

*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 3: Planning Control.

Section 23: Meaning of “development”

This section re-enacts the broad definition of the meaning of development and clarifies what is deemed to be included under the term, “building operations”. It also lists the operations or uses of land which, for the purposes of the Act, do not involve development of land. An amendment is included to exclude (for certain buildings specified by direction) structural alteration consisting of partial demolition from the definition of development.

Section 24: Development requiring planning permission

This section re-enacts the requirement for planning permission to be sought for developing land. Permission is not required to return to a former land use after planning permission which is time bound expires. Development orders can grant planning permission without applications being required. Where an enforcement notice has been issued permission is not required for the use of the land for any purpose it could have been legally used for if the development which is being enforced against had not been carried out.

Section 25: Hierarchy of Developments

A new hierarchy of developments is defined and the Department can make regulations as to the classes of development which fall into either the major developments or local developments categories. The Department can require a specific application which would normally be a local development to be dealt with as if it is a major development.

Section 26: Development’s jurisdiction in relation to developments of regional significance

This section allows the Department to make regulations as to which applications falling within the major developments category should be submitted directly to it. Where a proposed development exceeds specific thresholds set out in Regulations, the applicant must, before submitting an application for planning

permission, consult with the Department to enable the Department decide if the proposed development will fall to be determined by the Department or the relevant council. If the Department considers that the application is regionally significant based on the criteria indicated at section 26(4), then it will deal with it itself. An exception is made for urgent development by the Crown where an application can be made directly to the Department. Applications under this section follow the process similar to that previously used for Article 31 applications under the Planning (Northern Ireland) Order 1991, with the option for a public inquiry to be held by the Planning Appeals Commission or a person appointed by the Department. Alternatively the Department may issue a notice of opinion to the applicant and appropriate council indicating the decision it proposes to make. If an application raises national security or security of premises issues, an inquiry must be held. The decision of the Department is final on these applications.

Section 27: Pre-application community consultation

Obligations are placed on the developer to consult the community in advance of submitting an application if the development falls within the major category. This includes those major developments which the Department will determine because they are of regional significance. The minimum period of consultation is 12 weeks, and regulations will prescribe the minimum requirements for the developer. Additional requirements may be placed on the consultation arrangements for a particular development if a council or Department considers it appropriate.

Section 28: Pre-application community consultation report

After the community consultation in section 27, a report must be produced and this is to be submitted with the application for planning permission. Regulations can be made as to the form the report must take.

Section 29: Call in of applications, etc., to Department

This allows the Department to direct that certain applications (including those where either the Secretary of State or the Department of Justice has certified that an application raises issues relating to national security or the security of premises) be referred to it instead of being dealt with by a council. The process for determination is then the same as for the regionally significant developments mentioned in section 26, with the option for a public inquiry. An inquiry must be held if an application raises national security or security of premises issues. The decision of the Department is final for these applications.

Section 30: Pre-determination hearings

The Department may, by subordinate legislation, require a council to provide the opportunity for the applicant to have a hearing before a council, as part of the application process, for certain types of applications. The procedures for the

hearings will be decided by a council concerned, and it will decide on the parties which will have a right to attend the hearing.

Section 31: Local developments: schemes of delegation

This section requires each council to prepare a scheme of delegation, stating the application types where a decision may be taken by an appointed officer rather than a council. The scheme must be kept under regular review. The decision will have the same effect as one taken by a council. In individual cases a council will be able to decide that an application which would normally fall within this scheme be determined by a council.

Section 32: Development orders

The Department must make a development order stating the types of development which by virtue of the order are granted planning permission and those for which permission must be applied for. The grant of permission can include permission with conditions if necessary. In the case of permitted development, a council and Department will have the power to direct in relation to a particular case or area of land that the permission which would otherwise be granted by the order does not apply, and an application must be made.

Section 33: Simplified planning zones

This section makes provision for simplified planning zones by defining them and by prescribing their content and effect. The effect of a simplified planning zone is to grant planning permission for development specified in the scheme or for development of any specified class.

