
STATUTORY INSTRUMENTS

1990 No. 1510

**The Planning and Building Regulations
(Amendment) (Northern Ireland) Order 1990**

**PART II
PLANNING**

Amendments to the Planning (Northern Ireland) Order 1972

Development plans

3. For Articles 4 to 10 of the Planning Order there shall be substituted the following Articles—

“Development plans

4.—(1) The Department may at any time make a development plan for any area or alter, repeal or replace a development plan adopted by it for any area.

(2) A development plan for an area shall consist of—

- (a) a map and a written statement formulating, in such detail as the Department thinks appropriate, proposals for the development or other use of land in the area to which the plan relates; and
- (b) such diagrams, illustrations and descriptive matter as the Department thinks appropriate to explain or illustrate the proposals in the plan.

(3) Where a development plan has not been adopted for an area, any provision of this Order which requires or authorises regard to be had to the development plan shall have effect in relation to that area as if any reference to the development plan were omitted.

Publicity and consultation

5.—(1) Where the Department proposes to make, alter, repeal or replace a development plan for an area, it shall proceed in accordance with this Article, unless Article 6 (which provides a short procedure for certain alterations, etc.) applies.

(2) The Department shall consult with the district council for the area or any part of the area to which the plan or proposed plan relates.

(3) The Department shall take such steps as will in its opinion secure—

- (a) that adequate publicity is given, in the area to which the plan or proposed plan relates, to the Department’s proposals or to the issues involved;
- (b) that persons who may be expected to wish to make representations to the Department about those proposals or issues are made aware that they are entitled to do so;

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

and the Department shall consider any representations made to it within the prescribed period.

(4) The Department shall then prepare the relevant documents, that is, the plan, alteration, instrument of repeal or replacement plan, as the case may be, and shall make copies of the documents available for inspection at such places as the Department considers appropriate.

(5) Each copy of the documents made available for inspection shall be accompanied by a statement of the prescribed period within which objections may be made to the Department.

(6) The Department shall then take such steps as may be prescribed for the purpose of advertising—

- (a) the fact that the documents are available for inspection;
- (b) the places and times at which, and period during which, they may be inspected; and
- (c) the prescribed period within which objections may be made to the Department.

Publicity and consultation: short procedure for certain alterations, etc.

6.—(1) Where the Department proposes to alter, repeal or replace a development plan for an area and it appears to the Department that the issues involved are not of sufficient importance to warrant the full procedure set out in Article 5, the Department may proceed instead in accordance with this Article.

(2) The Department shall consult with the district council for the area or any part of the area to which the plan relates.

(3) The Department shall prepare the relevant documents, that is, the alteration, instrument of repeal or replacement plan, as the case may be, and shall make copies of the documents available for inspection at such place as the Department considers appropriate.

(4) Each copy of the documents made available for inspection shall be accompanied by a statement of the prescribed period within which representations or objections may be made to the Department.

(5) The Department shall then take such steps as may be prescribed for the purpose of—

- (a) advertising the fact that the documents are available for inspection and the places and times at which, and period during which, they may be inspected; and
- (b) inviting the making of representations or objections in accordance with regulations,

and shall consider any representations or objections made to it within the prescribed period.

Inquiries relating to development plans

7. The Department may cause a public local inquiry to be held by the planning appeals commission for the purpose of considering objections to a development plan or to the alteration, repeal or replacement of a development plan.

Adoption by Department

8.—(1) After the expiry of the period afforded for making objections to a development plan or to the alteration, repeal or replacement of a development plan or, if such objections have been duly made within that period, after considering the objections so made, and,

where a public local inquiry is held, the report of the planning appeals commission, the Department may by order adopt the plan, alteration, repeal or replacement in whole or in part (whether with or without modifications) or reject it.

(2) A development plan or any alteration, repeal or replacement of a development plan shall become operative on a date appointed for the purpose in the order under paragraph (1) adopting the plan or the alteration, repeal or replacement.

Incorporation in development plans of certain orders and schemes

9.—(1) Any development plan for an area which includes land to which an order or scheme listed in paragraph (2) relates shall have effect as if the provisions of the order or scheme were included in the plan.

(2) The orders and schemes mentioned in paragraph (1) are—

- (a) an order under section 1 of the New Towns Act (Northern Ireland) 1965(1);
- (b) an order under Article 13 or 14 of the Roads (Northern Ireland) Order 1980(2);
- (c) a redevelopment scheme approved under Article 49 of the Housing (Northern Ireland) Order 1981(3);
- (d) an enterprise zone scheme;
- (e) a simplified planning zone scheme; and
- (f) a development scheme adopted under Article 53.

Regulations as to development plans

10. Without prejudice to Articles 4 to 9, the Department may make regulations with respect to—

- (a) the form and content of development plans; and
- (b) the procedure to be followed in connection with the making, alteration, repeal and replacement of development plans.”.

General and special development orders

4. In Article 13 of the Planning Order (development orders) after paragraph (2) there shall be inserted the following paragraph—

“(2A) A development order may be made either—

- (a) as a general order applicable, except so far as the order otherwise provides, to all land, but which may make different provision with respect to different descriptions of land; or
- (b) as a special order applicable only to such land or descriptions of land as may be specified in the order.”.

Simplified planning zones

5. After Article 13 of the Planning Order there shall be inserted the following cross-heading and Articles—

(1) 1965 c. 13 (N.I.)
(2) 1980 NI 11
(3) 1981 NI 3

*“Simplified planning zone schemes***Simplified planning zones**

13A.—(1) A simplified planning zone is an area in respect of which a simplified planning zone scheme is in force.

(2) The adoption of a simplified planning zone scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission for development specified in the scheme or for development of any class so specified.

(3) Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme.

(4) A simplified planning zone scheme shall consist of a map and a written statement, and such diagrams, illustrations and descriptive matter as the Department thinks appropriate for explaining or illustrating the provisions of the scheme, and shall specify—

- (a) the development or classes of development permitted by the scheme;
- (b) the land in relation to which permission is granted; and
- (c) any conditions, limitations or exceptions subject to which it is granted;

and shall contain such other matters as may be prescribed.

(5) The Department may at any time make a simplified planning zone scheme in respect of any area or alter a scheme adopted by it in respect of any area.

(6) Articles 5, 6, 7 and 8(1) shall, with any necessary modifications, apply to the making or alteration of a simplified planning zone scheme as they apply to the making or alteration of a development plan.

(7) Without prejudice to paragraph (6), the Department may make regulations with respect to—

- (a) the form and content of simplified planning zone schemes; and
- (b) the procedure to be followed in connection with the making or alteration of such schemes.

Simplified planning zone schemes: conditions and limitations on planning permission

13B.—(1) The conditions and limitations on planning permission which may be specified in a simplified planning zone scheme may include—

- (a) conditions or limitations in respect of all development permitted by the scheme or in respect of particular descriptions of development so permitted; and
- (b) conditions or limitations requiring the consent, agreement or approval of the Department in relation to particular descriptions of permitted development;

and different conditions or limitations may be specified for different cases or classes of case.

(2) Nothing in a simplified planning zone scheme shall affect the right of any person—

- (a) to do anything not amounting to development; or
- (b) to carry out development for which planning permission is not required or for which permission has been granted otherwise than by the scheme;

and no limitation or restriction subject to which permission has been granted otherwise than under the scheme shall affect the right of any person to carry out development for which permission has been granted under the scheme.

Duration of simplified planning zone scheme

13C.—(1) A simplified planning zone scheme shall take effect on the date of its adoption and shall cease to have effect at the end of the period of ten years beginning with that date.

(2) Upon the scheme's ceasing to have effect planning permission under the scheme shall also cease to have effect except in a case where the development authorised by it has been begun.

(3) The provisions of Article 28(2) to (6) (which provide for the termination of planning permission if the completion of development is unreasonably delayed) apply to planning permission under a simplified planning zone scheme where development has been begun but not completed by the time the area ceases to be a simplified planning zone.

(4) The provisions of Article 27(1) apply in determining for the purposes of this Article when development shall be taken to be begun.

Alteration of simplified planning zone scheme

13D.—(1) The adoption of alterations to a simplified planning zone scheme has effect as follows.

(2) The adoption of alterations providing for the inclusion of land in the simplified planning zone has effect to grant in relation to that land or such part of it as is specified in the scheme planning permission for development so specified or of any class so specified.

(3) The adoption of alterations providing for the grant of planning permission has effect to grant such permission in relation to the simplified planning zone, or such part of it as is specified in the scheme, for development so specified or development of any class so specified.

