

EXPLANATORY MEMORANDUM TO

The Planning (2011 Act) (Transitional Provisions) Order (Northern Ireland) 2011

S.R. 2011 No. 387

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment (“the Department”) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 251(2) of the Planning Act (Northern Ireland) 2011 (“the 2011 Act”) and is subject to the negative resolution procedure.
- 1.3. The Rule is due to come into operation on 1 December 2011.

2. Purpose

- 2.1. This Order makes transitional provisions in connection with the commencement of section 248 of the 2011 Act which amends the time periods for enforcement under the Planning (Northern Ireland) Order 1991. Section 248 provides for a new 5 year time period for enforcement (instead of 4 and 10 years).
- 2.2. Article 2 of this Order sets out how enforcement cases will be handled by the Department where enforcement action has been initiated under the Planning (Northern Ireland) Order 1991 at the time the new period is introduced.

3. Background

- 3.1. The 2011 Act provides the legislative basis for the reform of the Northern Ireland planning system – most current powers are contained in the Planning (Northern Ireland) Order 1991. Initially it was Article 6 of the Planning (Amendment) (Northern Ireland) Order 2003 which inserted into the Planning (Northern Ireland) Order 1991 Article 67B provisions simplifying 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, namely the four-year and ten-year time limits. These time limits are cut off points for taking enforcement action. After expiry of the relevant periods - 4 years in the case of operational development and breaches relating to the change of use to use as a single dwelling house and 10 years for any other breach of planning control - the breach of development control becomes immune from enforcement action and thereby lawful.
- 3.2. Section 132 of the Planning Act (Northern Ireland) 2011 changes the time periods, within which, action may be taken in respect of breaches of planning control. Where the breach consists of carrying out without planning permission of building, engineering, mining or other operations no enforcement action may be taken after 5 years beginning with the date on which the operations were substantially completed. If the breach consists in the change of use of any

building to use as a single dwelling-house, no enforcement action may be taken after 5 years beginning with the date of the breach. In the case of any other breach of planning control, including other changes of use, no enforcement action may be taken after the end of 5 years beginning with the date of the breach.

- 3.3. The bulk of the reforms within the Act 2011 cannot be commenced at this point as they apply whenever powers transfer to councils. Section 248 of the Act, however, provides for the early introduction of a standard 5 year time period for taking enforcement action against breaches of planning control pre transfer of powers to councils. This section relates to the new 5 year enforcement time period provisions contained in section 132 of the Planning Act (Northern Ireland) 2011 and makes similar provision in relation to the Planning (Northern Ireland) Order 1991 by means of amendments to the Planning (Northern Ireland) Order 1991. Amending provisions specifically adjust Articles 23 (notice requiring planning application), 24 (appeal against notice under article 23), 67B (time limits), 67F (temporary stop notice: restrictions), 73 (service of stop notice) and 82 (enforcement of duties as to replacement of trees of the Planning (Northern Ireland) Order 1991).
- 3.4. To ensure the smooth transition to the new time period the Department must provide transitional arrangements through subordinate legislation. Section 251(2) of the Planning Act (Northern Ireland) 2011, under which this Order is made, provides that the Department may, amongst other things, make any transitional provision in connection with the coming into operation of any provision of this Act. This Order at Article 2 sets out how enforcement cases will be handled where formal enforcement action has been initiated at the time the new period is introduced.

4. Matters of Special Interest to the Environment Committee

- 4.1. At the Environment Committee meeting of 9 June 2011 the Committee stated it welcomed the new 5 year time period and would like to see the provisions come into force as soon as possible.

5. Consultation

- 5.1. Wide and extensive consultation was carried out on the Department's proposals to reform the planning system. A new time period for enforcement was recommended by the Environment Committee during its scrutiny of the Planning Bill and was debated by the Assembly. The Department does not consider further consultation on the implementing and clarifying subordinate legislation is necessary – the purpose of this Statutory Rule is simply to make clarifying transitional provisions in connection with the commencement of section 248 of the 2011 Act which amends the time limits for enforcement under the Planning (Northern Ireland) Order 1991. (The accompanying Planning (2011 Act) (Commencement No.1) Order (Northern Ireland) 2011 commences section 248 which actually provides for the new 5 year time period for enforcement (instead of 4 or 10 years)).

6. Equality Impact

- 6.1. In accordance with its duty under Section 75 of the Northern Ireland Act 1978, the Department has conducted a screening exercise on the legislative proposals and has concluded that they do not have significant implications for equality of opportunity. The measures will apply equally to all groups. In light of this, the Department considers that an Equality Impact Assessment is not necessary.

7. Regulatory Impact

- 7.1. Any Regulatory Impact derives from the 2011 Act itself, not from its commencement or transitional arrangements. A Regulatory Impact Assessment was carried out during development of the 2011 Act. As the Order will not impose any additional costs on business and will not impact on charities social enterprise or voluntary bodies a Regulatory Impact Assessment has not been prepared.

8. Financial Implications

- 8.1. Overall it is difficult to estimate the exact costs and savings for the enforcement work resulting from the new proposals. We do not expect that the proposals will have any significant financial impact for businesses. While the time periods for taking enforcement action will be changed and consequential transitional arrangements introduced it remains the fact that enforcement action will only be taken if there has been a breach of planning control. There are no start-up costs for the Department as the enforcement regime is well established.

9. EU Implications

- 9.1. Not applicable.

10. Section 24 of the Northern Ireland Act 1998

- 10.1. The provisions of this Order are considered to be compliant with section 24 of the Northern Ireland Act 1998, including that they are compatible with Community Law and Convention Rights as defined in the Human Rights Act 1998.