2011 CHAPTER 25

Part 1

Functions of Department of the Environment
with respect to development of land

Modifications etc. (not altering text)

C1 Pts. 1-3: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

General functions of Department with respect to development of land

1.—(1) The Department must formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development.

(2) The Department must—

(a) ensure that any such policy is in general conformity with the regional development strategy;

(b) exercise its functions under subsection (1) with the objective of furthering sustainable development and promoting or improving well-being.

(3) For the purposes of subsection (2)(b) the Department must take account of—

(a) policies and guidance issued by—

(i) the Department for Regional Development;

(ii) the Office of the First Minister and deputy First Minister;

(b) any other matter which appears to it to be relevant.

(4) The Department may undertake, or cause to be undertaken, such surveys or studies as it may consider necessary, including surveys or studies relating to any of the following matters—

(a) the physical, economic, social and environmental characteristics of any area, including the purposes for which land is used;

(b) the size, composition and distribution of the population of an area;

(c) the communications, transport system and traffic of an area;

(d) any changes in relation to the matters mentioned in paragraphs (a) to (c) and the effect which the changes are likely to have on the development of Northern Ireland or any part of Northern Ireland or the planning of that development.

Modifications etc. (not altering text)

C2 S. 1(3)(a)(ii): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 1 Pt. 1** (with art. 9(2))

Commencement Information

I1 S. 1 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I2 S. 1 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Preparation of statement of community involvement by Department

2.—(1) The Department must prepare and publish a statement of community involvement.

(2) The statement of community involvement is a statement of the Department's policy as to the involvement in the exercise of the Department's functions under Part 3 of persons who appear to the Department to have an interest in matters relating to development.

(3) The Department must prepare and publish a statement of community involvement within the period of one year from the day appointed for the coming into operation of this section.

Commencement Information

I3 S. 2 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I4 S. 2 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Part 2

Local development plans

General

Survey of district

3.—(1) A council must keep under review the matters which may be expected to affect the development of its district or the planning of that development.

(2) Those matters include—

(a) the principal physical, economic, social and environmental characteristics of the council's district;

(b) the principal purposes for which land is used in the district;

(c) the size, composition and distribution of the population of the district;

(d) the communications, transport system and traffic of the district;

(e) any other considerations which may be expected to affect those matters;

(f) such other matters as may be prescribed or as the Department (in a particular case) may direct.

(3) The matters also include—

(a) the potential impact of climate change;

(b) any changes which the council thinks may occur in relation to any other matter;

(c) the effect such changes are likely to have on the development of the council's district or on the planning of such development.

(4) A council may also keep under review and examine the matters mentioned in subsections (2) and (3) in relation to any neighbouring district to the extent that those matters may be expected to affect the district of the council.

(5) In exercising a function under subsection (4) a council must consult with the council for the neighbouring district in question.

Commencement Information

I5 S. 3 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I6 S. 3 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Statement of community involvement

4.—(1) A council must prepare a statement of community involvement.

(2) The statement of community involvement is a statement of the council's policy as to the involvement in the exercise of the council's functions under this Part and Part 3 of persons who appear to the council to have an interest in matters relating to development in its district.

(3) The council and the Department must attempt to agree the terms of the statement of community involvement.

(4) But to the extent that the council and the Department cannot agree the terms of the statement of community involvement the Department may direct that the statement must be in the terms specified in the direction.

(5) The council must comply with the direction.

(6) The Department may prescribe—

(a) the procedure in respect of the preparation of the statement of community involvement;

(b) the form and content of the statement;

(c) publicity about the statement;

(d) making the statement available for inspection by the public;

(e) the manner in which—

(i) representations may be made in relation to any matter to be included in the statement; and

(ii) those representations are to be considered;

(f) circumstances in which the requirements of the statement need not be complied with.

Commencement Information

I7 S. 4 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I8 S. 4 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Sustainable development

5.—(1) Any person who exercises any function under this Part must exercise that function with the objective of furthering sustainable development.

(2) For the purposes of subsection (1) the person must take account of—

(a) policies and guidance issued by—

(i) the Office of the First Minister and deputy First Minister;

[F1](ii) . . . . . .

(iii) the Department of Regional Development;

(b) any matters which appear to that person to be relevant.

Textual Amendments

F1 S. 5(2)(a)(ii) omitted (8.5.2016) by virtue of The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 14** (with art. 9(2))

Modifications etc. (not altering text)

C3 S. 5(2)(a)(i): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 1 Pt. 1** (with art. 9(2))

Commencement Information

I9 S. 5 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I10 S. 5 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Local development plans

Local development plan

6.—(1) Any reference—

(a) to a local development plan in this Act and in any other statutory provision relating to planning; and

(b) to a development plan in any statutory provision relating to planning,

is to be construed as a reference to the development plan documents (taken together) which have been adopted by the council or approved by the Department in accordance with section 16(6).

(2) In this Part the development plan documents are—

(a) the plan strategy;

(b) the local policies plan.

(3) If to any extent a policy contained in a local development plan conflicts with another policy in that plan the conflict must be resolved in favour of the policy which is contained in the last development plan document to be adopted or, as the case may be, approved.

(4) Where, in making any determination under this Act, regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Commencement Information

I11 S. 6 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I12 S. 6 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Preparation of timetable

7.—(1) A council must prepare, and keep under review a timetable for the preparation and adoption of the council's local development plan.

(2) The council and the Department must attempt to agree the terms of the timetable mentioned in subsection (1).

(3) But to the extent that the Department and the council cannot agree the terms the Department may direct that the timetable must be in the terms specified in the direction.

(4) The council must comply with the direction.

(5) The Department may prescribe—

(a) the procedure in respect of the preparation of the timetable mentioned in subsection (1);

(b) the form and content of the timetable;

(c) the time at which any step in the preparation of the timetable must be taken;

(d) publicity about the timetable;

(e) making the timetable available for inspection by the public;

(f) circumstances in which the requirements of the timetable need not be complied with.

Commencement Information

I13 S. 7 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I14 S. 7 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Plan strategy

8.—(1) A council must prepare a plan for its district (to be known as a plan strategy).

(2) A plan strategy must set out—

(a) the council's objectives in relation to the development and use of land in its district;

(b) its strategic policies for the implementation of those objectives; and

(c) such other matters as may be prescribed.

(3) Regulations under this section may prescribe the form and content of the plan strategy.

(4) A plan strategy must be prepared in accordance with—

(a) the timetable set out in section 7(1);

(b) the council's statement of community involvement.

(5) In preparing a plan strategy, the council must take account of—

(a) the regional development strategy;

[[F2](aa) the council's current community plan;**]**

(b) any policy or advice contained in guidance issued by the Department;

(c) such other matters as the Department may prescribe or, in a particular case, direct,

and may have regard to such other information and considerations as appear to the council to be relevant.

(6) The council must also—

(a) carry out an appraisal of the sustainability of the plan strategy;

(b) prepare a report of the findings of the appraisal.

(7) A plan strategy is a plan strategy only if it is—

(a) adopted by resolution of the council; or

(b) approved by the Department in accordance with section 16(6).

Textual Amendments

F2 S. 8(5)(aa) inserted (1.4.2015) by Local Government Act (Northern Ireland) 2014 (c. 8), **ss. 77(2)**, 129 (with ss. 77(5), 124(4)); S.R. 2015/209, art. 2, Sch. 1

Commencement Information

I15 S. 8 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I16 S. 8 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Local policies plan

9.—(1) A council must, after the plan strategy for its district has been adopted by resolution of the council or, as the case may be, approved by the Department, prepare a plan for its district (to be known as a local policies plan).

(2) The local policies plan must set out—

(a) the council's policies in relation to the development and use of land in its district; and

(b) such other matters as may be prescribed.

(3) Regulations under this section may prescribe the form and content of the local policies plan.

(4) The local policies plan must be prepared in accordance with—

(a) the timetable set out in section 7(1);

(b) the council's statement of community involvement.

(5) The council's local policies plan must be consistent with the council's plan strategy.

(6) In preparing the local policies plan, the council must take account of—

(a) the regional development strategy;

[[F3](aa) the council's current community plan;**]**

(b) any policy or advice contained in guidance issued by the Department;

(c) such other matters as the Department may prescribe or, in a particular case, direct,

and may have regard to such other information and considerations as appear to the council to be relevant.

(7) The council must also—

(a) carry out an appraisal of the sustainability of the local policies plan;

(b) prepare a report of the findings of the appraisal.

(8) A local policies plan is a local policies plan only if it is—

(a) adopted by resolution of the council; or

(b) approved by the Department in accordance with section 16(6).

Textual Amendments

F3 S. 9(6)(aa) inserted (1.4.2015) by Local Government Act (Northern Ireland) 2014 (c. 8), **ss. 77(3)**, 129 (with ss. 77(5), 124(4)); S.R. 2015/209, art. 2, Sch. 1

Commencement Information

I17 S. 9 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I18 S. 9 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Independent examination

10.—(1) The council must submit every development plan document to the Department for independent examination.

(2) But the council must not submit such a document unless—

(a) it has complied with any relevant requirements contained in regulations under this Part, and

(b) it thinks the document is ready for independent examination.

(3) The council must also send to the Department (in addition to the development plan document) such other documents (or copies of documents) and such information as is prescribed.

(4) The Department must, unless it intends to make a direction under section 11(2) or 15(1), cause an independent examination to be carried out by—

(a) the planning appeals commission; or

(b) a person appointed by the Department.

(5) The Department must not appoint a person under subsection (4)(b) unless, having regard to the timetable prepared by the council under section 7(1), the Department considers it expedient to do so.

(6) The purpose of an independent examination is to determine in respect of the development plan document—

(a) whether it satisfies the requirements of sections 7 and 8 or, as the case may be, sections 7 and 9, and any regulations under section 22 relating to the preparation of development plan documents;

(b) whether it is sound.

(7) Any person who makes representations seeking to change a development plan document must (if that person so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.

(8) The person appointed to carry out the examination must—

(a) make recommendations;

(b) give reasons for the recommendations.

Commencement Information

I19 S. 10 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I20 S. 10 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Withdrawal of development plan documents

11.—(1) A council may, in such manner as may be prescribed, at any time before a development plan document is submitted to the Department under section 10(1), withdraw the document.

(2) The Department may, at any time after the development plan document has been submitted to it under section 10(1), direct the council to withdraw the document.

Commencement Information

I21 S. 11 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I22 S. 11 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Adoption

12.—(1) The Department must consider the recommendations made under section 10(8) and direct the council to—

(a) adopt the development plan document as originally prepared;

(b) adopt the development plan document with such modifications as may be specified in the direction; or

(c) withdraw the development plan document.

(2) The Department must give reasons for a direction given under subsection (1).

(3) The council must comply with a direction given under subsection (1) within such time as may be prescribed.

(4) For the purposes of this section, a development plan document is adopted by resolution of the council.

Commencement Information

I23 S. 12 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I24 S. 12 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Review of local development plan

13.—(1) A council must carry out a review of its local development plan at such times as the Department may prescribe.

(2) The council must report to the Department on the findings of its review.

(3) A review must—

(a) be in such form as may be prescribed; and

(b) be published in accordance with such requirements as may be prescribed.

Commencement Information

I25 S. 13 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I26 S. 13 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Revision of plan strategy or local policies plan

14.—(1) The council may at any time prepare a revision of—

(a) its plan strategy; or

(b) its local policies plan.

(2) The council must prepare a revision of its plan strategy or its local policies plan—

(a) at such times and in such manner as may be prescribed;

(b) if, following a review under section 13, it thinks that the plan strategy or the local policies plan should be revised;

(c) if the Department directs the council to do so.

(3) This Part applies to the revision of a plan strategy or a local policies plan as it applies to the preparation of a plan strategy or, as the case may be, a local policies plan.

Commencement Information

I27 S. 14 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I28 S. 14 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Intervention by Department

15.—(1) If the Department thinks that a development plan document is unsatisfactory it may, at any time before the document is adopted under section 12 direct the council to modify the document in accordance with the direction.

(2) If the Department gives a direction under subsection (1) it must state its reasons for doing so.

(3) The council must comply with a direction given under subsection (1).

Commencement Information

I29 S. 15 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I30 S. 15 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Department's default powers

16.—(1) This section applies if the Department thinks that a council is failing or omitting to do anything it is necessary for it to do in connection with the preparation or revision of a development plan document.

(2) The Department may—

(a) prepare the document; or

(b) revise the document.

(3) The Department must give reasons for anything it does in pursuance of subsection (2).

(4) The Department must cause an independent examination to be carried out by—

(a) the planning appeals commission; or

(b) a person appointed by the Department,

and section 10(5) to (8) applies accordingly.

(5) The Department must publish the recommendations and reasons of the person appointed to hold the examination.

(6) The Department must consider recommendations made in accordance with section 10(8) (as applied by subsection (4) of this section) and may approve the document with or without modification.

(7) The council must reimburse the Department for any expenditure the Department incurs in connection with anything—

(a) which is done by it under subsection (2), and

(b) which the council failed or omitted to do as mentioned in subsection (1).

Commencement Information

I31 S. 16 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I32 S. 16 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Joint plans

17.—(1) Two or more councils may agree to prepare—

(a) a joint plan strategy; or

(b) a joint plan strategy and joint local policies plan.

(2) This Part applies for the purposes of any step which may be or is required to be taken in relation to a joint plan strategy or a joint local policies plan as it applies for the purposes of any step which may be or is required to be taken in relation to a plan strategy or local policies plan.

(3) For the purposes of subsection (2) anything which must be done by or in relation to a council in connection with a plan strategy or a local policies plan must be done by or in relation to each of the councils mentioned in subsection (1) in connection with a joint plan strategy or local policies plan.

(4) Subsections (5) to (7) apply if a council withdraws from an agreement mentioned in subsection (1).

(5) Any step taken in relation to the joint plan strategy or joint local policies plan must be treated as a step taken by—

(a) a council which was a party to the agreement for the purposes of any corresponding plan strategy or corresponding local policies plan prepared by it;

(b) two or more other councils who were parties to the agreement for the purposes of any corresponding joint plan strategy or corresponding joint local policies plan.

(6) Any independent examination of a plan strategy or a local policies plan to which the agreement relates must be suspended.

(7) If before the end of the period prescribed for the purposes of this subsection a council which was a party to the agreement requests the Department in writing to do so the Department may direct that—

(a) the examination is resumed in relation to the corresponding plan strategy or corresponding local policies plan;

(b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.

(8) In this section and in section 18—

(a) a joint plan strategy is a plan strategy prepared jointly by two or more councils;

(b) a joint local policies plan is a local policies plan prepared jointly by two or more councils.

(9) The Department may by regulations make provision as to what is—

(a) a corresponding plan strategy;

(b) a corresponding local policies plan.

Commencement Information

I33 S. 17 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I34 S. 17 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Power of Department to direct councils to prepare joint plans

18.—(1) The Department may direct two or more councils to prepare—

(a) a joint plan strategy; or

(b) a joint plan strategy and joint local policies plan.

(2) A direction given by the Department under subsection (1) may relate to the whole or part of the councils' districts.

(3) A council must comply with a direction given by the Department under subsection (1).

Commencement Information

I35 S. 18 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I36 S. 18 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Exclusion of certain representations

19.—(1) This section applies to any representation or objection in respect of anything which is done or is proposed to be done in pursuance of—

(a) an order, or proposed order, under section 1 of the New Towns Act (Northern Ireland) 1965 (c. 13);

(b) a redevelopment scheme prepared and submitted under Article 48 of the Housing (Northern Ireland) Order 1981 (NI 3);

(c) the preparation of, or adoption of, a development scheme under Part 7 of the Planning (Northern Ireland) Order 1991 (NI 11);

(d) an order under Article 14 or 15 of the Roads (Northern Ireland) Order 1993 (NI 15);

(e) a simplified planning zone scheme;

(f) an enterprise zone scheme.

(2) If a council, or a person appointed by the Department to carry out an independent examination under this Part, or the planning appeals commission thinks that a representation made in relation to a development plan document is in substance a representation or objection to which this section applies, the council, person or commission (as the case may be) may disregard it.

Commencement Information

I37 S. 19 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I38 S. 19 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Guidance

20 In the exercise of any function conferred under or by virtue of this Part, the council must have regard to any guidance issued by—

(a) the Department;

(b) the Department for Regional Development;

(c) the Office of the First Minister and deputy First Minister.

Commencement Information

I39 S. 20 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I40 S. 20 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Annual monitoring report

21.—(1) Every council must make an annual report to the Department.

(2) The annual report must contain such information as is prescribed as to the extent to which the objectives set out in the local development plan are being achieved.

(3) The annual report must—

(a) be made at such time as may be prescribed;

(b) be in such form as may be prescribed;

(c) contain such other matter as may be prescribed.

Commencement Information

I41 S. 21 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I42 S. 21 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Regulations

22.—(1) The Department may by regulations make provision in connection with the exercise by any person of functions under this Part.

(2) The regulations may in particular make provision as to—

(a) the procedure to be followed by the council in carrying out an appraisal under section 8(6) or 9(7);

(b) the procedure to be followed in the preparation of development plan documents;

(c) requirements about the giving of notice and publicity;

(d) requirements about inspection by the public of a development plan document or any other document;

(e) the nature and extent of consultation with and participation by the public in anything done under this Part;

(f) the making of representations about any matter to be included in a development plan document;

(g) consideration of any such representations;

(h) the determination of the time at which anything must be done for the purposes of this Part;

(i) the manner of publication of any draft, report or other document published under this Part;

(j) monitoring the exercise by councils of their functions under this Part.

Commencement Information

I43 S. 22 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I44 S. 22 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Part 3

Planning control

Modifications etc. (not altering text)

C4 Pt. 3 applied with modification(s) (1.4.2015) by The Planning General Regulations (Northern Ireland) 2015 (S.R. 2015/39), regs. 1(1), **2** (with regs. 3-10)

"Development" and requirement of planning permission

Meaning of "development"

23.—(1) In this Act, subject to subsections (2) to (6), "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(2) For the purposes of this Act "building operations" includes—

(a) demolition of buildings;

(b) rebuilding;

(c) structural alteration of or addition to buildings; and

(d) other operations normally undertaken by a person carrying on business as a builder.

(3) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of

the building or which do not materially affect the external appearance of the building;

(b) the carrying out by a council or statutory undertaker of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(c) the use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such;

(d) the use of any land for the purposes of agriculture or forestry and the use for any of those purposes of any building occupied together with land so used;

(e) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Department for the purpose of this section, the use of the buildings or other land or, subject to the provisions of the order, of any part thereof for any other purpose of the same class;

(f) the demolition of any description of building specified in a direction given by the Department to councils generally or to a particular council;

(g) a structural alteration of any description of building specified in a direction given by the Department to councils generally or to a particular council, where the alteration consists of demolishing part of the building.

(4) The Department may in a development order specify any circumstances or description of circumstances in which subsection (3) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage amount as is so specified.

(5) For the purposes of this section—

(a) the use as two or more separate dwelling-houses of any building previously used as a single dwelling-house involves a material change in the use of the building and of each part thereof which is so used;

(b) the deposit of refuse or waste material on land involves a material change in the use thereof, notwithstanding that the land is comprised in a site already used for that purpose, if either the superficial area of the deposit is thereby extended, or the height of the deposit is thereby extended and exceeds the level of the land adjoining the site.

