
STATUTORY INSTRUMENTS

1990 No. 1510

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

PART III

BUILDING REGULATIONS

Notification by district council of passing or rejection of plans

31. In Article 13 of the principal Order—

(a) for paragraph (3) there shall be substituted the following paragraph—

“(3) A district council with which plans are deposited in accordance with building regulations shall notify the person by or on behalf of whom the plans were deposited whether the council has passed or rejected the plans.”;

(b) after paragraph (4) there shall be added the following paragraph—

“(5) Building regulations may provide that the council shall comply with paragraph (3) within the prescribed period from the deposit of the plans or within such extended period as may, before the expiration of the prescribed period, be agreed in writing between the person by or on behalf of whom the plans were deposited and the council.”.

Relaxation of building regulations for existing works

32. After Article 15 of the principal Order there shall be inserted the following Article—

“Relaxation of building regulations for existing work

15A.—(1) This Article applies to a direction under Article 15(1)(a) that will affect the application of building regulations to work that has been carried out before the giving of the direction.

(2) Neither the Department nor a district council shall give a direction to which this Article applies if, when the application is made, there is in force an injunction or other direction given by a court that requires the work to be pulled down, removed or altered.

(3) Subject to paragraph (8), after the making of an application for a direction to which this Article applies, and until the application is withdrawn or finally disposed of, no contravention notice shall be served as regards the work to which the application relates on the ground that it contravenes the requirement to which the application relates.

(4) If an application for a direction to which this Article applies is made before the expiration of 18 months from the date of completion of the work to which the application relates, Article 18(5) shall not prevent the service of a contravention notice as regards that work at any time within a period of 3 months from the date on which the application is withdrawn or finally disposed of.

(5) Subject to paragraph (8), if an application for a direction to which this Article applies is made after a contravention notice has been served on the ground that the work to which the application relates contravenes the requirement to which the application relates (not being an application prohibited by paragraph (2)), Article 18(4) shall have effect in relation to that work as if for the reference to the period there mentioned there were substituted a reference to a period expiring 28 days after the application is withdrawn or finally disposed of.

(6) Subject to paragraph (8), if an application for a direction to which this Article applies is made after any person has, in consequence of the carrying out of the work to which the application relates in contravention of building regulations, become liable to a fine continuing from day to day, the daily fine shall not be recoverable in respect of any day after the making of the application and before it is withdrawn or finally disposed of.

(7) In a case where an application is withdrawn or is finally disposed of without any direction being given, the Department or, as the case may be, the district council may order that the daily fine shall not be recoverable in respect of any day during such further period not exceeding 28 days as may be specified in the order.

(8) Paragraphs (3), (5) and (6) do not apply to an application that is a repetition, or substantially a repetition, of a previous application under Article 15(1)(a).

(9) The giving of a direction to which this Article applies shall not affect the liability of a person for an offence committed before the giving of the direction, except so far as that liability depends on the continuation of the offence after the giving of the direction.

(10) If, before the giving of a direction to which this Article applies, a contravention notice has been served, and the contravention of building regulations by virtue of which the notice was served comes to an end when the direction is given, the district council shall not, after the giving of the direction, be entitled to proceed under Article 18(4) by virtue of that notice.”.

Contravention notices in respect of work contravening building regulations

33. For Article 18 of the principal Order there shall be substituted the following Article—

“Contravention notices in respect of work contravening building regulations

18.—(1) If any work to which building regulations apply contravenes any of those regulations, the district council of the district in which that work is being or has been done may by notice served on the owner require him—

- (a) to pull down or remove the work; or
- (b) if he so elects and the council so agrees, to effect such alterations or additions therein as may be necessary to make the work comply with the requirements of building regulations.

(2) A notice under this Article is in this Order referred to as “a contravention notice”.

(3) Where a district council has power to serve a contravention notice on the owner of any work, it may in addition or instead serve such a notice on one or more of the following persons, namely—

- (a) the occupier;
- (b) the person executing the work;
- (c) the person causing the work to be executed;
- (d) any other person appearing to the council to have control over the work.

(4) If any person on whom a contravention notice is served fails to comply with the notice before the expiration of 28 days from the date on which the notice is served, the district council may pull down or remove the work in question or effect such alterations or additions therein as it deems necessary to make the work conform with building regulations and the council may recover from that person the expenses reasonably incurred by the council in so doing.

(5) A contravention notice shall not be served after the expiration of 18 months from the date of completion of the work in question.

(6) Where—

- (a) plans of any proposed work have, in accordance with building regulations, been deposited with, and passed by, a district council; and
- (b) work has been executed in accordance with the plans and any requirement made by the district council as a condition of passing the plans,

it shall not be open to the district council to serve a contravention notice on the ground that that work contravenes any building regulations; but nothing in this paragraph shall be taken to prevent such a notice from being served (before the expiration of 18 months from the completion of the work) in respect of anything of which particulars were not required to be shown in the plans.

(7) A district council may at any time withdraw a contravention notice without prejudice to its power to serve another; and if a council withdraws a contravention notice—

- (a) it shall forthwith give notice of the withdrawal to the person on whom the contravention notice was served; and
- (b) the council shall not after the withdrawal be entitled to proceed under paragraph (4) by virtue of the contravention notice.

(8) This Article does not affect the right of a district council, the Attorney General or any other person to apply for an injunction for the removal or alteration of any work on the ground that it contravenes any building regulations but if—

- (a) the work is one in respect of which plans were deposited;
- (b) the plans were passed by the district council; and
- (c) the work has been executed in accordance with the plans,

the court on granting an injunction has power to order the district council to pay to the owner of the work such compensation as the court thinks just, but before making any such order the court shall in accordance with rules of court cause the council, if not a party to the proceedings, to be joined as a party to them.”.

