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STATUTORY INSTRUMENTS

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**1995 No. 1625**

**Historic Monuments and Archaeological  
Objects (Northern Ireland) Order 1995**

**PART II**

**HISTORIC MONUMENTS**

*Protection of scheduled monuments*

**Schedule of monuments**

**3.—**(1) The Department shall for the purposes of this Order compile and maintain in such form as it thinks fit a schedule specifying such monuments as it thinks fit.

(2) In this Order—

“the Schedule” means the schedule compiled and maintained under paragraph (1);

“scheduled monument” means a monument which is for the time being specified in the Schedule.

(3) Subject to paragraph (5), the Department shall on first compiling the Schedule include therein—

(a) any monument which, immediately before the coming into operation of this Order, is included in a schedule prepared under section 7(1) of the Historic Monuments Act (Northern Ireland) 1971<sup>(1)</sup>; and

(b) any monument in respect of which the Department has before the coming into operation of this Order served notice on any person in accordance with section 7(2) of that Act of its intention to include it in such a schedule.

(4) Subject to paragraphs (5) and (6), at any time thereafter the Department may—

(a) include any monument in the Schedule;

(b) remove any monument from the Schedule;

(c) amend any entry in the Schedule relating to a monument (whether by removing anything previously included as part of the monument or adding anything not previously so included, or otherwise).

(5) The Department shall not at any time include in the Schedule any structure which is occupied as a dwelling house by any person other than a person employed as a caretaker thereof or his family.

(6) Before taking any action under paragraph (4)(a) or (b) the Department shall consult the Historic Monuments Council.

(7) As soon as may be after taking any action under paragraph (4) (a), (b) or (c) in relation to a monument, the Department shall inform the owner and (if the owner is not the occupier) the occupier

of the monument of the action taken and, in the case of action under paragraph (4)(a) or (c), shall also send to him or them a copy of the entry or (as the case may be) of the amended entry.

(8) The Department shall from time to time publish a list of all the monuments which are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list published in sections, all sections of the list need not be published simultaneously.

(9) The Department may from time to time publish amendments of any list published under paragraph (8) and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being—

- (a) of the monuments listed; and
- (b) of any matters purporting to be reproduced in the list from the entries in the Schedule relating to the monuments listed.

### **Control of works affecting scheduled monuments**

4.—(1) If any person executes or causes or permits to be executed any works to which this Article applies he shall be guilty of an offence unless the works are authorised under this Part.

(2) This Article applies to any of the following works, that is to say—

- (a) any works resulting in the demolition, destruction or disturbance of, or any damage to, a scheduled monument;
- (b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto; and
- (c) any flooding or tipping operations on land in, on or under which there is a scheduled monument.

(3) Without prejudice to any other authority to execute works conferred under this Part, works to which this Article applies are authorised under this Part if—

- (a) the Department has granted written consent (referred to in this Order as “scheduled monument consent”) for the execution of the works; and
- (b) the works are executed in accordance with the terms of the consent and of any conditions attached to the consent.

(4) Scheduled monument consent may be granted either unconditionally or subject to conditions (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).

(5) Without prejudice to the generality of paragraph (4), a condition attached to a scheduled monument consent may require that the Department or a person authorised by the Department be afforded an opportunity, before any works to which the consent relates are begun, to examine the monument and its site and carry out such excavations therein as appear to the Department to be desirable for the purpose of archaeological investigation.

(6) Without prejudice to paragraph (1), if a person executing or causing or permitting to be executed any works to which a scheduled monument consent relates fails to comply with any condition attached to the consent he shall be guilty of an offence, unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.

(7) In any proceedings for an offence under this Article in relation to works within paragraph (2) (a) it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to or disturbance of the monument.

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

- (a) that the works were urgently necessary in the interests of safety and health or for the preservation of the scheduled monument;
  - (b) that the works carried out were limited to the minimum measures immediately necessary; and
  - (c) that notice in writing justifying in detail the carrying out of the works was given to the Department as soon as reasonably practicable.
- (9) A person guilty of an offence under this Article shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment to a fine.
- (10) Part I of Schedule 1 shall have effect with respect to applications for, and the effect of, scheduled monument consent.

