

**PLANNING AMENDMENT
(NORTHERN IRELAND) ORDER 2003**

S.I. 2003 No. 430 (N.I. 8)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The draft Planning (Amendment) (NI) Order 2003 (the Order) was made on 27 February 2003.
2. This Memorandum needs to be read in conjunction with the Order. It does not give, and is not meant to be, a comprehensive description of the Order. So where an Article or part of an Article does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Order amends existing legislation contained in the Planning (Northern Ireland) Order 1972, the Planning (Northern Ireland) Order 1991 and the Strategic Planning (Northern Ireland) Order 1999.
4. In relation to planning enforcement and control the Order: -
 - simplifies, streamlines and strengthens the Department's enforcement powers and introduces new enforcement powers. These include: -
 - the power to issue planning contravention notices and breach of condition notices; and,
 - an express power to apply to the court for an injunction to prevent a threatened breach of planning control.
 - improves control over development by: -
 - giving district councils a statutory consultative role when the Department is drawing up, modifying, varying or discharging a planning agreement;
 - introducing building preservation notices to enable the Department to respond quickly to protect buildings at risk ('spot listing');
 - funding, in certain circumstances, bodies, which may include building preservation trusts, to enable the acquisition of buildings considered to be at risk;
 - broadening the definition of "advertisement" to ensure that modern forms of outdoor advertising are subject to advertisement control;
 - providing that a stop notice shall come into effect immediately, unless the Department specifies a later date;
 - introducing a regulation making power to allow the scope of regulations requiring environmental assessment under EC Directive Reference [85/337/EEC](#) to go beyond the EC minimum requirements;

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- empowering the Department, in certain circumstances, to decline to determine applications if, within the preceding 2 years, a similar proposal had been dismissed on appeal by the Planning Appeals Commission;
 - empowering the Planning Appeals Commission to dismiss an appeal if it appears that the appellant is causing undue delay;
 - giving prime importance to development plans in the determination of planning applications; and,
 - providing the Planning Appeals Commission with greater operational flexibility.
5. In relation to strategic planning, the regional development strategy, which covers the period up to 2025, provides an over-arching strategic planning framework to facilitate and guide the long-term development of the region. The Order amends the Strategic Planning (Northern Ireland) Order 1999 to require planning policies, development plans and development schemes to be “*in general conformity with*” the regional development strategy rather than “*consistent with*” the strategy. It makes provision for a statement of conformity procedure in the statutory planning process, which will re-affirms the primacy of the regional development strategy in relation to the requirement that all future development plans must be “*in general conformity with*” it. It also provides a transitional saving for three development plans (the Cookstown Area Plan 2010, the Craigavon Area Plan 2010 and the Dungannon & South Tyrone Area Plan 2010), which were at an advanced stage prior to the formulation of the Regional Development Strategy.
6. In relation to development schemes, the Order amends Part VII of the Planning (Northern Ireland) Order 1991 to enable the Department for Social Development to enter into agreements for the development of land where it intends to acquire land under Article 91 of the Planning (NI) Order. Previously it could only enter into such agreements when it had acquired the land.

CONSULTATION

7. The Department issued consultation documents in March 1999, in relation to proposals included in the Planning (Amendment) Bill, and in January 2002, in relation to the Strategic Planning Bill, to a large number of organisations and individuals, including Ministers, Members of the Assembly, district councils, Northern Ireland departments, statutory consultees under section 75 of the Northern Ireland Act 1975 and those who were primarily consulted on the regional development strategy.
8. In accordance with the requirement for consultation with the Northern Ireland Human Rights Commission, Civic Forum and Equality Commission, which did not exist when the 1999 public consultation first took place, these consultees were consulted on the proposals and no comments were received.

OPTIONS CONSIDERED

9. The bulk of the provisions in the Order replicate those relating to planning enforcement and the primacy of development plans in development control introduced in Great Britain by the Planning and Compensation Act 1991. The Government has included further provisions to strengthen and improve the planning system in Northern Ireland. These include the introduction of building preservation notices, a power to fund bodies, including building preservation trusts, and reforms to the way in which the Planning Appeals Commission operates.
10. The provisions amending the Strategic Planning (Northern Ireland) Order 1999 arose from concerns that the statutory requirement for development plans to be “consistent with” the Regional Development Strategy (RDS) would inhibit the Department of the Environment in securing the orderly and consistent development of land and its ability to respond to changing circumstances unforeseen in the RDS. Following

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senior counsel's opinion, it was determined that the change to require development plans to be "*in general conformity with*" the RDS, provided the flexibility to address those concerns. As a result, a statement of conformity procedure and a transitional arrangement for the three development plans were proposed.

