

*These notes refer to the Planning Act (Northern Ireland)
2011 (c.25) which received Royal Assent on 4 May 2011*

Planning Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 14: Miscellaneous and General Provisions

Section 228: Review of Planning Act

This section requires the Department to review and issue a report on the implementation of the Act 3 years after the commencement of Part 3 of the Act and at least once in every 5 years after that.

Section 229: Duty to respond to consultation

This section introduces a requirement that those persons or bodies which a council or the Department are required to consult before determining certain applications for planning permission or consent must respond to consultation requests within a prescribed period. The section also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.

Section 230: Minerals

This section provides for the application of the Act to development consisting of the winning and working of minerals, subject to modifications. The circumstances under which mining operations are considered to be a “use” of land are stipulated.

Section 231: Local inquiries

This section allows the Department to hold a public inquiry when carrying out any of the functions of this Act. The provisions of the [Interpretation Act \(NI\) 1954 \(c.33\)](#) apply to these inquiries. The Department may make rules for the procedures to be followed during the inquiry process. Such rules will be subject to negative resolution.

Section 232: Inquiries to be held in public subject to certain exceptions

Given the changes in the role of the Secretary of State and the new role of the Department of Justice, following devolution of policing and justice powers, these provisions clarify the responsibilities of the Secretary of State and the

Department of Justice in relation to inquiries. The provisions deal with procedures for planning applications, etc, where, in the opinion of the Secretary of State/the Department of Justice, the consideration by a council or Department of objections or representations received in relation to the application raise issues of national security or the security of Crown or other premises and that the disclosure of related information would be contrary to the national or public interest.

The Secretary of State will have responsibility for issuing a relevant direction under section 232 in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information relating to:

- (a) national security; or
- (b) the measures taken or to be taken to ensure the security of any premises or property 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; or
- (c) measures taken or to be taken to ensure the security of any premises or property which is used for the purposes of the armed forces of the Crown or the Ministry of Defence Police.

The provisions also set out that the Department of Justice will have responsibility for issuing the relevant direction under section 232 in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information (contrary to the public interest) relating to the measures to be taken to ensure the security of any premises or property other than premises or property mentioned above.

Section 233: Directions: Secretary of State

This section sets out that the Secretary of State may direct that certain evidence may only be heard by, or be open to inspection by, certain persons. If the Secretary of State is considering giving such a direction, the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting such evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.

Section 234: Directions: Department of Justice

This section sets out that the Department of Justice may direct that certain evidence may only be heard by, or open to inspection by, certain persons. If the Department of Justice is considering giving such a direction, the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting such evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative)

to represent the interests of those people who are prevented from seeing the restricted material.

Section 235: National security

This section contains the procedures for planning applications, consents and approvals where, in the opinion of the Secretary of State or, as the case may be, the Department of Justice, the consideration by a council or the Department of objections or representations received in relation to the application raise issues of national security or matters relating to the security of Crown or other properties and the public disclosure of such information would be contrary to the national or public interest. Procedures will enable decisions to be made where, for security reasons, details of the development cannot be revealed but where to withhold such details would impact on the ability of interested parties to fully participate in the planning process. The Department will be required to hold a public local inquiry in such circumstances. The roles of the Secretary of State and the Department of Justice in relation to certification under this section are split. The Secretary of State will have responsibility for the making of rules in circumstances where he has certified under this section, the Department of Justice will have responsibility for the making of corresponding rules where that Department issues the relevant certification under this section.

Section 236: Rights of entry

This section gives councils and the Department the powers of entry they require to discharge their functions under this Act. Powers of entry are also given to the Department of Finance and Personnel and the Planning Appeals Commission in respect of their functions under this Act.

Section 237: Supplementary provisions as to powers of entry

This section sets out the obligations on a person exercising powers of entry under section 236 to provide notice to occupiers and, if required, identification on arrival. Provisions covering trade secrets and damages to property are addressed.

Section 238: Supplementary provisions as to powers of entry: Crown land

Additional provisions for the exercise of the powers of entry under section 236 when the land is owned by the Crown are contained in this section. Advance permission must be obtained from the appropriate authority.

Section 239: Service of notices and documents

This section allows for the service of notices to be completed via electronic communication where the recipient has agreed to this. Provisions are contained for permission to be withdrawn and a list of notices to which this cannot apply is listed in subsection (3).

Section 240: Information as to estates in land

This section allows a council or the Department to require occupiers of premises to provide information to them on the owner and to enable them to serve a notice or other document on the owner. Failure to give this information within the stipulated timeframe is an offence.

Section 241: Information as to estates in Crown land

This section disapplies section 240 when the land is Crown land. Powers are given to the Department to request the same information as that in section 240, and the authority must generally comply with this request.

Section 242: Planning Register

This section requires all councils to keep and make available a planning register containing copies of the items listed, which includes all applications for planning permission. A development order may require the Department to populate the register of the relevant council when an application is submitted directly to it, or it issues a notice under departmental reserved powers.

Section 243: Power to appoint advisory bodies or committees

This section allows the Minister to appoint bodies to assist the Department in any of its functions under this Act.

Section 244: Time limit for certain summary offences under this Act

This section gives jurisdiction to the magistrates' court to hear complaints on offences relating to breach of condition notices if the complaint is made within 3 years from the time when the offence was committed or ceased to continue.

Section 245: Registration of matters in Statutory Charges Register

This section sets out the matters which must be registered in the Statutory Charges Register.

Section 246: Directions

This section confirms that any directions which may or must be given by a council or the Department may be withdrawn, varied or revoked by a subsequent direction.

Section 247: Regulations and orders

This section details the Assembly controls which will apply to regulations and orders under the Act. Regulations under sections 153 and 154 must not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Section 248: Amendment of certain time periods in relation to enforcement

This section relates to the new 5 year enforcement time limit provisions contained in the Planning Act and makes similar provision in relation to the Planning (Northern Ireland) Order 1991 by means of amendments to that Order.

Initially it was planned that the provisions setting the time limits for breaches of planning control to 5 years would be commenced with the provisions of the rest of the Act and within a time scale to be agreed. This section enables the Department to bring these limits into effect in a shorter timeframe. This is achieved by amending the Planning (Northern Ireland) Order 1991. Amending provisions are required to specifically adjust Articles 23, 24, 67B, 67F, 73 and 82 of the Planning (Northern Ireland) Order 1991.

Section 249: Increased penalties for certain offences under the Planning (Northern Ireland) Order 1991

Section 249 raises fines from £30,000 to £100,000 for certain offences (relating to control of works for demolition, alteration or extension of a listed building and contravention of tree preservation orders) under Articles 44(6) and 66(1) of the Planning (Northern Ireland) Order 1991.

The section also provides that the provisions amending the Planning (Northern Ireland) Order 1991, increasing fines from £30,000 to £100,000, do not have effect in relation to any relevant offence committed before the commencement date. The increased fines are effective from Royal Assent.