Obtaining of report where contravention notice served

34. After Article 18 of the principal Order there shall be inserted the following Article—

“Obtaining of report where contravention notice served

18A.—(1) In a case where—

- (a) before the expiry of the period of 28 days referred to in Article 18(4), a person on whom a contravention notice has been served gives to the district council by which the notice was served notice of his intention to obtain from a suitably qualified person a written report concerning work to which the contravention notice relates; and

- (b) such a report is obtained and submitted to the council before the expiry of the period of 56 days from the date on which the contravention notice was served; and
- (c) as a result of its consideration of the report the council withdraws the contravention notice,

the council may pay to the person on whom the contravention notice was served such amount as appears to it to represent the expenses reasonably incurred by him in consequence of the council's having served that notice including, in particular, his expenses in obtaining the report.

(2) If a person on whom a contravention notice has been served gives notice under paragraph (1)(a), then,—

- (a) so far as regards the matters to which the contravention notice relates, the reference to 28 days in Article 18(4) shall be construed as a reference to 70 days;
- (b) the district council shall not be entitled to proceed under Article 18(4) unless—
 - (i) a report is not submitted to it in accordance with paragraph (1)(b); or
 - (ii) a report is so submitted and the council has notified that person in writing that, after consideration of the report, it has decided not to withdraw the contravention notice.”.

Appeal against contravention notice

35. After Article 18A of the principal Order there shall be inserted the following Article—

“Appeal against contravention notice

18B.—(1) Any person aggrieved by a contravention notice served on him may by notice in writing appeal to the Department.

- (2) An appeal under this Article shall be brought—
 - (a) within 28 days of the service of the contravention notice; or
 - (b) in a case where the person on whom the contravention notice was served gives notice under Article 18A(1)(a), within 70 days of the service of the contravention notice.
- (3) On an appeal under this Article the Department shall—
 - (a) if it determines that the district council was entitled to serve the contravention notice, confirm the notice; and
 - (b) in any other case, give the council a direction to withdraw the notice.
- (4) Where an appeal is brought under this Article—
 - (a) the contravention notice shall be of no effect pending the final determination or withdrawal of the appeal; and
 - (b) Article 18(4) shall have effect in relation to that notice as if for the words “from the date on which the notice is served” there were substituted the words “beginning, in a case where an appeal is brought under Article 18B, on the date when the appeal is finally determined or, as the case may be, withdrawn”.
- (5) If on an appeal under this Article—
 - (a) there is produced to the Department a report that has been submitted to the district council under Article 18A(1); and
 - (b) the Department gives a direction under paragraph (3)(b),

the Department may further direct the council to pay to the person on whom the contravention notice was served such amount as appears to the Department to represent the expenses reasonably incurred by that person in obtaining the report.

(6) It shall be the duty of a district council to comply with any direction given to it by the Department under this Article .

(7) The decision of the Department on an appeal under this Article shall be final and conclusive, except on any question of law.

(8) Any question of law arising in connection with the determination by the Department of an appeal under this Article may, if the Department thinks fit, be referred for decision to the Court of Appeal and, where the Department decides so to refer such a question, it shall give notice of its intention to do so to the appellant and the district council.

(9) An appellant or district council aggrieved by a decision of the Department on a point of law arising on an appeal under this Article which is not referred for decision to the Court of Appeal under paragraph (8) may appeal from that decision to the Court of Appeal.

(10) The decision of the Court of Appeal on a point of law referred to it under paragraph (8) or (9) shall be final.”.

Appeals to Department: procedure and fees

36. After Article 18B of the principal Order there shall be inserted the following Article—

“Appeals to Department: procedure and fees

18C.—(1) Building regulations may make provision—

- (a) with respect to the procedure to be followed in connection with appeals to the Department under this Order;
- (b) for the payment of a fee of the prescribed amount in respect of an appeal to the Department under this Order;
- (c) for the remission of a prescribed fee (in whole or in part) in prescribed circumstances;
- (d) for appeals to the Department from decisions of district councils in cases where no appeal is provided for under this Order.

(2) Every notice of appeal to the Department under this Order shall be accompanied by the prescribed fee (if any).”.

Penalties for offences under principal Order

37.—(1) For Article 21 of the principal Order there shall be substituted the following Article—

“Penalties

21.—(1) Any person who contravenes—

- (a) any provision contained in building regulations; or
- (b) a contravention notice,

shall be guilty of an offence under this Order.

(2) Any person guilty of an offence—

- (a) under Article 11(6) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale;

(b) under any other provision of this Order shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale and to a further fine not exceeding one-tenth of level 5 on the standard scale for each day during which the offence continues after he is convicted.

(3) The court by which a person is originally convicted of an offence referred to in paragraph (2)(b) may fix a reasonable period from the date of conviction for the defendant to comply with any directions given by the court and where the court has fixed such a period, the daily fine referred to in paragraph (2)(b) shall not be recoverable in respect of any day before the period expires.”

(2) The increase by virtue of paragraph (1) in the amount of the daily fine applies to every day after the coming into operation of this Article, notwithstanding that the offence began before.

Amendments and repeals

38.—(1) The principal Order shall have effect subject to the minor and consequential amendments specified in Part II of Schedule 1.

(2) The statutory provisions set out in Part II of Schedule 3 are hereby repealed to the extent specified in the third column of that Part.