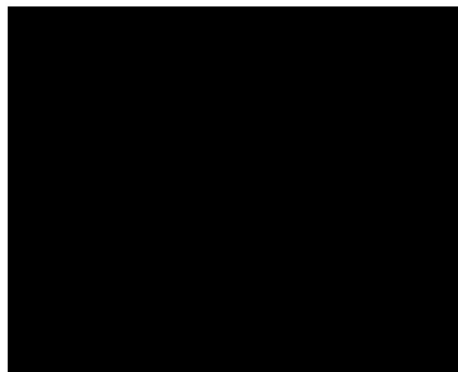
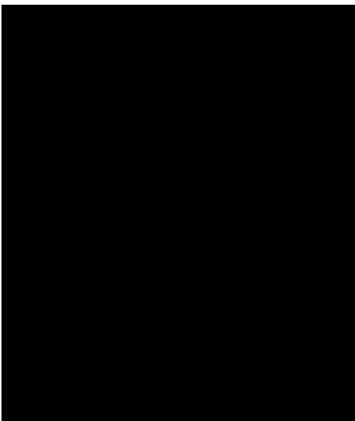


ENFORCEMENT NOTICE (PLANNING)
BRATH CUR AN GNÌOMH (DEALBHADH)

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

**ACHD DEALBHaidH BAILE AGUS DÙTHCHA (ALBA) 1997 (MAR A CHAIDH
ATHARRACHADH)**

REFERENCE NUMBER: 21/00307/ENF



THIS IS A FORMAL NOTICE issued by The Highland Council (“the Planning Authority”) because it appears to them that there has been a breach of planning control, under Section 127 of the Town and Country Planning (Scotland) Act 1997 (as amended) (“the Act”), at the location described below. The Planning Authority considers that it is expedient to issue this Notice, having regard to the provisions of the development plan and to all other material considerations.

1. THE LAND TO WHICH THIS NOTICE RELATES

This Notice relates to the mooring of a Fresh Water Fish Farm upon Loch Ness by MOWI Scotland Ltd, Loch Ness Fish Farm, Dores, Inverness, shown red on the location plan included in Schedule 1 of this Notice (“the land”).

2. THE BREACH OF PLANNING CONTROL

On the land affected:

- i. A Fresh Water Fish Farm has been incorrectly positioned on Loch Ness without the required planning permission (section 123(1)(a) of the Act);

("the breach of planning control")

3. REASONS FOR ISSUING THIS NOTICE

The Planning Authority considers it expedient to issue this enforcement notice for the following reasons:

- i. The Fresh Water Fish Farm has not been moored to comply with Planning Permission 20/01887/FUL; the south east and north east corners of the pens have been positioned approximately 100 metres N and 110 metres NNW of their approved locations.
- ii. The unauthorised location of surface equipment has a greater visual impact upon the Loch Ness and Duntelchaig Special Landscape Area, than that approved by Planning Permission 20/01887/FUL.

4. WHAT YOU ARE REQUIRED TO DO

You are required to:

- i. Relocate the Fresh Water Fish Farm to comply with the position approved by Planning Permission 20/01887/FUL; or
- ii. Relocate the Fresh Water Fish Farm (including all fish pens and components) to the previously consented position (Figure 2). Under section 128 (13&14) of the Town and Country Planning (Scotland) Act planning permission for this location shall be treated as having been granted.

The time period(s) for compliance: **31 January 2022.**

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on **8 September 2021**, unless an appeal is made before the Notice takes effect. See Section 6 and Schedule 2 below.

6. RIGHT OF APPEAL

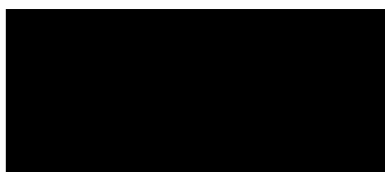
You have a right of appeal against this Notice. Your appeal must be received by the Directorate for Planning and Environmental Appeals **before the date upon which this Notice take effect**. For more information on your right of appeal, please refer to Schedule 2 of this Notice.

7. WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Notice, **it will take effect on the date outlined in Section 5** and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in Section 4 of the Notice.

Dated: 6 August 2021

Signed:



(Bob Robertson – Planning Team Leader)

On behalf of The Highland Council
Glenurquhart Road, Inverness, IV3 5NX

SCHEDULE 1 – LOCATION PLAN

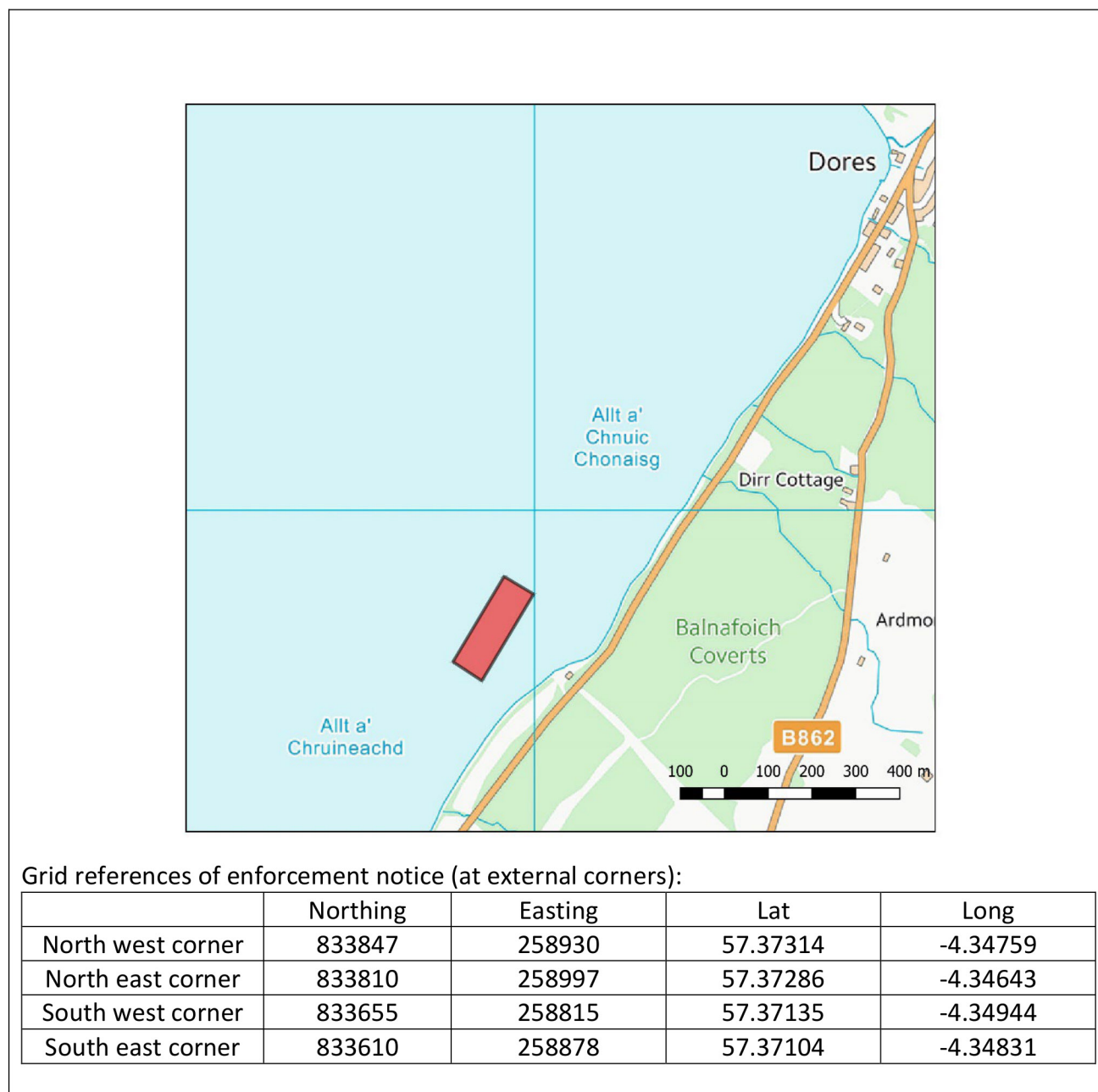
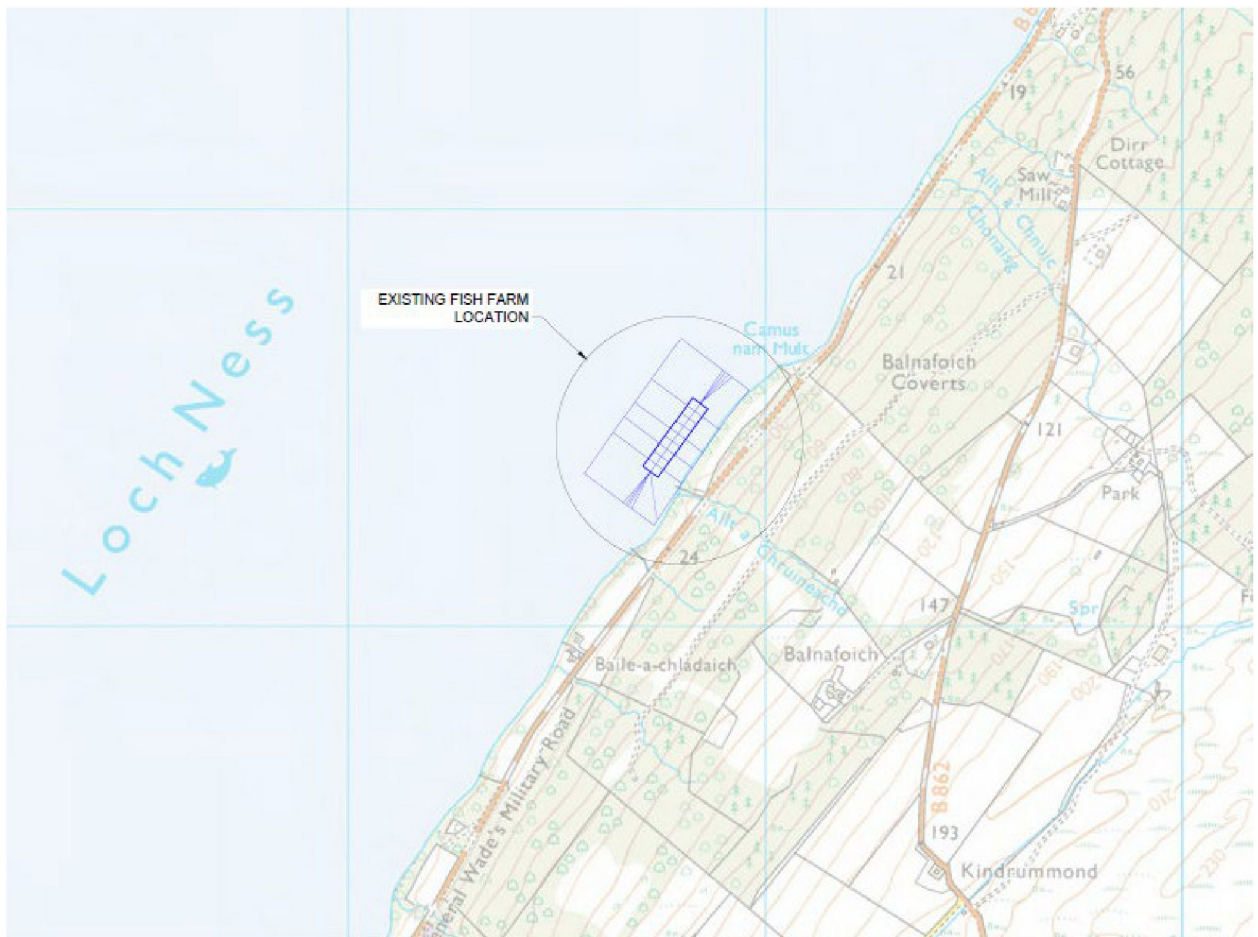


Figure 1: The land to which this Notice relates is shown red on the above plan.