### **Grant of scheduled monument consent by order of the Department**

5.—(1) The Department may by order grant scheduled monument consent for the execution of works of any class or description specified in the order, and any such consent may apply to scheduled monuments of any class or description so specified.

(2) Any conditions attached by virtue of Article 4 to a scheduled monument consent granted by an order under this Article shall apply in such class or description of cases as may be specified in the order.

(3) The Department may direct that scheduled monument consent granted by an order under this Article shall not apply to any scheduled monument specified in the direction, and may withdraw any direction given under this paragraph.

(4) A direction under paragraph (3) shall not take effect until notice of it has been served on the occupier or (if there is no occupier) on the owner of the monument in question.

(5) References in this Order to a scheduled monument consent do not include references to a scheduled monument consent granted by an order under this Article, unless the contrary intention is expressed.

### **Duration, modification and revocation of scheduled monument consent**

6.—(1) Subject to paragraph (2), if no works to which a scheduled monument consent relates are executed or started within the period of five years beginning with the date on which the consent was granted or such longer or shorter period as may be specified for the purposes of this paragraph in the consent, the consent shall cease to have effect at the end of that period (unless previously revoked in accordance with the following provisions of this Article).

(2) Paragraph (1) does not apply to a scheduled monument consent which provides that it shall cease to have effect at the end of a period specified therein.

(3) If it appears to the Department to be expedient to do so, it may by a direction given under this Article modify or revoke a scheduled monument consent to any extent it considers expedient.

(4) Without prejudice to the generality of the power conferred by paragraph (3) to modify a scheduled monument consent, it extends to specifying a period, or altering any period specified, for the purposes of paragraph (1), and to including a provision to the effect mentioned in paragraph (2), or altering any period specified for the purposes of any such provision.

(5) Part II of Schedule 1 shall have effect with respect to directions under this Article modifying or revoking a scheduled monument consent.

### **Execution of works for protection of a scheduled monument by Department in cases of urgency**

7.—(1) If it appears to the Department that any works are urgently necessary for the protection of a scheduled monument, it may enter the site of the monument and execute those works, after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than 48 hours notice in writing of its intention to do so.

(2) Where the Department executes works under this Article for repairing any damage to a scheduled monument—

- (a) any compensation order previously made in respect of that damage under Article 14 of the Criminal Justice (Northern Ireland) Order 1994<sup>(2)</sup> (compensation orders against convicted persons) in favour of any other person shall be enforceable (so far as not already complied with) as if it had been made in favour of the Department; and
- (b) any such order subsequently made in respect of that damage shall be made in favour of the Department.

### **Powers of entry for inspection of scheduled monuments, etc.**

8.—(1) Any person duly authorised in writing by the Department may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining its condition and—

- (a) whether any works affecting the monument are being carried out in contravention of Article 4(1); or
- (b) whether it has been or is likely to be damaged (by any such works or otherwise).

(2) Any person duly authorised in writing by the Department may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land in connection with—

- (a) any application for scheduled monument consent for works affecting that monument; or
- (b) any proposal by the Department to modify or revoke a scheduled monument consent for any such works.

(3) Any person duly authorised in writing by the Department may at any reasonable time enter any land for the purpose of—

- (a) observing the execution on the land of any works to which a scheduled monument consent relates; and
- (b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works,

so as to ensure that the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the consent.

(4) Any person duly authorised in writing by the Department may at any reasonable time enter any land on which any works to which a scheduled monument consent relates are being carried out for the purpose of—

- (a) inspecting the land with a view to recording any matters of archaeological or historical interest; and
- (b) observing the execution of those works with a view to examining and recording any objects or other material of archaeological or historical interest, and recording any matters of archaeological or historical interest, discovered during the course of those works.

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(2) 1994 NI 15

(5) Any person duly authorised in writing by the Department may enter any land in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Department to be desirable with a view to preserving the monument from accidental or deliberate damage.