(6) Without prejudice to any regulations made under this Act relating to the control of advertisements, a use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this Act as involving a material change in the use of that part of the building.

Commencement Information

I45 S. 23 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I46 S. 23 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Development requiring planning permission

24.—(1) Subject to this Act, planning permission is required for the carrying out of any development of land.

(2) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted.

(3) Where by a development order planning permission to develop land has been granted subject to limitations, planning permission is not required for the use of that land which (apart from its use in accordance with that permission) is its normal use.

(4) Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part) it could lawfully have been used if that development had not been carried out.

(5) In determining for the purposes of subsections (2) and (3) what is or was the normal use of land, no account shall be taken of any use begun in contravention of this Part.

Commencement Information

I47 S. 24 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I48 S. 24 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Development management

Hierarchy of developments

25.—(1) For the purposes of this Act, a development belongs to one of the following categories—

(a) the first, to be known as “major developments”; and

(b) the second, to be known as “local developments”.

(2) The Department must by regulations describe classes of development and assign each class to one of the categories mentioned in paragraphs (a) and (b) of subsection (1).

(3) But the Department may, as respects a particular local development, direct that the development is to be dealt with as if (instead of being a local development) it were a major development.

Commencement Information

I49 S. 25 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I50 S. 25 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Department's jurisdiction in relation to developments of regional significance

26.—(1) A person who proposes to apply for permission for any major development (except a development to which section 213 applies) which is prescribed in regulations made for the purposes of this subsection ("the prospective applicant") must, before complying with section 27, enter into consultations with the Department.

(2) The Department may make regulations prescribing the procedure to be followed in relation to consultations under this section.

(3) Without prejudice to any regulations made under subsection (2), the prospective applicant must, for the purpose of consultations under that subsection, supply to the Department sufficient information in relation to the proposed development to enable the Department to assess the proposed development.

(4) Where, following consultations under this section, the Department is of the opinion that the proposed development would, if carried out—

(a) be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland, or

(b) involve a substantial departure from the local development plan for the area to which it relates,

it must serve a notice in writing on the prospective applicant stating that the development is development to which this section applies.

(5) An application for planning permission for development to which this section applies must be made to the Department.

(6) Where, following consultations under this section, the Department is of the opinion that the proposed development would not, if carried out—

(a) be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland, or

(b) involve a substantial departure from the local development plan for the area to which it relates,

it must serve a notice in writing on the prospective applicant stating—

(i) that it is of that opinion; and

(ii) that the prospective applicant's application for planning permission, if it is proceeded with, must be made to the appropriate council.

(7) No application for planning permission in respect of a development specified in regulations made for the purposes of subsection (1) may be made to a council unless or until a notice is served under subsection (6) in relation to the development.

(8) The Department must serve a copy of a notice under subsection (4) or (6), as the case may be, on the appropriate council.

(9) For the purpose of considering representations made in respect of an application for planning permission which is an application to which section 235 (national security) applies, the Department must, subject to any rules made under subsection (2) or (5) of that section, cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(10) For the purpose of considering representations made in respect of an application for planning permission made to it, other than an application mentioned in subsection (9), the Department may cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(11) Where a public local inquiry is not held under subsection (10), the Department must, before determining the application, serve a notice in writing on the applicant and the appropriate council 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 of the notice), the applicant or the council so requests in writing, the Department shall afford to each of them an opportunity of appearing before and being heard by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(12) In determining an application for planning permission made to it, the Department must, where any inquiry or hearing is held, take into account any report of the planning appeals commission or a person appointed by the Department for the purposes of the inquiry or hearing, as the case may be.

(13) The decision of the Department on an application for planning permission made to it shall be final.

Modifications etc. (not altering text)

C5 S. 26 applied (22.4.2015) by The Planning (Inquiry Procedure) Rules (Northern Ireland) 2015 (S.R. 2015/189), rules 1, **3**

Commencement Information

I51 S. 26 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I52 S. 26 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Pre-application community consultation

27.—(1) Before submitting an application for planning permission for a major development (except a development to which section 213 applies), the prospective applicant must comply with the following provisions of this section.

(2) The prospective applicant must give notice (to be known as a "proposal of application notice") to the appropriate council that an application for planning permission for the development is to be submitted.

(3) A period of at least 12 weeks must elapse between giving the notice and submitting any such application.

(4) A proposal of application notice must be in such form, and have such content, as may be prescribed but must in any event contain—

(a) a description in general terms of the development to be carried out;

(b) if the site at which the development is to be carried out has a postal address, that address;

(c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site, and

(d) details as to how the prospective applicant may be contacted and corresponded with.

(5) Regulations may—

(a) require that the proposal of application notice be given to persons specified in the regulations,

(b) prescribe—

(i) the persons who are to be consulted as respects a proposed application, and

(ii) the form that consultation is to take.

(6) The council may, provided that it does so within the period of 21 days after receiving the proposal of application notice, notify the prospective applicant that it requires (either or both)—

(a) that the proposal of application notice be given to persons additional to those specified under subsection (5) (specifying in the notification who those persons are);

(b) that consultation additional to any required by virtue of subsection (5) (b) be undertaken as regards the proposed development (specifying in the notification what form that consultation is to take).

(7) In considering whether to give notification under subsection (6) the council is to have regard to the nature, extent and location of the proposed development and to the likely effects, at and in the vicinity of that location, of its being carried out.

(8) In the case of an application for planning permission to be made to the Department, this section has effect as if any reference to a council were a reference to the Department.

Commencement Information

I53 S. 27 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I54 S. 27 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Pre-application community consultation report

28.—(1) A person who, before submitting an application for planning permission for a development, is required to comply with section 27 and who proceeds to submit that application is to prepare a report (a "pre-application community consultation report") as to what has been done to effect such compliance.

(2) A pre-application community consultation report is to be in such form as may be prescribed.

Commencement Information

I55 S. 28 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I56 S. 28 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Call in of applications, etc., to Department

29.—(1) The Department may give directions requiring applications for planning permission made to a council, or applications for the approval of a council of any matter required under a development order, to be referred to it instead of being dealt with by councils.

(2) A direction under subsection (1)—

(a) may be given either to a particular council or to councils generally; and

(b) may relate either to a particular application or to applications of a class specified in the direction.

(3) Where the Secretary of State or, as the case may be, the Department of Justice has certified that an application for planning permission or an application for any approval under this Act or a development order is an application to which section 235 (national security) applies, the Department of the Environment must give a direction to the council to which the application was made requiring the application to be referred to the Department of the Environment instead of being dealt with by the council.

(4) Any application in respect of which a direction under this section has effect shall be referred to the Department accordingly.

(5) For the purpose of considering representations made in respect of an application to which section 235 applies which has been referred to it under this section, the Department must, subject to any rules made under subsection (2) or (5) of that section, cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(6) For the purpose of considering representations made in respect of an application referred to it under this section, other than an application mentioned in subsection (5), the Department may cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(7) Where a public local inquiry is not held under subsection (6), the Department must, before determining the application, serve a notice in writing on the applicant and the appropriate council 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 of the notice), the applicant or the council so requests in writing, the Department shall afford to each of them an opportunity of appearing before and being heard by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(8) In determining an application for planning permission referred to it, the Department must, where any inquiry or hearing is held, take into account any report of the planning appeals commission or a person appointed by the Department for the purposes of the inquiry or hearing, as the case may be.

(9) The decision of the Department on an application for planning permission referred to it shall be final.

Modifications etc. (not altering text)

C6 S. 29 applied (with modifications) (1.4.2015) by The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 (S.R. 2015/66), regs. 1, **12**

C7 S. 29 applied (22.4.2015) by The Planning (Inquiry Procedure) Rules (Northern Ireland) 2015 (S.R. 2015/189), rules 1, **3**

Commencement Information

I57 S. 29 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I58 S. 29 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Pre-determination hearings

30.—(1) Regulations or a development order may provide that, before determining an application for planning permission for a development of a class prescribed in the regulations or specified in the order, a council is to give the applicant and any person so prescribed or specified an opportunity of appearing before and being heard by a committee of the council.

(2) The procedures in accordance with which any such hearing is arranged and conducted (including, without prejudice to the generality of this subsection, procedures for ensuring relevance and avoiding repetition) and any other procedures consequent upon the hearing are to be such as the council considers appropriate.

(3) Any right of attendance at the hearing (other than for the purpose of appearing before and being heard by the committee) is to be such as the council considers appropriate.

(4) In relation to an application other than is provided for in regulations or a development order under subsection (1), a council may elect to give the applicant and any other person an opportunity such as is mentioned in that subsection; and if the council does so elect, subsections (2) and (3) apply accordingly.

Commencement Information

I59 S. 30 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I60 S. 30 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Local developments: schemes of delegation

31.—(1) A council must—

(a) as soon as practicable after the coming into operation of this section, and thereafter—

(i) whenever required to do so by the Department; or

(ii) subject to sub-paragraph (i), at such intervals as may be provided for in regulations made under this section,

prepare a scheme (to be known as a "scheme of delegation") by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by the council for the purposes of this section instead of by it, and

(b) keep under review the scheme so prepared.

(2) The determination of any person so appointed is to be treated as that of the council.

(3) Without prejudice to subsection (1)(a)(ii), regulations under this section may make provision as to—

(a) the form and content of,

(b) the procedures for preparing and adopting, and

(c) the requirement to publish,

a scheme of delegation.

(4) Where an application for planning permission falls to be determined by a person so appointed, sections 41(3), 42, 45, 46, 48, 52(1) and (2), 54, 58 and 60 apply, with any necessary modifications, as they apply to an application which falls to be determined by the council.

(5) The council may, if it thinks fit, decide to determine an application itself which would otherwise fall to be determined by a person so appointed.

(6) Any such decision must include a statement of the reasons for which it has been taken; and a copy of the decision is to be served on the applicant.

Commencement Information

I61 S. 31 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I62 S. 31 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Development orders

Development orders

32.—(1) The Department must by order (in this Act referred to as a "development order") provide for the grant of planning permission.

(2) A development order may either—

(a) itself grant planning permission for development specified in the order or for development of any class so specified; or

(b) in respect of development for which planning permission is not granted by the order itself, provide for the grant of planning permission by a council (or, in the cases provided for elsewhere in this Act, the Department) on an application made to the council or, as the case may be, the Department, in accordance with the order.

(3) A development order may be made either—

(a) as a general order applicable, except so far as the order otherwise provides, to all land, but which may make different provision with respect to different descriptions of land; or

(b) as a special order applicable only to such land or descriptions of land as may be specified in the order.

(4) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.

(5) Without prejudice to the generality of subsection (4), where planning permission is granted by a development order for development of a specified class, the order may enable a council or the Department to direct that the permission shall not apply either in relation to development in a particular area or in relation to any particular development.

(6) Any provision of a development order whereby permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of other references in this Act to limitations) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that provision on more than that number of days in that period.

(7) For the purpose of enabling development to be carried out in accordance with planning permission, or otherwise for the purpose of promoting proper development in accordance with a local development plan, a development order may direct that any statutory provision in relation to any development specified under the order—

(a) shall not apply to any development specified in the order; or

(b) shall apply to it subject to such modifications as may be so specified.

Commencement Information

I63 S. 32 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I64 S. 32 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Simplified planning zone schemes

Simplified planning zones

33.—(1) A simplified planning zone is an area in respect of which a simplified planning zone scheme is in force.

(2) The adoption or approval of a simplified planning zone scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission for development specified in the scheme or for development of any class so specified.

(3) Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme.

(4) A simplified planning zone scheme shall consist of a map and a written statement, and such diagrams, illustrations and descriptive matter as the council for the district within which the zone is located thinks appropriate for explaining or illustrating the provisions of the scheme, and must specify—

(a) the development or classes of development permitted by the scheme;

(b) the land in relation to which permission is granted; and

(c) any conditions, limitations or exceptions subject to which it is granted;

and must contain such other matters as may be prescribed.

Commencement Information

I65 S. 33 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I66 S. 33 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Making and alteration of simplified planning zone schemes

34.—(1) A council may at any time make a simplified planning zone scheme in respect of any area within its district.

(2) A council may at any time alter—

(a) a simplified planning zone scheme adopted by it; or

(b) with the consent of the Department, a simplified planning zone scheme approved by the Department.

(3) In exercising its functions under subsection (1) or (2), the council must take account of—

(a) the regional development strategy;

(b) any policy or advice contained in guidance issued by the Department;

(c) such other matters as the Department may prescribe or, in a particular case, direct.

(4) Schedule 1 has effect with respect to the making and alteration of simplified planning zone schemes and other related matters.

Commencement Information

I67 S. 34 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I68 S. 34 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Simplified planning zone schemes: conditions and limitations on planning permission

35.—(1) The conditions and limitations on planning permission which may be specified in a simplified planning zone scheme may include—

(a) conditions or limitations in respect of all development permitted by the scheme or in respect of particular descriptions of development so permitted; and

(b) conditions or limitations requiring the consent, agreement or approval of the council in relation to particular descriptions of permitted development;

and different conditions or limitations may be specified for different cases or classes of case.

(2) Nothing in a simplified planning zone scheme shall affect the right of any person—

(a) to do anything not amounting to development; or

(b) to carry out development for which planning permission is not required or for which permission has been granted otherwise than by the scheme;

and no limitation or restriction subject to which permission has been granted otherwise than under the scheme shall affect the right of any person to carry out development for which permission has been granted under the scheme.

Commencement Information

I69 S. 35 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I70 S. 35 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Duration of simplified planning zone scheme

36.—(1) A simplified planning zone scheme shall take effect on the date of its adoption or approval and shall cease to have effect at the end of the period of 10 years beginning with that date.

(2) Upon the scheme's ceasing to have effect, planning permission under the scheme shall also cease to have effect except in a case where the development authorised by it has been begun.

(3) The provisions of section 64(2) to (6) and sections 65 and 66 apply to planning permission under a simplified planning zone scheme where development has been begun but not completed by the time the area ceases to be a simplified planning zone.

(4) The provisions of section 63(2) apply in determining for the purposes of this section when development shall be taken to be begun.

Commencement Information

I71 S. 36 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I72 S. 36 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Alteration of simplified planning zone scheme

37.—(1) The adoption of alterations to a simplified planning zone scheme has effect as follows.

(2) The adoption of alterations providing for the inclusion of land in the simplified planning zone has effect to grant in relation to that land or such part of it as is specified in the scheme planning permission for development so specified or of any class so specified.

(3) The adoption of alterations providing for the grant of planning permission has effect to grant such permission in relation to the simplified planning zone, or such part of it as is specified in the scheme, for development so specified or development of any class so specified.

(4) The adoption of alterations providing for the withdrawal or relaxation of conditions, limitations or restrictions to which planning permission under the scheme is subject has effect to withdraw or relax the conditions, limitations or restrictions forthwith.

(5) The adoption of alterations providing for—

(a) the exclusion of land from the simplified planning zone;

(b) the withdrawal of planning permission; or

(c) the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject,

has effect to withdraw permission, or to impose the conditions, limitations or restrictions, with effect from the end of the period of 12 months beginning with the date of the adoption.

(6) The adoption of alterations to a scheme does not affect planning permission under the scheme in any case where the development authorised by it

has been begun before the adoption of alterations has effect; and the provisions of section 63(2) apply in determining for the purposes of this subsection when development shall be taken to be begun.

(7) This section applies to the approval of alterations to a simplified planning zone by the Department as it applies to the adoption of such alterations by a council.

Commencement Information

I73 S. 37 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I74 S. 37 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Exclusion of certain descriptions of land or development

38.—(1) The following descriptions of land may not be included in a simplified planning zone—

(a) land in a conservation area;

(b) land in an area which is—

(i) designated as a National Park under Article 12 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (NI 1);

(ii) designated as an area of outstanding natural beauty under Article 14 of that Order;

(iii) declared to be an area of special scientific interest under Article 28 of the Environment (Northern Ireland) Order 2002 (NI 7);

(c) land declared to be a national nature reserve under Article 18 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;

(d) land of such other description as may be prescribed.

(2) Where land included in a simplified planning zone becomes land of such a description, subsection (1) does not have effect to exclude it from the zone.

(3) The Department may by order provide that no simplified planning zone scheme shall have effect to grant planning permission—

(a) in relation to an area of land specified in the order or to areas of land of a description so specified; or

(b) for development of a description specified in the order.

(4) An order under subsection (3) has effect to withdraw such planning permission under a simplified planning zone scheme already in force with effect from the date on which the order comes into force, except in a case where the development authorised by the permission has been begun before that date; and

the provisions of section 63(2) apply in determining for the purposes of this subsection when development shall be taken to be begun.

Commencement Information

I75 S. 38 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I76 S. 38 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Grant of planning permission in enterprise zones

Grant of planning permission in enterprise zones

39.—(1) An order designating an enterprise zone under the 1981 Order shall (without more) have effect on the effective date to grant planning permission for development specified in the scheme or for development of any class so specified.

(2) The adoption of a modified scheme under Article 4 of the 1981 Order (as applied by Article 10(2) of that Order) shall (without more) have effect on the effective date of modification to grant planning permission for development specified in the modified scheme or for development of any class so specified.

(3) Planning permission granted by virtue of this section shall be subject to such conditions or limitations as may be specified in the scheme or modified scheme or (if none are specified) unconditional.

(4) Where planning permission is so granted for any development or class of development, the Department may direct that the permission shall not apply in relation to—

(a) a specified development; or

(b) a specified class of development; or

(c) a specified class of development in a specified area within the enterprise zone.

(5) If the scheme or the modified scheme specifies matters, in relation to any development it permits, which will require approval by the Department, the permission shall have effect accordingly.

(6) The Department may by regulations make provision—

(a) as to the procedure for giving a direction under subsection (4);

(b) as to the method and procedure relating to the approval of matters specified in a scheme or modified scheme as mentioned in subsection (5),

and such regulations may modify any provision of this Act other than this section.

(7) Notwithstanding subsections (1) to (6), planning permission may be granted under any other provision of this Part in relation to land in an enterprise zone (whether the permission is granted in pursuance of an application made under this Part or by a development order).

(8) Modifications to a scheme do not affect planning permission under the scheme in any case where the development authorised by it has been begun before the effective date of modification.

(9) Upon an area ceasing to be an enterprise zone planning permission under the scheme shall cease to have effect except in a case where the development authorised by it has been begun.

(10) Section 64(2) to (6) and sections 65 and 66 shall apply to planning permission under the scheme where development has been begun but not completed by the time the area ceases to be an enterprise zone.

(11) Section 63(2) shall apply in determining for the purposes of this section when development shall be taken to be begun.

(12) Nothing in this section prejudices the right of any person to carry out development apart from this section.

(13) In this section "the 1981 Order" means the Enterprise Zones (Northern Ireland) Order 1981 (NI 15) and other expressions used in this section and in that Order have the same meaning in this section as in that Order.

Commencement Information

I77 S. 39 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I78 S. 39 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Planning applications

Form and content of applications

40.—(1) Any application for planning permission—

(a) must be made in such form and in such manner as may be specified by a development order;

(b) must include such particulars, and be verified by such evidence, as may be required by a development order or by any directions given by a council or the Department under such an order.