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Grid references for surface equipment at previously consented position (at external corners):

	Northing	Easting	Lat	Long
North west corner	833533	258835	57.370300	-4.3489993
North east corner	833520	258792	57.370191	-4.3485599
South west corner	833383	258723	57.368919	-4.3507737
South east corner	833364	258747	57.368756	-4.3503641

Figure 2: Previously consented position (under previous planning consents: 15/01206/PNO and 09/00685/FULIN). This location plan has been extracted from the 20/01887/FUL planning application.

SCHEDULE 2 – EXPLANATORY NOTE

RIGHT OF APPEAL

Any appeal you may wish to make against this Notice must be made in writing direct to the Directorate of Planning and Environmental Appeals (DPEA). **Do not send an appeal direct to the Planning Authority** - doing so may delay the appeal process and could result in deadlines being missed and an appeal being rejected. You must, however, send a copy of all appeal documentation to the Planning Authority.

Directorate of Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk, FK1 1XR

An appeal must be based on one or more of the grounds set out in Section 130 of the Act, and you should state the facts on which you propose to rely in support of each of the grounds of the appeal.

If you lodge an appeal, the Notice will be suspended and will not take effect unless the appeal is withdrawn or dismissed.

Appeal forms and guidance notes for enforcement appeals can be accessed via the DPEA's webpage: <http://www.dpea.scotland.gov.uk>

PENALTIES FOR NON-COMPLIANCE WITH THIS NOTICE

Failure to comply with an enforcement notice which has taken effect is an offence.

Where an enforcement notice requires the discontinuance of a use of land or compliance, in respect of a use of land or the carrying out of operations, with any conditions or limitations, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, is guilty of an offence and liable on summary conviction to **a fine not exceeding Twenty Thousand Pounds or on conviction on indication to an unlimited fine**. Furthermore, if the use is continued after conviction the person may be convicted of a second or subsequent offence.

The Planning Authority may issue a fixed penalty notice as an alternative to prosecution. A fixed penalty notice may be issued in relation to each particular step or activity. The Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009 have set the **fixed penalty at Two Thousand Pounds**. Payment of a fixed penalty notice discharges the liability for prosecution but does not discharge the requirement to comply with the steps contained in this Notice.

DIRECT ACTION FOR NON-COMPLIANCE WITH THIS NOTICE

If the steps required in Section 4 of this Notice are not taken within the specified period(s), the Planning Authority may enter the land and take direct action under section 135 of the Act to meet those requirements. Please note that it is an offence for any person to wilfully obstruct a person acting in the exercise of such direct action.

Furthermore, all reasonable costs incurred by the Planning Authority during this process, including administration expenses, will be recovered from the owner, occupier or lessee of the land. Failure to reimburse the Planning Authority when required may lead to prosecution through the courts.

FURTHER OFFENCES

Compliance with the terms of this Notice does not discharge the Notice. It will continue in effect and any repetition of the breach of control may incur further penalties and/or may result in direct action by the Planning Authority.

FURTHER INFORMATION

If you would like to discuss the contents of this notice with the Planning Authority, please contact Allan Bryce – Planning Enforcement Officer using the following details and ensure that all correspondence includes the reference number given at the head of this Notice.

ePlanning Centre
The Highland Council
Glenurquhart Road
Inverness, IV3 5NX

eplanning@highland.gov.uk

You can find more information about planning enforcement, statutory notices and our Planning Enforcement Charter at: www.highland.gov.uk/planningenforcement

SCHEDULE 3 – RELEVANT LEGISLATION

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

Enforcement notices

127 Issue of enforcement notice

- 1) The planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them:
 - a) that there has been a breach of planning control, and
 - b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- 2) A copy of an enforcement notice shall be served:
 - a) on the owner and on the occupier of the land to which it relates, and
 - b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
- 3) The service of the notice shall take place:
 - a) not more than 28 days after its date of issue, and
 - b) not less than 28 days before the date specified in it as the date on which it is to take effect.