(6) References in this Article to scheduled monument consent include references to consent granted by order under Article 5.

### **Compensation for refusal of scheduled monument consent**

9.—(1) Subject to the following provisions of this Article, where a person who has an estate in the whole or any part of a monument incurs expenditure or otherwise sustains any loss or damage in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to any works of a description mentioned in paragraph (2), the Department shall pay to that person compensation in respect of that expenditure, loss or damage.

References in this Article and in Article 10 to compensation being paid in respect of any works are references to compensation being paid in respect of any expenditure incurred or other loss or damage sustained in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to those works.

- (2) The following are works in respect of which compensation is payable under this Article—
- (a) works which are reasonably necessary for carrying out any development for which planning permission had been granted (otherwise than by a general development order) before the time when the monument in question became a scheduled monument and was still effective at the date of the application for scheduled monument consent;
  - (b) works which do not constitute development, or constitute development such that planning permission is granted therefor by a general development order; and
  - (c) works which are reasonably necessary for the continuation of any use of the monument for any purpose for which it was in use immediately before the date of the application for scheduled monument consent.

For the purposes of sub-paragraph (c), any use in contravention of any legal restrictions for the time being applying to the use of the monument shall be disregarded.

(3) The compensation payable under this Article in respect of any works within paragraph (2) (a) shall be limited to compensation in respect of any expenditure incurred or other loss or damage sustained by virtue of the fact that, in consequence of the Department's decision, any development for which the planning permission in question was granted could not be carried out without contravening Article 4(1).

(4) A person shall not be entitled to compensation under this Article by virtue of paragraph (2) (b) if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument.

(5) In a case where scheduled monument consent is granted subject to conditions, a person shall not be entitled to compensation under this Article by virtue of paragraph (2)(c) unless compliance with those conditions would in effect make it impossible to use the monument for the purpose there mentioned.

(6) In calculating, for the purposes of this Article, the amount of any loss or damage consisting of depreciation of the value of an estate in land—

- (a) it shall be assumed that any subsequent application for scheduled monument consent in relation to works of a like description would be determined in the same way; but
- (b) if, in the case of a refusal of scheduled monument consent, the Department, on refusing that consent, undertook to grant such consent for some other works affecting the monument

in the event of an application being made in that behalf, regard shall be had to that undertaking.

(7) Sections 32 and 33 of the Land Development Values (Compensation) Act (Northern Ireland) 1965<sup>(3)</sup> shall, subject to any necessary modifications, have effect in relation to any compensation payable under this Article in respect of any loss or damage consisting of depreciation of the value of an estate in land as they have effect in relation to compensation payable under Part III of that Act.

(8) In this Article “development” and “planning permission” have the same meanings as in the Planning (Northern Ireland) Order 1991<sup>(4)</sup> and “general development order” means an order made as mentioned in Article 13(3)(a) of that Order.

### **Recovery of compensation under Article 9 on subsequent grant of consent**

10.—(1) Subject to the following provisions of this Article, this Article applies—

- (a) in a case where compensation under Article 9 was paid in consequence of the refusal of a scheduled monument consent, if the Department subsequently grants scheduled monument consent for the execution of all or any of the works in respect of which the compensation was paid; and
- (b) in the case where compensation under that Article was paid in consequence of the granting of a scheduled monument consent subject to conditions, if the Department subsequently so modifies that consent that those conditions, or any of them, cease to apply to the execution of all or any of the works in respect of which the compensation was paid or grants a new consent in respect of all or any of those works free from those conditions, or any of them.

(2) This Article does not apply in any case unless—

- (a) the compensation paid exceeded £200; and
- (b) at or before the time when compensation is paid to any person, notice is served on him by the Department specifying the decision which gave rise to the right to compensation, the monument affected by the decision and the amount of the compensation and stating that this Article applies.

(3) In granting or modifying a scheduled monument consent in a case to which this Article applies the Department may do so on terms that no works in respect of which the compensation was paid are to be executed in pursuance of the consent until the recoverable amount has been repaid to the Department or secured to its satisfaction.