(4) The adoption of alterations providing for the withdrawal or relaxation of conditions, limitations or restrictions to which planning permission under the scheme is subject has effect to withdraw or relax the conditions, limitations or restrictions forthwith.

(5) The adoption of alterations providing for—

- (a) the exclusion of land from the simplified planning zone;
- (b) the withdrawal of planning permission; or
- (c) the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject,

has effect to withdraw permission, or to impose the conditions, limitations or restrictions, with effect from the end of the period of twelve months beginning with the date of the adoption.

(6) The adoption of alterations to a scheme does not affect planning permission under the scheme in any case where the development authorised by it has been begun before the adoption of alterations has effect; and the provisions of Article 27(1) apply in determining for the purposes of this paragraph when development shall be taken to be begun.

Exclusion of certain descriptions of land

13E.—(1) The following descriptions of land may not be included in a simplified planning zone—

- (a) land in a conservation area;
- (b) land in an area which is—

- (i) designated as a National Park under Article 12 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(4);
 - (ii) designated as an area of outstanding natural beauty under Article 14 of that Order;
 - (iii) declared to be an area of special scientific interest under Article 24 of that Order;
 - (c) land declared to be a national nature reserve under Article 18 of that Order;
 - (d) land identified in the development plan for the area as a green belt or part of a green belt;
 - (e) land of such other description as may be prescribed.
- (2) Where land included in a simplified planning zone becomes land of such a description, paragraph (1) does not have effect to exclude it from the zone.
- (3) The Department may by order provide that no simplified planning zone scheme shall have effect to grant planning permission—
- (a) in relation to an area of land specified in the order or to areas of land of a description so specified; or
 - (b) for development of a description specified in the order.
- (4) An order under paragraph (3) has effect to withdraw such planning permission under a simplified planning zone scheme already in force with effect from the date on which the order comes into force, except in a case where the development authorised by the permission has been begun before that date; and the provisions of Article 27(1) apply in determining for the purposes of this paragraph when development shall be taken to be begun.”.

Publication of notices of planning applications

6. In Article 15 of the Planning Order (publication of notices of planning applications) for the word “Where” there shall be substituted the words “(1) Subject to paragraph (2), where” and at the end of that Article there shall be added the following paragraphs—

- “(2) A development order may provide that paragraph (1) shall not apply to an application for planning permission for development of any class specified by the order.
- (3) Where an application for planning permission for development of a class specified under paragraph (2) is made to the Department, the Department shall not determine the application before the expiration of 21 days from the date on which it is received by the Department.”.

Notice requiring planning application

7. After Article 16 of the Planning Order there shall be inserted the following Articles—

“Notice requiring planning application

- 16A.**—(1) Where it appears to the Department that development has been carried out—
- (a) without the grant of the planning permission required in that behalf in accordance with this Part; or
 - (b) without the grant of any approval of the Department required in that behalf under a development order;

the Department may issue a notice under this Article requiring the making of an application for such planning permission or approval to the Department within 28 days from the service of the notice.

(2) A notice under this Article may be issued only within the period of four years from the date on which the development to which it relates was begun; and the provisions of Article 27(1) apply in determining for the purpose of this Article when development shall be taken to be begun.

(3) A notice under this Article shall specify the matters alleged to constitute the development to which the notice relates.

(4) A copy of a notice under this Article shall be served on the owner and on the occupier of the land to which it relates.

(5) Where a copy of a notice under this Article has been served on any person referred to in paragraph (4), then if the application referred to in the notice is not made to the Department within the period allowed for compliance with the notice, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) If a person against whom proceedings are brought under paragraph (5)—

- (a) was, at the time when the copy of the notice under this Article was served on him, the owner of the land to which the notice relates; but
- (b) has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of that land,

he shall, upon a complaint duly made by him and on giving to the prosecution not less than three days' notice of his intention, be entitled to have the person who then became the owner of the land (in paragraph (7) referred to as the "subsequent owner") brought before the court in the proceedings.

(7) If after it has been proved, in a case to which paragraph (6) applies, that the application referred to in the notice under this Article has not been made within the period allowed for compliance with the notice, the original defendant proves that the failure to make that application was attributable, in whole or in part, to the default of the subsequent owner—

- (a) the subsequent owner may be convicted of the offence; and
- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the notice, shall be acquitted of the offence.

(8) If, after a person has been convicted under paragraphs (5) to (7), the application referred to in the notice under this Article is not made to the Department, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day following his first conviction on which the offence continues.

(9) The Department may, at any time before the end of the period allowed for compliance with a notice under this Article, withdraw the notice.

(10) If it does so the Department shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.

(11) Any reference in this Article and Article 16B to the period allowed for compliance with a notice under this Article is a reference to the period mentioned in paragraph (1) or such extended period as may be allowed by the Department for compliance with the notice.

(12) For the purposes of this Article an application to the Department for any planning permission or approval shall not be taken to be made unless it is accompanied by the fee prescribed under Article 105A in relation to that application.

Appeal against notice under Article 16A

16B.—(1) A person on whom a copy of a notice has been served under Article 16A may, at any time before the end of the period allowed for compliance with that notice, appeal to the planning appeals commission against the notice.

(2) An appeal may be brought on any of the following grounds—

- (a) that the matters alleged in the notice do not constitute development;
- (b) that the development alleged in the notice has not taken place;
- (c) that the period of 4 years referred to in Article 16A(2) had elapsed at the date when the notice was issued.

(3) An appeal under this Article shall be made by notice in writing to the planning appeals commission and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(4) Before determining an appeal under this Article, the planning appeals commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(5) Where an appeal is brought under this Article the notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(6) On an appeal under this Article the planning appeals commission—

- (a) shall quash the notice, vary the terms of the notice or uphold the notice;
- (b) may correct any informality, defect or error in the notice, or vary its terms, if it is satisfied that the correction or variation can be made without injustice to the appellant or to the Department.

(7) The validity of a notice under Article 16A shall not, except by way of an appeal under this Article, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.”.

Permission to develop land without compliance with conditions previously attached

8. After Article 18 of the Planning Order there shall be inserted the following Article—

“Permission to develop land without compliance with conditions previously attached

18A.—(1) This Article applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) A development order may make special provision with respect to—

- (a) the form and content of such applications; and
- (b) the procedure to be followed in connection with such applications.

(3) On such an application the Department shall consider only the question of the conditions subject to which planning permission should be granted, and—

- (a) if it decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or

that it should be granted unconditionally, the Department shall grant planning permission accordingly; and

- (b) if it decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, the Department shall refuse the application.

(4) This Article does not apply where the application is made after the previous planning permission has become time-expired, that is to say, the previous permission having been granted subject to a condition as to the time within which the development to which it related was to be begun, that time has expired without the development having been begun.”.

Discontinuance orders

9. After Article 29 of the Planning Order there shall be inserted the following cross-heading and Article—

“Additional powers of control

Orders requiring discontinuance of use or alteration or removal of buildings or works

29A.—(1) If it appears to the Department that it is expedient in the interests of the proper planning of an area (including the interests of amenity), regard being had to the development plan and to any other material considerations—

- (a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance of a use of land; or
- (b) that any buildings or works should be altered or removed;

the Department may by order require the discontinuance of that use within such time as may be specified in the order, or impose such conditions as may be so specified on the continuance thereof, or require such steps as may be so specified to be taken within such time as may be so specified for the alteration or removal of the buildings or works, as the case may be.

(2) An order under this Article may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order; and the provisions of Article 29 shall apply in relation to any planning permission granted by an order under this Article as they apply in relation to planning permission granted by the Department on an application made under this Part.

(3) The power conferred by paragraph (2) shall include power, by an order under this Article, to grant planning permission, subject to such conditions as may be specified in the order—

- (a) for the retention, on the land to which the order relates, of buildings or works constructed or carried out before the date on which the order was made; or
- (b) for the continuance of a use of that land instituted before that date;

and paragraph (3) of Article 19 shall apply to planning permission granted by virtue of this paragraph as it applies to planning permission granted in accordance with paragraph (2) of that Article.

(4) Before making an order under this Article, the Department shall serve notice on the owner and occupier of the land affected and on any other person who in its opinion would be affected by the order; and if within such period as may be specified in that behalf in the notice (not being less than twenty-eight days from the date of service thereof) any person

on whom notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(5) Were the Department makes an order under this Article it shall serve a copy of the order on the owner and occupier of the land to which the order relates and on any other person who in its opinion would be affected by the order.

(6) Where the requirements of an order under this Article will involve the displacement of persons residing in any premises, it shall be the duty of the Northern Ireland Housing Executive, in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement.”.