128 Contents and effect of notice

- 1) An enforcement notice shall state:
 - a) the matters which appear to the planning authority to constitute the breach of planning control, and
 - b) the paragraph of section 123(1) within which, in the opinion of the authority, the breach falls.
- 2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
- 3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
- 4) Those purposes are:
 - a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - b) remedying any injury to amenity which has been caused by the breach.
- 5) An enforcement notice may, for example, require:
 - a) the alteration or removal of any buildings or works,
 - b) the carrying out of any building or other operations,
 - c) any activity on the land not to be carried on except to the extent specified in the notice, or
 - d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.
- 6) An enforcement notice issued in respect of a breach of planning control consisting of demolition of a building may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7), is as similar as possible to the demolished building.

- 7) A replacement building:
- a) must comply with any requirement imposed by or under any enactment applicable to the construction of buildings,
 - b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control, and
 - c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b) of this subsection).
- 8) An enforcement notice shall specify the date on which it is to take effect and, subject to section 131(3), shall take effect on that date.
- 9) An enforcement notice shall specify the period for compliance with the notice at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities.
- 10) Where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.
- 11) An enforcement notice shall specify such additional matters as may be prescribed.
- 12) Regulations may require every copy of an enforcement notice served under section 127 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 130.
- 13) Where:
- a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so, and
 - b) all the requirements of the notice have been complied with,

then, so far as the notice did not so require, planning permission shall be treated as having been granted under section 33 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

- 14) Where:
- a) an enforcement notice requires the construction of a replacement building, and
 - b) all the requirements of the notice with respect to that construction have been complied with,
- planning permission shall be treated as having been granted under section 33 in respect of development consisting of that construction.

129 Variation and withdrawal of enforcement notice

- 1) The planning authority may:
- a) withdraw an enforcement notice issued by them, or
 - b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 128(9).
- 2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
- 3) The planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were reissued, be served with a copy of it.
- 4) The withdrawal of an enforcement notice does not affect the power of the planning authority to issue a further enforcement notice.

130 Appeal against enforcement notice

- 1) A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds:
 - a) ~~that~~ [repealed];
 - b) that the matters which, by virtue of section 128(1)(a) have been stated in the notice, have not occurred;
 - c) that those matters (if they occurred) do not constitute a breach of planning control;
 - d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
 - e) that copies of the enforcement notice were not served as required by section 127;
 - f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
 - g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.
- 2) An appeal under this section shall be made:
 - a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect, or
 - b) by sending such notice to him in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date; or
 - c) by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date.
- 3) A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing:
 - a) specifying the grounds on which he is appealing against the enforcement notice, and
 - b) giving such further information as may be prescribed.

131 Appeals: supplementary provisions

- 1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 130 and, in particular, but without prejudice to the generality of the foregoing provisions of this subsection, in so prescribing may:
 - a) specify the matters on which information is to be given in a statement under section 130(3);
 - b) require the planning authority to submit, within such time as may be specified, a statement indicating the submissions which they propose to put forward on the appeal;
 - c) specify the matters to be included in such a statement;
 - d) require the authority or the appellant to give such notice of an appeal as may be specified to such persons as may be specified;
 - e) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be specified, a copy of the enforcement notice and a list of the persons served with copies of it.
- ~~2) [Repealed].~~
- 3) Where an appeal is brought under section 130 the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- 4) Schedule 4 applies to appeals under section 130, including appeals under that section as applied by regulations under any other provisions of this Act.

132 General provisions relating to determination of appeals

- 1) On the determination of an appeal under section 130, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice.

2) On such an appeal the Secretary of State may:

- a) correct any defect, error or misdescription in the enforcement notice, or
- b) vary the terms of the enforcement notice,

if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority.

3) The Secretary of State may:

- a) dismiss an appeal if the appellant fails to comply with section 130(3) within the prescribed time, and
- b) allow an appeal and quash the enforcement notice if the planning authority fail to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of section 131(1).

4) Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required by section 127(2) to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

133 Grant or modification of planning permission on appeal against enforcement notice

1) On the determination of an appeal under section 130, the Secretary of State may:

- a) *[repealed]*,
- b) *[repealed]*,
- c) *[repealed]*,
- d) determine whether on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which the permission was granted was lawful and, if so, issue a certificate under section 150.