(2) A direction under subsection (1)(b) must not be inconsistent with the development order.

(3) A development order must require an application for planning permission of such description as is specified in the order to be accompanied by such of the following as is so specified—

(a) a statement about the design principles and concepts that have been applied to the development;

(b) a statement about how issues relating to access to the development have been dealt with.

(4) The form and content of a statement mentioned in subsection (3) is such as is required by the development order.

(5) Subsection (1) shall apply to applications to a council or the Department for any consent, agreement or approval of the council or, as the case may be, the Department required by a condition imposed on a grant of planning permission as that subsection applies to applications for planning permission.

Modifications etc. (not altering text)

C8 S. 40 applied with modification(s) (1.4.2015) by The Planning (Trees) Regulations (Northern Ireland) 2015 (S.R. 2015/84), regs. 1(1), 2, **Sch.** (with reg. 11(7))

C9 S. 40 applied with modification(s) (1.4.2015) by The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 (S.R. 2015/66), regs. 1, 8, **Sch. 4 Pts. 1**, **2**

Commencement Information

I79 S. 40 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I80 S. 40 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Notice, etc., of applications for planning permission

41.—(1) A development order may make provision requiring notice to be given of any application for planning permission and provide for publicising such applications and for the form, content and service of such notices.

(2) A development order may require an applicant for planning permission to provide evidence that any requirements of the order have been satisfied.

(3) An application for planning permission must not be entertained by a council or the Department unless any requirements imposed by virtue of this section have been satisfied.

Commencement Information

I81 S. 41 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I82 S. 41 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Notification of applications to certain persons

42.—(1) Subject to subsection (2), a council or, as the case may be, the Department must not entertain an application for planning permission in relation to any land (in this section and in section 43 referred to as "the designated land")

unless it is accompanied by one or other of the following certificates, that is to say—

(a) a certificate stating that the application is made by or on behalf of a person who at the date of the application is in the actual possession of all the designated land, being a person entitled to one of the following estates in that land, namely—

(i) a legal or equitable fee simple absolute, a legal or equitable fee tail or a legal or equitable life estate;

(ii) a tenancy of which not less than 40 years of the term thereof remain unexpired;

(b) a certificate stating that the application is made by or on behalf of the trustees of a trust or settlement which affects all the designated land and that, at the date of the application—

(i) a beneficiary under the trust or settlement is in the actual possession of the designated land; and

(ii) no person other than a beneficiary under the trust or settlement is entitled to enter into the actual possession of the designated land within a period of 40 years;

(c) a certificate stating that the requisite notice of the application has been given by or on behalf of the applicant to each person who at the beginning of the period of 21 days ending with the date of the application, in relation to the designated land or any part thereof, fell into any of the following classes, namely—

(i) that that person was such a person as is described in paragraph (a) or (b);

(ii) that (not being such a person as is described in paragraph (a) or (b)) that person was in the actual possession of the designated land;

(iii) that (not being a person falling under sub-paragraph (i) or (ii)) that person was entitled to enter into the actual possession of the designated land within a period of 40 years;

(d) a certificate stating—

(i) that the applicant is unable to issue a certificate in accordance with paragraph (a) or (b); and

(ii) that the applicant has made due inquiries and is of the opinion, for the reasons specified in the certificate, that he or she is unable to issue a certificate which would satisfy the requirements of paragraph (c); and

(iii) that the applicant has given the requisite notice of the application to any person who, at the beginning of the period of 21 days ending with the date of the application, was in the actual possession of any part of the designated land.

(2) Subsection (1) does not apply to an application for planning permission made—

(a) by the Northern Ireland Housing Executive in pursuance of a redevelopment scheme approved by the Department for Social Development or proposed by the Executive;

(b) by an electricity undertaker to place an electricity line above or below ground across any land;

(c) by a gas undertaker to lay pipes for the conveyance or supply of gas;

(d) by a water or sewerage undertaker to lay a main, sewer or pipe for the purposes of its functions under the Water and Sewerage Services (Northern Ireland) Order 2006 (NI 21).

(3) A certificate for the purposes of paragraph (c) or (d) of subsection (1) shall set out the names and postal addresses of the persons to whom the requisite notice was given in accordance with that paragraph and the date of service of the notice.

(4) Where an application for planning permission is accompanied by such a certificate as is mentioned in subsection (1)(c) or (d), the council or, as the case may be, the Department, must not determine the application before the end of the period of 14 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate.

(5) Where a tenancy subsists in any land, and—

(a) it is necessary, for the purposes of this section, to determine whether a person is entitled to enter into the actual possession of that land; and

(b) by reason of any option or other contractual right with respect to the determination, renewal or continuance of the tenancy the date of expiry of the tenancy is not ascertainable with certainty;

that date shall be taken to be such as appears reasonable and probable having regard to the interests of the party by whom the option is exercisable, or in whose favour the right operates, and to any other material consideration.

(6) If any person—

(a) issues a certificate which purports to comply with the requirements of this section and which contains a statement which that person knows to be false or misleading in a material particular; or

(b) 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;

that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Any certificate issued for the purposes of this section shall be in such form as may be specified in a development order; and any reference in this section to the requisite notice is a reference to a notice in the form so specified.

Commencement Information

I83 S. 42 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I84 S. 42 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Notice requiring planning application to be made

43.—(1) Where it appears to a council that development has been carried out—

(a) without the grant of the planning permission required in that behalf in accordance with this Part; or

(b) without the grant of any approval of the council required in that behalf under a development order;

the council may issue a notice under this section requiring the making of an application for such planning permission or approval to the council within 28 days from the service of the notice.

(2) A notice under this section may be issued only within the period of 5 years from the date on which the development to which it relates was begun, and the provisions of section 63(2) apply in determining for the purpose of this section when development shall be taken to be begun.

(3) A notice under this section must specify the matters alleged to constitute the development to which the notice relates.

(4) A copy of a notice under this section must be served on the owner and on the occupier of the land to which it relates.

(5) Where a copy of a notice under this section has been served on any person referred to in subsection (4), then if the application referred to in the notice is not made to the council within the period allowed for compliance with the notice, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) If a person against whom proceedings are brought under subsection (5)—

(a) was, at the time when the copy of the notice under this section was served on that person, the owner of the land to which the notice relates; but

(b) has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of that land,

that person shall, upon duly making a complaint and on giving to the prosecution not less than 3 days' notice of his or her intention, be entitled to have the person

who then became the owner of the land (in subsection (7) referred to as the "subsequent owner") brought before the court in the proceedings.

(7) If after it has been proved, in a case to which subsection (6) applies, that the application referred to in the notice under this section has not been made within the period allowed for compliance with the notice, the original defendant proves that the failure to make that application was attributable, in whole or in part, to the default of the subsequent owner—

(a) the subsequent owner may be convicted of the offence; and

(b) the original defendant, if that person further proves that all reasonable steps were taken to secure compliance with the notice, shall be acquitted of the offence.

(8) If, after a person has been convicted under subsections (5) to (7), the application referred to in the notice under this section is not made to the council, that person 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 following the first conviction on which the offence continues.

(9) The council may, at any time before the end of the period allowed for compliance with a notice under this section, withdraw the notice.

(10) If it does so the council must as soon as is reasonably possible give notice of the withdrawal to every person who was served with a copy of the notice.

(11) Any reference in this section and section 44 to the period allowed for compliance with a notice under this section is a reference to the period mentioned in subsection (1) or such extended period as may be allowed by the council for compliance with the notice.

(12) For the purposes of this section an application to the council for any planning permission or approval shall not be taken to be made unless it is accompanied by the fee prescribed under section 223 in relation to that application.

Modifications etc. (not altering text)

C10 S. 43 applied with modification(s) (1.4.2015) by The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 (S.R. 2015/66), regs. 1, 14, **Sch. 4 Pts. 1**, **2**

Commencement Information

I85 S. 43 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I86 S. 43 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Appeal against notice under section 43

44.—(1) A person on whom a copy of a notice has been served under section 43 may, at any time before the end of the period allowed for compliance with that notice, appeal to the planning appeals commission against the notice.

(2) An appeal may be brought on any of the following grounds—

(a) that the matters alleged in the notice do not constitute development;

(b) that the development alleged in the notice has not taken place;

(c) that the period of 5 years referred to in section 43(2) had elapsed at the date when the notice was issued.

(3) An appeal under this section must be made by notice in writing to the planning appeals commission and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(4) Before determining an appeal under this section, the planning appeals commission must, if either the appellant or the council so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(5) Where an appeal is brought under this section the notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(6) On an appeal under this section the planning appeals commission—

(a) must quash the notice, vary the terms of the notice or uphold the notice;

(b) may correct any informality, defect or error in the notice, or vary its terms, if it is satisfied that the correction or variation can be made without injustice to the appellant or to the council.

(7) The validity of a notice under section 43 shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

Modifications etc. (not altering text)

C11 S. 44 applied (with modifications) (1.4.2015) by The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 (S.R. 2015/66), regs. 1, 14, **Sch. 4 Pts. 1**, **2**

Commencement Information

I87 S. 44 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I88 S. 44 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Determination of planning applications

Determination of planning applications

45.—(1) Subject to this Part and section 91(2), where an application is made for planning permission, the council or, as the case may be, the Department, in dealing with the application, must have regard to the local development plan, so far as material to the application, and to any other material considerations, and—

(a) subject to sections 61 and 62, may grant planning permission, either unconditionally or subject to such conditions as it thinks fit; or

(b) may refuse planning permission.

(2) A development order may provide that a council or the Department must not determine an application for planning permission before the end of such period as may be specified by the development order.

(3) In determining any application for planning permission the council or the Department must take into account any representations relating to that application which are received by it within such period as may be specified by a development order.

(4) Where an application for planning permission is accompanied by such a certificate as is mentioned in section 42(1)(c) or (d), the council or, as the case may be, the Department—

(a) in determining the application, must take into account any representations relating to the application which are made to it by any person who satisfies it that, in relation to any of the designated land, that person is such a person as is described in section 42(1)(c); and

(b) must give notice of its decision on the application to every person who made representations which it was required to take into account under paragraph (a).

Commencement Information

I89 S. 45 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I90 S. 45 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Power of council to decline to determine subsequent application

46.—(1) A council may decline to determine a relevant application if—

(a) any of the conditions in subsections (2) to (4) is satisfied; and

(b) the council thinks there has been no significant change in the relevant considerations since the relevant event.

(2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Department has refused a similar application.

(3) The condition is that in that period the planning appeals commission has dismissed an appeal—

(a) against the refusal of a similar application; or

(b) under section 60 in respect of a similar application.

(4) The condition is that—

(a) in that period the council has refused more than one similar application; and

(b) there has been no appeal to the planning appeals commission against any such refusal or, if there has been such an appeal, it has been withdrawn.

(5) A council may also decline to determine a relevant application if—

(a) the condition in subsection (6) is satisfied; and

(b) the council thinks there has been no significant change in the relevant considerations since the relevant event.

(6) The condition is that—

(a) in the period of two years ending with the date on which the application mentioned in subsection (5) is received the planning appeals commission has refused a similar application,

(b) the similar application was an application deemed to have been made by section 145(5).

(7) A relevant application is an application for planning permission for the development of any land.

(8) The relevant considerations are—

(a) the local development plan so far as material to the application;

(b) any other material considerations.

(9) The relevant event is—

(a) for the purposes of subsections (2), (4) and (6) the refusal of the similar application;

(b) for the purposes of subsection (3) the dismissal of the appeal.

(10) An application for planning permission is similar to another application if (and only if) the council thinks that the development and the land to which the applications relate are the same or substantially the same.

Commencement Information

I91 S. 46 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I92 S. 46 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Power of Department to decline to determine subsequent application

47.—(1) The Department may decline to determine an application for planning permission for the development of any land made to it in accordance with section 26(5) if—

(a) in the period of two years ending with the date on which that application is received the Department has refused a similar application; and

(b) the Department thinks there has been no significant change in the relevant considerations since the refusal of the similar application.

(2) The relevant considerations are—

(a) the local development plan so far as material to the application;

(b) any other material considerations.

(3) An application for planning permission is similar to another application if (and only if) the Department thinks that the development and the land to which the applications relate are the same or substantially the same.

Commencement Information

I93 S. 47 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I94 S. 47 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Power of council to decline to determine overlapping application

48.—(1) A council may decline to determine an application for planning permission for the development of any land which is—

(a) made on the same day as a similar application; or

(b) made at a time when any of the conditions in subsections (2) to (4) applies in relation to a similar application.

(2) The condition is that a similar application is under consideration by the council and the determination period for that application has not expired.

(3) The condition is that a similar application is under consideration by—

(a) the Department; or

(b) the planning appeals commission on an appeal under section 58 or 60,

and the Department or, as the case may be, the planning appeals commission, has not issued its decision.

(4) The condition is that a similar application—

(a) has been granted by the council;

(b) has been refused by the council; or

(c) has not been determined by the council within the determination period,

and the time within which an appeal could be made to the planning appeals commission under section 58 or 60 has not expired.

(5) A council may also decline to determine an application for planning permission for the development of any land which is made at a time when the condition in subsection (6) applies in relation to a similar application.

(6) The condition is that—

(a) a similar application is under consideration by the planning appeals commission,

(b) the similar application is an application deemed to have been made by section 145(5), and

(c) the planning appeals commission has not issued its decision.

(7) An application for planning permission is similar to another application if (and only if) the council thinks that the development and the land to which the applications relate are the same or substantially the same.

(8) The determination period is—

(a) the period specified by the development order for the determination of the application; or

(b) such longer period as the applicant and the council have agreed for the determination of the application.

(9) If a council exercises its power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, it may not also exercise that power to decline to determine the similar application.

Commencement Information

I95 S. 48 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I96 S. 48 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Power of Department to decline to determine overlapping application

49.—(1) The Department may decline to determine an application for planning permission for the development of any land made to it in accordance with section 26(5) which is—

(a) made on the same day as a similar application; or

(b) made at a time when a similar application is under consideration by the Department.

(2) An application for planning permission is similar to another application if (and only if) the Department thinks that the development and the land to which the applications relate are the same or substantially the same.

(3) If the Department exercises its power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, it may not also exercise that power to decline to determine the similar application.

Commencement Information

I97 S. 49 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I98 S. 49 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Duty to decline to determine application where section 27 not complied with

50.—(1) A council or, as the case may be, the Department must decline to determine an application for the development of any land if, in the opinion of the council or the Department—

(a) compliance with section 27 was required as respects the development, and

(b) there has not been such compliance.

(2) Before deciding whether, under subsection (1), an application must be declined the council or, as the case may be, the Department, may request the applicant to provide such additional information as it may specify within such time as may be prescribed.

(3) Where, under subsection (1), a council or the Department declines to determine an application, the council or, as the case may be, the Department, must advise the applicant of the reason for its being of the opinion mentioned in that subsection.

Commencement Information

I99 S. 50 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I100 S. 50 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Assessment of environmental effects

51.—(1) The Department may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.

(2) The regulations may make the same provision as, or provision similar or corresponding to, any provision made for the purposes of any Community obligation of the United Kingdom about the assessment of the likely effects

of the development on the environment, under section 2(2) of the European Communities Act 1972 (c. 68).

Commencement Information

I101 S. 51 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I102 S. 51 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Conditional grant of planning permission

52.—(1) Without prejudice to the generality of section 45(1), conditions may be imposed on the grant of planning permission—

(a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the council or, as the case may be, the Department to be expedient for the purposes of or in connection with the development authorised by the permission;

(b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.

(2) Conditions may not be imposed by a council under subsection (1)(a) for regulating the development or use of any land within the district of another council except with the consent of that council.

(3) Any planning permission granted subject to such a condition as is mentioned in subsection (1)(b) is in this Act referred to as "planning permission granted for a limited period".

Commencement Information

I103 S. 52 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I104 S. 52 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Power to impose aftercare conditions on grant of mineral planning permission

53.—(1) Where—

(a) planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste or waste materials is granted, and

(b) the permission is subject to a condition requiring that after the winning and working is completed or the depositing has ceased, the site shall be restored by the use of any or all of the following, namely, subsoil, topsoil and soil-making material,

it may be granted subject also to any such condition as the council or, as the case may be, the Department thinks fit requiring that such steps shall be taken as may be necessary to bring land to the required standard for whichever of the following uses is specified in the condition, namely—

(i) use for agriculture;

(ii) use for forestry;

(iii) use for amenity; or

(iv) use for ecological purposes.

(2) In this Act—

(a) a condition such as is mentioned in paragraph (b) of subsection (1) is referred to as "a restoration condition"; and

(b) a condition requiring such steps to be taken as are mentioned in that subsection is referred to as "an aftercare condition".

(3) An aftercare condition may either—

(a) specify the steps to be taken; or

(b) require that the steps be taken in accordance with a scheme (in this Act referred to as an "aftercare scheme") approved by the council or, as the case may be, the Department.

(4) A council or the Department may approve an aftercare scheme in the form in which it is submitted to it or may modify it and approve it as modified.

(5) The steps that may be specified in an aftercare condition or an aftercare scheme may consist of planting, cultivating, fertilising, watering, draining or otherwise treating the land.

(6) Where a step is specified in a condition or a scheme, the period during which it is to be taken may also be specified, but no step may be required to be taken after the expiry of the aftercare period.

(7) In subsection (6) "the aftercare period" means a period of 5 years from compliance with the restoration condition or such other maximum period after compliance with that condition as may be prescribed; and in respect of any part of a site, the aftercare period shall commence on compliance with the restoration condition in respect of that part.

(8) In a case where—

(a) the use specified in an aftercare condition is a use for agriculture; and

(b) the land was in use for agriculture at the time of the grant of the planning permission or had previously been used for that purpose and had not at the

time of the grant been used for any authorised purpose since its use for agriculture ceased,

the land is brought to the required standard when its physical characteristics are restored, so far as it is practicable to do so, to what they were when it was last used for agriculture.

(9) In any other case where the use specified in an aftercare condition is a use for agriculture, the land is brought to the required standard when it is reasonably fit for that use.

(10) Where the use specified in an aftercare condition is a use for forestry, the land is brought to the required standard when it is reasonably fit for that use.

(11) Where the use specified in an aftercare condition is a use for amenity, the land is brought to the required standard when it is suitable for sustaining trees, shrubs or other plants.

(12) In this section—

"authorised" means authorised by planning permission;

"forestry" means the growing of a utilisable crop of timber.

Commencement Information

I105 S. 53 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I106 S. 53 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Permission to develop land without compliance with conditions previously attached

54.—(1) This section applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) A development order may make special provision with respect to—

(a) the form and content of such applications; and

(b) the procedure to be followed in connection with such applications.

(3) On such an application the authority which granted the previous planning permission must consider only the question of the conditions subject to which planning permission should be granted, and

(a) if it decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, the authority must grant planning permission accordingly; and

(b) if it decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, the authority must refuse the application.

(4) This section does not apply where the application is made after the previous planning permission has become time-expired, that is to say, the previous permission having been granted subject to a condition as to the time within which the development to which it related was to be begun, that time has expired without the development having been begun.

(5) Planning permission must not be granted under this section to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which—

(a) a development must be begun;

(b) an application for approval of reserved matters (within the meaning of section 62) must be made.