Agreements facilitating, regulating or restricting development or use of land

10. After Article 29A of the Planning Order there shall be inserted the following Article—

“Agreements facilitating, regulating or restricting development or use of land

29B.—(1) The Department may enter into an agreement with any person who has an estate in land for the purpose of facilitating, regulating or restricting the development or use of the land, either permanently or during such period as may be prescribed by the agreement.

(2) An agreement under this Article—

- (a) shall be contained in an instrument under seal;
- (b) may include provisions for securing the carrying out of works for the purpose mentioned in paragraph (1); and
- (c) may include such incidental and consequential provisions (including provisions of a financial character) as appear to the Department to be necessary or expedient for the purposes of the agreement.

(3) Where—

- (a) an agreement under this Article contains a covenant on the part of any person who has an estate in land;
- (b) the agreement defines the land to which the covenant relates, being land in which that person has an estate at the time the instrument containing the agreement is executed; and
- (c) the covenant is expressed to be one to which this Article applies,

the covenant shall be enforceable (without any limit of time) against any person deriving title from the original covenantor in respect of his estate in any of the land defined as mentioned in sub-paragraph (b) and any person deriving title under him in respect of any lesser estate in that land as if that person had also been an original covenanting party in respect of the estate for the time being held by him.

(4) Without prejudice to any other method of enforcement of a covenant falling within paragraph (3), if there is a breach of the covenant in relation to any of the land to which the covenant relates a person authorised in writing by the Department may, subject to paragraph (5), enter on the land concerned and do anything which the covenant requires to be done or remedy anything which has been done and which the covenant required not to be done.

(5) Before the Department exercises its powers under paragraph (4) in relation to any land it shall give not less than 21 days notice in writing of its intention to do so to any person—

- (a) who has for the time being an estate in the land; and
- (b) against whom the covenant is enforceable (whether by virtue of paragraph (3) or otherwise).

(6) Where the Department exercises its powers under paragraph (4) in relation to the breach of a covenant, it may recover from any person against whom the covenant is enforceable (whether by virtue of paragraph (3) or otherwise) any expenses incurred by it in exercise of those powers and those expenses shall be a civil debt recoverable summarily.

(7) If a person against whom an agreement is enforceable by virtue of paragraph (3) requests the Department to supply him with a copy of the agreement, it shall be the duty of the Department to do so free of charge.

(8) Nothing in this Article or in any agreement made thereunder shall be construed—

- (a) as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by the Department under this Order so long as those powers are exercised in accordance with the provisions of the development plan; or
- (b) as requiring the exercise of any such powers otherwise than as mentioned in subparagraph (a).”.

Applications to determine whether planning permission required

11. For Article 30 of the Planning Order there shall be substituted the following Article—

“Applications to determine whether planning permission required

30.—(1) If any person who proposes to carry out any operations on land, or to make any change in the use of land, wishes to have it determined—

- (a) whether the carrying out of those operations or the making of that change would constitute or involve development of the land; and
- (b) if so, whether an application for planning permission in respect thereof is required under this Part, having regard to the development order and any enterprise zone scheme or simplified planning zone scheme,

he may apply to the Department to determine that question.

(2) The provisions of Articles 13, 14(1), 17(1), 23 and 24 shall, subject to any necessary modifications, apply in relation to any application under this Article, and to the determination thereof, as they apply in relation to applications for planning permission and to the determination of such applications.

(3) Where an application for planning permission is made to the Department and it appears to the Department that—

- (a) the carrying out of the operations specified in the application or the making of the change so specified in the use of any land would not constitute or involve development; or
- (b) if the carrying out of those operations or the making of that change would constitute development, that an application for planning permission in respect thereof is not required under this Part,

the Department may treat the application for planning permission as an application under this Article and may make an appropriate determination.”.

Listed building consent

12.—(1) In Article 31(7) of the Planning Order (definition of “listed building”) for the words from “any object or structure” to the end there shall be substituted the words

“the following shall be treated as part of the building—

- (a) any object or structure within the curtilage of the building and fixed to the building;
- (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st October 1973.”.

(2) In Article 32 of the Planning Order (control of works for demolition, alteration or extension of listed buildings), for paragraph (5) (exception for certain urgent works) there shall be substituted the following paragraph—

“(5) In proceedings for an offence under this Article it shall be a defence to prove the following matters—

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

(3) In Article 33 of the Planning Order (supplementary provisions with respect to listed building consent), after paragraph (4A) there shall be inserted the following paragraph—

“(4B) Listed building consent may be granted subject to a condition reserving specified details of the works (whether or not set out in the application) for subsequent approval by the Department.”.

(4) After Article 35 of the Planning Order there shall be inserted the following Article—

“Applications to determine whether listed building consent required

35A.—(1) If any person who proposes to execute or cause to be executed any works to a listed building wishes to have it determined whether those works would involve the alteration or extension of the building in any manner which would affect its character as a building of special architectural or historic interest, he may apply to the Department to determine that question.

(2) The provisions of paragraphs 1(1), 7 and 8 of Schedule 1A shall, subject to any necessary modifications, apply in relation to any application under this Article, and to the determination thereof, as they apply in relation to applications for listed building consent and to the determination of such applications.

(3) Where an application for listed building consent is made to the Department and it appears to the Department that the execution of the works specified in the application does not involve the alteration or extension of a listed building in any manner which would affect its character as a building of special architectural or historic interest, the Department may treat the application for listed building consent as an application under this Article and may make an appropriate determination.”.

Daily fines for continuing offences

13. In the provisions of the Planning Order listed in column 1 of the following Table, which impose daily fines for certain offences whose general nature is indicated in column 2, for the amount shown in column 3 there shall be substituted the words shown in column 4.

TABLE

Provision of Planning Order	Nature of offence	Present maximum daily fine	New maximum daily fine
Article 36(3)	Damage to listed building	£20	one-tenth of level 3 on the standard scale
Article 40(3)	Contravention of tree preservation order	£5	one-tenth of level 1 on the standard scale
Article 44(4)	Non-compliance with enforcement order	£100	one-tenth of level 5 on the standard scale
Article 44(5)(b)	Use of land in contravention of enforcement notice	£100	one-tenth of level 5 on the standard scale
Article 45(7)	Non-compliance with stop notice	£100	one-tenth of level 5 on the standard scale
Article 51(2)	Contravention of advertising control regulations	£20	one-tenth of level 3 on the standard scale

Hazardous substances

14. After Article 37 of the Planning Order there shall be inserted the following cross-heading and Articles—

*“Hazardous substances***Requirement of hazardous substances consent**

37A.—(1) Subject to the provisions of this Part, the presence of a hazardous substance on, over or under land requires the consent of the Department (in this Order referred to as “hazardous substances consent”) unless the aggregate quantity of the substance—

- (a) on, over or under the land;
- (b) on, over or under other land which is within 500 metres of it and controlled by the same person; or
- (c) in or on a structure controlled by the same person any part of which is within 500 metres of it,

is less than the controlled quantity.

(2) The temporary presence of a hazardous substance while it is being transported from one place to another is not to be taken into account unless it is unloaded.

(3) The Department—

- (a) shall by regulations specify—

- (i) the substances that are hazardous substances for the purposes of this Order;
- (ii) the quantity which is to be the controlled quantity of any such substance;
- (b) may by regulations provide that hazardous substances consent is not required or is only required—
 - (i) in relation to land of prescribed descriptions;
 - (ii) by reason of the presence of hazardous substances in prescribed circumstances;
- (c) may by regulations provide that, except in such circumstances as may be prescribed, all hazardous substances falling within a group specified in the regulations are to be treated as a single substance for the purposes of this Order.
- (4) Regulations which—
 - (a) are made by virtue of sub-paragraph (a)(i) of paragraph (3); or
 - (b) are made by virtue of sub-paragraph (a)(ii) of that paragraph and reduce the controlled quantity of a substance,

may make such transitional provision as appears to the Department to be appropriate.

(5) The power to make such transitional provision includes, without prejudice to its generality, power to apply paragraph 4 of Schedule 2 to the Planning and Building Regulations (Amendment) (Northern Ireland) Order 1990, subject to such modifications as appear to the Department to be appropriate.

(6) Bodies corporate which are inter-connected for the purposes of the Fair Trading Act 1973⁽⁵⁾ are to be treated as being one person for the purposes of this Article and Articles 37B to 37I and 50AB.

