
STATUTORY INSTRUMENTS

1991 No. 1220

The Planning(Northern Ireland) Order 1991

PART V

ADDITIONAL PLANNING CONTROL

Buildings of special architectural or historic interest

Lists of buildings of special architectural or historic interest

42.—(1) The Department—

- (a) shall compile lists of buildings of special architectural or historic interest; and
- (b) may amend any list so compiled.

(2) In considering whether to include a building in a list compiled under this Article the Department may take into account not only the building itself but also—

- (a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part; and
- (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building which consists of a man-made object or structure fixed to the building or which forms a part of the land and which is comprised within the curtilage of the building.

(3) Before compiling or amending any list under this Article, the Department shall consult with the Historic Buildings Council and with the appropriate district council.

(4) As soon as may be after any list has been compiled under this Article, or any amendments of such a list have been made, the Department shall cause a copy of so much of the list, or so much of the amendments, as relates to the area of a district council to be deposited with the clerk of that council.

(5) As soon as may be after the inclusion of any building in a list under this Article, whether on the compilation of the list or by its amendment, or as soon as may be after any such list has been amended by the exclusion of any building from it, the Department shall serve a notice in the prescribed form on every owner and occupier of the building, stating that the building has been included in, or excluded from, the list, as the case may be.

(6) The Department shall keep available for inspection by the public at all reasonable hours copies of lists and amendments of lists compiled or made under this Article.

(7) In this Order “listed building” means a building which is for the time being included in a list compiled under this Article; and, for the purposes of the provisions of this Order relating to listed buildings, 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.

Issue of certificate that building is not intended to be listed

43.—(1) Where—

- (a) application has been made for planning permission for any development involving the alteration, extension or demolition of a building; or
- (b) any such planning permission has been granted, the issue by the Department, on the application of any person, of a certificate stating that it does not intend to list the building shall preclude the Department, for a period of five years from the date of issue of the certificate, from exercising in relation to that building any of the powers conferred on it by Article 42.

(2) An application for the issue of a certificate under paragraph (1) shall be made to the Department in writing and Article 22 shall apply in relation to an application for the issue of a certificate under paragraph (1) as it applies in relation to an application for planning permission.

(3) Before issuing any certificate under paragraph (1), the Department shall consult with the Historic Buildings Council and with the district council for the area in which the building is situated.

Control of works for demolition, alteration or extension of listed buildings

44.—(1) Subject to this Part, if a person executes or causes to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, and the works are not authorised under paragraph (2), he shall be guilty of an offence.

(2) Works for the demolition, alteration or extension of a listed building are authorised under this Part if—

- (a) written consent for the execution of the works has been granted by the Department and the works are carried out in accordance with the terms of the consent and any conditions which may be attached to the consent; and
- (b) in the case of demolition—
 - (i) a person duly authorised in writing by the Department has been afforded reasonable access to the building for a period of at least one month following the grant of listed building consent and before the commencement of the works, for the purpose of recording it; or
 - (ii) the Department has stated in writing that it has completed its recording of the building or that it does not wish to record it.

(3) If written consent is granted by the Department for the retention of works for the demolition of a listed building, or for its alteration or extension, which have been executed without consent under paragraph (2), the works are authorised under this Part from the grant of the consent under this paragraph.

(4) Consent under paragraph (2) or (3) is referred to in this Order as “listed building consent”.

(5) Without prejudice to paragraph (1), if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent he shall be guilty of an offence.

(6) A person guilty of an offence under paragraph (1) or (5) shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine and in determining the amount of any fine imposed on a person convicted on indictment the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to him in consequence of the offence.

(7) 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.
- (8) This Article shall not apply to works for the demolition, alteration or extension of—
- (a) an ecclesiastical building which is for the time being used for ecclesiastical purposes or would be so used but for the works; or
 - (b) a building which is the subject of a guardianship or protection order under the Historic Monuments Act (Northern Ireland) 1971; or
 - (c) a building for the time being included in a schedule of historic monuments published by the Department under that Act;

and for the purposes of this paragraph, a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office shall be treated as not being an ecclesiastical building.

- (9) Paragraph (8) shall cease to have effect on such date as the Department may by order appoint.

Provisions supplementary to Article 44

45.—(1) In considering whether to grant planning permission for development which affects a listed building or its setting, and in considering whether to grant listed building consent for any works, the Department shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

(2) Listed building consent may be refused, or granted either unconditionally or subject to conditions.

(3) Without prejudice to the generality of paragraph (2), the conditions subject to which listed building consent may be granted include conditions with respect to—

- (a) the preservation of particular features of the building either as part of it or after severance therefrom;
- (b) the making good, after the works are completed, of any damage caused to the building by the works; and
- (c) the reconstruction of the building or any part of it following the execution of any works, with the use of original materials so far as practicable and with such alterations of the interior of the building as may be specified in the conditions.

(4) 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.