Commencement Information

I107 S. 54 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I108 S. 54 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Planning permission for development already carried out

55.—(1) On an application made to a council or the Department, the planning permission which may be granted includes planning permission for development carried out before the date of the application.

(2) Subsection (1) applies to development carried out—

(a) without planning permission;

(b) in accordance with planning permission granted for a limited period; or

(c) without complying with some condition subject to which planning permission was granted.

(3) Planning permission for such development may be granted as to have effect from—

(a) the date on which the development was carried out; or

(b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.

Commencement Information

I109 S. 55 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I110 S. 55 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Directions etc. as to method of dealing with applications

56.—(1) Provision may be made by a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by councils and the Department, and in particular—

(a) for enabling the Department to give directions restricting the grant of planning permission by a council, either indefinitely or during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified;

(b) for enabling the Department to give directions to a council requiring it, in respect of any such development, or in respect of development of any such class, as may be specified in the directions—

(i) to consider, where the council is minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and

(ii) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Department that such consideration has been given and that such a condition either will be imposed or need not be imposed;

(c) for requiring that, before planning permission for any development is granted or refused, councils must consult with such authorities or persons as may be specified by the order;

(d) for requiring the Department before granting or refusing planning permission for any development to consult with the council for the district in which the land is situated and with such other authorities or persons as may be specified by the order;

(e) for requiring a council or, as the case may be, the Department to give to any applicant for planning permission, within such time as may be specified by the order, such notice as may be so specified as to the manner in which the applicant's application has been dealt with;

(f) for requiring a council or, as the case may be, the Department to give any applicant for any consent, agreement or approval required by a condition imposed on a grant of planning permission notice of its decision on the application, within such time as may be specified by the order;

(g) for requiring a council to give to the Department, and to such other persons as may be specified by or under the order, such information as may be so specified with respect to applications for planning permission made to the council, including information as to the manner in which any such application has been dealt with.

(2) Provision may be made by a development order—

(a) for determining the persons to whom applications under this Act are to be sent; and

(b) for requiring persons to whom such applications are sent to send copies to other interested persons.

Commencement Information

I111 S. 56 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I112 S. 56 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Effect of planning permission

57.—(1) Without prejudice to the provisions of this Part, any grant of planning permission to develop land shall (except insofar as the permission otherwise provides) have effect for the benefit of the land and of all persons for the time being having an estate therein.

(2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used; and if no purpose is so specified the permission shall be construed as including permission to use the building for the purpose for which it is designed.

Commencement Information

I113 S. 57 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I114 S. 57 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Appeals

Appeals

58.—(1) Where an application is made to a council—

(a) for planning permission to develop land; or

(b) for any consent, agreement or approval of the council required by a condition imposed on a grant of planning permission; or

(c) for any approval of the council required under a development order;

then if that permission, consent, agreement or approval is refused or is granted subject to conditions, the applicant may by notice in writing appeal to the planning appeals commission.

(2) Subsection (1) shall not apply to any application referred to the Department under section 29.

(3) Any notice under this section must be served on the planning appeals commission within 4 months from the date of notification of the decision to which it relates or such other period as may be specified by development order.

(4) Where an appeal is brought under this section from a decision of a council, the planning appeals commission, subject to subsections (5) to (7), 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.

(5) Before determining an appeal under this section, the planning appeals commission must, if either the applicant or the council so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(6) If at any time before or during the determination of an appeal under this section it appears to the planning appeals commission that the appellant is responsible for undue delay in the progress of the appeal, it may—

(a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and

(b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.

(7) Subject to subsection (5), sections 41, 42, 45, 52, 53, 54 and 55 shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this section as they apply to an application for planning permission.

Modifications etc. (not altering text)

C12 S. 58 applied with modification(s) (1.4.2015) by The Planning (Trees) Regulations (Northern Ireland) 2015 (S.R. 2015/84), regs. 1(1), 2, **Sch.** (with reg. 11(7))

C13 S. 58 applied with modification(s) (1.4.2015) by The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 (S.R. 2015/66), regs. 1, 15, **Sch. 4 Pts. 1**, **2**

Commencement Information

I115 S. 58 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I116 S. 58 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Matters which may be raised in an appeal under section 58

59.—(1) In an appeal under section 58, a party to the proceedings is not to raise any matter which was not before the council or, as the case may be, the Department at the time the decision appealed against was made unless that party can demonstrate to the satisfaction of the planning appeals commission—

(a) that the matter could not have been raised before that time, or

(b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—

(a) the provisions of the local development plan, or

(b) any other material consideration.

Modifications etc. (not altering text)

C14 S. 59 applied with modification(s) (1.4.2015) by The Planning (Trees) Regulations (Northern Ireland) 2015 (S.R. 2015/84), regs. 1(1), 2, **Sch.** (with reg. 11(5)(7))

C15 S. 59 applied with modification(s) (1.4.2015) by The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 (S.R. 2015/66), regs. 1, 15, **Sch. 4 Pts. 1**, **2**

Commencement Information

I117 S. 59 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I118 S. 59 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Appeal against failure to take planning decision

60 Where any such application as is mentioned in section 58(1) is made to a council, then unless within such period as may be specified by a development order, or within such extended period as may be agreed upon in writing between the applicant and the council, the council either—

(a) gives notice to the applicant of its decision on the application; or

(b) gives notice to the applicant that the application is one to which section 29 applies; or

(c) gives notice to the applicant that it has exercised its power under section 46 or 48 to decline to determine the application,

section 58 shall apply in relation to the application—

(i) as if the permission, consent, agreement or approval to which it relates had been refused by the council; and

(ii) as if notification of the council's decision had been received by the applicant at the end of the period so specified, or at the end of the said extended period, as the case may be.

Modifications etc. (not altering text)

C16 S. 60 applied with modification(s) (1.4.2015) by The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 (S.R. 2015/66), regs. 1, 15, **Sch. 4 Pts. 1**, **2**

C17 S. 60 applied with modification(s) (1.4.2015) by The Planning (Trees) Regulations (Northern Ireland) 2015 (S.R. 2015/84), regs. 1(1), 2, **Sch.** (with reg. 11(7))

Commencement Information

I119 S. 60 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I120 S. 60 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Duration of planning permission

Duration of planning permission

61.—(1) Subject to this section, every planning permission granted or deemed to be granted shall be granted or, as the case may be, deemed to be granted subject to the condition that the development to which it relates must be begun within—

(a) 5 years of the date on which the permission is granted; or

(b) such other period (whether longer or shorter) as the authority concerned with the terms of the planning permission considers appropriate having regard to the provisions of the local development plan and to any other material considerations.

(2) If planning permission is granted without the condition required by subsection (1), it shall be deemed to have been granted subject to the condition that the development to which it relates must be begun within 5 years of the date of the grant.

(3) Nothing in subsections (1) and (2) applies—

(a) to any outline planning permission;

(b) to any planning permission granted by a development order;

(c) to any planning permission granted for a limited period;

(d) to any planning permission granted for development carried out before the grant of that permission;

(e) to any planning permission granted by an enterprise zone scheme; or

(f) to any planning permission granted by a simplified planning zone scheme.

Commencement Information

I121 S. 61 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I122 S. 61 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Duration of outline planning permission

62.—(1) In this section and in section 61 "outline planning permission" means planning permission granted in accordance with the provisions of a

development order, conditional on the subsequent approval by the council or, as the case may be, the Department of the particulars of the proposed development (in this section referred to as "reserved matters").

(2) Subject to the following provisions of this section, where outline planning permission is granted for development consisting of or including the carrying out of building or other operations it must be granted subject to conditions to the following effect—

(a) that in the case of any reserved matter application for approval must be made within 3 years of the date of the grant of outline planning permission; and

(b) that the development to which the permission relates must be begun by whichever is the later of the following dates—

(i) the expiration of 5 years from the date of the grant of outline planning permission; or

(ii) the expiration of 2 years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

(3) If outline planning permission is granted without the conditions required by subsection (2), it shall be deemed to have been granted subject to those conditions.

(4) The authority concerned with the terms of an outline planning permission may, in applying subsection (2), substitute for the periods of 3 years, 5 years or 2 years referred to in that subsection, such other periods respectively (whether longer or shorter) as it considers appropriate.

(5) It may, in applying subsection (2), specify separate periods under subsection (2)(a) in relation to separate parts of the development to which the planning permission relates; and if it does so, the condition required by subsection (2)(b) shall then be framed correspondingly by reference to those parts, instead of by reference to the development as a whole.

(6) In considering whether to exercise its powers under subsections (4) and (5), the authority must have regard to the provisions of the local development plan and to any other material consideration.

Commencement Information

I123 S. 62 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I124 S. 62 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Provisions supplementary to sections 61 and 62

63.—(1) The authority referred to in section 61(1)(b) or 62 is—

(a) the council in the case of planning permission granted by it;

(b) the Department, in the case of planning permission granted by it;

(c) in the case of planning permission granted under section 58, 60 or 145, the planning appeals commission;

(d) in the case of planning permission deemed to be granted under paragraph 3(1) of Schedule 8 to the Electricity (Northern Ireland) Order 1992 (NI 1) (consents under Articles 39 and 40 of that Order), the Department of Enterprise, Trade and Investment.

(2) For the purposes of sections 61 and 62, development shall be taken to be begun on the earliest date on which any of the following operations comprised in the development begins to be carried out—

(a) where the development consists of or includes the erection of a building, any work of construction in the course of the erection of the building;

(b) where the development consists of or includes alterations to a building, any work involved in the alterations;

(c) where the development consists of or includes a change of use of any building or other land, that change of use;

(d) where the development consists of or includes mining operations, any of those operations.

(3) For the purposes of section 62(2), a reserved matter shall be treated as finally approved when an application for approval is granted, or, where on an appeal under section 58, the planning appeals commission grants the approval, on the date of the determination of the appeal.

(4) Where a council grants planning permission the fact that any of the conditions of the permission are required by this Act to be imposed or are deemed by this Act to be imposed, shall not prevent the conditions being the subject of an appeal under section 58 against the decision of the council.

(5) Where a planning permission (whether outline or other) has conditions attached to it by or under section 61 or 62—

(a) development commenced and carried out after the date by which the conditions of the permission require it to be commenced shall be treated as not authorised by the permission; and

(b) an application for approval of a reserved matter, if it is made after the date by which the conditions require it to be made, shall be treated as not made in accordance with the terms of the permission.

Commencement Information

I125 S. 63(1)(a)-(c) (2)-(5) in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I126 S. 63(1)(a)-(c) (2)-(5) in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Termination of planning permission by reference to time limit

64.—(1) Subsections (2) to (6) shall have effect where by virtue of section 61 or 62, a planning permission is subject to a condition that the development to which the permission relates must be begun before the expiration of a particular period and that development has been begun within that period but the period has elapsed without the development having been completed.

(2) If the council is of the opinion that the development will not be completed within a reasonable period, it may serve a notice ("a completion notice") stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice.

(3) The period so specified must not be less than 12 months after the notice takes effect.

(4) A completion notice must be served—

(a) on the owner of the land,

(b) on the occupier of the land, and

(c) on any other person who in the opinion of the council will be affected by the notice.

(5) The council may withdraw a completion notice at any time before the expiration of the period specified in it as the period at the expiration of which the planning permission is to cease to have effect.

(6) If it does so it must immediately give notice of the withdrawal to every person who was served with the completion notice.

Commencement Information

I127 S. 64 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I128 S. 64 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Effect of completion notice

65.—(1) A completion notice shall not take effect unless and until it is confirmed by the Department.

(2) In confirming a completion notice the Department may substitute a longer period for that specified in the notice as the period at the expiration of which the planning permission is to cease to have effect.

(3) If, within such period as may be specified in a completion notice (which shall not be less than 28 days from its service) any person on whom the notice

is served so requires, the Department, before confirming the notice, must give that person and the council an opportunity of appearing before and being heard by the planning appeals commission.

(4) If a completion notice takes effect, the planning permission referred to in it shall become invalid at the expiration of the period specified in the notice (whether the original period specified under section 64(1) or a longer period substituted by the Department under subsection (2)).

(5) Subsection (4) shall not affect any permission so far as development carried out under it before the end of the period mentioned in that subsection is concerned.

Commencement Information

I129 S. 65 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I130 S. 65 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Power of Department to serve completion notices

66.—(1) If it appears to the Department to be expedient that a completion notice should be served in respect of any land, the Department may itself serve such a notice.

(2) A completion notice served by the Department shall have the same effect as if it had been served by the appropriate council.

(3) The Department shall not serve such a notice without consulting the appropriate council.

Commencement Information

I131 S. 66 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I132 S. 66 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Power to make non-material changes to planning permission

67.—(1) A council may make a change to any planning permission relating to land within its district if it is satisfied that the change is not material.

(2) In deciding whether a change is material, a council must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.

(3) The power conferred by subsection (1) includes power—

(a) to impose new conditions;

(b) to remove or alter existing conditions.

(4) The power conferred by subsection (1) may be exercised only on an application made by or on behalf of a person with an estate in the land to which the planning permission relates.

(5) An application under subsection (4) must be made in the form and manner specified by a development order.

(6) Subsection (7) applies in relation to an application under subsection (4) made by or on behalf of a person with an estate in some, but not all, of the land to which the planning permission relates.

(7) The application may be made only in respect of so much of the planning permission as affects the land in which the person has an estate.

(8) A council must comply with such requirements as may be specified by development order as to consultation and publicity in relation to the exercise of the power conferred by subsection (1).

Commencement Information

I133 S. 67 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I134 S. 67 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Revocation or modification of planning permission by council

68.—(1) If it appears to a council, having regard to the local development plan and to any other material considerations, that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part or on an appeal under section 143, the council may, subject to subsections (2) to (4), by order revoke or modify the permission to such extent as (having regard to those matters) it considers expedient.

(2) The power conferred by this section to revoke or modify permission to develop land may be exercised—

(a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;

(b) where the permission relates to a change of use of any land, at any time before the change has taken place;

except that the revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(3) An order made under this section in respect of mining operations by surface working shall not prevent the continuation of those operations on any land in use for the purpose of those operations at the date on which the order comes into operation.

(4) Where the council makes an order under this section it must serve a notice on the owner and occupier of the land affected and on any other person who in its opinion would be affected by the order.

Modifications etc. (not altering text)

C18 S. 68 applied with modification(s) (1.4.2015) by The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 (S.R. 2015/66), regs. 1, 16, **Sch. 4 Pts. 1**, **2**

C19 S. 68 applied with modification(s) (1.4.2015) by The Planning (Trees) Regulations (Northern Ireland) 2015 (S.R. 2015/84), regs. 1(1), 2, **Sch.** (with reg. 11(7))

Commencement Information

I135 S. 68 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I136 S. 68 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Aftercare conditions imposed on revocation or modification of mineral planning permission

69.—(1) An order under section 68 may in relation to planning permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials, include such aftercare condition as the council thinks fit if—

(a) it also includes a restoration condition; or

(b) a restoration condition has previously been imposed in relation to the land by virtue of any provision of this Act.

(2) Subsections (3) to (12) of section 53 shall apply in relation to an aftercare condition so imposed as they apply in relation to such a condition imposed under section 53.

Commencement Information

I137 S. 69 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I138 S. 69 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Procedure for section 68 orders: opposed cases

70.—(1) Except as provided in section 71, an order under section 68 shall not take effect unless it is confirmed by the Department.

(2) Where a council submits such an order to the Department for confirmation, it must serve notice on—

(a) the owner of the land affected,

(b) the occupier of the land affected, and

(c) any other person who, in the opinion of the council, will be affected by the order.

(3) The notice must specify the period within which any person on whom it is served may require the Department to give that person an opportunity of appearing before, and being heard by, the planning appeals commission.

(4) If within that period such a person so requires, before the Department confirms the order it must give such an opportunity both to that person and to the council.

(5) The period referred to in subsection (3) must not be less than 28 days from the service of the notice.

(6) The Department may confirm an order submitted to it under this section either without modification or subject to such modifications as the Department considers expedient.

Modifications etc. (not altering text)

C20 S. 70 applied (with modifications) (1.4.2015) by The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 (S.R. 2015/66), regs. 1, 16, **Sch. 4 Pts. 1**, **2**

Commencement Information

I139 S. 70 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I140 S. 70 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Procedure for section 68 orders: unopposed cases

71.—(1) This section applies where—

(a) a council has made an order under section 68; and

(b) the owner and occupier of the land and all persons who in the opinion of the council will be affected by the order have notified the council in writing that they do not object to the order.

(2) Where this section applies, instead of submitting the order to the Department for confirmation the council must advertise in the prescribed manner the fact that the order has been made, and the advertisement must specify—

(a) the period within which persons affected by the order may give notice to the Department that they wish for an opportunity of appearing before, and being heard by, the planning appeals commission; and

(b) the period at the expiration of which, if no such notice is given to the Department, the order may take effect by virtue of this section without being confirmed by the Department.

(3) The council must also serve notice to the same effect on the persons mentioned in subsection (1)(b).

(4) The period referred to in subsection (2)(a) must not be less than 28 days from the date the advertisement first appears.

(5) The period referred to in subsection (2)(b) must not be less than 14 days from the expiration of the period referred to in subsection (2)(a).

(6) The council must send a copy of any advertisement published under subsection (2) to the Department not more than 3 days after the publication.

(7) If—

(a) no person claiming to be affected by the order has given notice to the Department under subsection (2)(a) within the period referred to in that subsection, and

(b) the Department has not directed within that period that the order be submitted to it for confirmation,

the order shall take effect at the expiry of the period referred to in subsection (2)(b), without being confirmed by the Department as required by section 70(1).

(8) This section does not apply—

(a) to an order revoking or modifying a planning permission granted by the Department under this Part;

(b) to an order revoking or modifying a planning permission granted by the planning appeals commission under Part 5;

(c) to an order modifying any conditions to which a planning permission is subject by virtue of section 61 or 62.

Commencement Information

I141 S. 71 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I142 S. 71 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Revocation or modification of planning permission by the Department

72.—(1) If it appears to the Department that it is expedient that an order should be made under section 68, it may make such an order.

(2) Such an order which is made by the Department shall have the same effect as if it had been made by the relevant council and confirmed by the Department.

(3) The Department must not make such an order without consulting the relevant council.

(4) Where the Department proposes to make such an order it must serve notice on the relevant council.

(5) A notice served under subsection (4) must specify the period (which must not be less than 28 days from the date of its service) within which the council

may require an opportunity of appearing before and being heard by the planning appeals commission.

(6) If within that period the council so requires, before the Department makes the order it must give the council such an opportunity.

(7) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by a council of any order under section 68 and its confirmation by the Department shall have effect, subject to any necessary modifications, in relation to any proposal by the Department to make such an order and its making by the Department.

(8) Section 69 applies to orders made by the Department under this section as that section applies to orders made by a council under section 68.

(9) In this section, "relevant council" means the council for the district in which the land to which the order relates is situated.

Commencement Information

I143 S. 72 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I144 S. 72 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Orders requiring discontinuance of use or alteration or removal of buildings or works

73.—(1) If it appears to a council that it is expedient in the interests of the proper planning of an area within its district (including the interests of amenity), regard being had to the local development plan and to any other material considerations—

(a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance of a use of land; or

(b) that any buildings or works should be altered or removed;

the council may by order require the discontinuance of that use within such time as may be specified in the order, or impose such conditions as may be so specified on the continuance thereof, or require such steps as may be so specified to be taken within such time as may be so specified for the alteration or removal of the buildings or works, as the case may be.

