from prosecution. In determining whether or not to issue a Fixed Penalty, planning authorities should have regard to the nature of the breach of the condition and the impact on local amenity. The penalty payable is £300, reduced to £225 if paid within the first 15 days.

21. Alternatively, a summary prosecution in the Sheriff or District Court may be sought, under section 145(9), for the offence of contravening a Breach of Condition Notice. The maximum penalty on conviction is a fine not exceeding level 3 on the standard scale (currently £1000). In terms of section 136 of the Criminal Procedure (Scotland) Act 1995, prosecutions for such an offence must be brought within 6 months of the date on which the offence was committed. If the offence is a continuing one there is a 6 month time limit which begins to run on the last date when the offence was committed, although in such cases the prosecution can include the whole period of the offence.

22. Section 145(10) provides that an offence 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 by reference to any period of time following the preceding conviction.

23. It is a defence for those charged with an offence under Section 145(9) to prove:

- that they took all reasonable measures to secure compliance with the conditions specified in the notice; or
- where the notice was served on them as having control of the land, that they no longer had control of it at the date when the offence is alleged to have taken place.

ANNEX K

FIXED PENALTY NOTICES

Provisions

1. Section 136A provides planning authorities with the power to issue fixed penalty notices as an alternative to prosecution for breaching the terms of an enforcement notice. Section 145A makes similar provision in respect of breaches of breach of condition notices.

Fixed penalty notice issued where enforcement notice or breach of condition notice not complied with.

2. Where a planning authority believes that a person is in breach of an enforcement notice or breach of condition notice, it may issue that person with a fixed penalty notice. They may do so on condition that:

- the notice is served within the six months period immediately following the compliance period stated in the enforcement notice; and
- that no prosecution proceedings have been started in respect of the breach.

3. For planning purposes, a fixed penalty notice is a notice offering a person the opportunity of discharging any liability for prosecution in respect of a breach of an enforcement notice or breach of condition notice, by paying the planning authority a penalty of an amount specified in the notice within 30 days. The 30 day period starts the day the notice is served, but if payment is made within the first 15 days then the amount payable is reduced by 25%. Any penalty paid accrues to the planning authority.

4. No court proceedings can be initiated during the 30 day payment period. If however the penalty is not paid within the 30 day period then it would be open to the planning authority to consider prosecution.

5. There is no requirement on the planning authority to issue a fixed penalty notice in any particular instance, and it is open to the authority to determine to take no action in respect of the breach or to initiate prosecution proceedings. In the case of a breach of the terms of an enforcement notice, the planning authority may consider direct action regardless of whether or not any other action is considered appropriate or taken. In reaching a decision as to whether or not to issue a fixed penalty notice or to take alternative action, planning authorities should apply the principles of planning enforcement that any action should be commensurate to the nature and scale of the breach.

6. Only one fixed penalty notice may be issued in relation to a particular step or activity. An enforcement notice may list several steps to be taken, or activities to be ceased, in order to comply with the notice. As failure to comply with any step or activity is a breach of the notice, it follows that there could be several fixed penalty notices issued, each relating to a *different* step or activity.

7. Where a fixed penalty notice is issued for a particular breach of an enforcement notice, it is possible that the penalty might be paid but the breach remains uncorrected. By paying the fixed penalty the person discharges any liability for prosecution. Payment of the fixed penalty does **not** however discharge the requirement to comply with the requirements of the original enforcement notice or breach of condition notice and the planning authority retains the power to take direct action to remedy the breach and recover any costs associated with such work.

8. There is no right of appeal against a fixed penalty notice. It would be open to a person to make representations to the planning authority that the breach to which the notice relates had in fact been corrected and that they should not therefore be required to pay the fixed penalty. There is no formal process for withdrawing a fixed penalty notice, but the planning authority would have discretion not to initiate prosecution proceedings where the notice was unpaid, if it was felt the terms of the original enforcement or breach of condition notice had subsequently been met.

Fixed penalties for breach of enforcement notices: amount of penalty

9. The Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009 set out that the penalty for breach of an enforcement notice is to be £2,000.

Fixed penalties for breach of breach of condition notices: amount of penalty

10. The Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009 set out that the penalty for breach of a breach of condition notice is to be £300.

ANNEX L

INTERDICTS TO RESTRAIN BREACHES OF PLANNING CONTROL

Provisions

1. Section 146 of the 1997 Act enables planning authorities to apply for an interdict to restrain breaches of planning control. The availability of this provision is not dependent on the exercise of any other powers under the 1997 Act.

Application for an Interdict

2. A planning authority may seek to restrain or prevent any breach of planning control, whether actual or apprehended, by applying to the Court for an interdict. Planning authorities should be aware that as long as their application for an interdict is not frivolous and is supported by evidence that a breach of planning control is likely to occur in the near future the planning authority need have no fear of being found liable for damages simply because the apprehended breach did not occur. Applications may be made either to the Court of Session or to the Sheriff.