(5) Listed building consent for the demolition of a listed building may be granted subject to a condition that the building shall not be demolished before a contract for the carrying out of works of redevelopment of the site has been made, and planning permission has been granted for the redevelopment for which the contract provides.

(6) Schedule 1 shall have effect in relation to applications for listed building consent and appeals against decisions on such applications.

Duration of listed building consent

46.—(1) Subject to the provisions of this Article, every listed building consent shall be granted subject to the condition that the works to which it relates must be begun not later than the expiration of—

- (a) five years beginning with the date on which the consent is granted; or
- (b) such other period (whether longer or shorter) beginning with the said date as the Department may direct, being a period which the Department considers appropriate having regard to any material considerations.

(2) If listed building consent is granted without the condition required by paragraph (1), it shall be deemed to have been granted subject to the condition that the works to which it relates must be begun not later than the expiration of five years beginning with the date of the grant.

(3) Nothing in this Article applies to any consent to the retention of works granted under Article 44(3).

Revocation or modification of listed building consent

47.—(1) If it appears to the Department, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify listed building consent in respect of any works to a building, being consent granted on an application made under this Part, the Department may, subject to paragraphs (2) to (4), by order revoke or modify the consent to such extent as (having regard to those matters) it considers expedient.

(2) Before making an order under this Article the Department shall serve notice on the owner and occupier of the building 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 28 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.

(3) The power conferred by this Article to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed, but the revocation or modification shall not affect so much of those works as has been previously carried out.

(4) Where the Department makes an order under this Article it shall serve a notice on any person mentioned in paragraph (2) stating the general effect of the order.

Applications to determine whether listed building consent required

48.—(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 I 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.

Acts causing or likely to result in damage to listed buildings

49.—(1) Where a building, not being a building excluded by paragraph (8) of Article 44 from the operation of that Article, is included in a list compiled under Article 42, then, if any person who, but for this Article, would be entitled to do so—

- (a) does or permits the doing of any act which causes or is likely to result in damage to the building (other than an act for the execution of excepted works); and
- (b) does or permits the act with the intention of causing such damage;

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) In paragraph (1) “excepted works” means—

- (a) works authorised by planning permission granted in pursuance of an application under this Order; or
- (b) works for which listed building consent has been given under this Order.

(3) Where a person convicted under this Article fails to take such reasonable steps as may be necessary to prevent any damage or further damage resulting from the offence, 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 on which the failure continues.

Areas of special architectural or historic interest

Conservation areas

50.—(1) The Department may designate areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance.

(2) The Department may vary or cancel a designation under paragraph (1).

(3) Before making, varying or cancelling a designation under this Article, the Department shall consult with the Historic Buildings Council and with any appropriate district council.

(4) The Department shall publish notice of the designation of any conservation area and of any variation or cancellation of any such designation, with sufficient particulars to identify the area affected, in at least one newspaper circulating in the locality of the area.

(5) Where any area is for the time being designated as a conservation area, special attention shall be paid to the desirability of preserving or enhancing its character or appearance in the exercise, with respect to any buildings or other land in that area, of any powers under this Order.

(6) In this Order “conservation area” means an area designated under paragraph (1).

Control of demolition in conservation areas

51.—(1) This Article applies to all buildings in conservation areas other than—

- (a) listed buildings;
- (b) buildings of a class specified in Article 44(8);
- (c) buildings in relation to which a direction under paragraph (3) is for the time being in force.

(2) A building to which this Article applies shall not be demolished without the consent of the Department.

(3) The Department may—

- (a) direct that this Article shall not apply to a description of buildings specified in the direction; and

- (b) vary or revoke that direction by a further direction.
- (4) Where the Department gives a direction under paragraph (3), it shall publish a copy of the direction in the Belfast Gazette and in a newspaper circulating in the area in which the buildings are situated.
- (5) The following provisions, namely—
 - (a) Articles 44 to 48, 77 to 79, 94 and 113(1)(b) and (4); and
 - (b) Article 65 of the Planning (Northern Ireland) Order 1972, 1972 NI 17 shall have effect in relation to buildings to which this Article applies as they have effect in relation to listed buildings, subject to such exceptions and modifications as may be prescribed.
- (6) If this Article ceases to apply to a building—
 - (a) any proceedings on or arising out of an application for listed building consent made while this Article applied to the building shall lapse;
 - (b) any listed building consent granted with respect to the building shall also lapse;
 - (c) the cesser shall not affect the liability of any person to be prosecuted and punished for an offence under Article 44 or 77 committed by him with respect to the building while this Article applied to it.

Grants in relation to conservation areas

52.—(1) The Department may, in relation to any conservation area, make grants or loans for the purpose of defraying in whole or in part any expenditure incurred or to be incurred in or in connection with, or with a view to the promotion of, the preservation or enhancement of the character or appearance of the area or any part thereof.

(2) A grant or loan under this Article may be made subject to such conditions as the Department thinks fit.