(2) An order under this section may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order; and the provisions of section 68 shall apply in relation to any planning permission granted by an order under this section as they apply in relation to planning permission granted by the council on an application made under this Part.

(3) The planning permission which may be granted by an order under this section includes planning permission, subject to such conditions as may be specified in the order, for development carried out before the date on which the order was submitted to the Department under section 74; and planning permission for such development may be granted so as to have effect from—

(a) the date on which the development was carried out; or

(b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.

(4) Where the requirements of an order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the Northern Ireland Housing Executive in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement.

(5) Subject to section 74(8), in the case of planning permission granted by an order under this section, the authority referred to in sections 61(1)(b) and 62 is the council making the order.

Commencement Information

I145 S. 73 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I146 S. 73 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Confirmation by Department of section 73 orders

74.—(1) An order under section 73 shall not take effect unless it is confirmed by the Department, either without modification or subject to such modifications as the Department considers expedient.

(2) The power of the Department under this section to confirm an order subject to modifications includes power—

(a) to modify any provision of the order granting planning permission, as mentioned in subsections (2) and (3) of section 73;

(b) to include in the order any grant of planning permission which might have been included in the order as submitted to it.

(3) Where a council submits an order to the Department for its confirmation under this section, the council must serve notice—

(a) on the owner of the land affected,

(b) on the occupier of that land, and

(c) on any other person who in the opinion of the council will be affected by the order.

(4) The notice must specify the period within which any person on whom it is served may require the Department to give that person an opportunity of appearing before, and being heard by, the planning appeals commission.

(5) If within that period such a person so requires, before the Department confirms the order, it must give such an opportunity both to that person and to the council.

(6) The period referred to in subsection (4) must not be less than 28 days from the service of the notice.

(7) Where an order under section 73 has been confirmed by the Department, the council must serve a copy of the order on the owner and occupier of the land to which the order relates.

(8) Where the Department exercises its powers under subsection (2) in confirming an order granting planning permission, the Department is the authority referred to in sections 61(1)(b) and 62(4).

Commencement Information

I147 S. 74 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I148 S. 74 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Power of Department to make section 73 orders

75.—(1) If it appears to the Department that it is expedient that an order should be made under section 73, it may make such an order.

(2) Such an order made by the Department shall have the same effect as if it had been made by the relevant council and confirmed by the Department.

(3) The Department must not make such an order without consulting the relevant council.

(4) Where the Department proposes to make such an order it shall serve notice on the relevant council.

(5) The notice must specify the period within which the council may require an opportunity of appearing before and being heard by the planning appeals commission.

(6) If within that period the council so requires, before the Department makes the order it shall give the council such an opportunity.

(7) The period referred to in subsection (5) must not be less than 28 days from the date of the service of the notice.

(8) The provisions of this Part and of any regulations or order made under this Act with respect to the procedure to be followed in connection with the submission by a council of any order under section 73, its confirmation by the Department and the service of copies of it as confirmed shall have effect, subject

to any necessary modifications, in relation to any proposal by the Department to make such an order, its making by the Department and the service of copies of it.

(9) In this section, "relevant council" means the council for the district in which the land to which the order relates is situated.

Commencement Information

I149 S. 75 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I150 S. 75 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Planning agreements

76.—(1) Any person who has an estate in land may enter into an agreement with the relevant authority (referred to in this section and sections 77 and 78 as "a planning agreement"), enforceable to the extent mentioned in subsection (4)—

(a) facilitating or restricting the development or use of the land in any specified way;

(b) requiring specified operations or activities to be carried out in, on, under or over the land;

(c) requiring the land to be used in any specified way;

(d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically; or

(e) requiring a sum or sums to be paid to a Northern Ireland department on a specified date or dates or periodically.

(2) A planning agreement may—

(a) be unconditional or subject to conditions;

(b) impose any restriction or requirement mentioned in subsection (1)(a) to (c) either indefinitely or for such period or periods as may be specified; and

(c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the agreement is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.

(3) Before entering into a planning agreement, the Department must consult with the appropriate council.

(4) Subject to subsection (5) a planning agreement is enforceable by the relevant authority—

(a) against the person entering into the agreement; and

(b) against any person deriving title from that person.

(5) The instrument by which a planning agreement is entered into may provide that a person shall not be bound by the agreement in respect of any period during which that person no longer has an estate in the land.

(6) A restriction or requirement imposed under a planning agreement is enforceable by injunction.

(7) Without prejudice to subsection (6), if there is a breach of a requirement in a planning agreement to carry out any operations in, on, under or over the land to which the agreement relates, the relevant authority may—

(a) enter the land and carry out the operations; and

(b) recover from the person or persons against whom the agreement is enforceable any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(8) Before the relevant authority exercises its power under subsection (7)(a) it must give not less than 21 days' notice of its intention to do so to any person against whom the planning agreement is enforceable.

(9) Any person who wilfully obstructs a person acting in the exercise of a power under subsection (7)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) A planning agreement may not be entered into except by an instrument under seal which—

(a) states that the agreement is a planning agreement for the purposes of this section;

(b) identifies the land in which the person entering into the agreement has an estate; and

(c) identifies the person entering into the agreement and states what that person's estate in the land is.

(11) If a person against whom an agreement is enforceable requests the relevant authority to supply that person with a copy of the agreement, it is the duty of the authority to do so free of charge.

(12) Any sum or sums required to be paid under a planning agreement and any expenses recoverable by the relevant authority under subsection (7)(b) shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the person against whom the planning agreement is enforceable.

(13) The charge created by subsection (12) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the relevant authority by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the authority may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 (c. 41) on mortgagees by deed accordingly.

(14) In this section "specified" means specified in the instrument by which the planning agreement is entered into.

(15) In this section, and in sections 77 and 78, "relevant authority", in relation to a planning agreement proposed to be made in connection with an application for planning permission, means—

(a) where the application has been made to a council, and the council has an estate in the land to which the proposed agreement relates, the Department;

(b) where the application has been made to the Department, the Department;

(c) in any other case, the council in whose district the land to which the application relates is situated.

Commencement Information

I151 S. 76 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I152 S. 76 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Modification and discharge of planning agreements

77.—(1) A planning agreement may not be modified or discharged except—

(a) by agreement between the relevant authority and the person or persons against whom the agreement is enforceable; or

(b) in accordance with this section and section 78.

(2) Before entering into an agreement falling within subsection (1)(a), the Department must consult with the appropriate council.

(3) An agreement falling within subsection (1)(a) shall be contained in an instrument under seal.

(4) A person against whom a planning agreement is enforceable may, at any time after the expiry of the relevant period, apply to the relevant authority for the agreement—

(a) to have effect subject to such modifications as may be specified in the application; or

(b) to be discharged.

(5) In subsection (4) "the relevant period" means—

(a) such period as may be prescribed; or

(b) if no period is prescribed, the period of 5 years beginning with the date on which the agreement is entered into.

(6) An application under subsection (4) for the modification of a planning agreement may not specify a modification imposing an obligation on any other person against whom the agreement is enforceable.

(7) Where an application is made to the relevant authority under subsection (4), the authority may determine—

(a) that the planning agreement shall continue to have effect without modification;

(b) if the agreement no longer serves a useful purpose, that it shall be discharged; or

(c) if the agreement continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

(8) The relevant authority must give notice of its determination to the applicant within such period as may be prescribed.

(9) Where the relevant authority determines that a planning agreement shall have effect subject to modifications specified in the application, the agreement as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.

(10) Regulations may make provision with respect to—

(a) the form and content of applications under subsection (4);

(b) the publication of notices of such applications;

(c) the procedures for considering any representations made with respect to such applications; and

(d) the notices to be given to applicants of determinations under subsection (7).

(11) Article 5 of the Property (Northern Ireland) Order 1978 (NI 4) (power of Lands Tribunal to modify or extinguish impediments) shall not apply to a planning agreement.

Commencement Information

I153 S. 77 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I154 S. 77 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Appeals

78.—(1) Where the relevant authority—

(a) fails to give notice as mentioned in section 77(8); or

(b) determines that a planning agreement shall continue to have effect without modifications;

the applicant may appeal to the planning appeals commission.

(2) For the purposes of an appeal under subsection (1)(a), it shall be assumed that the relevant authority has determined that the planning agreement shall continue to have effect without modification.

(3) An appeal under this section shall be made by notice served within such period and in such manner as may be prescribed.

(4) Subsections (7) to (10) of section 77 apply in relation to appeals to the planning appeals commission under this section as they apply in relation to applications to the relevant authority under that section.

(5) Before determining the appeal the planning appeals commission must, if either the applicant or the relevant authority so wishes, afford to each of them an opportunity of appearing before and being heard by the planning appeals commission.

(6) The determination of an appeal by the planning appeals commission under this section shall be final.

Commencement Information

I155 S. 78 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I156 S. 78 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Land belonging to councils and development by councils

Land belonging to councils and development by councils

79.—(1) The provisions listed in subsection (2) shall apply in relation to—

(a) land of interested councils; and

(b) the development of any land by interested councils or by such councils jointly with any other persons,

subject to regulations made by virtue of this section.

(2) The provisions are—

(a) Part 3;

(b) Part 4 (apart from the provisions of Chapters 1 and 2 of that Part); and

(c) Part 5.

(3) The regulations may, in relation to such land or such development—

(a) provide for any of those provisions to apply subject to prescribed exceptions or modifications or not to apply;

(b) make new provision as to any matter dealt with in any of those provisions.

(4) Without prejudice to subsection (2), the regulations may provide—

(a) for applications for planning permission to develop such land, or for such development, to be determined by the interested council or by the Department; and

(b) for the procedure to be followed on such applications,

and, in the case of applications falling to be determined by an interested council, they may regulate the council's arrangements for the discharge of its functions, notwithstanding anything in section **[**[F4]6 of the Local Government Act (Northern Ireland) 2014 so far as it relates to an officer of the council**]** .

(5) The regulations must—

(a) provide for any provision made by virtue of section 41, 42, 45(2) to (4) or by a development order, to apply to applications for planning permission to develop such land, or for such development, subject to prescribed exceptions or modifications, or

(b) make corresponding provision to those provisions.

(6) In this section "interested council", in relation to any land, means any council which exercises any functions of a council under this Act in relation to that land, and, for the purposes of this section, land is land of a council if the council has any estate in it.

(7) This section applies to any consent required in respect of any land as it applies to planning permission to develop land.

Textual Amendments

F4 Words in s. 79(4) substituted (2.6.2014) by Local Government Act (Northern Ireland) 2014 (c. 8), s. 129, **Sch. 9 para. 8** (with s. 124(4)); S.R. 2014/153, art. 2, Sch. 1

Commencement Information

I157 S. 79 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

I158 S. 79 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/25, **art. 3**

Part 4

Additional planning control

Modifications etc. (not altering text)

C21 Pt. 4 (except chpts. 1, 2) applied with modification(s) (1.4.2015) by The Planning General Regulations (Northern Ireland) 2015 (S.R. 2015/39), regs. 1(1), **2** (with regs. 3-10)

Chapter 1

Listed buildings and conservation areas

Modifications etc. (not altering text)

C22 Pt. 4 chapter 1 (except ss. 92-93 102) applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, **11**

Listed buildings

Lists of buildings of special architectural or historic interest

80.—(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 section 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 section, the Department must consult with the appropriate council and the Historic Buildings Council.

(4) As soon as may be after any list has been compiled under this section, or any amendments of such a list have been made, the Department must cause a copy of so much of the list, or so much of the amendments, as relates to the district of a 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 section, 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 must 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 must keep available for inspection by the public at all reasonable hours copies of lists and amendments of lists compiled or made under this section.

(7) In this Act "listed building" means a building which is for the time being included in a list compiled under this section; and, for the purposes of the provisions of this Act 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.

Modifications etc. (not altering text)

C23 Ss. 80-84: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I159 S. 80 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I160 S. 80 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Temporary listing: building preservation notices

81.—(1) If it appears to a council that a building in its district which is not a listed building—

(a) is of special architectural or historic interest; and

(b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest,

it may serve on the owner and occupier of the building a notice (in this Act referred to as a "building preservation notice").

(2) A building preservation notice served by a council must—

(a) state that the building appears to the council to be of special architectural or historic interest and that it has requested the Department to consider including it in a list compiled under section 80; and

(b) explain the effect of subsections (3) to (5) and section 83.

(3) A building preservation notice—

(a) comes into force as soon as it has been served on both the owner and occupier of the building to which it relates; and

(b) subject to subsection (4), remains in force for 6 months from the date when it is served or, as the case may be, last served.

(4) A building preservation notice ceases to be in force if the Department—

(a) includes the building in a list compiled under section 80, or

(b) notifies the council in writing that it does not intend to do so.

(5) While a building preservation notice is in force with respect to a building, the provisions of this Act (other than section 103) shall have effect in relation to the building as if it were a listed building.

(6) If, following the service of a building preservation notice, the Department notifies the council that it does not propose to include the building in a list compiled under section 80, the council must immediately give notice of that decision to the owner and occupier of the building.

(7) Following a notification by the Department under subsection (4)(b) no further building preservation notice in respect of the building shall be served by the council within the period of 12 months beginning with the date of the notification.

Modifications etc. (not altering text)

C23 Ss. 80-84: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I161 S. 81 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I162 S. 81 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Temporary listing in urgent cases

82.—(1) If it appears to a council to be urgent that a building preservation notice should come into force, it may, instead of serving the notice on the owner and occupier of the building, affix the notice conspicuously to some object on the building.

(2) The affixing of a notice under subsection (1) shall be treated for all the purposes of section 81, this section, section 83 and sections 86 to 101 as service of the notice.

(3) A notice which is so affixed must explain that by virtue of being so affixed it is treated as being served for those purposes.

Modifications etc. (not altering text)

C23 Ss. 80-84: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I163 S. 82 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I164 S. 82 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Lapse of building preservation notices

83.—(1) This section applies where a building preservation notice ceases to be in force by virtue of—

(a) the expiry of the 6 month period mentioned in subsection (3)(b) of section 81; or

(b) the service of a notification by the Department under subsection (4)(b) of that section.

(2) The fact that the notice has ceased to be in force shall not affect the liability of any person to be prosecuted and punished for an offence under section 85 or section 147 (as applied by section 157(6)) committed with respect to the building while it was in force.

(3) Any proceedings on or arising out of an application for listed building consent with respect to the building made while the notice was in force and any such consent granted while it was in force shall lapse.

(4) Any listed building enforcement notice served by the council while the building preservation notice was in force shall cease to have effect.

(5) Any proceedings relating to a listed building enforcement notice served by the council while the building preservation notice was in force shall lapse.

(6) Notwithstanding subsection (4), subsections (1) and (2) of section 146 (execution and costs of works required by enforcement notice), as applied by section 157(6), shall continue to have effect as respects any expenses incurred by the council or the owner or occupier as mentioned in that section and with respect to any sums paid on account of such expenses.

Modifications etc. (not altering text)

C23 Ss. 80-84: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I165 S. 83 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I166 S. 83 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Issue of certificate that building is not intended to be listed

84.—(1) Where—

(a) an 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—

(i) preclude the Department, for a period of 5 years from the date of issue of the certificate, from exercising in relation to that building any of the powers conferred on it by section 80; and

(ii) preclude a council for that period from issuing a building preservation notice in relation to it.

(2) An application for the issue of a certificate under subsection (1) must be made to the Department in writing and section 42 shall apply, with the appropriate modifications, in relation to an application for the issue of a certificate under subsection (1) as it applies in relation to an application for planning permission.

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

Modifications etc. (not altering text)

C23 Ss. 80-84: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I167 S. 84 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I168 S. 84 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

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

85.—(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 subsection (2), that person 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 a council or 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 a council or 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 subsection (2), the works are authorised under this Part from the grant of the consent under this subsection.

(4) Consent under subsection (2) or (3) is referred to in this Act as "listed building consent".

(5) Without prejudice to subsection (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 that person shall be guilty of an offence.

(6) A person guilty of an offence under subsection (1) or (5) shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £100,000, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both,

and in determining the amount of any fine imposed on a person convicted of an offence under subsection (1) or (5) the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to that person in consequence of the offence.

(7) In proceedings for an offence under this section 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 works was given to the council as soon as reasonably practicable.

(8) This section 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 for the time being included in the schedule of monuments compiled and maintained under Article 3 of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 (NI 9);

and for the purposes of this subsection, 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 that office shall be treated as not being an ecclesiastical building.

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

Modifications etc. (not altering text)

C24 S. 85 applied (with modifications) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

C25 S. 85(1)-(8): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C26 S. 85(9): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I169 S. 85 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I170 S. 85 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Applications for listed building consent

86.—(1) Any application to a council for listed building consent—

(a) must be made in such form and in such manner as may be prescribed; and

(b) must include such particulars, and be verified by such evidence, as may be required by the regulations or by any direction given by the council under the regulations.

(2) Regulations must require an application for listed building consent of such description as is prescribed to be accompanied by such of the following as is prescribed—

(a) a statement about the design principles and concepts that have been applied to the works in relation to which the application is made;

(b) a statement about how issues relating to access to the building have been dealt with.

(3) The form and content of a statement mentioned in subsection (2) is such as is prescribed.

(4) Provision may be made by regulations with respect to—

(a) requirements as to publicity in relation to applications for listed building consent;

(b) the time within which such applications are to be dealt with by councils or the Department;

(c) requirements as to consultation in relation to such applications;

(d) prohibiting the determination of such applications during such period as is prescribed;

(e) requirements on the council or, as the case may be, the Department to take account of responses from persons consulted and to notify the persons responding of the decision of the council or the Department on the application.

(5) Subsections (1) and (4)(b) shall apply to applications to a council or the Department for any approval of the council or, as the case may be, the Department required by a condition imposed on a grant of listed building consent as they apply to applications for listed building consent.

Modifications etc. (not altering text)

C27 S. 86 applied (with modifications) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I171 S. 86 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I172 S. 86 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Notification of applications for listed building consent to certain persons

87.—(1) Section 42 shall, with appropriate modifications, apply to applications for listed building consent in relation to any building as it applies to applications for planning permission in relation to any land.

(2) In the application of section 42(7) by virtue of subsection (1) for the words "specified in a development order" and "form so specified" there shall be substituted the words " prescribed " and " prescribed form ".

(3) References in the following provisions of this Part to section 42 are to that section as it applies by virtue of this section.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C29 Ss. 87-89 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

C30 S. 87 applied (1.4.2015) by The Planning (Listed Buildings) Regulations (Northern Ireland) 2015 (S.R. 2015/108), regs. 1(1), 5, **Sch. 1**

C31 S. 87 applied (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 5, **Sch. 1**

Commencement Information

I173 S. 87 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I174 S. 87 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Call in of certain applications for listed building consent to Department

88.—(1) The Department may give directions requiring applications for listed building consent to be referred to it instead of being dealt with by councils.

(2) A direction under subsection (1) may relate either to a particular application, or to applications in respect of such buildings as may be specified in the direction.