Applications for hazardous substances consent

- 37B.**—(1) Provision may be made by regulations with respect to—
- (a) the form and manner in which applications for hazardous substance consent are to be made;
 - (b) the particulars which they are to contain and the evidence by which they are to be verified;
 - (c) the manner in which they are to be advertised; and
 - (d) the time within which they are to be dealt with.
- (2) Regulations may provide that an application for hazardous substances consent, or an appeal against the refusal of such an application or against the imposition of a condition on such a consent, shall not be entertained unless it is accompanied by a certificate in the prescribed form and corresponding to one or other of those described in Article 16(1)(a) to (d); and any such regulations may—
- (a) include requirements corresponding to Articles 16(4) and 17(3); and
 - (b) make provision as to who is to be treated as in actual possession of land for the purposes of any provision of the regulations.
- (3) If any person issues a certificate which purports to comply with the requirements of regulations made by virtue of paragraph (2) and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which

is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Regulations—

- (a) may require an applicant for hazardous substances consent or the Department or both to give publicity to an application for hazardous substances consent in such manner as may be prescribed;
- (b) may require the Department to consult with the Department of Economic Development, the district council for the area in which the land is situated and with such other bodies or persons as may be prescribed before determining applications for hazardous substances consent;
- (c) may provide for the manner in which such a consultation is to be carried out and the time within which—
 - (i) such a consultation;
 - (ii) any stage in such a consultation, is to be completed;
- (d) may require the Department to determine applications for hazardous substances consent within such time as may be prescribed.

Determination of applications for hazardous substances consent

37C.—(1) Subject to the following provisions of this Order, where an application is made to the Department for hazardous substances consent, the Department, in dealing with the application, shall have regard to any material considerations, and—

- (a) may grant hazardous substances consent, either unconditionally or subject to such conditions as it thinks fit; or
- (b) may refuse hazardous substances consent.

(2) Without prejudice to the generality of paragraph (1), in dealing with an application the Department shall have regard—

- (a) to any current or contemplated use of the land to which the application relates;
- (b) to the way in which land in the vicinity is being used or is likely to be used;
- (c) to any planning permission that has been granted for development of land in the vicinity; and
- (d) to the provisions of the development plan.

(3) If an application relates to more than one hazardous substance, the Department may make different determinations in relation to each.

(4) It shall be the duty of the Department, when granting hazardous substances consent, to include in that consent—

- (a) a description of the land to which the consent relates;
- (b) a description of the hazardous substance or substances to which it relates; and
- (c) in respect of each hazardous substance to which it relates, a statement of the maximum quantity permitted by the consent to be present at any one time and of all conditions relating to that substance subject to which the consent is granted.

(5) Without prejudice to the generality of paragraph (1), the Department may grant hazardous substances consent subject to conditions with respect to any of the following—

- (a) how and where any hazardous substance to which the consent relates is to be kept or used;

- (b) times between which any such substance may be present;
- (c) the permanent removal of any such substance—
 - (i) on or before a date specified in the consent; or
 - (ii) before the end of a period specified in it and commencing on the date on which it is granted;
- (d) the consent being conditional on the commencement or partial or complete execution of development on the land which is authorised by a specified planning permission.

Special procedure for major applications

37D.—(1) Where, in relation to an application for hazardous substances consent, the Department considers that the presence of any hazardous substance on, over or under land for which consent is sought, would—

- (a) involve a substantial departure from the development plan for the area in which the land is situated;
- (b) be of significance to the whole or a substantial part of Northern Ireland; or
- (c) affect the whole of a neighbourhood,

the Department may within two months from the date of the application serve on the applicant a notice in such form as may be prescribed applying this Article to the application.

(2) For the purpose of considering representations made in respect of an application to which this Article applies, the Department may cause a public local inquiry to be held by the planning appeals commission.

(3) Where a public local inquiry is not held under paragraph (2), the Department shall, before determining the application, serve a notice on the applicant indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than twenty-eight days from the date of service thereof) the applicant so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(4) In determining an application to which this Article applies, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.

(5) The decision of the Department on an application to which this Article applies shall be final.

Appeals

37E.—(1) Where an application for hazardous substances consent is made to the Department, then if that consent is refused or is granted subject to conditions the applicant may by notice in writing under this Article appeal to the planning appeals commission.

(2) Paragraph (1) shall not apply to any application in relation to which the Department has served a notice under Article 37D(1).

(3) Any notice under this Article shall be served on the planning appeals commission within six months from the date of notification of the decision to which it relates or such longer period as the commission may allow.

- (4) Where an appeal is brought under this Article the planning appeals commission—
 - (a) shall publish notice of the appeal in at least one newspaper circulating in the locality in which the land to which the appeal relates is situated; and

- (b) shall not determine the appeal before the expiration of fourteen days from the date on which notice of the appeal is first published in a newspaper in pursuance of sub-paragraph (a).

(5) Where an appeal is brought under this Article from a decision of the Department, the planning appeals commission, subject to paragraph (6), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part thereof or not, and may deal with the application as if it had been made to it in the first instance.

(6) Before determining an appeal under this Article, the planning appeals commission shall, if either the applicant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(7) Where an application for hazardous substances consent is made to the Department then unless within the prescribed period, or within such extended period as may be agreed upon in writing between the applicant and the Department, the Department either—

- (a) gives notice to the applicant of its decision on the application; or
- (b) gives notice to him that the application is one to which Article 37D applies,

paragraphs (1) to (6) shall apply in relation to the application—

- (i) as if the consent to which it relates had been refused by the Department; and
- (ii) as if notification of the Department's decision had been received by the applicant at the end of the prescribed period, or at the end of the said extended period, as the case may be.

Grant of hazardous substances consent without compliance with conditions previously attached

37F.—(1) This Article applies to an application for hazardous substances consent without a condition subject to which a previous hazardous substances consent was granted.

(2) On such an application the Department shall consider only the question of the conditions subject to which hazardous substances consent should be granted, and—

- (a) if it determines that hazardous substances consent should be granted subject to conditions differing from those subject to which the previous consent was granted, or that it should be granted unconditionally, the Department shall grant hazardous substances consent accordingly; and
- (b) if it determines that hazardous substances consent should be granted subject to the same conditions as those subject to which the previous consent was granted, the Department shall refuse the application.

(3) Where—

- (a) hazardous substances consent has been granted for the presence on, over or under land of more than one hazardous substance; and
- (b) an application under this Article does not relate to all the substances,

the Department shall only have regard to any condition relating to a substance to which the application does not relate to the extent that it has implications for a substance to which the application does relate.

(4) Where—

- (a) more than one hazardous substances consent has been granted in respect of the same land; and
- (b) an application under this Article does not relate to all the consents,

the Department shall only have regard to any consent to which the application does not relate to the extent that it has implications for consent to which the application does relate.

Power to revoke or modify hazardous substances consent

37G.—(1) If it appears to the Department that—

- (a) there has been a material change of use of land to which a hazardous substances consent relates; or
- (b) planning permission has been granted for development the carrying out of which would involve a material change of use of such land and the development to which the permission relates has been commenced,

it may by order—

- (i) if the consent relates only to one substance, revoke it;
- (ii) if it relates to more than one, revoke it or revoke it so far as it relates to a specified substance.

(2) The Department may by order—

- (a) revoke a hazardous substances consent which relates to only one substance if it appears to the Department that that substance has not for at least 5 years been present on, over or under the land to which the consent relates in a quantity equal to or exceeding the controlled quantity; and
- (b) revoke a hazardous substances consent which relates to a number of substances if it appears to the Department that none of those substances has for at least 5 years been so present.

(3) The Department may by order revoke a hazardous substances consent or modify it to such extent as it considers expedient if it appears to the Department, having regard to any material consideration, that it is expedient to revoke or modify it.

(4) An order under this Article shall specify the grounds on which it is made.

(5) Before making an order under this Article, the Department shall serve notice—

- (a) on any person who is an owner of the whole or any part of the land to which the order relates;
- (b) on any person other than an owner who appears to it to be in control of the whole or any part of that land;
- (c) on any other person who in its opinion will be affected by the order;

and if within the period specified in that behalf in the notice (not being less than 28 days from the service thereof) any person on whom the notice is served so requests in writing, the Department shall afford to that person an opportunity of appearing before, and being heard by, the planning appeals commission.

(6) Where an order under this Article has been made, the Department shall serve a copy of the order on every person who was entitled to be served with notice under paragraph (5).

Provisions as to effect of hazardous substances consent and change of control of land

37H.—(1) Without prejudice to the provisions of this Part, any hazardous substances consent shall (except in so far as it otherwise provides) enure for the benefit of the land to which it relates and of all persons for the time being having an estate therein.

(2) A hazardous substances consent shall cease to have effect if there is a change of the person in control of part of the land to which it relates, unless an application for the continuation of the consent has previously been made to the Department.