(3) Any loan under this Article shall be made on such terms as to repayment, payment of interest and otherwise as the Department may with the approval of the Department of Finance and Personnel determine; and all sums received by the Department by way of interest on, or repayment of, such a loan shall be paid into the Consolidated Fund.

Hazardous substances

Requirement of hazardous substances consent

53.—(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 4, 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 are to be treated as being one person for the purposes of this Article and Articles 54 to 61 and 81.

Applications for hazardous substances consent

- 54.**—(1) Provision may be made by regulations with respect to—
- (a) the form and manner in which applications for hazardous substances 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 22(1)(a) to (d); and any such regulations may—
- (a) include requirements corresponding to Articles 22(4) and 25(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

55.—(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

56.—(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 28 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

57.—(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 56(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 14 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 56 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

58.—(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.

Revocation or modification of hazardous substances consent

59.—(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).

Effect of hazardous substances consent and change of control of land

60.—(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 54 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 55(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 55(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 55(5).

(10) Subject to paragraph (11), Article 57 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 57 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.”.

Offences

61.—(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

62.—(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

63.—(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 4; or

(b) any hazardous substances contravention notice issued under Article 81,

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.

Trees

Duty of Department in relation to trees

64. The Department shall—

- (a) ensure wherever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and
- (b) make such orders under Article 65 as appear to the Department to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.

Tree preservation orders

65.—(1) Where it appears to the Department that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in any area, it may for that purpose make an order (in this Order referred to as a “tree preservation order”) with respect to such trees, groups of trees or woodlands as may be specified in the order; and in particular, provision may be made by any such order—

- (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping or wilful destruction of trees except with the consent of the Department, and for enabling the Department to give its consent subject to conditions;
- (b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the order;
- (c) for applying, in relation to any consent under the order and to applications for such consent, any of the provisions of Part IV, subject to such adaptations and modifications as may be specified in the order.

(2) The Department may make regulations as to the form of tree preservation orders and the procedure to be followed in connection with such orders; and the regulations may (without prejudice to the generality of this paragraph) make provision as follows—

- (a) that the Department may make a provisional tree preservation order, which shall take effect immediately, and notice of its making shall be given to the owners and occupiers of the land affected and to such other persons, if any, as may be specified in the regulations;
- (b) that objections and representations with respect to the provisional order may be made within 28 days of the giving of the notice;
- (c) that if within that period any person on whom the notice is served so desires the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission;
- (d) that—
 - (i) after considering any objections and representations received within that period and, where a hearing is held, the report of the planning appeals commission; or
 - (ii) where no objections or representations are received within that period;the Department may confirm the provisional tree preservation order, withdraw it or modify it, and shall give notice of the confirmation, withdrawal or modification to the persons on whom notice of the provisional tree preservation order was served.

(3) Without prejudice to any other exemptions for which provision may be made by a tree preservation order, no such order shall apply to the cutting down, topping or lopping of trees which are dying or dead or have become dangerous or the cutting down, topping or lopping of any trees in compliance with any obligations imposed by or under any statutory provision or so far as may be necessary for the prevention or abatement of a nuisance.

Penalties for contravention of tree preservation orders

66.—(1) If any person, in contravention of a tree preservation order, cuts down or wilfully destroys a tree, or tops or lops a tree in such a manner as to be likely to destroy it, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If any person contravenes a tree preservation order otherwise than as mentioned in paragraph (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If in the case of a continuing offence under this Article, the contravention is continued after the conviction, the offender shall be guilty of a further offence and liable on summary conviction to an additional fine not exceeding one-tenth of level 1 on the standard scale for each day on which the contravention is continued.

Advertisements

Control of advertisements

67.—(1) Subject to this Article, provision shall be made by regulations under this Order for restricting or regulating the display of advertisements so far as appears to the Department to be expedient in the interests of amenity or public safety.

(2) Without prejudice to paragraph (1), any such regulations may provide—

- (a) for regulating the dimensions, appearance and position of advertisements which may be displayed, the sites on which advertisements may be displayed and the manner in which they are to be affixed to the land;
- (b) for requiring the consent of the Department to be obtained for the display of advertisements;

(c) for applying in relation to any such consent and to applications for such consent any of the provisions of Part IV or VIII of this Order or Part 111 of the Act of 1965 subject to such adaptations and modifications as may be specified in the regulations.

(3) Areas of special control for the purposes of regulations under this Article may be defined by means of orders made by the Department in accordance with the regulations.

(4) Where the Department is authorised by the regulations to make any such order as is mentioned in paragraph (3), the regulations shall provide for the publication of notice of the proposed order in such manner as may be prescribed by the regulations, for the consideration of objections duly made thereto and for the holding of such inquiries or other hearings by the planning appeals commission as may be so prescribed before the order is made.

(5) Where the display of advertisements in accordance with regulations made under this Article involves development of land, planning permission for that development shall be deemed to be granted by virtue of this Article, and no application shall be necessary in that behalf under Part IV.