OVERVIEW

11. The Order has 37 Articles and 2 Schedules.

COMMENTARY ON ARTICLES

Introductory

Article 1 - Title and commencement

This Article gives the short title of the Order. This is the title by which the Order is referred to. It also provides for certain provisions in the Order to come into operation on such day or days as may be appointed by the Department and for transitional and saving provisions to be made.

New enforcement powers

Article 3 - Planning contravention notices

This Article provides for the issue of a planning contravention notice, the purpose of which is to strengthen the Department's power to obtain information prior to taking enforcement action, to encourage dialogue with any persons thought to be in breach of planning control and to secure their co-operation in taking corrective action. Failure to comply with such a notice within 21 days of its service is an offence, liable on summary conviction, to a fine not exceeding level 3 on the standard scale (currently £1,000). In addition any person who makes a false or misleading statement in respect of a notice is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). Failure to comply with a notice could also affect any future entitlement to compensation payable in connection with stop notices.

Article 4 - Enforcement of conditions

This Article provides for the issue of a breach of condition notice for breaches of conditions attached to a planning permission. It may be served if there is clear evidence that a planning condition has not been complied with. Non-compliance with a breach of condition notice shall be an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

Article 5 - Injunctions

This Article gives the Department an express power to apply to the Courts for an injunction to prevent any actual or threatened breach of planning control. This power also applies in relation to unauthorised works to a listed building, breaches of a tree preservation order and certain acts in respect of trees in a conservation area; and, any actual or apprehended breach of a hazardous substances contravention order. The intention is to integrate injunctions into the range of enforcement powers available to the Department so that they may be used, whether or not other enforcement powers have been, or are intended to be, used. Rules of court may provide for an injunction to be granted against a person whose identity is unknown.

Other changes relating to enforcement

Article 6 - Time limits on enforcement action

This Article simplifies the rules regarding the time period within which action may be taken in respect of breaches of planning control, by establishing two different limitation periods for enforcement action: -

- *The four year rule:* four years is the time allowed to the Department to take enforcement action where the breach comprises *either* operational development (the carrying out of unauthorised building, engineering, mining or other operations), or the *change of use to use as a single dwelling house*.

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- *The ten-year rule:* this is the time allowed for all other breaches of planning control, and represents a significant change from the current position. Under the Planning (NI) Order 1991, an unauthorised change of use (other than to use as a single dwelling house) was immune from enforcement action only if it had been undertaken before 26 August 1974. Once this new provision comes into operation, immunity from enforcement action will automatically be conferred on all breaches of planning control that occurred between 26 August 1974 and the date ten years prior to the Order becoming law. Thereafter, immunity will accrue on a rolling basis.

Article 7 - Enforcement notices

This Article reduces the legal complexity of the provisions that apply to the drafting, issue and service of enforcement notices, by minimising the possibility of some minor drafting error, legal or technical deficiency resulting in a notice being quashed. The notice still has to be sufficiently clear to enable any recipient to understand exactly what unauthorised use/work is alleged and what he/she is required to do to remedy this. The Article provides that an enforcement notice may be served on the current owner or occupier of the land to which the notice relates and on any other person with an estate in the land. The provisions provide the Department with flexibility to require only partial remedy of a breach of planning control where, at the time of enforcement, a total remedy is not considered necessary. This provision also allows for the withdrawal or variation of an enforcement notice, without prejudice to the Department's power to issue a further notice.

Article 8 - Appeal against enforcement notice

This Article specifies revised grounds on which an appeal against an enforcement notice can be made and the procedures for making a valid appeal. It also provides that if an appeal against an enforcement notice includes a ground of appeal that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged, it shall constitute a deemed planning application. The Article also requires the planning appeals commission to notify the appellant of the amount of the appropriate planning application fee and to specify the period within which it must be paid. If the fee is not paid within that period then the appeal on the planning merits will lapse and the commission will be barred from considering or determining the deemed planning application.

Article 9 - Offence where enforcement notice not complied with

This Article strengthens and clarifies existing provisions concerning offences for not complying with an enforcement notice. The Article provides for an increase in the maximum level of fine, on summary conviction, from £5,000 to £30,000. It also allows, for the first time, for a person to be convicted on indictment for this type of offence. The courts when determining the level of fine shall, in particular, have regard to any financial benefit, which has accrued or appears likely to have accrued, in consequence of the offence. The Article also makes it clear that a person found guilty of an offence, and who continues not to comply with a notice, may be guilty of a further offence, and subsequently, of still further offences until there is compliance with a notice.