(3) Regulations may make provision in relation to applications under paragraph (2) corresponding to any provision that may be made by regulations under Article 37B in relation to applications for hazardous substances consent.

(4) When such an application is made, the Department, having regard to any material consideration—

- (a) may modify the consent in any way it considers appropriate; or
- (b) may revoke it.

(5) Without prejudice to the generality of paragraph (4), in dealing with an application the Department shall have regard to the matters to which it is required to have regard by Article 37C(2).

(6) If an application relates to more than one consent, the Department may make different determinations in relation to each.

(7) If a consent relates to more than one hazardous substance, the Department may make different determinations in relation to each.

(8) It shall be the duty of the Department, when continuing hazardous substances consent, to attach to the consent one of the following—

- (a) a statement that it is unchanged in relation to the matters included in it by virtue of Article 37C(4);
- (b) a statement of any change in respect of those matters.

(9) The modifications which the Department may make by virtue of paragraph (4)(a) include, without prejudice to the generality of that sub-paragraph, the making of the consent subject to conditions with respect to any of the matters mentioned in Article 37C(5).

(10) Subject to paragraph (11), Article 37E shall have effect in relation to applications under paragraph (2) and to decisions on such applications as though they were applications for hazardous substances consent.

(11) In the application of Article 37E by virtue of paragraph (10)—

- (a) paragraph (2) of that Article shall be omitted; and
- (b) in paragraph (7) of that Article for the words from “either” to the end there shall be substituted the words “gives notice to the applicant of its decision on the application, the application shall be deemed to have been granted.”.

(12) Where the Department modifies or revokes the consent, it shall pay to the person in control of the whole of the land before the change compensation in respect of any loss or damage sustained by him and directly attributable to the modification or revocation.

(13) Any question of disputed compensation under this Article shall be determined by the Lands Tribunal.

Offences

37I.—(1) Subject to this Part, if there is a contravention of hazardous substances control, the appropriate person shall be guilty of an offence.

(2) There is a contravention of hazardous substances control—

- (a) if a quantity of a hazardous substance equal to or exceeding the controlled quantity is or has been present on, over or under land and either—

- (i) there is no hazardous substances consent for the presence of the substance;
or
- (ii) there is hazardous substances consent for its presence but the quantity present exceeds the maximum quantity permitted by the consent;
- (b) if there is or has been a failure to comply with a condition subject to which a hazardous substances consent was granted.
- (3) In paragraph (1) “the appropriate person” means—
 - (a) in relation to a contravention falling within sub-paragraph (a) of paragraph (2)—
 - (i) any person knowingly causing the substance to be present on, over or under the land;
 - (ii) any person allowing it to be so present; and
 - (b) in relation to a contravention falling within sub-paragraph (a) or (b) of that paragraph, the person in control of the land.
- (4) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, and if the contravention is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which it continues.
- (5) In any proceedings for an offence under this Article it shall be a defence for the accused to prove—
 - (a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or
 - (b) that commission of the offence could be avoided only by the taking of action amounting to a breach of a statutory duty.
- (6) In any proceedings for an offence consisting of a contravention falling within paragraph (2)(a), it shall be a defence for the accused to prove that at the time of the alleged commission of the offence he did not know, and had no reason to believe,—
 - (a) if the case falls within sub-paragraph (a)(i)—
 - (i) that the substance was present; or
 - (ii) that it was present in a quantity equal to or exceeding the controlled quantity;
 - (b) if the case falls within sub-paragraph (a)(ii), that the substance was present in a quantity exceeding the maximum quantity permitted by the consent.
- (7) In any proceedings for an offence consisting of a contravention falling within paragraph (2)(b), it shall be a defence for the accused to prove that he did not know, and had no reason to believe, that there was a failure to comply with a condition subject to which hazardous substances consent had been granted.

Emergencies

- 37J.**—(1) If it appears to the Department—
- (a) either—
 - (i) that the community or part of it is being or is likely to be deprived of an essential service or commodity; or
 - (ii) that there is or is likely to be a shortage of such a service or commodity affecting the community or part of it; and

(b) that the presence of a hazardous substance on, over or under land specified in the direction in circumstances such that hazardous substances consent would be required, is necessary for the effective provision of that service or commodity, it may direct that, subject to such conditions or exceptions as it thinks fit, the presence of the substance on, over or under the land is not to constitute a contravention of hazardous substances control so long as the direction remains in force.

(2) A direction under this Article—

- (a) may be withdrawn at any time;
- (b) shall in any case cease to have effect at the end of the period of three months beginning with the day on which it was given, but without prejudice to the Department's power to give a further direction.

(3) The Department shall send a copy of any such direction to the district council in whose area any land affected by the direction is situated and to the Department of Economic Development.

Health and safety requirements

37K.—(1) Nothing in—

- (a) any hazardous substances consent granted or deemed to be granted under—
 - (i) the preceding provisions of this Order; or
 - (ii) paragraph 4 of Schedule 2 to the Planning and Building Regulations (Amendment) (Northern Ireland) Order 1990; or
- (b) any hazardous substances contravention notice issued under Article 50AB,

shall require or allow anything to be done in contravention of any of the relevant statutory provisions or any prohibition notice or improvement notice served under or by virtue of any of those provisions; and to the extent that such a consent or notice purports to require or allow any such thing to be done, it shall be void.

(2) Where it appears to the Department after it has granted, or is deemed to have granted, a hazardous substances consent or has issued a hazardous substances contravention notice that the consent or notice or part of it is rendered void by paragraph (1), the Department shall, as soon as is reasonably practicable, consult the Department of Economic Development with regard to the matter.

(3) If that Department advises the Department that the consent or notice is rendered wholly void, the Department shall revoke it.

(4) If that Department advises that part of the consent or notice is rendered void, the Department shall so modify it as to render it wholly operative.

(5) In this Article “relevant statutory provisions”, “improvement notice” and “prohibition notice” have the same meanings as in the Health and Safety at Work (Northern Ireland) Order 1978(6).”.

Appeal against enforcement notice by person in occupation of land by virtue of a licence

15. In Article 43 of the Planning Order (appeal against enforcement notice) in paragraph (1) after the word “relates” there shall be inserted the words “or a person to whom paragraph (1A) applies” and after that paragraph there shall be inserted the following paragraph—

“(1A) This paragraph applies to a person who—

- (a) on the date on which the enforcement notice is issued occupies the land to which it relates by virtue of a licence in writing; and
- (b) continues to occupy the land as aforesaid when the appeal is brought.”.

Appeal against listed building enforcement notice

16.—(1) In Article 50(1) of the Planning Order (appeal against listed building enforcement notice)—

- (a) after the word “relates” there shall be inserted the words “or a person to whom paragraph (1A) applies”;
- (b) for sub-paragraph (d) there shall be substituted the following sub-paragraph—

“(d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;”.

(2) In Article 50 of the Planning Order after paragraph (1) there shall be inserted the following paragraph—

“(1A) This paragraph applies to a person who—

- (a) on the date on which the listed building enforcement notice is issued occupies the building to which it relates by virtue of a licence in writing; and
- (b) continues to occupy the building as aforesaid when the appeal is brought.”.

Urgent works to preserve buildings

17. After Article 50A of the Planning Order there shall be inserted the following Article—

“Urgent works to preserve building

50AA.—(1) Where it appears to the Department that works are urgently necessary for the preservation of—

- (a) a listed building, or
- (b) a building in respect of which a direction has been given by the Department that this Article shall apply,

the Department may, subject to the following provisions of this Article, execute the works, which may consist of or include works for affording temporary support or shelter for the building.

(2) The ground on which the Department may give a direction that this Article shall apply to a building is that the building is in a conservation area and it appears to the Department that its preservation is important for maintaining the character or appearance of the conservation area.

(3) If the building is occupied works may be carried out only to those parts which are not in use.

(4) The owner of the building shall be given not less than seven days' notice in writing of the intention to carry out the works and the notice shall describe the works proposed to be carried out.

(5) Paragraphs (6) to (10) have effect for enabling the expenses of works executed under this Article to be recovered by the Department.

- (6) The Department may give notice to the owner of the building requiring him to pay the expenses of the works.
- (7) Where the works consist of or include works for affording temporary support or shelter for the building—
 - (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used; and
 - (b) notices under paragraph (6) in respect of any such continuing expenses may be given from time to time.
- (8) The owner may within 28 days of the service of the notice appeal to the planning appeals commission against the notice on any of the following grounds—
 - (a) that some or all of the works were unnecessary for the preservation of the building;
 - (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time;
 - (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause him hardship.
- (9) The planning appeals commission shall give notice of its determination, the reasons for it and the amount recoverable to the owner of the building and to the Department and the determination of the appeals commission shall be final.
- (10) Any expenses recoverable by the Department under this Article shall be a civil debt recoverable summarily.”.