3. It is for each planning authority to decide when it is appropriate to apply for an interdict. An application should be made on the basis of their assessment of the seriousness of the breach of control and the particular circumstances of the persons against whom proceedings are contemplated. Before initiating proceedings, planning authorities will need to assess the likely outcome (if necessary, by obtaining appropriate legal advice) and the risk of incurring wasted expenditure on abortive proceedings. In assessing the possible costs, the planning authority should bear in mind that there may be a liability in damages for all loss arising to the developer from the activity having been prevented by the interdict if it is subsequently shown (e.g., in an enforcement appeal to the Scottish Ministers) that no breach of planning control had occurred on the land.

4. A planning authority may also apply for an interim interdict which is an interim measure designed to preserve the status quo or prevent temporary and imminent wrong. This is a discretionary remedy and the planning authority must be able to establish a *prima facie* case whereupon the court will proceed to consider whether, upon balance of convenience, the planning authority has presented sufficient facts to establish a compelling need for immediate protection by the grant of an interim interdict.

The Court's Decision

5. The Court may grant such an interdict as it thinks appropriate for the purpose of restraining or preventing the breach or it may refuse the application. The decision is always a matter solely for the Court in its absolute discretion in the circumstances of any case. Nevertheless, the Court is unlikely to grant an interdict unless all the following criteria are satisfied:

- that in deciding that it was necessary or expedient to apply for an interdict, the planning authority took account of all those considerations which appear to be relevant;
- that there is clear evidence that a breach of planning control has already occurred, or is likely to occur, on land in the planning authority's area; and
- that an interdict would provide a commensurate remedy in the circumstances of the particular case.

6. Even if all the above criteria are satisfied, the Court may decide that the circumstances of the case do not justify granting an interdict. If an interdict is granted, the Court may decide to suspend its effect until a specified later date.

ANNEX M

LAND ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD

1. Section 179 of the 1997 Act provides planning authorities with the power to serve a notice on the owner, lessee or occupier of land in their area, the condition of which they consider to be adversely affecting the amenity of the area. Such notices may require specified steps to be taken for the abatement of the injury to the amenity.

2. A copy of the notice has to be served on the owner, lessee or occupier of the land. The notice must specify the date on which it will take effect. This must be at least 28 days, taken from the date on which the notice is served.

3. The planning authority may withdraw a notice at any time before it takes effect (without prejudice to its power to serve another notice) by serving notice of the withdrawal on every recipient of the original notice.

4. A notice under section 179 cannot be issued with reference to any building which is designated as an ancient monument (section.179 (5)).

5. Where a notice is not complied with, the planning authority has the power to take direct action under section 135. There is however no power for the planning authority to take other action such as seeking prosecution or issuing a fixed penalty notice. It is also important to note that issuing a notice under section 179 does not constitute taking enforcement action as defined in section 123(2).

6. Under section 181, planning authorities are required to maintain a register of notices issued under section 179

7. Although the service of a notice does not constitute taking enforcement action, the revised appeal procedures set out in Regulations 5 & 6 of the Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Regulations 1992 (as amended by The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009) also apply to appeals against these notices. In particular, this means that an appellant must observe the time limit for submitting the appeal statement. Regulation 7 also applies the requirements for registration of these notices under Section 181.

ANNEX N

ENFORCEMENT CHARTERS

Provision

1. Section 158A of the 1997 Act requires a planning authority to prepare an enforcement charter. This is a publicly available document setting out how the enforcement system works, in particular, the role of the planning authority and the service standards it sets itself.

What information does the charter provide?

2. The charter consists of a document setting out:
- The planning authority's policies for taking enforcement action
- How members of the public can report ostensible breaches to the planning authority
- How the public can complain to the authority as regards how they take enforcement action
- The complaints procedure.

3. The Scottish Ministers may issue guidance to a planning authority on the form and content of the charter. Currently this is done through a model charter published on the internet on the Scottish Government website. A planning authority **must**, when preparing its charter, have regard to this guidance as an example of the sort of information the charter should contain. This is not to say that they have to produce an exact copy of the model charter, which should be viewed as a template. Planning authorities are free to adapt the format and the content to suit their own requirements, providing that their charter contains the required information to meet the criteria set out above.

Review of charters

4. A planning authority must keep their charter under review. Charters must be upgraded and re-published at least every two years, possibly more frequently if situations change.

5. Scottish Ministers may also require that a charter be reviewed at any time, for example if they are not satisfied that sufficient regard has been paid to the guidance on content, or if the charter has not been reviewed within the required timescales. Changes to enforcement legislation may also require that charters be updated outside the bi-annual requirement. Ministers may require a single authority to review its charter or, where there are changes to the enforcement system; require all authorities to review charters.

Availability of charters

6. When they publish or re-publish the charter, the planning authority must:
- Send two copies of it to Scottish Ministers
- Place a copy of the charter in each public library in their district

- Publish the charter electronically, for example on the local authority website.

7. Scottish Ministers will, on receipt of their copies, consider whether the charter meets the requirements as to form and content, and determine whether further review is required.

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