(3) Where the Secretary of State or, as the case may be, the Department of Justice has certified that an application for listed building consent is an application to which section 235 (national security) applies, the Department of the Environment must give a direction to the council to which the application was made requiring the application to be referred to the Department of the Environment instead of being dealt with by the council.

(4) An application in respect of which a direction under this section has effect shall be referred to the Department accordingly.

(5) For the purpose of considering representations made in respect of an application for listed building consent to which section 235 applies which has been referred to it under this section, the Department must, subject to any rules made under section 235(2) or (5), cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(6) For the purpose of considering representations made in respect of an application for listed building consent referred to it under this section, other than

an application mentioned in subsection (5), the Department may cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(7) Where a public local inquiry is not held under subsection (6), the Department must, before determining the application, serve a notice on the applicant and the appropriate council 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 of the notice), the applicant or the council so requests in writing, the Department shall afford to each of them an opportunity of appearing before and being heard by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(8) In determining an application for listed building consent referred to it, the Department must, where any inquiry or hearing is held, take into account any report of the planning appeals commission or a person appointed by the Department for the purposes of the inquiry or hearing, as the case may be.

(9) The decision of the Department on an application for listed building consent referred to it under this section shall be final.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C29 Ss. 87-89 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

C32 S. 88 applied (22.4.2015) by The Planning (Inquiry Procedure) Rules (Northern Ireland) 2015 (S.R. 2015/189), rules 1, **3**

Commencement Information

I175 S. 88 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I176 S. 88 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Duty to notify Department of applications for listed building consent

89.—(1) If a council to which an application is made for listed building consent intends to grant listed building consent it must first notify the Department of the application, giving particulars of the works for which the consent is required.

(2) The Department may within the period of 28 days beginning with the date of such a notification—

(a) direct the reference of the application to it under section 88; or

(b) give notice to the council that it requires further time in which to consider whether to require such a reference.

(3) The council must not grant listed building consent until—

(a) the period mentioned in subsection (2) has expired without the Department directing the reference of the application to it or giving the council notice under paragraph (b) of that subsection; or

(b) the Department has notified the council that it does not intend to require the reference of the application.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C29 Ss. 87-89 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I177 S. 89 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I178 S. 89 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Directions concerning notification of applications, etc.

90.—(1) The Department may direct that, in the case of such descriptions of applications for listed building consent as it may specify, section 89 shall not apply.

(2) Where a direction is in force under subsection (1) in respect of any description of application, councils may determine applications of that description in any manner they think fit, without notifying the Department.

(3) Where a direction is in force under subsection (1), the Department may direct a council that section 89 shall nevertheless apply—

(a) to a particular application for listed building consent; or

(b) to such descriptions of application for listed building consent as are specified in the direction;

and such a direction has effect in relation to any such application which has not been disposed of by the council by its granting or refusing consent.

(4) Without prejudice to sections 86, 88 and 89, the Department may give directions to councils requiring councils, in such cases or classes of case as may be specified in the directions, to notify the Department and such other persons as may be so specified—

(a) of any applications made to the councils for listed building consent; and

(b) of the decisions taken by the councils on those applications.

(5) Directions under subsection (1) or (4) may be given to councils generally or to particular councils or descriptions of councils.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C33 S. 90 applied (with modifications) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I179 S. 90 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I180 S. 90 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Decision on application for listed building consent

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

(2) 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, a council or, as the case may be, the Department must 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.

(3) Without prejudice to sections 94 and 98, any grant of listed building consent shall (except in so far as the consent otherwise provides) have effect for the benefit of the building and of all persons for the time being having an estate therein.

(4) Without prejudice to the generality of subsection (1), 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 from it;

(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.

(5) 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 council or, as the case may be, the Department.

(6) 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.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C34 S. 91 applied (with modifications) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I181 S. 91 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I182 S. 91 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Power to decline to determine application for listed building consent

Power to decline to determine subsequent application for listed building consent

92.—(1) A council may decline to determine an application for listed building consent if—

(a) one or more of the conditions in subsections (2) to (4) is satisfied; and

(b) the council thinks there has been no significant change in any material considerations since the relevant event.

(2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Department has refused a similar application made under section 88.

(3) The condition is that in that period the planning appeals commission has dismissed an appeal—

(a) against the refusal of a similar application; or

(b) under section 97 in respect of a similar application.

(4) The condition is that—

(a) in that period the council has refused more than one similar application; and

(b) there has been no appeal to the planning appeals commission against any such refusal or, if there has been such an appeal, it has been withdrawn.

(5) The relevant event is—

(a) for the purposes of subsections (2) and (4) the refusal of the similar application;

(b) for the purposes of subsection (3) the dismissal of the appeal.

(6) An application for listed building consent is similar to another application if (and only if) the council thinks that the building and works to which the applications relate are the same or substantially the same.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C35 Ss. 92-101 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I183 S. 92 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I184 S. 92 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Power to decline to determine overlapping application for listed building consent

93.—(1) A council may decline to determine an application for listed building consent which is—

(a) made on the same day as a similar application; or

(b) made at a time when any of the conditions in subsections (2) to (4) applies in relation to a similar application.

(2) The condition is that a similar application is under consideration by the council and the determination period for that application has not expired.

(3) The condition is that a similar application is under consideration—

(a) by the Department under section 88 and the Department has not issued its decision; or

(b) by the planning appeals commission on an appeal under section 96 or 97 and the commission has not issued its decision.

(4) The condition is that a similar application—

(a) has been granted by the council;

(b) has been refused by the council; or

(c) has not been determined by the council within the determination period,

and the time within which an appeal could be made to the planning appeals commission under section 96 or 97 has not expired.

(5) If a council exercises its power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, it may not also exercise that power to decline to determine the similar application.

(6) An application for listed building consent is similar to another application if (and only if) the council thinks that the building and works to which the applications relate are the same or substantially the same.

(7) The determination period is—

(a) the period prescribed for the determination of the application; or

(b) such longer period as the applicant and the council have agreed for the determination of the application.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C35 Ss. 92-101 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I185 S. 93 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I186 S. 93 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Duration of listed building consent

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

(a) 5 years beginning with the date on which the consent is granted; or

(b) such other period (whether longer or shorter) beginning with that date as the council or, as the case may be, the Department may direct, being a period which the council or the Department considers appropriate having regard to any material considerations.

(2) If listed building consent is granted without the condition required by subsection (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 5 years beginning with the date of the grant.

(3) Nothing in this section applies to any consent to the retention of works granted under section 85(3).

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C35 Ss. 92-101 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I187 S. 94 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I188 S. 94 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Consent to execute works without compliance with conditions previously attached

95.—(1) This section applies to applications for listed building consent for the execution of works to a building without complying with conditions subject to which a previous listed building consent was granted.

(2) Regulations may make provision with respect to—

(a) the form and content of such applications; and

(b) the procedure to be followed in connection with such applications.

(3) On such an application the authority which granted the previous listed building consent must consider only the question of the conditions subject to which listed building consent should be granted, and—

(a) if the council or the Department decides that listed building 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 council or, as the case may be, the Department must grant listed building consent accordingly; and

(b) if the council or the Department decides that listed building consent should be granted subject to the same conditions as those subject to which the previous consent was granted, the council or, as the case may be, the Department must refuse the application.

(4) This section does not apply where the application is made after the previous listed building consent has become time-expired, that is to say, the previous consent having been granted subject to a condition as to the time within which the works to which it related were to be begun, that time has expired without the works having been begun.

(5) Listed building consent shall not be granted under this section to the extent that it has effect to change a condition subject to which a previous listed building consent was granted by extending the time limit within which the works must be begun.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C35 Ss. 92-101 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I189 S. 95 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I190 S. 95 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Appeal against decision

96.—(1) Where an application is made to a council—

(a) for listed building consent; or

(b) for any approval of the council required by a condition imposed on a grant of listed building consent,

then, if that consent or approval is refused or is granted subject to conditions, the applicant may by notice in writing under this subsection appeal to the planning appeals commission.

(2) Subsection (1) does not apply to any application referred to the Department under section 88.

(3) Any notice under this section must be served on the planning appeals commission within 4 months from the date of notification of the decision to which it relates or such other period as may be prescribed.

(4) Where an appeal is brought under this section from a decision of a council, the planning appeals commission, subject to subsections (5) and (6), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part of the decision or not and may deal with the application as if it had been made to it in the first instance.

(5) Before determining an appeal under this section, the planning appeals commission must, if either the applicant or the council so wishes, afford to each of them an opportunity of appearing before and being heard by the commission.

(6) Sections 87 and 95 and any provisions made under regulations made in accordance with section 86(4)(a) shall apply, with any necessary modifications,

in relation to an appeal to the planning appeals commission under this subsection as they apply to an application for listed building consent.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C35 Ss. 92-101 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

C36 S. 96(6) applied (1.4.2015) by The Planning (Listed Buildings) Regulations (Northern Ireland) 2015 (S.R. 2015/108), regs. 1(1), 5, **Sch. 1**

C37 S. 96(6) applied (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 5, **Sch. 1**

Commencement Information

I191 S. 96 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I192 S. 96 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Appeal against failure to take decision

97 Where any such application as is mentioned in section 96(1) is made to a council, then unless within such period as may be prescribed, or within such extended period as may be agreed upon in writing between the applicant and the council, the council gives notice to the applicant of its decision on the application or gives notice to the applicant that it has exercised its power under section 92 or 93 to decline to determine the application, section 96 shall apply in relation to the application—

(a) as if the consent or approval to which it relates had been refused by the council; and

(b) as if notification of the council's decision had been received by the applicant at the end of the prescribed period, or at the end of the extended period, as the case may be.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C35 Ss. 92-101 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

C38 S. 97 applied (1.4.2015) by The Planning (Listed Buildings) Regulations (Northern Ireland) 2015 (S.R. 2015/108), regs. 1(1), 5, **Sch. 1**

Commencement Information

I193 S. 97 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I194 S. 97 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Revocation or modification of listed building consent by council

98.—(1) If it appears to a council, having regard to the local 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 within its district, being consent granted on an application made under this Part, the council may, subject to subsection (2), by order revoke or modify the consent to such extent as (having regard to those matters) it considers expedient.

(2) The power conferred by this section 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.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C35 Ss. 92-101 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I195 S. 98 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I196 S. 98 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Procedure for section 98 orders: opposed cases

99.—(1) Except as provided in section 100, an order made by a council under section 98 shall not take effect unless it is confirmed by the Department.

(2) Where a council submits such an order to the Department for confirmation it must serve notice on—

(a) the owner of the building affected;

(b) the occupier of that building; and

(c) any other person who in the opinion of the council will be affected by the order.

(3) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require

an opportunity of appearing before and being heard by the planning appeals commission.

(4) If within that period a person on whom the notice is served so requires, the Department must give such an opportunity both to that person and to the council before it confirms the order.

(5) The Department may confirm an order submitted to it under this section either without modification or subject to such modifications as it considers expedient.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C35 Ss. 92-101 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I197 S. 99 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I198 S. 99 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Procedure for section 98 orders: unopposed cases

100.—(1) This section applies where—

(a) a council has made an order under section 98 revoking or modifying a listed building consent granted by it; and

(b) the owner and occupier of the land and all persons who in the council's opinion will be affected by the order have notified the council in writing that they do not object to the order.

(2) Where this section applies, instead of submitting the order to the Department for confirmation the council must—

(a) advertise in the prescribed manner the fact that the order has been made, specifying in the advertisement—

(i) the period within which persons affected by the order may give notice to the Department that they wish for an opportunity of appearing before and being heard by the planning appeals commission; and

(ii) the period at the end of which, if no such notice is given to the Department, the order may take effect by virtue of this section without being confirmed by the Department;

(b) serve notice to the same effect on the persons mentioned in subsection (1)(b);

(c) send a copy of any such advertisement to the Department not more than 3 days after its publication.

(3) The period referred to in subsection (2)(a)(i) must not be less than 28 days from the date on which the advertisement first appears.

(4) The period referred to in subsection (2)(a)(ii) must not be less than 14 days from the end of the period referred to in subsection (2)(a)(i).

(5) If—

(a) no person claiming to be affected by the order has given notice to the Department as mentioned in subsection (2)(a)(i) within the period referred to in that subsection; and

(b) the Department has not directed within that period that the order be submitted to it for confirmation,

the order shall take effect at the end of the period referred to in subsection (2)(a)(ii) without being confirmed by the Department as required by section 99(1).

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C35 Ss. 92-101 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I199 S. 100 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I200 S. 100 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Revocation or modification of listed building consent by the Department

101.—(1) If it appears to the Department that it is expedient that an order should be made under section 98 revoking or modifying any listed building consent granted on an application under this Part, it may make such an order revoking or modifying the consent to such extent as it considers expedient.

(2) In performing its functions under subsection (1) the Department must have regard to any material considerations.

(3) The Department must not make an order under that subsection without consulting the appropriate council.

(4) Where the Department proposes to make such an order it must serve notice on—

(a) the owner of the building affected;

(b) the occupier of that building; and

(c) any other person who in its opinion will be affected by the order.

(5) The notice must specify the period (which shall not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by the planning appeals commission.

(6) If within that period a person on whom it is served so requires, before the Department makes the order it must give such an opportunity both to that person and to the council.

(7) The power conferred by this section 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.

(8) An order under this section shall have the same effect as if it had been made by the council under section 98 and confirmed by the Department under section 99.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C35 Ss. 92-101 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I201 S. 101 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I202 S. 101 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Applications to determine whether listed building consent required

102.—(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, that person may apply to the council to determine that question.

(2) The provisions of sections 86(1), 96 and 97 shall, subject to any necessary modifications, apply in relation to any application under this section, and to the determination of that application, as those sections 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 a council and it appears to the council 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 council may treat the application for listed building consent as an application under this section and may make an appropriate determination.

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C39 S. 102 applied (with modifications) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I203 S. 102 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I204 S. 102 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Acts causing or likely to result in damage to listed buildings

103.—(1) Where a building, not being a building excluded by subsection (8) of section 85 from the operation of that section, is included in a list compiled under section 80, then, if any person who, but for this section, 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,

that person shall be guilty of an offence and liable—

(i) on summary conviction to a fine not exceeding the statutory maximum; or

(ii) on conviction on indictment, to a fine.

(2) In subsection (1) "excepted works" means—

(a) works authorised by planning permission granted in pursuance of an application under this Act; or

(b) works for which listed building consent has been given under this Act.

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

Modifications etc. (not altering text)

C28 Ss. 86-103: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I205 S. 103 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I206 S. 103 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Areas of special architectural or historic interest

Conservation areas

104.—(1) A council may designate areas of special architectural or historic interest within its district the character or appearance of which it is desirable to preserve or enhance.

(2) The Department may from time to time determine that any part of an area within a council's district which is not for the time being designated as a conservation area is an area of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance; and, if the Department so determines, it may designate that part as a conservation area.

(3) Before making a determination under subsection (2) the Department must consult the council concerned.

(4) A designation under subsection (1) or (2) may be varied or cancelled by the authority which made the designation.

(5) Subject to subsection (6), before making, varying or cancelling a designation under this section, the council or, as the case may be, the Department must consult with—

(a) the Historic Buildings Council;

(b) such other persons or bodies as may be prescribed.

(6) A designation under this section may be made without consulting the persons or bodies mentioned in subsection (5)(b), but a designation made without such consultation shall only have effect for a period of 6 months beginning on the date on which the designation was made.

(7) A council must give notice of the designation of any part of its district as a conservation area under subsection (1) and of any variation or cancellation of any such designation to the Department.

(8) The Department must give notice of the designation of any part of the district of a council as a conservation area under subsection (2) and of any variation or cancellation of any such designation to the council.

(9) A notice under subsection (7) or (8) must contain sufficient particulars to identify the area affected.

(10) Notice of any such designation, variation or cancellation as is mentioned in subsection (7) or (8), with particulars of its effect and sufficient particulars to identify the area affected, must be published in at least one newspaper circulating in the council's district, by that council or, as the case may be, the Department.

(11) Where any area is for the time being designated as a conservation area, special regard must be had, in the exercise, with respect to any buildings or other land in that area, of any powers under this Act, to the desirability of—

(a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise;

(b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise.

(12) In this Act "conservation area" means an area designated under subsection (1) or (2).

Modifications etc. (not altering text)

C40 S. 104: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I207 S. 104 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I208 S. 104 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Control of demolition in conservation areas

105.—(1) This section applies to all buildings in conservation areas other than—

(a) listed buildings;

(b) buildings of a class specified in section 85(8);

(c) buildings in relation to which a direction under subsection (4) is for the time being in force.

(2) A building to which this section applies shall not be demolished without the consent (in this Act referred to as a "conservation area consent") of the appropriate authority.

(3) The appropriate authority for the purposes of this section is—

(a) in relation to applications for consent made by councils, the Department;

(b) in relation to other applications for consent, the council or the Department.

(4) The Department may direct that this section shall not apply to a description of buildings specified in the direction.

(5) Where the Department gives a direction under subsection (4), it must publish a copy of the direction in the Belfast Gazette and in a newspaper circulating in the area in which the buildings are situated.

(6) Sections 85 to 102, 107, 157 to 160, 181 and 191 shall have effect in relation to buildings to which this section applies as they have effect in relation to listed buildings, subject to such exceptions and modifications as may be prescribed.

(7) If this section ceases to apply to a building—

(a) any proceedings on or arising out of an application for conservation area consent made while this section applied to the building shall lapse;

(b) any conservation area 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 section 85 or 157 (as applied by subsection (6)) committed by that person with respect to the building while this section applied to it.

(8) For the purposes of this section, any reference to demolition, in relation to a building to which this section applies, includes a reference to any structural alteration of that building where the alteration consists of demolishing part of the building.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C42 S. 105(6) applied (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 5, **Sch. 1**

Commencement Information

I209 S. 105 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I210 S. 105 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Grants in relation to conservation areas

106.—(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 section may be made subject to such conditions as the Department thinks fit.

(3) Any loan under this section must 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.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I211 S. 106 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I212 S. 106 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Land and works of councils

Application of Chapter 1, etc., to land and works of councils

107.—(1) In relation to land of an interested council, section 80 shall have effect subject to such exceptions and modifications as may be prescribed.

(2) The provisions listed in subsection (3) shall apply in relation to applications by interested councils relating to the execution of works for the demolition, alteration or extension of listed buildings, subject to regulations made by virtue of this subsection.

(3) The provisions are—

(a) the provisions included in this Chapter (except for sections 92, 93 and 102);

(b) the provisions of Part 5;

(c) sections 181 and 186;

(d) the provisions of Part 7 (except for section 192);

(e) sections 223 and 242.

(4) Regulations made under subsection (2) may—

(a) provide for any of the provisions listed in subsection (3) to apply subject to prescribed exceptions or modifications or not to apply;

(b) make new provision as to any matter dealt with in any of those provisions.

(5) Regulations made under subsection (2) may in particular provide—

(a) for the making of applications for listed building consent to the Department; and

(b) for the procedure to be followed on such applications.