Hazardous substances contravention notices

18. After Article 50AA of the Planning Order there shall be inserted the following Article—

“Hazardous substances contravention notice

50AB.—(1) Subject to paragraph (2), where it appears to the Department that there is or has been a contravention of hazardous substances control, it may issue a hazardous substances contravention notice if it considers it expedient to do so having regard to any material consideration.

(2) The Department shall not issue a hazardous substances contravention notice where it appears to the Department that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.

- (3) In this Order “hazardous substances contravention notice” means a notice—
 - (a) specifying an alleged contravention of hazardous substances control; and
 - (b) requiring such steps as may be specified in the notice to be taken to remedy the contravention.
- (4) A copy of a hazardous substances contravention notice shall be served—
 - (a) on the owner and on the occupier of the land to which it relates;
 - (b) on any person other than the owner or occupier who appears to the Department to be in control of that land; and
 - (c) on such other persons as may be prescribed.
- (5) A hazardous substances contravention notice shall also specify—
 - (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect;

- (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.
- (6) Where the Department issues a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of paragraph (3)(b), if the Department thinks it expedient, include a requirement that the hazardous substance be removed from the land.
- (7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substance which is required to be removed.
- (8) The Department may withdraw a hazardous substances contravention notice (without prejudice to its power to issue another) at any time before it takes effect.
- (9) If the Department does so, it shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.
- (10) The Department shall by regulations provide for—
 - (a) appeals to the planning appeals commission against hazardous substances contravention notices;
 - (b) the persons by whom, grounds upon which and time within which such an appeal may be brought;
 - (c) the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of Articles 43 to 43B.
- (11) If any person appeals against a hazardous substances contravention notice, the notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (12) The Department may by regulations—
 - (a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by this Article;
 - (b) direct that any of the provisions of Articles 44 to 48 and 67 shall have effect in relation to hazardous substances contravention notices subject to such modifications as it may specify in the regulations;
 - (c) make such other provision as it considers necessary or expedient in relation to hazardous substances contravention notices.”.

Enforcement of discontinuance orders

19. After Article 50B of the Planning Order there shall be inserted the following Article—

“Enforcement of orders under Article 29A

50C.—(1) Any person who, without the grant of planning permission in that behalf, uses land, or causes or permits land to be used—

- (a) after the expiry of the period allowed for compliance with an order under Article 29A, for any purpose for which an order under that Article has required that its use shall be discontinued; or
- (b) in contravention of any condition imposed by such an order by virtue of paragraph (1)(a) of that Article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If the use is continued after the conviction of a person of an offence under paragraph (1), he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the use is so continued.

(3) It shall be a defence for a person charged with an offence under paragraph (1) or (2) to prove that he took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.

(4) If in any case the defence provided by paragraph (3) involves an allegation that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending seven days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

(5) If any steps required by an order under Article 29A to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, a person authorised in writing by the Department may enter the land and take those steps, and the Department may recover from the person who is then the owner of the land any expenses reasonably incurred by it in that behalf; and those expenses shall be a civil debt recoverable summarily.

(6) Where a copy of an order under Article 29A has been served on the person who, at the time when the copy was served on him, was the owner of the land to which the order relates, then, if any steps required by the order to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) If a person against whom proceedings are brought under paragraph (6) has, at some time before the end of the period allowed for compliance with the order, ceased to be the owner of the land, he shall, upon a complaint duly made by him and on giving to the prosecution not less than three days' notice of his intention, be entitled to have the person who then became the owner of the land (in paragraph (8) referred to as "the subsequent owner") brought before the court in the proceedings.

(8) If after it has been proved, in a case to which paragraph (7) applies, that any steps required by the order under Article 29A have not been taken within the period allowed for compliance with the order, the original defendant proves that the failure to take those steps was attributable, in whole or in part, to the default of the subsequent owner—

- (a) the subsequent owner may be convicted of the offence; and
- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the order, shall be acquitted of the offence.

(9) If after a person has been convicted of an offence under paragraphs (6) to (8) he does not as soon as practicable do everything in his power to secure compliance with the order under Article 29A in so far as it requires steps to be taken for the alteration or removal of any buildings or works, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day following his first conviction on which any requirements of the order remain unfulfilled.

(10) Any reference in this Article to the period allowed for compliance with an order under Article 29A, is a reference to the period specified in the order for compliance

therewith or such extended period as may be allowed by the Department for compliance with the notice.”.

Acquisition of land for planning purposes

- 20.** In Article 54 of the Planning Order (acquisition of land for planning purposes)—
- (a) in paragraph (1)(a) for the words from “in order to secure the treatment” to the end there shall be substituted the words “in connection with a development scheme; or”; and
 - (b) paragraph (8) shall cease to have effect.

Compensation in respect of orders under Article 29A or 37G(3) of the Planning Order

- 21.** After Article 65 of the Planning Order there shall be inserted the following Article—

“Compensation in respect of orders under Article 29A or 37G(3)

65A.—(1) This Article shall have effect where—

- (a) an order is made under Article 29A requiring a use of land to be discontinued, or imposing conditions on the continuance thereof, or requiring any building or works on land to be altered or removed; or
- (b) an order is made under Article 37G(3) revoking or modifying a hazardous substances consent for the presence of a hazardous substance on, over or under land.

(2) If, on a claim made to the Department in accordance with paragraph (6), it is shown that any person has suffered damage in consequence of the order by depreciation of the value of an interest in the land to which he is entitled or by being disturbed in his enjoyment of the land, the Department shall pay to that person compensation in respect of that damage.

(3) Without prejudice to paragraph (2), any person who carries out any works in compliance with an order under Article 29A or Article 37G(3) shall be entitled, on a claim made to the Department in accordance with paragraph (6), to recover from the Department compensation in respect of any expenses reasonably incurred by him in that behalf.

(4) Any compensation payable to a person under this Article in respect of such an order as is mentioned in paragraph (1)(a) or (b) shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.

(5) No compensation shall be payable under this Article in respect of an order under Article 29A if—

- (a) a purchase notice in respect of an estate in land is served in consequence of such an order; and
- (b) that estate is purchased by the Department in accordance with Part IX.

(6) A claim under paragraph (2) or (3) shall be made in writing to the Department within 6 months from the date of the order in respect of which the claim is made or within such extended period as the Department may allow.

(7) Any question of disputed compensation under this Article shall be determined by the Lands Tribunal.”.

Purchase notices

- 22.—**(1) For Articles 70 and 71 of the Planning Order there shall be substituted the following Articles—

“Service of purchase notice

70.—(1) Where—

- (a) on an application for planning permission to develop any land, permission is refused or is granted subject to conditions; or
- (b) by an order under Article 29 planning permission in respect of any land is revoked, or is modified by the imposition of conditions,

then if any owner of the land claims—

- (i) that the land has become incapable of reasonably beneficial use in its existing state; and
- (ii) in a case where planning permission was granted subject to conditions, or was modified by the imposition of conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions; and
- (iii) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been granted,

he may serve on the Department a notice requiring the Department to purchase his estate in the land in accordance with this Part.

(2) Where—

- (a) on an application for listed building consent in respect of a building, consent is refused or is granted subject to conditions; or
- (b) by an order under Article 35, listed building consent in respect of a building is revoked or is modified by the imposition of conditions,

then if any owner of the land claims—

- (i) that the land has become incapable of reasonably beneficial use in its existing state; and
- (ii) in a case where consent was granted subject to conditions with respect to the execution of the works or, as the case may be, was modified by the imposition of such conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the works in accordance with those conditions; and
- (iii) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other works for which listed building consent has been granted,

he may serve on the Department a notice requiring the Department to purchase his estate in the land in accordance with this Part.

(3) If any person entitled to an estate in land in respect of which an order is made under Article 29A claims—

- (a) that by reason of the order the land is incapable of reasonably beneficial use in its existing state; and
- (b) that it cannot be rendered capable of reasonably beneficial use by the carrying out of any development for which planning permission has been granted, whether by that order or otherwise,

he may serve on the Department a notice requiring the Department to purchase his estate in the land in accordance with this Part.

(4) A notice under this Article—

(a) shall be served within the time and in the manner specified by a development order; and

(b) is referred to in this Order as a “purchase notice”.