(4) Subject to paragraph (5), in paragraph (3) “the recoverable amount” means such amount (being an amount representing the whole of the compensation previously paid or such part thereof as the Department thinks fit) as the Department may specify in giving notice of its decision on the application for scheduled monument consent or (as the case may be) in the direction modifying the consent.

(5) Where a person who has an estate in the whole or any part of a monument is aggrieved by the amount specified by the Department as the recoverable amount for the purposes of paragraph (3), he may require the determination of that amount to be referred to the Lands Tribunal; and in any such case the recoverable amount for the purposes of that paragraph shall be such amount (being an amount representing the whole or any part of the compensation previously paid) as that Tribunal may determine to be just in the circumstances of the case.

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(3) 1965 c. 23 (N.I.)

(4) 1991 NI 11

### **Compensation where works affecting a scheduled monument cease to be authorised**

**11.**—(1) Subject to the following provisions of this Article, where any works affecting a scheduled monument which were previously authorised under this Part cease to be so, then, if any person who has an estate in the whole or any part of the monument—

- (a) has incurred expenditure in carrying out works which are rendered abortive by the fact that any further works have ceased to be so authorised; or
- (b) has otherwise sustained loss or damage which is directly attributable to that fact,

the Department shall pay to that person compensation in respect of that expenditure, loss or damage.

(2) Paragraph (1) only applies where the works cease to be authorised under this Part—

- (a) by virtue of the fact that a scheduled monument consent granted by order under Article 5 ceases to apply to any scheduled monument (whether by virtue of variation or revocation of the order or by virtue of a direction under paragraph (3) of that Article); or
- (b) by virtue of the modification or revocation of a scheduled monument consent by a direction given under Article 6; or
- (c) in accordance with paragraph 7 of Schedule 1, by virtue of the service of a notice of proposed modification or revocation of a scheduled monument consent under paragraph 4 of that Schedule.

(3) A person shall not be entitled to compensation under this Article in a case falling within paragraph (2)(a) unless, on an application for scheduled monument consent for the works in question, consent is refused, or is granted subject to conditions other than those which previously applied under the order.

(4) For the purposes of this Article, any expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out those works.

(5) Subject to paragraph (4), no compensation shall be paid under this Article in respect of any works carried out before the grant of the scheduled monument consent in question, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an estate in land) arising out of anything done or omitted to be done before the grant of that consent.

(6) Sections 32 and 33 of the Land Development Values (Compensation) Act (Northern Ireland) 1965<sup>(5)</sup> shall, subject to any necessary modifications, have effect in relation to any compensation payable under this Article in respect of any loss or damage consisting of depreciation of the value of an estate in land as they have effect in relation to compensation payable under Part III of that Act.

### **Proceedings for questioning validity of certain actions of Department**

**12.**—(1) If any person is aggrieved by any action on the part of the Department to which this Article applies and desires to question the validity of that action on the grounds that it is not within the powers of this Part, or that any of the relevant requirements have not been complied with in relation to it, he may within 6 weeks from the date on which that action is taken, make an application under this Article to the High Court.

(2) This Article applies to action on the part of the Department of either of the following descriptions, that is to say—

- (a) any decision of the Department on an application for scheduled monument consent; and
- (b) the giving by the Department of any direction under Article 6 modifying or revoking a scheduled monument consent.

(3) On any application under this Article the High Court—

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(5) 1965 c. 23 (N.I.)

- (a) may by interim order suspend the operation of the action, the validity whereof is questioned by the application, until the final determination of the proceedings;
  - (b) if satisfied that the action in question is not within the powers of this Part, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation thereto, may quash that action in whole or in part.
- (4) In this Article “the relevant requirements”, in relation to any action to which this Article applies, means any requirements of this Part or of any regulations made under this Part which are applicable to that action.
- (5) Except as provided by this Article, the validity of any action to which this Article applies shall not be questioned in any legal proceedings whatsoever; but nothing in this Article shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Department to take a decision on an application for scheduled monument consent.