2) The provisions of sections 150 to 153 mentioned in subsection (3) shall apply for the purposes of subsection (1)(d) as they apply for the purposes of section 150, but as if:

- a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made, and
- b) references to the planning authority were references to the Secretary of State.

Those provisions are sections 150(5) to (7), 152(4) (so far as it relates to the form of the certificate), (6) and (7) and 153.

- 3) *[Repealed]*
- 4) *[Repealed]*
- 5) *[Repealed]*.
- 6) *[Repealed]*.
- 7) *[Repealed]*
- 8) *[Repealed]*.
- 9) *[Repealed]*.
- 10) *[[Repealed]*.

134 Validity of enforcement notices

The validity of an enforcement notice shall not be questioned in any proceedings whatsoever on any of the grounds specified in section 130(1)(b) to (e) except by appeal under that section.

135 Execution and cost of works required by enforcement notice

1) If any steps which are required by an enforcement notice to be taken have not been taken within the compliance period, the planning authority may:

- a) enter the land and take those steps, and
 - b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- 2) If that person did not appeal to the Secretary of State although entitled to do so, he shall not be entitled to dispute the validity of the action taken by the planning authority under subsection (1) in accordance with the enforcement notice.
- 3) In computing the amount of the expenses which may be recovered by them under subsection (1), a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.
- 4) Where a copy of an enforcement notice has been served in respect of any breach of planning control:
 - a) any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice, and
 - b) any sums paid by the owner or lessee of any land under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken,
 shall be recoverable from the person by whom the breach of planning control was committed.
- 5) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by an enforcement notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.
- 6) A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal.
- 7) After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.
- 8) Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that:
 - a) he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
 - b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands-on behalf of that other person sufficient money to discharge the whole demand of the authority,
 his liability shall be limited to the total amount of the money which he has or has had in his hands-on behalf of that other person.
- 9) A planning authority who by reason of subsection (8) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.
- 10) Any person who willfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 11) In this section and in sections 136, 136A, 140 and 141 any reference to the compliance period, in relation to an enforcement notice, is a reference to the period specified in the notice for compliance with it or such extended period as the planning authority may allow for compliance with it.

136 Offence where enforcement notice not complied with

- 1) Where, at any time after the end of the compliance period in respect of an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
- 2) Where the owner of the land is in breach of the notice, he shall be guilty of an offence.

- 3) In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
- 4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
- 5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.
- 6) An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.
- 7) Where:
 - a) a person charged with an offence under this section has not been served with a copy of the enforcement notice, and
 - b) the notice is not contained in the appropriate register kept under section 147,
 it shall be a defence for him to show that he was not aware of the existence of the notice.
- 8) A person guilty of an offence under this section shall be liable:
 - a) on summary conviction, to a fine not exceeding £20,000, and
 - b) on conviction on indictment, to a fine.
- 9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

136A Fixed penalty notice where enforcement notice not complied with

- 1) Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
- 2) The fixed penalty notice is to specify—
 - a) the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or
 - b) the activity so specified which has not ceased.
- 3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
- 4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice.
- 5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
- 6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
- 7) The conditions are that the fixed penalty notice—
 - a) is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and
 - b) is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice.

- 8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- 9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- 10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
- 11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.

137 Effect of planning permission etc. on enforcement or breach of condition notice

- 1) Where, after the service of:
 - a) a copy of an enforcement notice, or
 - b) a breach of condition notice,planning permission is granted for any development carried out before the grant of that permission; the notice shall cease to have effect so far as inconsistent with that permission.
- 2) Where, after a breach of condition notice has been served, any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.
- 3) The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

138 Enforcement notice to have effect against subsequent development

- 1) Compliance with an enforcement notice, whether in respect of:
 - a) the removal or alteration of any building or works,
 - b) the discontinuance of any use of land, or
 - c) any other requirements contained in the notice,shall not discharge the notice.
- 2) Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.
- 3) Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered.
- 4) A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.