(5) Where, for the purpose of determining whether the conditions in paragraph (1)(i) to (iii), paragraph (2)(i) to (iii) or paragraph (3)(a) and (b) are fulfilled in relation to any land, any question arises as to what is a reasonably beneficial use of that land, then in determining that question for that purpose no account shall be taken of any prospective use of that land which would involve the carrying out of new development as defined in section 43(1) of the Act of 1965, or of any works requiring listed building consent which might be executed to the building.

(6) For the purposes of this Article, the conditions referred to in Articles 25, 26 and 33A shall be disregarded.

(7) A person on whom there has been served a repairs notice under Article 86(4) shall not in any case be entitled to serve a purchase notice in respect of the building in question until the expiration of three months beginning with the date of the service of the repairs notice; and if during that period the Department commences proceedings for the compulsory acquisition of the building in the exercise of its powers under Article 86, that person shall not be so entitled unless and until those proceedings are discontinued.

(8) In paragraph (2) and in the other provisions of this Part as they apply for the purposes of a purchase notice served under paragraph (2) “the land” means the building in respect of which listed building consent has been refused, or granted subject to conditions, or revoked or modified by the imposition of conditions, and in respect of which its owner serves a notice under paragraph (2), together with any land comprising the building, or contiguous or adjacent to it, and owned with it, being land as to which the owner claims that its use is substantially inseparable from that of the building and that it ought to be treated, together with the building, as a single holding.

Action by Department following service of purchase notice

71.—(1) Where a purchase notice is served on the Department, it shall serve on the person by whom the notice was served—

- (a) a notice that the Department is willing to comply with the purchase notice; or
- (b) a counter-notice, objecting to the purchase notice, stating that for the reasons specified the Department is not willing to comply with the purchase notice; or
- (c) a counter-notice, objecting to the purchase notice and stating that the Department considers that—
 - (i) in the case of a purchase notice served under Article 70(1) or (3), planning permission for any other development might reasonably be expected to be granted, being development which in the opinion of the Department would if carried out render the land capable of reasonably beneficial use;
 - (ii) in the case of a purchase notice served under Article 70(2), listed building consent for any other works might reasonably be expected to be granted, being works which in the opinion of the Department would if carried out render the land capable of reasonably beneficial use.

(2) The Department shall comply with paragraph (1)—

- (a) in any case where an appeal under Article 23, 43 or 50 or paragraph 7 of Schedule 1A relating to the land—
 - (i) is pending on the date on which the purchase notice was served; or

- (ii) is made within two months of that date,
within two months of the date on which the appeal is disposed of;
- (b) in any other case, within two months of the date on which the purchase notice was served.”.

(2) In Article 74 of the Planning Order (effect of valid purchase notice) after paragraph (3) there shall be inserted the following paragraph—

“(3A) A person who has served a purchase notice in relation to an estate in land may withdraw that notice at any time before the amount to be paid for the estate has been agreed with the Department or determined by the Lands Tribunal or at any time before the end of six weeks beginning with the date on which that amount is so agreed or determined; and where a purchase notice is withdrawn by virtue of this paragraph any contract deemed to have been made under paragraph (1) in consequence thereof shall be deemed not to have been made.”.

Compulsory acquisition of listed buildings

23.—(1) In Article 86(1) of the Planning Order (grounds for compulsory acquisition of listed buildings) for the words from “owing” to “(isrepair” there shall be substituted the words “, in the case of a listed building to which this paragraph applies, reasonable steps are not being taken for properly preserving it”.

(2) At the end of Article 86 of the Planning Order there shall be added the following paragraphs—

“(4) The Department shall not commence proceedings for the compulsory acquisition of a building under this Article unless at least two months previously it has served on the owner of the building, and not withdrawn, a notice (in this Article referred to as a “repairs notice”)—

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

(5) Where the Department has served a repairs notice, the demolition of the building thereafter shall not prevent the Department from being authorised under this Article to acquire compulsorily the site of the building, if the Department is satisfied that it would have made a vesting order in respect of the building had it not been demolished.

(6) The Department may at any time withdraw a repairs notice served by it; and if it does so, it shall forthwith give notice of the withdrawal to the person who was served with the repairs notice.”.

Appointment of assessors

24. In Article 89 of the Planning Order (procedure of appeals commission) for paragraph (1) there shall be substituted the following paragraphs—

“(1) Where, under this Order or any other transferred provision, the appeals commission may determine an appeal—

- (a) the appeal shall be heard by such member of the appeals commission as the chief commissioner may appoint in that behalf;
- (b) except where an appeal is to be decided solely by reference to written representations, the chief commissioner may, after consultation with the appeals commission and the Department, appoint an assessor to sit with the member

appointed under sub-paragraph (a) at the appeal to advise him on any matters arising;

- (c) notwithstanding sub-paragraphs (a) and (b), any decision on the appeal shall be made by the appeals commission.

(1A) Where, under this Order or any other transferred provision, the appeals commission may hold an inquiry or hearing—

- (a) the inquiry or hearing shall be held by such member of the appeals commission as the chief commissioner may appoint in that behalf;
- (b) the chief commissioner may, after consultation with the appeals commission and the Department, appoint an assessor to sit with the member appointed under sub-paragraph (a) at the inquiry or hearing to advise him on any matters arising;
- (c) notwithstanding sub-paragraphs (a) and (b), any report on the inquiry or hearing shall be made by the appeals commission.

(1B) The appeals commission may pay to any assessor appointed under paragraph (1) (b) or (1A)(b) such fees and allowances as the commission, with the approval of the Department, may approve.”.

Crown land

25. After Part XIV of the Planning Order there shall be inserted the following Part—
“PART XIVA

CROWN LAND

Application to Crown land

97A.—(1) Notwithstanding any interest of the Crown in Crown land, but subject to the following provisions of this Article—

- (a) a development plan adopted under Part II may include proposals relating to the use of Crown land, and any power to acquire land compulsorily under Article 54 or 86 may be exercised in relation to any estate therein which is for the time being held otherwise than by or on behalf of the Crown;
- (b) any restrictions or powers imposed or conferred by Part IV, Part V, Part VI or Part IX shall apply and be exercisable in relation to Crown land, to the extent of any estate therein for the time being held otherwise than by or on behalf of the Crown;
- (c) a building which for the time being is Crown land may be included in a list compiled by the Department under Article 31.

(2) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of paragraph (1)(b) so far as applicable to Parts IV to VI as having an estate in land.

(3) No enforcement notice shall be issued under Article 42 in respect of development carried out by or on behalf of the Crown on land which was Crown land at the time when the development was carried out.

(4) No listed building enforcement notice shall be issued in respect of works executed by or on behalf of the Crown in respect of a building which was Crown land at the time when the works were executed.

Application for planning permission, etc. in anticipation of disposal of Crown land

97B.—(1) This Article has effect for the purpose of enabling Crown land, or an estate in Crown land, to be disposed of with the benefit of—

- (a) planning permission, listed building consent, hazardous substances consent or conservation area consent; or
- (b) a determination under Article 30 or 35A.

(2) Notwithstanding the estate of the Crown in the land in question, an application for any such permission, consent or determination as is mentioned in paragraph (1) may be made—

- (a) in the case of land—
 - (i) belonging to Her Majesty in right of the Crown and under the management of a Northern Ireland department; or
 - (ii) belonging to a Northern Ireland department or held in trust for Her Majesty for the purposes of a Northern Ireland department,by the Commissioner of Valuation for Northern Ireland or by a person authorised by that department in writing;
- (b) in any other case, by the appropriate authority or a person authorised by that authority in writing;

and, subject to paragraphs (3) to (6), all the statutory provisions relating to the making and determination of any such application shall accordingly apply as if the land were not Crown land.

- (3) Any planning permission granted by virtue of this Article shall apply only—
 - (a) to development carried out after the land in question has ceased to be Crown land; and
 - (b) so long as that land continues to be Crown land, to development carried out by virtue of a private estate in the land;

and any listed building consent or conservation area consent granted by virtue of this Article shall apply only to works carried out as aforesaid.

- (4) Any hazardous substances consent granted by virtue of this Article shall apply only—
 - (a) to the presence of the substance to which the consent relates after the land in question has ceased to be Crown land; and
 - (b) so long as that land continues to be Crown land, to the presence of the substance by virtue of a private estate in the land.

(5) In relation to any application made by virtue of this Article for a determination under Article 30, that Article shall have effect as if for any reference to an application for planning permission being, or not being, required there were substituted a reference to such an application being, or not being, required in the event of the proposed operations or change of use being carried out or made otherwise than by or on behalf of the Crown.