Section 34: Making and alteration of simplified planning zone schemes

This section enables a council to make or alter a simplified planning zone scheme at any time in any area of its district. The exception is where a scheme has been approved by the Department rather than adopted by a council. In such cases, the consent of the Department is required before a scheme may be altered by the relevant council.

In making or altering a simplified planning zone scheme councils must take account of the Regional Development Strategy, any guidance issued by the Department and any other matters either prescribed in regulations or contained in a direction given by the Department.

Section 35: Simplified planning zone schemes: conditions and limitations on planning permission

This section describes the types of conditions and limitations which may be placed on planning permission specified in a simplified planning zone scheme. It also covers the effects of a simplified planning zone on development other than that for which permission has been granted under the scheme.

Section 36: Duration of simplified planning zone scheme

This section provides that a simplified planning zone scheme shall last for a period of ten years from the date when it was adopted by a council or approved by the Department. Upon expiry of the scheme, the planning permission granted by the scheme shall no longer have effect except where development authorised by it has already been commenced.

Section 37: Alteration of simplified planning zone scheme

This section sets out the effect of alterations to an existing simplified planning zone scheme.

Section 38: Exclusion of certain descriptions of land or development

This section prescribes the areas to be excluded from a Simplified Planning Zone scheme. There are two categories: those that are mandatorily excluded by subsection (1), and those which may be excluded by order of the Department under subsection (3). The first category includes land designated as a National Park, land designated as an area of outstanding natural beauty, land declared to be an area of special scientific interest and land declared to be a national nature reserve.

Section 39: Grant of planning permission in enterprise zones

This section declares the effect of an enterprise zone designation in planning terms. It also describes the effect where modifications to an existing scheme are made. Planning permission granted under an enterprise zone scheme will not apply in relation to certain developments where a direction to that effect is made by the Department.

Section 40: Form and content of applications

The format of applications for planning permission is governed by this section. A development order may specify the information and documents which must accompany an application and the form and content of it. This section requires certain applications for planning permission and consent to be accompanied by a statement about the design principles and concepts that have been applied to the development and a statement about how issues relating to access to the development have been dealt with.

Section 41: Notice, etc., of applications for planning permission

The publicity requirements for applications for planning permission is governed by this section. A development order may set out the detailed publicity requirements. A council or the Department must not consider an application if the publicity requirements are not satisfied.

Section 42: Notification of applications to certain persons

This section requires certain certificates to be submitted with each planning application to satisfy a council or Department that the owner has consented to, or is aware of, the application for development of their land. It also covers land held on a tenancy, and makes it an offence to issue a false certificate. The form of these certificates are to be prescribed by development order.

Section 43: Notice requiring planning application to be made

A council may serve a notice on an owner or occupier requiring him or her to apply for planning permission for development which has been carried out without planning permission having been granted. The notice must now be served within 5 years of the date upon which the development was begun. It is an offence not to comply with this in the time specified within the notice. Provision is made to deal with changes in ownership and the withdrawal of notices.

Section 44: Appeal against notice under section 43

Three grounds for appealing against notices under section 43 are set out in this section. Appeals are made to the Planning Appeals Commission and the appellant has the opportunity to appear before and be heard by the Commission, as does a council.

Section 45: Determination of planning applications

A council, or the Department, is empowered under this section either to grant planning permission (unconditionally or subject to such conditions as it sees fit) or to refuse permission. This is subject to a number of conditions including the obligation to have regard to the local development plan (so far as material to the application) and to any other material considerations, and to take account of representations made to it.

Sections 46 to 49: Power to decline to determine subsequent or overlapping applications

These sections set out the cases where a council or the Department may decline to determine subsequent, repeat or overlapping applications. Existing powers within the Planning (Northern Ireland) Order 1991 are expanded to allow councils to decline to determine a repeat application where the Planning Appeals Commission has refused a similar deemed planning application within the last 2 years. Councils may also decline to determine overlapping applications made on the same day as a similar application and where similar applications are under consideration by the Planning Appeals Commission.