(6) In this section "interested council", in relation to any land, means any council which exercises any functions of a council under this Chapter in relation to that land and, for the purposes of this section, land is land of a council if the council has any estate in it.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C43 S. 107 applied (with modifications) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I213 S. 107 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I214 S. 107 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

CHAPTER 2

HAZARDOUS SUBSTANCES

Requirement of hazardous substances consent

108.—(1) Subject to the provisions of this Part, the presence of a hazardous substance on, over or under land requires the consent of the council (in this Act 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 controlled by the same person and which, in all the circumstances (including in particular the purpose for which the land and the land mentioned in paragraph (a) is used), forms with the land so mentioned a single establishment;

(c) on, over or under other land which is within 500 metres of the land mentioned in paragraph (a) and controlled by the same person; or

(d) in or on a structure controlled by the same person any part of which is within 500 metres of the land mentioned in paragraph (a),

is less than the controlled quantity.

(2) A quantity of a substance which falls within more than one paragraph of subsection (1) shall only be counted once.

(3) 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—

(a) it is unloaded; or

(b) it is present on, over or under land in respect of which there is a hazardous substances consent for any substance, or in respect of which (not taking into account the quantity of the substance being transported) there is required to be such a consent for any substance.

(4) The Department—

(a) must by regulations specify—

(i) the substances that are hazardous substances for the purposes of this Act;

(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 Act.

(5) Regulations which—

(a) are made by virtue of paragraph (a)(i) of subsection (4); or

(b) are made by virtue of paragraph (a)(ii) of that subsection and reduce the controlled quantity of a substance,

may make such transitional provision as appears to the Department to be appropriate.

(6) Bodies corporate which are inter-connected for the purposes of the Fair Trading Act 1973 (c. 41) are to be treated as being one person for the purposes of this section and sections 109 to 117 and 162.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I215 S. 108 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I216 S. 108 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Applications for hazardous substances consent

109.—(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, must not be entertained unless it is accompanied by a certificate in the prescribed form and corresponding to one or other of those described in section 42(1)(a) to (d); and any such regulations may—

(a) include requirements corresponding to sections 42(4) and 45(4); 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 subsection (2) and which contains a statement which that person 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, that person 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 council or both to give publicity to an application for hazardous substances consent in such manner as may be prescribed;

(b) may require the council to consult with the Health and Safety Executive for Northern Ireland 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 council to determine applications for hazardous substances consent within such time as may be prescribed;

(e) may require councils to give prescribed persons or bodies prescribed information about applications for hazardous substances consent, including information as to the manner in which such applications have been dealt with;

(f) may prohibit councils from granting hazardous substances consent during such period as may be prescribed.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I217 S. 109 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I218 S. 109 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Determination of applications for hazardous substances consent

110.—(1) Subject to the following provisions of this Act, where an application is made to a council for hazardous substances consent, the council, in dealing with the application, must 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 subsection (1), in dealing with an application the council must 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;

(d) to the provisions of the local development plan; and

(e) to any advice which the Health and Safety Executive for Northern Ireland has given following consultations in pursuance of regulations made under section 109(4).

(3) If an application relates to more than one hazardous substance, the council may make different determinations in relation to each.

(4) It shall be the duty of a council, 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 subsection (1), a council 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.

(6) A council may only grant consent subject to conditions as to how a hazardous substance is to be kept or used if the conditions are conditions to which the Health and Safety Executive for Northern Ireland has advised the council that any consent it might grant should be subject.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C44 S. 110 applied (1.4.2015) by The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (S.R. 2015/61), regs. 1, **15(3)**

C45 S. 110 applied with modification(s) (16.10.2015) by The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015 (S.R. 2015/344), regs. 1, **16(3)**

Commencement Information

I219 S. 110 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I220 S. 110 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Grant of hazardous substances consent without compliance with conditions previously attached

111.—(1) This section applies to an application for hazardous substances consent without a condition subject to which a previous hazardous substances consent was granted.

(2) Regulations may make provision with respect to—

(a) the form and content of such applications; and

(b) the procedure to be followed in relation to such applications.

(3) On such an application the authority which granted the previous hazardous substances consent must 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 authority must 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 authority must refuse the application.

(4) 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 section does not relate to all the substances,

the authority 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.

(5) Where—

(a) more than one hazardous substances consent has been granted in respect of the same land; and

(b) an application under this section does not relate to all the consents,

the authority 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.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I221 S. 111 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I222 S. 111 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Revocation or modification of hazardous substances consent

112.—(1) If it appears to a council 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) A council may by order—

(a) revoke a hazardous substances consent which relates to only one substance if it appears to the council 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 council that none of those substances has for at least 5 years been so present.

(3) A council may by order revoke a hazardous substances consent or modify it to such extent as it considers expedient if it appears to the council, having regard to any material consideration, that it is expedient to revoke or modify it.

(4) An order under this section must specify the grounds on which it is made.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I223 S. 112 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I224 S. 112 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Confirmation by Department of section 112 orders

113.—(1) An order under section 112 shall not take effect unless it is confirmed by the Department.

(2) The Department may confirm any such order submitted to it either without modification or subject to such modification as it considers expedient.

(3) Where a council submits an order under section 112 to the Department for its confirmation under this section, the council must serve notice of the order—

(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.

(4) A notice under subsection (3) must specify the period (which must not be less than 28 days from the service of it) within which any person on whom the notice is served may require an opportunity of appearing before and being heard by the planning appeals commission.

(5) If such a person so requires, the Department, before confirming the order, must give that person and the council such an opportunity.

(6) Where an order under section 112 has been confirmed by the Department, the council must serve a copy of the order on every person who was entitled to be served with notice under subsection (3).

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I225 S. 113 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I226 S. 113 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Call in of certain applications for hazardous substances consent to Department

114.—(1) The Department may give directions requiring applications for hazardous consent to be referred to it instead of being dealt with by a council.

(2) A direction under subsection (1)—

(a) may be given either to a particular council or to councils generally; and

(b) may relate either to a particular application or to applications of a class specified in the direction.

(3) Where the Secretary of State or, as the case may be, the Department of Justice has certified that an application for hazardous substances consent is an application to which section 235 (national security) applies, the Department of the Environment must give a direction to the council to which the application was made requiring the application to be referred to the Department of the Environment instead of being dealt with by the council.

(4) Where an application for hazardous substances consent is referred to the Department under this section, sections 109 and 110 shall apply, with any necessary modifications, as they apply to such an application which falls to be determined by a council.

(5) Any application in respect of which a direction under this section has effect shall be referred to the Department accordingly.

(6) For the purpose of considering representations made in respect of an application to which section 235 applies which has been referred to it under this section, the Department must, subject to any rules made under subsection (2) or (5) of that section, cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(7) For the purpose of considering representations made in respect of an application referred to it under this section, other than an application mentioned in subsection (6), the Department may cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department.

(8) Where a public local inquiry is not held under subsection (7), the Department must, before determining the application, serve a notice on the applicant and the appropriate council 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), either the applicant or the council so requests in writing, the Department shall afford to each of them an opportunity of appearing before and being heard by—

(a) the planning appeals commission; or

(b) a person appointed by the Department.

(9) In determining an application referred to it under this section, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.

(10) The decision of the Department on an application referred to it under this section shall be final.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C46 S. 114 applied (22.4.2015) by The Planning (Inquiry Procedure) Rules (Northern Ireland) 2015 (S.R. 2015/189), rules 1, **3**

Commencement Information

I227 S. 114 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I228 S. 114 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Appeals

115.—(1) Where an application for hazardous substances consent is made to a council, then if that consent is refused or is granted subject to conditions the applicant may by notice in writing under this section appeal to the planning appeals commission.

(2) Subsection (1) does not apply to any application referred to the Department under section 114.

(3) Any notice under this section must be served on the planning appeals commission within 4 months from the date of notification of the decision to which it relates or such other period as may be prescribed.

(4) Where an appeal is brought under this section the planning appeals commission—

(a) must 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) must 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 paragraph (a).

(5) Where an appeal is brought under this section from a decision of a council, the planning appeals commission, subject to subsection (6), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the

appeal relates to that part of the decision 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 section, the planning appeals commission must, if either the applicant or the council 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 a council then unless within the prescribed period, or within such extended period as may be agreed upon in writing between the applicant and the council, the council either—

(a) gives notice to the applicant of its decision on the application; or

(b) gives notice to the applicant that the application has been referred to the Department under section 114,

subsections (1) to (6) shall apply in relation to the application—

(i) as if the consent to which it relates had been refused by the council; and

(ii) as if notification of the council's decision had been received by the applicant at the end of the prescribed period, or at the end of the extended period, as the case may be.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I229 S. 115 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I230 S. 115 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Effect of hazardous substances consent and change of control of land

116.—(1) Without prejudice to the provisions of this Part, any hazardous substances consent shall (except in so far as it otherwise provides) have effect 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 council.

(3) Regulations may make provision in relation to applications under subsection (2) corresponding to any provision that may be made by regulations under section 109 in relation to applications for hazardous substances consent.

(4) Subsections (2) and (3) do not apply if the control of land changes from one emanation of the Crown to another.

(5) When such an application is made, the council, having regard to any material consideration—

(a) may modify the consent in any way it considers appropriate; or

(b) may revoke it.

(6) Without prejudice to the generality of subsection (5), in dealing with an application the council must have regard to—

(a) the matters to which it is required to have regard by section 110(2); and

(b) any advice given by the Health and Safety Executive for Northern Ireland in relation to the application.

(7) If an application relates to more than one consent, the council may make different determinations in relation to each.

(8) If a consent relates to more than one hazardous substance, the council may make different determinations in relation to each.

(9) It shall be the duty of the council, 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 section 110(4);

(b) a statement of any change in respect of those matters.

(10) The modifications which the council may make by virtue of paragraph (a) of subsection (5) include, without prejudice to the generality of that paragraph, the making of the consent subject to conditions with respect to any of the matters mentioned in section 110(5).

(11) Subject to subsection (12), section 115 shall have effect in relation to applications under subsection (2) and to decisions on such applications as though they were applications for hazardous substances consent.

(12) In the application of section 115 by virtue of subsection (11)—

(a) subsection (2) of that section is omitted; and

(b) in subsection (7) of that section for the words from "either" to the end there are substituted the words " gives notice to the applicant of its decision on the application, the application shall be deemed to have been granted. ".

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I231 S. 116 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I232 S. 116 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Offences

117.—(1) Subject to the provisions of 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 subsection (1) "the appropriate person" means—

(a) in relation to a contravention falling within paragraph (a) of subsection (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 paragraph (a) or (b) of that subsection, the person in control of the land.

(4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding £100,000;

(b) on conviction on indictment, to a fine,

and in determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

(5) In any proceedings for an offence under this section it shall be a defence for the accused to prove—

(a) that the accused 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 subsection (2)(a), it shall be a defence for the accused to prove that at the time of the alleged commission of the offence the accused did not know, and had no reason to believe,—

(a) if the case falls within paragraph (a)(i) of that subsection—

(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 paragraph (a)(ii) of that subsection, 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 subsection (2)(b), it shall be a defence for the accused to prove that the accused 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.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I233 S. 117 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I234 S. 117 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Emergencies

118.—(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 section—

(a) may be revoked at any time;

(b) must in any case cease to have effect at the end of the period of 3 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 must send a copy of any such direction to the council in whose district any land affected by the direction is situated and to the Health and Safety Executive for Northern Ireland.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I235 S. 118 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I236 S. 118 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Health and safety requirements

119.—(1) Nothing in—

(a) any hazardous substances consent granted or deemed to be granted; or

(b) any hazardous substances contravention notice issued under section 162 (hazardous substances contravention notices),

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 a council after a hazardous substances consent has been granted, or is deemed to have been granted, or after a hazardous substances contravention notice has been issued that the consent or notice or part of it is rendered void by subsection (1), the council must, as soon as is reasonably practicable, consult the Health and Safety Executive for Northern Ireland with regard to the matter.

(3) If the Executive advises the council that the consent or notice is rendered wholly void, the council must revoke it.

(4) If the Executive advises that part of the consent or notice is rendered void, the council must so modify it as to render it wholly operative.

(5) In this section, "relevant statutory provisions", "improvement notice" and "prohibition notice" have the same meanings as in the Health and Safety at Work (Northern Ireland) Order 1978 (NI 9).

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I237 S. 119 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I238 S. 119 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Applications by councils for hazardous substances consent

120.—(1) The provisions listed in subsection (2) shall apply in relation to granting hazardous substances consent to councils, subject to regulations made by virtue of this subsection.

(2) The provisions are—

(a) the provisions of this Chapter;

(b) the provisions of Part 5;

(c) sections 182, 184, 223 and 242.

(3) Regulations made under subsection (1) may—

(a) provide for any of the provisions listed in subsection (2) to apply subject to prescribed exceptions or modifications or not to apply;

(b) make new provision as to any matter dealt with in any of those provisions.

(4) Subject to the provisions of paragraph 3(3) of Schedule 8 to the Electricity (Northern Ireland) Order 1992 (NI 1), any regulations made under subsection (1) may in particular provide for securing—

(a) that any application by a council for hazardous substances consent in respect of the presence of a hazardous substance on, over or under land shall be made to the Department and not to the council;

(b) that any order or notice authorised to be made, issued or served under this Chapter or Part 5 shall be made, issued or served by the Department and not by the council.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I239 S. 120 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I240 S. 120 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Chapter 3

Trees

Planning permission to include appropriate provision for trees

121 It shall be the duty of a council, and the Department, to—

(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 section 122 as appear to the council or, as the case may be, the Department to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I241 S. 121 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I242 S. 121 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Tree preservation orders: councils

122.—(1) Where it appears to a council that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in its district, it may for that purpose make an order (in this Act 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, uprooting,

wilful damage or wilful destruction of trees except with the consent of the council, and for enabling the council to give its consent subject to conditions;

(b) for securing the replanting, in such manner as may be specified 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 3, subject to such adaptations and modifications as may be specified in the order.

(2) A tree preservation order may be made so as to apply, in relation to trees to be planted pursuant to any such conditions as are mentioned in section 121(a), as from the time when those trees are planted.

(3) A tree preservation order shall not take effect until it is confirmed by the council and the council may confirm any such order either without modification or subject to such modifications as it considers expedient.

(4) The Department may make regulations as to the form of tree preservation orders and the procedure to be followed in connection with the making and confirmation of such orders; and the regulations may, in particular, make provision as follows—

(a) that, before a tree preservation order is confirmed by a council, notice of the making of the order shall be given to the owners and occupiers of land affected by the order and to such other persons, if any, as may be specified in the regulations;

(b) that objections and representations with respect to the order, if duly made in accordance with the regulations, shall be considered before the order is confirmed by the council; and

(c) that copies of the order, when confirmed by the council, must be served on such persons as may be specified in the regulations.

(5) 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, uprooting, topping or lopping of trees which are dead or have become dangerous or the cutting down, uprooting, 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.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I243 S. 122 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I244 S. 122 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Provisional tree preservation orders

123.—(1) If it appears to a council that a tree preservation order proposed to be made by that council should take effect immediately without previous confirmation, it may include in the order as made by it a direction that this section shall apply to the order.

(2) Notwithstanding section 122(3), an order which contains such a direction—

(a) shall take effect provisionally on such date as may be specified in it; and

(b) shall continue in force by virtue of this section until—

(i) the expiration of a period of 6 months beginning with the date on which the order was made; or

(ii) the date on which the order is confirmed,

whichever first occurs.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I245 S. 123 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I246 S. 123 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Power for Department to make tree preservation orders

124.—(1) If it appears to the Department, after consultation with the appropriate council, to be expedient that a tree preservation order or an order amending or revoking such an order should be made, the Department may make such an order.

(2) Any order so made by the Department shall have the same effect as if it had been made by the appropriate council and confirmed by it under this Chapter.

(3) The provisions of this Chapter and of any regulations made under it with respect to the procedure to be followed in connection with the making and confirmation of any order to which subsection (1) applies and the service

of copies of it as confirmed shall have effect, subject to any necessary modifications—

(a) in relation to any proposal by the Department to make such an order,

(b) in relation to the making of it by the Department, and

(c) in relation to the service of copies of it as so made.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I247 S. 124 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I248 S. 124 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Replacement of trees

125.—(1) If any tree in respect of which a tree preservation order is for the time being in force—

(a) is removed, uprooted or destroyed in contravention of the order; or

(b) except in the case of a tree to which the order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of section 122 on the grounds that it is dying or dead or has become dangerous,

it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as the owner reasonably can.

(2) The duty imposed by subsection (1) does not apply to an owner if on application by the owner the council dispenses with it.

(3) In respect of trees in a woodland it shall be sufficient for the purposes of this section to replace the trees removed, uprooted or destroyed by planting the same number of trees—

(a) on or near the land on which the trees removed, uprooted or destroyed stood; or

(b) on such other land as may be agreed between the council and the owner of the land,

and in such places as may be designated by the council.

(4) In relation to any tree planted pursuant to this section, the relevant tree preservation order shall apply as it applied to the original tree.

(5) The duty imposed by subsection (1) on the owner of any land shall attach to the person who is from time to time the owner of the land.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I249 S. 125 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I250 S. 125 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Penalties for contravention of tree preservation orders

126.—(1) If any person, in contravention of a tree preservation order, cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it, that person shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding £100,000;

(b) on conviction on indictment, to a fine.

(2) In determining the amount of any fine to be imposed on a person convicted of an offence under subsection (1), the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

(3) If any person contravenes a tree preservation order otherwise than as mentioned in subsection (1), that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I251 S. 126 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I252 S. 126 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Preservation of trees in conservation areas

127.—(1) Subject to the provisions of this section and section 128, any person who, in relation to a tree to which this section applies, does any act which might

by virtue of section 122(1)(a) be prohibited by a tree preservation order shall be guilty of an offence.

(2) Subject to section 128, this section applies to any tree in a conservation area in respect of which no tree preservation order is for the time being in force.

(3) It shall be a defence for a person charged with an offence under subsection (1) to prove—

(a) that that person served notice of his or her intention to do the act in question (with sufficient particulars to identify the tree) on the council in whose district the tree is or was situated; and

(b) that that person did the act in question—

(i) with the consent of the council in whose district the tree is or was situated; or

(ii) after the expiry of the period of 6 weeks from the date of the notice but before the expiry of the period of 2 years from that date.

(4) Section 126 shall apply to an offence under this section as it applies to a contravention of a tree preservation order.

(5) An emanation of the Crown must not, in relation to a tree to which this section applies, do any act mentioned in subsection (1) unless—

(a) the first condition is satisfied; and

(b) either the second or third condition is satisfied.

(6) The first condition is that the emanation serves notice of an intention to do the act (with sufficient particulars to identify the tree) on the council in whose district the tree is or was situated.

(7) The second condition is that the act is done with the consent of the council in whose district the tree is or was situated.

(8) The third condition is that the act is done—

(a) after the end of the period of 6 weeks starting with the date of the notice; and

(b) before the end of the period of 2 years starting with that date.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C47 S. 127 excluded (1.4.2015) by The Planning (Trees) Regulations (Northern Ireland) 2015 (S.R. 2015/84), regs. 1(1), **9(1)** (with reg. 11(7))

Commencement Information

I253 S. 127 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I254 S. 127 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Power to disapply section 127

128.—(1) The Department may by regulations direct that section 127 shall not apply in such cases as may be specified in the regulations.

