

## **PLANNING REFORM (NORTHERN IRELAND) ORDER 2006**

**S.I. 2006 No. 1252 (N.I. 7)**

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### **EXPLANATORY MEMORANDUM**

#### **INTRODUCTION**

1. The Planning Reform (Northern Ireland) Order 2006 (“the Order”) was made on 9 May 2006.
2. This Explanatory Memorandum has been prepared by the Department of the Environment (“the Department”) to assist the reader in understanding the Order. It does not form part of the Order.
3. The Order makes provision for the Department to reform and improve planning processes while also enhancing transparency and community involvement in the planning system. It also amends the Planning (Northern Ireland) Order 1991 to make planning legislation bind the Crown. Many of these provisions will reflect measures in Great Britain (GB) introduced by the Planning and Compulsory Purchase Act 2004 (c.5) which received Royal Assent on 13 May 2004.

#### **BACKGROUND AND POLICY OBJECTIVES**

4. The Order includes a number of measures relating to the Department’s development control, enforcement, and development plan preparation functions, including commitments made in the Department’s Modernising Planning Processes Implementation Plan published in February 2003. It also fulfils a long-standing commitment to end the Crown’s immunity from the planning system.
5. The primary objectives are to better manage and improve existing planning processes, particularly in relation to planning applications and development plans; contribute to the improved design and accessibility of the built environment; enhance protection of the built and natural environment, including conservation areas; introduce stronger controls over mineral development; strengthen enforcement powers by introducing temporary stop notices and increased fines for unauthorised advertisements; enhance community involvement in the planning system by providing more flexible, efficient and less adversarial procedures for considering objections to development plans and promote the achievement of sustainable development.

#### **CONSULTATION**

6. On 19 August 2004, the Department published a Consultation Paper, Reforming Planning - Proposals to Amend Primary Legislation in Northern Ireland. The closing date for comments on the paper was 12 November 2004. There was a very encouraging response, with some 114 responses received. Respondents covered a wide spectrum of planning interests and most supported the proposals.

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7. On 28 October 2005, the Department issued a legislation consultation document – the Planning Reform (Northern Ireland) Order and Explanatory Memorandum Public Consultation Document. The consultation period ended on 23 December 2005 and 57 responses were received from a wide range of interests. Again, the proposals were generally welcomed by respondents. Reports of the consultation process can be found on the Department’s internet site at [www.planningni.gov.uk](http://www.planningni.gov.uk).

## **MAIN ELEMENTS OF THE ORDER**

8. The Order is in 6 Parts and has 28 Articles and 5 Schedules. Part I contains introductory provisions. Part II deals with reform provisions, which aim to improve the management of planning processes, promote the achievement of sustainable development, enhance transparency and community involvement in the planning system and strengthen enforcement powers. Part III deals with the correction of errors in planning decisions. Part IV makes amendments to the Planning (Northern Ireland) Order 1991 to remove Crown immunity from planning legislation. Part V introduces new provisions dealing with mineral planning permissions and Part VI deals with amendment and repeal provisions. The 5 schedules contain detailed provisions relating to Parts IV, V and VI.

## **COMMENTARY ON ARTICLES**

9. A commentary on the provisions follows below (comments are not given where the wording is self-explanatory).

### **PART I – INTRODUCTORY**

#### **Articles 1 and 2 Title and commencement and Interpretation**

10. Articles 1 and 2 are introductory provisions.

### **PART II – PLANNING REFORM**

#### **Article 3 – Statement of community involvement**

11. This Article introduces a requirement for the Department to produce a statement of its policy for involving the community in development proposals, including both development control and development plan making functions.

#### **Article 4 – Status of development plans**

12. Article 4 confirms in law the importance of a development plan in the determination of planning applications. Where regard is to be had to the development plan, the determination must be in accordance with the development plan unless material considerations indicate otherwise.