Section 50: Duty to decline to determine application where section 27 not complied with

If the pre-application community consultation requirements in section 27 have not been complied with, a council or Department must decline to determine the

application. A council or Department can request additional information in order to decide whether to decline the application.

Section 51: Assessment of environmental effects

This section sets out the power of the Department to make regulations requiring the environmental effects of development to be considered when determining a planning application.

Section 52: Conditional grant of planning permission

Planning permission can be granted by a council or Department with conditions. These can relate to, amongst other things, regulation of the land use, or restoration of the land at the end of a specified period of time.

Section 53: Power to impose aftercare conditions on grant of mineral planning permission

The power to impose aftercare conditions is made available to councils and the Department to ensure mineral sites are restored to the required standard once development has finished. A condition may set out the steps to be taken to bring land to the required standard for use for ecological purposes, or agricultural, forestry or amenity.

Section 54: Permission to develop land without compliance with conditions previously attached

A person who has been granted planning permission with conditions can apply under this section to have them changed or set aside, provided the time limit has not expired on the planning permission. The form and content of such applications may be set out in a development order.

Section 55: Planning permission for development already carried out

This section allows a council or Department to grant planning permission retrospectively on application. This can cover development which has no planning permission or which did not comply with conditions attached to permission, including a time condition.

Section 56: Directions etc. as to method of dealing with applications

The Department may make a development order to specify how applications are to be dealt with. It can direct that a council is restricted in its power to grant permission for some developments, and require it to consider conditions suggested by the Department before granting permission on an application. A development order may require councils and the Department to consult specified authorities or persons before determining applications. A development order can also specify the person to whom applications need to be sent to under the Act, and who should in turn be sent copies.

Section 57: Effect of planning permission

This provision states that once planning permission is granted it has effect for the benefit of the land and of anyone who has an interest in the land at the time. If the permission includes the erection of a building, it can specify the use to which this building should be put.

Section 58: Appeals

If an application made to a council is refused or granted subject to conditions the applicant may appeal to the Planning Appeals Commission. The previous time limit for lodging an appeal is reduced from 6 months to 4 or such other period as may be prescribed by development order. If the applicant or council so wish, they may appear before and be heard by the Commission.

Section 59: Matters which may be raised in an appeal under section 58

A party to the proceedings of an appeal under section 58 will not be able to raise any matter that was not in front of a council or the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the Planning Appeals Commission, that the matter could not have been raised before that time or that its not being raised was due to exceptional circumstances.

Section 60: Appeal against failure to take planning decision

An applicant may ask the Planning Appeals Commission to determine their planning application if a council has not done so within a specified or agreed time (a “non determination appeal”).

Section 61: Duration of planning permission

Every planning permission granted or deemed to be granted, will be subject to the condition that the development must begin within 5 years of the date on which permission is granted (or such other period as considered appropriate by the Department or council which granted the permission).

Section 62: Duration of outline planning permission

Outline planning permission establishes for the applicant whether a proposal is acceptable in principle before embarking on the preparation of detailed plans (“reserved matters”). Unless provided otherwise reserved matters must be submitted for approval within 3 years of the grant of outline planning permission and development must be begun within 5 years of the grant of outline permission or 2 years from the final approval of reserved matters.

Section 63: Provisions supplementary to sections 61 and 62

This section includes ancillary provisions required for the working of sections 61 and 62 above. These include defining planning authority as a council, the Department, the Planning Appeals Commission (when planning permission is

granted on appeal) and the Department of Enterprise Trade and Investment when planning permission is deemed to be granted under Schedule 8 to the Electricity (Northern Ireland) Order 1992. Those operations which establish the time of commencement of development are also defined.

Section 64: Termination of planning permission by reference to time limit

This section allows a council to issue a “completion notice” to require a development which has a time bound planning permission, and which has been begun, to be completed. A council must give at least one year for the completion. Notices can be withdrawn by a council if appropriate.

Section 65: Effect of completion notice

Completion notices issued by a council under section 64 must be confirmed by the Department before they take effect. The person on whom it is served can request a hearing before the Planning Appeals Commission, as can a council. Once it takes effect the planning permission expires at the end of the period allowed for the development’s completion.