Article 10 - Execution of works required by enforcement notice

This Article strengthens the power of the Department to enter land and carry out works to ensure compliance with an enforcement notice. It also makes it an offence, punishable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000), to wilfully obstruct anyone authorised to carry out those works.

Article 11 - Stop notices

This Article strengthens and clarifies the current stop notice provisions by providing that a stop notice has immediate effect unless the Department states otherwise. To ensure parity with the increased penalties for contravention of an enforcement notice, this Article provides that:

- until the notice is complied with, further offences may be committed;
- the maximum level of fine for contravention of a stop notice is increased from £5,000 to £30,000 on summary conviction;
- statute allows, for the first time, for a person to be convicted on indictment for this type of offence; and,

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- the courts are required to take account of any benefits accrued or which appear likely to accrue as a result of the offence.

In certain circumstances compensation may be payable when a stop notice is quashed or withdrawn. Paragraph (2) of the Article provides that no compensation is payable in respect of a stop notice for any activity which, at the time when the notice is in force, constitutes or contributes to a breach of planning control or, in respect of any loss or damage if such loss or damage could have been avoided had information required under a contravention notice (see Article 3), or Article 125 of the 1991 Order, been provided.

Article 12 - Certificate of lawful use or development

Under this Article, a person is able to apply to the Department for a certificate to ascertain whether an existing use of buildings or other land, or operational development, or some activity in breach of a planning condition, is lawful. In the case of a proposed use or operational development, the grant of a certificate establishes the lawfulness of the proposed use or operational development. The onus for producing sufficient evidence to warrant the granting of a certificate rests firmly on the applicant. There is a right of appeal against a refusal or failure to give a decision. Any person who makes a false or misleading statement in respect of procuring a certificate will, on summary conviction, be liable to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

Article 13 - Rights of entry for enforcement purposes

This Article allows officers of the Department to enter any land at all reasonable hours, on production of appropriate authority, for the purposes of investigating any alleged breach of planning control on that land or on immediately adjoining land. The provisions of this Article are more closely tailored to the Department's needs in obtaining information, preparatory to taking formal enforcement action. When taken together with the new "planning contravention notice" (for which Article 3 provides) the Department has comprehensive powers under Part VI of the 1991 Order to obtain essential information about any suspected or actual breach of control.

Article 14 - Listed buildings

This Article provides for the following possible penalties for a person found guilty of an offence involving demolition, or alteration or extension of a listed building affecting its character:

- to be given a term of imprisonment not exceeding 6 months or a fine not exceeding £30,000 or both; or
- imprisonment for not more than 2 years, or a fine. The courts when determining either level of fine shall, in particular, have regard to any financial benefit, which has accrued or appears likely to be accrued, in consequence of the offence.

Article 15 - Hazardous substances

This Article provides that a person found guilty of an offence relating to hazardous substances shall be liable on summary conviction to a fine not exceeding £30,000 or, on conviction on indictment, to a fine. The courts when determining either level of fine shall, in particular, have regard to any financial benefit, which has accrued or appears likely to be accrued, in consequence of the offence. It also allows for hazardous substances contravention notices to require only a partial remedy, if this is considered appropriate.

Article 16 - Replacement of trees

This Article replaces Article 82 of the 1991 Order and provides for revised enforcement measures in respect of the protection of trees that are subject to a Tree Preservation Orders (TPO) as follows:

- a new power for the Department to enforce the duty to replace trees subject to a TPO;
- sets out specific grounds of appeal against enforcement notices in relation to trees;
- a power for the Department to enter onto land to replant trees subject to a TPO, and to recover any costs incurred as a civil debt;
- a new duty on an owner to replace trees that are removed in a Conservation Area.

Article 17 – Alteration in penalties

This Article brings the level of three fines in the Planning (Northern Ireland) Order 1991 into line with the level of fines elsewhere in Great Britain for similar offences.

Control over development

Article 18 – Demolition

This Article introduces an amendment to make it clear that all demolition comes within the meaning of development for planning purposes. However, for the time being, only buildings in areas of townscape character and those buildings whose demolition is already subject to planning control, i.e. historic monuments, listed buildings and buildings in conservation areas, are subject to this new regime. This is achieved by specifying in a departmental direction, under a new Article 11(2)(f), those buildings whose demolition does not come within the meaning of development for planning purposes and those buildings that do. The purpose of this is to avoid the possibility of a large number of planning applications for the demolition of relatively minor structures clogging up the planning process.