#### **Article 5 – Independent examination of development plans**

13. Article 5 replaces the powers whereby the Department may cause a public local inquiry to be held by the Planning Appeals Commission for considering objections to development plans. Instead it enables an independent examination to be carried out by the Planning Appeals Commission for the purpose of considering objections to a development plan or to the alteration, repeal or replacement of a development plan. A person, who makes objections, will still be given the opportunity to appear before and

be heard by the Planning Appeals Commission providing he has made a request to do so.

#### **Article 6 – Sustainable development**

14. This Article imposes a statutory duty on the Department and the Planning Appeals Commission. In exercising functions in relation to planning the development of land and the making, alteration or repeal of development plans, the Department and the Planning Appeals Commission must do so with the objective of contributing to the achievement of sustainable development. The Department and the Planning Appeals Commission are also required to have regard to policies and guidance issued by the Department of the Environment and the Department for Regional Development.

#### **Article 7 – Development to include certain internal operations**

15. Article 7 provides the Department with the power to bring increases of internal floor space within the definition of development. The threshold, above which planning consent would be required, will be defined within subordinate legislation.

#### **Article 8 – Statements of principles of design and accessibility**

16. This Article 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/or a statement about how issues relating to access to the development have been dealt with. Powers are also provided to enable the applications to which this is intended to apply to be prescribed in subordinate legislation.

#### **Article 9 – Power to decline to determine applications**

17. Article 9 provides the Department with a power to decline to determine any planning application or consent deemed to be the same or substantially the same as another application for the same site within the preceding two years. The provisions apply where the Department has refused a similar application under Article 31 of the Planning (Northern Ireland) Order 1991 or has refused more than one similar application and there has been no appeal to the Planning Appeals Commission; or where the Planning Appeals Commission has dismissed an appeal for a similar proposal and there has been no material change in circumstances (Repeat Applications). In addition, the Department may decline to determine an application if the Department thinks that it is similar or substantially similar to another application which has not been finally determined or is still under consideration by the Planning Appeals Commission (Twin Tracked Applications).

#### **Article 10 – Duration of planning permission and listed building consent**

18. This Article introduces new powers which will remove the ability to renew a planning permission, listed building or conservation area consent by applying to vary the time commencement condition. The powers also remove the ability to vary the time within which reserved matters must be submitted with regard to outline permissions.

#### **Article 11 – Removal of discretion to extend time for bringing appeal**

19. Article 11 removes the Planning Appeal Commission's discretion to extend the time for submitting an appeal.

#### **Article 12 – Conservation areas**

20. Article 12 provides for wider consultation on the proposed designation of conservation areas to include such other persons or bodies as may be prescribed. This Article also enables conservation area controls, including demolition control and the preservation of trees, to be put in place on a temporary basis before such consultation takes place.

#### **Article 13 – Temporary stop notice**

21. The Department may serve temporary, stand alone, stop notices to halt a breach of planning control for a period of up to 28 days as soon as the breach is identified. It enables the Department to prevent unauthorised development at an early stage without first having had to issue an enforcement notice. In addition, it allows the Department up to 28 days to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue. The provisions also impose certain limitations on activities and specify that contravention of such a notice would become a criminal offence, punishable on summary conviction by a fine of up to £30,000 or on indictment by an unlimited fine, and outline arrangements for compensation.

#### **Article 14 – Increase in fines for unlawful advertisements**

22. This Article increases the maximum level of fines for the offence of displaying an advertisement in contravention of advertisement regulations from level 3 on the standard scale of fines (£1,000) to level 4 (£2,500) with daily fines raised from up to £100 to a maximum of £250.

#### **Article 15 – Procedure of Planning Appeals Commission**

23. Article 15 introduces changes to allow the Chief Commissioner of the Planning Appeals Commission to delegate decision making in certain appeal cases to a single Commissioner. The Chief Commissioner will have the discretion to decide which cases are to be so delegated. Detailed changes may be prescribed in subordinate legislation.