Section 66: Power of Department to serve completion notices

This allows the Department to issue completion notices which have the same effect as those issued by a council. It must consult a council before doing so.

Section 67: Power to make non-material changes to planning permission

Councils may make a change to a planning permission already granted on application. The change must not have any material effect on the permission, and it includes the power to amend or remove conditions or impose new ones.

Section 68: Revocation or modification of planning permission by council

This section allows a council to revoke or modify any planning permission, provided the operations have not been completed or change of use has not yet occurred.

Section 69: Aftercare conditions imposed on revocation or modification of mineral planning permission

This section permits a council to impose aftercare conditions where a mineral planning permission has been modified or revoked by an order served under section 68.

Section 70: Procedure for section 68 orders: opposed cases

This section requires that an opposed modification or revocation order served under section 68 by a council must be confirmed by the Department before it can take effect. The person on whom it is served can request a hearing before the Planning Appeals Commission, as can a council. The Department may confirm an order with or without modification.

Section 71: Procedure for section 68 orders: unopposed cases

This section allows for an expedited procedure for section 68 cases which are not opposed.

Section 72: Revocation or modification of planning permission by the Department

This gives the Department the power to revoke or modify planning permission after consulting a council. A council may request to appear before and be heard by the planning appeals commission. The notice has the same effect as if it was issued by a council.

Section 73: Orders requiring discontinuance of use of alteration or removal of buildings or works

A council can issue an order requiring a particular land use to stop or require buildings to be removed or altered. The NI Housing Executive has a duty to house anyone whose place of residence is displaced if there is no reasonable alternative accommodation.

Section 74: Confirmation by Department of section 73 orders

The Department must confirm (with or without modification) an order issued by a council under section 73 before it takes effect. Notification requirements for a council are contained in this section. The person on whom the notice is served has the opportunity to appear before and be heard by the Planning Appeals Commission.

Section 75: Power of Department to make section 73 orders

This allows the Department to issue an order under section 73 instead of a council. It must consult the council before doing so.

Section 76: Planning agreements

This section enables any person who has an estate in land to enter into a planning agreement with either a council or the Department (whichever is the relevant authority). A planning agreement may facilitate or restrict the development or use of the land in any specified way, require operations or activities to be carried out, or require the land to be used in any specified way. An agreement may also require a sum or sums to be paid to the relevant authority or to a Northern Ireland department on a specified date or dates or periodically. The relevant authority has the power to enforce a planning agreement by entering the land and carrying out the operations itself. Any expenses incurred in doing so are recoverable from the person or persons against whom the agreement is enforceable.

Section 77: Modification and discharge of planning agreements

This section provides that a planning agreement may not be modified or discharged except by agreement between the relevant authority and the person

or persons against whom the agreement is enforceable. It sets out the conditions under which a planning agreement may be modified or discharged and enables regulations to be made with respect to applications under subsection (4) and determinations under subsection (7).

Section 78: Appeals

This section enables a person who applies for the modification or discharge of a planning agreement to appeal to the Planning Appeals Commission where the relevant authority fails to give notice of its determination to the applicant within such period as may be prescribed, or determines that a planning agreement shall continue to have effect without modifications.

Section 79: Land belonging to councils and development by councils

This section introduces new powers setting out the procedure for dealing with councils' own applications for planning permission. The new powers are introduced to ensure councils do not face a conflict of interest in dealing with their own proposals for development. Provisions are introduced for councils to grant planning permission for their own development or for development carried out jointly with another person and for development to be carried out on land owned by councils.

Specifically, the new powers enable the Department to make regulations modifying the application of Parts 3 (Planning Control), 4 (Additional Planning Control - apart from Chapters 1 and 2 of that Part) and 5 (Enforcement) of the Planning Act in relation to land of interested councils; and the development of any land by interested councils jointly with any other persons. The regulations will deal with governance arrangements and will ensure that conflicts of interest are avoided.