Article 19 - Reversion to previous lawful use

This Article brings NI legislation into line with GB legislation by specifying that it is lawful to revert to a previous legal use following service of an enforcement notice or at the end of a temporary planning permission. In NI, technically, such reversion previously required planning permission.

Article 20 - Power of Department to decline to determine applications

To prevent developers using "repeat applications" as a tactic, this Article gives the Department power to decline to determine a planning application if, within the preceding 2 years, it had refused an application designated under Article 31 of the Planning (NI) Order 1991, or the Planning Appeals Commission has dismissed an appeal for a similar proposal, and there has been no material change in circumstances.

Article 21 - Assessment of environmental effects

Under EC Directive [85/337/EEC](#) there is a requirement to make regulations which set out the classes of development for which an environmental assessment may be required. This requirement was implemented by the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999. This Article makes specific primary provision to allow new regulations to go beyond the environmental assessment provisions of the Directive. For example, in England and Wales, the regulations were extended to include wind generators, motorway service areas and coastal protection works in the classes of development for which an environmental assessment may be required.

Article 22 - Dismissal of appeals in cases of undue delay

To prevent time wasting appeals and appeals lodged for tactical purposes, this Article gives the Planning Appeals Commission the power to dismiss an appeal if it appears that the appellant is causing undue delay in its progress.

Article 23 - Planning agreements

This Article amends the provisions of the 1991 Order for planning agreements and introduces new provisions relating to the modification or discharge of an agreement. A party to a planning agreement is enabled by this Article to apply to the Department for modification and discharge of an agreement with a right of appeal to the Planning Appeals Commission against the Department's determination. The Article also creates a new offence for the wilful obstruction of any person authorised to enter land to carry out works required by a planning agreement. District Councils are also given a statutory consultative role when a planning agreement is being drawn up, modified, varied or discharged.

Control over particular matters

Article 24 – Advertisements

This Article broadens the definition of "advertisement" to include matters such as rotating poster panels, advertisements on permanently fixed blinds or canopies on business premises etc. This is to ensure that certain modern forms of outdoor advertising are subject to advertisement control.

Article 25 - Building preservation notices

This Article introduces building preservation notices for the temporary listing of buildings of special architectural or historic interest, commonly referred to as "spot-listing". These notices enable the Department to respond quickly to protect buildings at risk.

Article 26 – Trees

Together with Article 14, which deals with enforcement of duties in relation to the replacement of trees, this Article provides a major overhaul of the Department's powers in relation to the protection of trees and tree preservation orders (TPOs) as follows:

- a new duty to replace trees subject to a TPO that are removed. The existing TPO automatically applies to the new trees planted as it did to the original trees, thereby providing that the removal of trees in itself does not automatically render the land suitable for development ;
- higher penalties for breaches of TPOs. This involves an increase from £5,000 to £30,000 in the maximum level that can be imposed on summary conviction by a court. There is no limit to a fine that can be imposed on conviction on indictment. The courts when determining either level of fine shall, in particular, have regard to any financial benefit, which has accrued or appears likely to be accrued, in consequence of the offence;
- a new provision in respect of the protection of trees in a conservation area; and
- a new provision in respect of compensation payable where consent to fell trees is refused.

This allows restrictions to be imposed on compensation payable, in each TPO made under the new provision.

Regional development strategy

Article 27 - Certain policies, plans and schemes under the principal Order to be in general conformity with the regional development strategy

This Article further amends Articles 3 (1 A), 4(1 A) & 86(6) of the Planning (Northern Ireland) Order 1991. These provisions previously required that planning policies, development plans and development schemes must be "consistent with" the regional development strategy. The amendment deletes the words "consistent with" and substitutes the words "in general conformity with".

Article 28 - Development plans: statement as to general conformity with the regional development strategy

This Article provides for the introduction of a statement of conformity procedure by the Department for Regional Development where the Department of the Environment proposes to make, alter or replace a development plan. The Department for Regional Development is required to issue statements as to whether a development plan is, or is not, in general conformity with the regional development strategy. The Department for Regional Development is required to issue statements of conformity at two stages in the development plan making process:

- in respect of a draft plan, within 28 days from receipt of the draft plan; and
- in respect of the final draft plan, within 28 days from receipt of the draft Adoption Order and the plan, alteration or replacement plan to which the Order relates.