#### **Article 16 – Fees and charges**

24. Article 16 widens provisions for the payment of both charges and fees relating to planning applications. The provisions enable the Department to charge for the recovery of the costs of performing its functions.

### **PART III – CORRECTION OF ERRORS**

#### **Article 17 – Correction of errors**

25. Article 17 provides the power for the Department to correct minor typographical errors in its decision documents/notices. Article 18 requires the Department to notify, in writing, the relevant person of any correction or decision not to make a correction as soon as practicable. Article 19 explains the effect of a correction made or not made and Article 20 deals with supplementary provisions relating to the correction of errors in decision documents/notices.

### **PART IV CROWN APPLICATION**

#### **Article 21 and Schedule 1 – Crown application**

26. This Article removes Crown immunity subject to certain provisions and exceptions. It inserts new provisions regarding enforcement and applications for planning permission, etc by the Crown, and in relation to the service of notices on the Crown. Further

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amendments relating to the Crown are included in Schedule 1. These relate to service of enforcement notices, hazardous substances consent, rights of entry, compulsory acquisition of land for planning purposes and the service of purchase notices. Definitions relating to the Crown are revised and there are provisions requiring the Crown to provide information as to estates in Crown land.

27. The exceptions relate to the recovery by the Department of costs relating to the execution of works required by an enforcement notice, injunctions, urgent works to preserve a building in a conservation area and the recovery by the Department of costs relating to the execution of works required by an Article 82 enforcement notice (enforcement of duties as to replacement of trees).

**Article 22 – National security**

28. Article 22 introduces new procedures for planning applications, etc, where, in the opinion of the Secretary of State, the consideration by the Department of objections or representations received in relation to the application raise issues of national security. Procedures will enable decisions to be made where, for security reasons, details of the development cannot be revealed but where to withhold such details would impact on the ability of interested parties to fully participate in the planning process. The Department will be required to hold a public local inquiry in such circumstances.
29. Special provision is made for the giving of evidence at inquiries under the Planning (Northern Ireland) Order 1991 where national security issues are raised. The Secretary of State may direct that certain evidence may only be heard by, or open to inspection by, certain persons. If the Secretary of State gives such a direction, the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting such evidence.
30. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.

**Article 23 – Trees in conservation areas: acts of Crown**

31. This Article prohibits the Crown from doing any act to a tree in a conservation area which might be prohibited by a tree preservation order, unless it serves notice of its intention on the Department and does the act either with the consent of the Department or between six weeks and two years after the date of the notice.

**Article 24 - Subordinate legislation**

32. Article 24 provides the Department with a power to make an order to apply existing planning subordinate legislation to the Crown, with or without modifications.

**Article 25 and Schedule 2 – Crown application: transitional**

33. Article 25 introduces Schedule 2 which makes transitional provisions to deal with applications for planning permission submitted by the Crown to the Department

**PART V MINERAL PLANNING PERMISSIONS**

**Articles 26 and 27 and Schedule 3 – Mineral planning permissions**

34. These Articles and the new provisions introduced by Schedule 3 enable the Department to make an initial review of all old mineral permissions granted in Northern Ireland to

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ensure that their conditions meet current environmental standards. The provisions also prevent dormant sites from reopening without a review of the conditions attaching to the permission being carried out and place a duty on the Department to make periodic reviews of all mineral sites.

**PART VI AMENDMENTS AND REPEALS**

**Article 28 and Schedules 4 and 5 – Amendments and repeals**

35. Article 28 introduces Schedule 4 which makes minor amendments to the Planning (Northern Ireland) Order 1991 (NI 11) and the Planning (Amendment) (Northern Ireland) Order 2003 (NI 8). It also introduces the repeal of the statutory provisions set out in Schedule 5.

**COMMENCEMENT**

36. Many of the provisions will be brought into operation one month after approval of the Order by the Privy Council. The remaining provisions of the Order will be brought into operation on a day or days to be appointed by commencement order.



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