- (6) The Department may by regulations—
 - (a) modify or exclude any of the statutory provisions referred to in paragraph (2) in their application by virtue of that paragraph and any other statutory provisions in their application to permissions, consents or determinations granted or made by virtue of this Article;
 - (b) make such other provision in relation to the making and determination of applications by virtue of this Article as it thinks necessary or expedient.

(7) This Article shall not be construed as affecting any right to apply for any such permission, consent or determination as is mentioned in paragraph (1) in respect of Crown land in a case in which such an application can be made by virtue of a private estate in the land.

Tree preservation orders in anticipation of disposal of Crown land

97C.—(1) The Department may make a tree preservation order in respect of Crown land in which no estate is for the time being held otherwise than by or on behalf of the Crown if the Department considers it expedient to do so for the purpose of preserving trees or woodlands on the land in the event of its ceasing to be Crown land or becoming subject to a private estate.

(2) A tree preservation order made by virtue of this Article shall not take effect until the land in question ceases to be Crown land or becomes subject to a private estate, whichever first occurs.

(3) On the occurrence of any event by virtue of which a tree preservation order takes effect in accordance with paragraph (2) the appropriate authority shall as soon as practicable give to the Department a notice in writing of the name and address of the person who has become entitled to the land in question or to a private estate in it.

(4) The procedure prescribed under Article 39(2) in connection with the making and confirmation of a tree preservation order shall apply as if the order had been made on the date on which notice is received by the Department under paragraph (3).

Control of development on Crown land

97D.—(1) This Article applies to development of Crown land carried out otherwise than by or on behalf of the Crown at a time when no person is entitled to occupy it by virtue of a private estate.

(2) Where it appears to the Department that development to which this Article applies has taken place it may, if it considers it expedient to do so having regard to the provisions of the development plan and to any other material considerations, issue a notice under this Article (a “special enforcement notice”) and serve copies of it in accordance with paragraph (5).

(3) A special enforcement notice shall specify—

- (a) the matters alleged to constitute development to which this Article applies; and
- (b) the steps which the Department requires to be taken for restoring the land to its condition before the development took place or for discontinuing any use of the land which has been instituted by the development.

(4) A special enforcement notice shall also specify the date on which it is to take effect and the period within which any such steps as are mentioned in paragraph (3)(b) are to be taken and may specify different periods for the taking of different steps.

(5) A copy of a special enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in the notice as the date on which it is to take effect—

- (a) on the person who carried out the development alleged in the notice;
- (b) on any person who is occupying the land on the date on which the notice is issued; and
- (c) on the appropriate authority;

but sub-paragraph (a) shall not apply if the Department is unable after reasonable enquiry to identify or trace the person mentioned in that sub-paragraph.

(6) Any such person as is mentioned in paragraph (5)(a) or (b) (whether or not served with a copy of the special enforcement notice) may, at any time before the date specified in the notice as the date on which it is to take effect, appeal against the notice to the planning appeals commission on the ground that the matters alleged in the notice have not taken place or do not constitute development to which this Article applies.

(7) The provisions contained in or having effect under Articles 43(3) to (7) and 43A(1) and (2) shall apply to special enforcement notices and to appeals against such notices under paragraph (6) as they apply to enforcement notices and to appeals under Article 43 and the Department may by regulations apply to special enforcement notices and appeals under that paragraph such other provisions of this Order (with such modifications as it thinks fit) as it thinks necessary or expedient.

Requirement of planning permission for continuance of use instituted by Crown

97E.—(1) The Department may in writing direct that paragraph (2) shall apply to such use of land by the Crown as is specified in the direction, being a use resulting from a material change made or proposed to be made by the Crown in the use of the land.

(2) Where a direction is given under paragraph (1) in respect of any Crown land, then, if at any time the land ceases to be used by the Crown for the purpose specified in the direction, this Order shall have effect in relation to any subsequent private use of the land as if the specified use by the Crown had required planning permission and been authorised by planning permission granted subject to a condition requiring its discontinuance at that time.

(3) The condition referred to in paragraph (2) shall not be enforceable against any person who had a private estate in the land at the time when the direction was given unless the Department has notified him of the direction and of the effect of that paragraph.

(4) References in this Article to the use of land by the Crown include references to its use on behalf of the Crown, and “private use” means use otherwise than by or on behalf of the Crown.

Interpretation of Part XIVA

97F.—(1) In this Part—

“the appropriate authority”, in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

“conservation area consent” means consent under Article 4 of the Planning (Amendment) (Northern Ireland) Order 1978(7);

“Crown estate” means an estate belonging to Her Majesty in right of the Crown, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown land” means land in which there is a Crown estate;

“government department” means a department of the Government of the United Kingdom or a Northern Ireland department;

“private estate” means an estate which is not a Crown estate.

(2) In this Part references to the disposal of an estate in Crown land include references to the grant of an estate in such land.

(3) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of Articles 97B, 97C and 97D as having an estate in land, and references in Article 97B to the disposal of an interest in Crown land, and in that Article and Articles 97C and 97D to a private estate in such land, shall be construed accordingly.”.

Grants to bodies providing assistance in relation to certain development proposals

26. After Article 100 of the Planning Order there shall be inserted the following Article—

“Grants to bodies providing assistance in relation to certain development proposals

100A.—(1) The Department may make grants to any body of persons (not being a body carried on for profit) which appears to the Department to have among its principal objectives—

- (a) furthering an understanding of the planning and other technical aspects of proposals made by any body or person for the development, redevelopment or improvement of land; and
- (b) providing assistance to the community, or to a section of the community, in relation to such proposals.

(2) Grants under paragraph (1) shall be of such amounts and subject to such terms and conditions as the Department, with the approval of the Department of Finance and Personnel, thinks fit.”.

Amendments to other enactments relating to planning

Appeal to planning appeals commission under Article 43 of the Roads (Northern Ireland) Order 1980

27. In the Roads (Northern Ireland) Order 1980(8) for Article 43 there shall be substituted the following Article—

“Appeal against decision of Department under Article 42

43.—(1) Any person aggrieved by a decision of the Department under Article 42 to withhold consent or to impose any condition on such consent may, within twenty-one days of receiving notice of the decision, appeal to the planning appeals commission by notice in writing under this Article.

(2) Before determining an appeal under this Article the planning appeals commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(3) Every notice of appeal to the planning appeals commission under this Article shall be accompanied by such fee (if any) as the Department may by regulations prescribe.”.

Effect on planning permission of modification or termination of enterprise zone scheme

28. For Article 16 of the Enterprise Zones (Northern Ireland) Order 1981(9) there shall be substituted the following Article—

“Effect on planning permission of modification or termination of scheme

16.—(1) Modifications to a scheme do not affect planning permission under the scheme in any case where the development authorised by it has been begun before the effective date of modification.

(2) Upon an area ceasing to be an enterprise zone planning permission under the scheme shall cease to have effect except in a case where the development authorised by it has been begun.

(3) Paragraphs (2) to (6) of Article 28 of the Planning (Northern Ireland) Order 1972 (termination of planning permission if completion of development is unreasonably delayed) shall apply to planning permission under the scheme where development has been begun but not completed by the time the area ceases to be an enterprise zone.

(4) Article 27(1) of that Order shall apply in determining for the purposes of this Article when development shall be taken to be begun.”

Application of certain planning enactments to Crown land

29.—(1) After Article 15 of the Planning Blight (Compensation) (Northern Ireland) Order 1981(10) there shall be inserted the following Article—

“Application to Crown land

15A.—(1) The rights conferred by this Order shall be exercisable by a person who is an owner-occupier of a hereditament or agricultural unit which is Crown land, or is a resident owner-occupier of a hereditament which is Crown land, in the same way as they are exercisable in respect of a hereditament or agricultural unit which is not Crown land, and this Order shall apply accordingly.

(2) In paragraph (1) “Crown land” has the same meaning as in Part XIVA of the Order of 1972.”

(2) Where there is a Crown estate in any land, the provisions of the Act of 1965 and of Articles 64 to 66 of the Planning Order shall have effect in relation to any private estate as if the Crown estate were a private estate.

(3) In paragraph (2) “Crown estate” and “private estate” have the same meanings as in Part XIVA of the Planning Order.

Amendments, transitional provisions and repeals

30.—(1) The statutory provisions set out in Part I of Schedule 1 shall have effect subject to the minor and consequential amendments specified in that Part.

(2) The transitional provisions in Schedule 2 shall have effect.

(3) The statutory provisions set out in Part I of Schedule 3 (which include certain provisions which are spent or no longer of any practical utility) are hereby repealed to the extent specified in the third column of that Part.

(9) 1981 NI 15

(10) 1981 NI 16

Status: *This is the original version (as it was originally made).*