Article 29 - Regional development strategy: transitional arrangements for certain development plans

This Article makes arrangements in respect of three development plans, which were at draft plan stage prior to the formulation of the regional development strategy on 20 September 2001. The following development plans are treated as 'excepted plans'

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- Craigavon Area Plan 2010;
- Cookstown Area Plan 2010; and
- Dungannon and South Tyrone Area Plan 2010.

The statement of conformity procedure in Article 27 does not apply to 'excepted plans'.

The provision in Article 3(1A) of the Planning (Northern Ireland) Order 1991 that the Department of the Environment shall ensure policy formulated shall be in general conformity with the regional development strategy does not apply in relation to the making of an excepted plan.

The provision in Article 4(1A) of the Planning (Northern Ireland) Order 1991 that a development plan for an area must be in general conformity with the regional development strategy does not apply in relation to an excepted plan. This exemption applies to the plan as adopted under Article 8 of the Planning (Northern Ireland) Order 1991, and ceases to apply to an excepted plan if it is altered or replaced.

The provision of Article 5 of the Strategic Planning (Northern Ireland) Order 1999 that government departments shall have regard to the regional development strategy in exercising functions in relation to development does not apply to the Department of the Environment in relation to the making of an excepted plan.

Miscellaneous

Article 30 - Status of development plans

This Article gives prime importance to a development plan in the determination of planning applications. Its effect is that the development plan is no longer simply a consideration to which "regard" must be had; the planning decision itself now has to be made in general conformity with the plan, except where material considerations indicate otherwise. There is, therefore, a presumption in favour of development that accords with the plan and a presumption against development that does not. In all cases, the development plan is the starting point for the determination of planning decisions and its provisions prevail unless material considerations indicate otherwise.

Article 31 – Powers of Department before the acquisition of land for planning purposes

This Article introduces a new Article 91A to the Planning (NI) Order 1991 to enable the Department for Social Development (DSD) to enter into development agreements where it intends to acquire land in connection with a development scheme, or in the interests of the proper planning of an area, and has initiated the requisite statutory process. Where that Department is working in partnership with a developer, such agreements are beneficial in terms of giving a developer comfort to expend money in working up a detailed scheme and giving DSD comfort that it has a partner on board who will fund and implement the scheme and indemnify costs at an early stage. An agreement in advance of acquisition can also set the basis on which the land would be transferred at some future date subject in the usual way to the satisfaction of specific contingencies.

Article 32 - Planning Appeals Commission

This Article specifies, for the first time, the post of Deputy Chief Commissioner. It also makes specific provision to allow rules of procedure to be made governing the number of commissioners who will be required to make a decision on a planning appeal or to make a report to the Department on a public inquiry.

Article 33- Grants for research and bursaries

This Article extends to the planning and design of the built environment an existing power which the Department has to make grants for assisting establishments engaged in promoting or assisting research relating to, and education with respect to the physical environment.

Article 34 - Grants to bodies providing assistance in relation to certain development proposals

This Article provides the Department with powers to enable it to provide funding to bodies, which may include building preservation trusts, who have among their principal objectives, furthering the preservation, conservation and enhancement of historic buildings. This could include funding to enable the acquisition of buildings considered to be at risk.

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Article 35 - Planning register

In addition to those matters already listed in Article 124 of the Planning (NI) Order 1991, this Article requires the Department to keep registers available for public inspection detailing those notices that it issues:

- under Article 66A;
- in relation to breach of a condition;
- under Article 83A or 83B; and
- in relation to building preservation.

Article 36 - Home loss payments following planning blight

This Article amends the Home Loss Payments (Northern Ireland) Order 1992 to allow a home loss payment to be made to owner occupiers who have served a blight notice on the Department under the provisions of the Planning Blight Compensation (Northern Ireland) Order 1981.

Article 37 - Minor and consequential amendments and appeals

This Article makes provision for minor and consequential amendments to be made in Schedules 1 and 2 to the Order.

Schedule 1: Minor and consequential amendments

This Schedule makes minor and consequential amendments to the Planning (Northern Ireland) Order 1972 and the Planning (Northern Ireland) Order 1991, as required by the new provisions inserted by the Order.

Schedule 2: Repeals

This Schedule details those Articles of both the Planning (Northern Ireland) Order 1972 and the Planning (Northern Ireland) Order 1991 which are repealed by this Order.