(2) Regulations under subsection (1) may, in particular, be framed so as to exempt from the application of that section cases defined by reference to all or any of the following matters—

(a) acts of such descriptions or done in such circumstances or subject to such conditions as may be specified in the regulations;

(b) trees in such conservation areas as may be so specified;

(c) trees of a size or species so specified; or

(d) trees belonging to persons or bodies of a description so specified.

(3) Regulations under subsection (1) may, in particular, exempt from the application of section 127 cases exempted from section 122 by subsection (5) of that section.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I255 S. 128 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I256 S. 128 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

PROSPECTIVE

Chapter 4

Review of mineral planning permissions

Review of mineral planning permissions

129.—(1) Schedules 2 and 3 have effect.

(2) Without prejudice to the generality of section 32, a development order may make, in relation to any planning permission which is granted by a development order for minerals development, provision similar to any provision made by Schedule 2 or 3.

(3) In this section and in Schedules 2 and 3 "minerals development" means development consisting of mining operations or involving the deposit of mineral waste.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Chapter 5

Advertisements

Control of advertisements

130.—(1) Subject to this section, provision must be made by regulations under this Act 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 subsection (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 council 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 3 or 7 of this Act or Part 3 of the Act of 1965 subject to such adaptations and modifications as may be specified in the regulations.

(3) Without prejudice to the generality of subsection (1), the regulations may prohibit the display in any area of special control of all advertisements except advertisements of such classes (if any) as may be prescribed.

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

(5) Where the Department is authorised by the regulations to make or approve any such order as is mentioned in subsection (4), the regulations must provide—

(a) for the publication of notice of the proposed order in such manner as may be prescribed;

(b) for the consideration of objections duly made to it; and

(c) for the holding of such inquiries or other hearings by the planning appeals commission as may be so prescribed,

before the order is made or approved.

(6) Where the display of advertisements in accordance with regulations made under this section involves development of land, planning permission for that development shall be deemed to be granted by virtue of this section, and no application shall be necessary in that behalf under Part 3.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C48 S. 130(6) excluded (1.4.2015) by The Planning (General Permitted Development) Order (Northern Ireland) 2015 (S.R. 2015/70), **art. 1(3)**(4) (with art. 8(2))

C49 S. 130(6) excluded (1.4.2015) by The Planning (General Development Procedure) Order (Northern Ireland) 2015 (S.R. 2015/72), art. 1(1)**(3)**

Commencement Information

I257 S. 130 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I258 S. 130 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Part 5

Enforcement

Modifications etc. (not altering text)

C50 Pt. 5 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, **11**

C51 Pt. 5 (except ss. 157-163) applied with modification(s) (1.4.2015) by The Planning General Regulations (Northern Ireland) 2015 (S.R. 2015/39), regs. 1(1), **2** (with regs. 3-10)

Introductory

Expressions used in connection with enforcement

131.—(1) For the purposes of this Act—

(a) carrying out development without the planning permission required; or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted,

constitutes a breach of planning control.

(2) For the purposes of this Act—

(a) the issue of an enforcement notice; or

(b) the service of a breach of condition notice,

constitutes taking enforcement action.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I259 S. 131 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I260 S. 131 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Time limits

132.—(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 5 years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling-house, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of 5 years ending with that action being taken, the council or the Department has taken or purported to take enforcement action in respect of that breach.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I261 S. 132 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I262 S. 132 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Planning contravention notices

Power to require information about activities on land

133.—(1) Where it appears to a council that there may have been a breach of planning control in respect of any land in its district, it may serve notice to that effect (referred to in this Act as a "planning contravention notice") on any person who—

(a) is the owner or occupier of the land or has any other estate in it; or

(b) is carrying out operations on the land or is using it for any purpose.

(2) A planning contravention notice may require the person on whom it is served to give such information as to—

(a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land; and

(b) any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted,

as may be specified in the notice.

(3) Without prejudice to the generality of subsection (2), the notice may require the person on whom it is served, so far as that person is able—

(a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;

(b) to state when any use, operations or activities began;

(c) to give the name and postal address of any person known to that person to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;

(d) to give any information that person holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operations;

(e) to state the nature of that person's estate (if any) in the land and the name and postal address of any other person known to the first mentioned person to have an estate in the land.

(4) A planning contravention notice may give notice of a time and place at which—

(a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to refrain from carrying out any operations or activities or to undertake remedial works; and

(b) any representations which that person may wish to make about the notice,

will be considered by the council, and the council must give that person an opportunity to make in person any such offer or representations at that time and place.

(5) A planning contravention notice must inform the person on whom it is served—

(a) of the likely consequences of failing to respond to the notice and, in particular, that enforcement action may be taken; and

(b) of the effect of section 185(5)(b).

(6) Any requirement of a planning contravention notice must be complied with by giving information in writing to the council.

(7) The service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control.

(8) In this section references to operations or activities on land include operations or activities in, under or over the land.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I263 S. 133 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I264 S. 133 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Penalties for non-compliance with planning contravention notice

134.—(1) If, at any time after the end of the period of 21 days beginning with the day on which a planning contravention notice has been served on any person, that person has not complied with any requirement of the notice, that person shall be guilty of an offence.

(2) An offence under subsection (1) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.

(3) It shall be a defence for a person charged with an offence under subsection (1) to prove that that person had a reasonable excuse for failing to comply with the requirement.

(4) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) If any person—

(a) makes any statement purporting to comply with a requirement of a planning contravention notice which that person knows to be false or misleading in a material particular; or

(b) recklessly makes such a statement which is false or misleading in a material particular,

that person shall be guilty of an offence.

(6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I265 S. 134 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I266 S. 134 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Temporary stop notices

Temporary stop notice

135.—(1) This section applies if a council thinks—

(a) that there has been a breach of planning control in relation to any land in its district; and

(b) that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.

(2) The council may issue a temporary stop notice.

(3) The notice must be in writing and must—

(a) specify the activity which the council thinks amounts to the breach;

(b) prohibit the carrying on of the activity (or of so much of the activity as is specified in the notice);

(c) set out the council's reasons for issuing the notice.

(4) A temporary stop notice may be served on any of the following—

(a) a person who the council thinks is carrying on the activity;

(b) a person who the council thinks is an occupier of the land;

(c) a person who the council thinks has an estate in the land.

(5) The council must display on the land—

(a) a copy of the notice;

(b) a statement of the effect of the notice and of section 137.

(6) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of subsection (5).

(7) A temporary stop notice ceases to have effect—

(a) at the end of the period of 28 days starting on the day the copy notice is so displayed;

(b) at the end of such shorter period starting on that day as is specified in the notice; or

(c) if it is withdrawn by the council.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I267 S. 135 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I268 S. 135 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Temporary stop notice: restrictions

136.—(1) A temporary stop notice does not prohibit—

(a) any person from continuing to use any building, caravan or other structure situated on land to which the temporary stop notice relates as that person's permanent residence whether as owner, occupier, tenant, patient, guest or otherwise;

(b) the carrying out of an activity of such description or in such circumstances as is prescribed.

(2) A temporary stop notice does not prohibit the carrying out of any activity which has been carried out (whether continuously or not) for a period of 5 years ending with the day on which the copy of the notice is first displayed as mentioned in section 135(5).

(3) Subsection (2) does not prevent a temporary stop notice prohibiting—

(a) activity consisting of or incidental to building, engineering, mining or other operations; or

(b) the deposit of refuse or waste materials.

(4) For the purposes of subsection (2) any period during which the activity is authorised by planning permission shall be ignored.

(5) A second or subsequent temporary stop notice must not be issued in respect of the same activity unless the council has first taken some other enforcement action in relation to the breach of planning control which is constituted by the activity.

(6) In subsection (5) enforcement action includes obtaining the grant of an injunction under section 156.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I269 S. 136 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I270 S. 136 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Temporary stop notice: offences

137.—(1) A person commits an offence if that person contravenes a temporary stop notice—

(a) which has been served on that person; or

(b) a copy of which has been displayed in accordance with section 135(5).

(2) Contravention of a temporary stop notice includes causing or permitting the contravention of the notice.

(3) An offence under this section may be charged by reference to a day or a longer period of time.

(4) A person may be convicted of more than one such offence in relation to the same temporary stop notice by reference to different days or periods of time.

(5) A person does not commit an offence under this section if that person proves—

(a) that the temporary stop notice was not served on him or her; and

(b) that that person did not know, and could not reasonably have been expected to know, of its existence.

(6) A person convicted of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding £100,000;

(b) on conviction on indictment, to a fine.

(7) In determining the amount of the fine the court must have regard in particular to any financial benefit which has accrued or has appeared to accrue to the person convicted in consequence of the offence.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I271 S. 137 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I272 S. 137 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Enforcement notices

Issue of enforcement notice by councils

138.—(1) The council may issue a notice (in this Act referred to as an "enforcement notice") where it appears to the council—

(a) that there has been a breach of planning control in relation to any land in its district; and

(b) that it is expedient to issue the notice, having regard to the provisions of the local development plan and to any other material considerations.

(2) A copy of an enforcement notice must be served—

(a) on the owner and on the occupier of the land to which it relates; and

(b) on any other person having an estate in the land, being an estate which, in the opinion of the council, is materially affected by the notice.

(3) The service of the notice must take place—

(a) not more than 28 days after its date of issue; and

(b) not less than 28 days before the date specified in it as the date on which it is to take effect.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I273 S. 138 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I274 S. 138 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Issue of enforcement notice by Department

139.—(1) The Department may issue a notice (in this Act referred to as an "enforcement notice") where it appears to the Department—

(a) that there has been a breach of planning control; and

(b) that it is expedient to issue the notice, having regard to the provisions of the local development plan and to any other material considerations.

(2) The Department must not issue an enforcement notice without consulting the appropriate council.

(3) A copy of an enforcement notice must be served—

(a) on the owner and on the occupier of the land to which it relates; and

(b) on any other person having an estate in the land, being an estate which, in the opinion of the Department, is materially affected by the notice.

(4) The service of the notice must take place—

(a) not more than 28 days after its date of issue; and

(b) not less than 28 days before the date specified in it as the date on which it is to take effect.

(5) In relation to an enforcement notice issued by the Department, sections 146 and 149 shall apply as if for any reference in those sections to the council there were substituted a reference to the Department.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I275 S. 139 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I276 S. 139 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Contents and effect of enforcement notice

140.—(1) An enforcement notice must state—

(a) the matters which appear to the council or, as the case may be, the Department to constitute the breach of planning control; and

(b) the paragraph of section 131(1) within which, in the opinion of the council or Department, the breach falls.

(2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.

(3) An enforcement notice must specify the steps which the council or, as the case may be, the Department requires to be taken, or the activities which the council or the Department requires to cease, in order to achieve, wholly or partly, any of the following purposes.

(4) Those purposes are—

(a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or

(b) remedying any injury to amenity which has been caused by the breach.

(5) An enforcement notice may, for example, require—

(a) the alteration or removal of any buildings or works;

(b) the carrying out of any building or other operations;

(c) any activity on the land not to be carried on except to the extent specified in the notice; or

(d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.

(6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this section referred to as a "replacement building") which, subject to subsection (7), is as similar as possible to the demolished building.

(7) A replacement building—

(a) must comply with any requirement imposed by any statutory provision applicable to the construction of buildings;

(b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;

(c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b)).

(8) An enforcement notice must specify the date on which it is to take effect and, subject to section 143(7), shall take effect on that date.

(9) An enforcement notice must specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

(10) An enforcement notice must specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 138 or 139 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 143.

(11) Where—

(a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and

(b) all the requirements of the notice have been complied with,

then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 55 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

(12) Where—

(a) an enforcement notice requires the construction of a replacement building; and

(b) all the requirements of the notice with respect to that construction have been complied with,

planning permission shall be treated as having been granted by virtue of section 55 in respect of development consisting of that construction.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I277 S. 140 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I278 S. 140 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Variation and withdrawal of enforcement notices by councils

141.—(1) The council may—

(a) withdraw an enforcement notice issued by it; or

(b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 140(9).

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The council must, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the power of the council to issue a further enforcement notice.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I279 S. 141 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I280 S. 141 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Variation and withdrawal of enforcement notices by Department

142.—(1) The Department may—

(a) withdraw an enforcement notice issued by it; or

(b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 140(9).

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The Department must, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the power of the Department to issue a further enforcement notice.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I281 S. 142 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I282 S. 142 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Appeal against enforcement notice

143.—(1) A person having an estate in the land to which an enforcement notice relates or a person to whom subsection (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice, whether or not a copy of it has been served on that person.

(2) This subsection applies to a person who—

(a) on the date on which the enforcement notice is issued occupies the land to which it relates by virtue of a licence; and

(b) continues to occupy the land as aforesaid when the appeal is brought.

(3) An appeal may be brought on any of the following grounds—

(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 138 or, as the case may be, section 139;

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the notice in accordance with section 140(9) falls short of what should reasonably be allowed.

(4) An appeal under this section must be made by serving written notice of the appeal on the planning appeals commission before the date specified in the enforcement notice as the date on which it is to take effect and such notice must indicate the grounds of the appeal and state the facts on which it is based.

(5) Before determining an appeal under this section, the planning appeals commission must, if either—

(a) the appellant; or

(b) the council or, as the case may be, Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(6) Sections 41 and 45(2) shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this section as they apply to an application for planning permission to the council or the Department.

(7) Where an appeal is brought under this section, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(8) Subject to subsection (9), the validity of an enforcement notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(9) Subsection (8) shall not apply to proceedings brought under section 147 against a person who—

(a) has held an estate in the land since before the enforcement notice was issued;

(b) was not served with a copy of the enforcement notice; and

(c) satisfies the court that—

(i) that person did not know and could not reasonably have been expected to know that the enforcement notice had been issued; and

(ii) that person's interests have been substantially prejudiced by the failure to serve him or her with a copy of it.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C52 S. 143 applied with modification(s) (1.4.2015) by The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (S.R. 2015/61), regs. 1, 17, Sch. 3 Pts. 1, **3**

C53 S. 143 applied with modification(s) (16.10.2015) by The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015 (S.R. 2015/344), regs. 1, **21**, **Sch. 3 Pts. 1, 3**

Commencement Information

I283 S. 143 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I284 S. 143 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Appeal against enforcement notice - general supplementary provisions

144.—(1) On an appeal under section 143 the planning appeals commission must quash the enforcement notice, vary the terms of the notice or uphold the notice.

(2) On such an appeal the planning appeals commission may correct any misdescription, defect or error in the enforcement notice, or vary its terms if it is satisfied that the correction or variation can be made without injustice to the appellant or to the council or, as the case may be, the Department.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the enforcement notice was not so served, the planning appeals commission may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve the copy of the enforcement notice.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C54 S. 144 applied with modification(s) (1.4.2015) by The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (S.R. 2015/61), regs. 1, 17, Sch. 3 Pts. 1, **3**

C55 S. 144 applied with modification(s) (16.10.2015) by The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015 (S.R. 2015/344), regs. 1, **21**, **Sch. 3 Pts. 1**, **3**

Commencement Information

I285 S. 144 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I286 S. 144 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Appeal against enforcement notice - supplementary provisions relating to planning permission

145.—(1) On the determination of an appeal under section 143, the planning appeals commission may—

(a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;

(b) discharge any condition or limitation subject to which planning permission was granted;

(c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure

to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 169.

(2) The provisions of sections 169 to 172 mentioned in subsection (3) shall apply for the purposes of subsection (1)(c) as they apply for the purposes of section 169, but as if—

(a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and

(b) references to the council were references to the planning appeals commission.

(3) Those provisions are sections 169(5) to (7), 171(4) (so far as it relates to the form of the certificate), (6) and (7) and 172.

(4) In considering whether to grant planning permission under subsection (1), the planning appeals commission must have regard to the local development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations; and planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part 3; and where under that subsection the planning appeals commission discharges a condition or limitation, it may substitute another condition or limitation for it, whether more or less onerous.

(5) Where an appeal against an enforcement notice is brought under section 143, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control and, in relation to any exercise by the planning appeals commission of its powers under subsection (1)—

(a) any planning permission granted under that subsection shall be treated as granted on that application;

(b) in relation to a grant of planning permission or a determination under that subsection, the decision of the planning appeals commission shall be final; and

(c) subject to paragraph (b), any planning permission granted under that subsection shall have the like effect as a permission granted under Part 3.

(6) Where—

(a) the notice under subsection (4) of section 143 indicates the ground mentioned in subsection (3)(a) of that section;

(b) any fee is payable under regulations made by virtue of section 223 in respect of the application deemed to be made by virtue of the appeal; and

(c) the planning appeals commission gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application, shall lapse at the end of that period.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C56 S. 145 applied with modification(s) (1.4.2015) by The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (S.R. 2015/61), regs. 1, 17, Sch. 3 Pts. 1, **3**

C57 S. 145 applied with modification(s) (16.10.2015) by The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015 (S.R. 2015/344), regs. 1, **21**, **Sch. 3 Pts. 1**, **3**

C58 S. 145(5) applied (1.4.2015) by The Planning Fees (Deemed Planning Applications and Appeals) Regulations (Northern Ireland) 2015 (S.R. 2015/136), regs. 1, **3(1)** (with regs. 4-6)

Commencement Information

I287 S. 145 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I288 S. 145 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Execution and cost of works required by enforcement notice

146.—(1) Where any steps required by an enforcement notice to be taken are not taken within the period allowed for compliance with the notice, a person authorised in writing by the council may—

(a) enter the land and take the steps; and

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(2) Any expenses incurred by the owner or occupier of any land for the purposes of complying with an enforcement notice in respect of any breach of planning control, and any sums paid by the owner of any land under subsection (1), in respect of expenses incurred by the council in taking steps required to be taken by such a notice, shall be deemed to be incurred for the use and at the request of the person by whom the breach of planning control was committed.

(3) The council may sell any materials which have been removed by it from any land when taking steps under subsection (1) if, before the expiration of 3 days from their removal, they are not claimed and taken away by their owner.

(4) Where the council sells any materials under subsection (3), it must pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by it from that person.

(5) Subsections (3) and (4) do not apply to refuse removed by the council.

(6) Where the council claims to recover any expenses under this section from a person as being the owner of the land in respect of which the expenses were incurred and that person proves that—

(a) that person is receiving the rent of that land merely as agent or trustee for some other person; and

(b) has not, and since the date of the service of a demand for payment has not had, on behalf of that other person sufficient money to discharge the whole demand of the council,

that person's liability shall be limited to the total amount of the money which that person has or has had as mentioned in paragraph (b), but the council where it is, or would be, debarred by this subsection from recovering the whole of any such expenses from an agent or trustee may recover the whole of any unpaid balance thereof from the person on whose behalf the agent or trustee receives the rent.

(7) Any expenses recoverable by the council under this section shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the owner of the land and of any person deriving title from the owner.

(8) The charge created by subsection (7) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the council by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the council may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 (c. 41) on mortgagees by deed accordingly.

(9) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C59 S. 146 applied with modification(s) (1.4.2015) by The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (S.R. 2015/61), regs. 1, 18, Sch. 3 Pts. 2, **3**

C60 S. 146 applied with modification(s) (16.10.2015) by The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015 (S.R. 2015/344), regs. 1, **22**, **Sch. 3 Pts. 2**, **3**

Commencement Information

I289 S. 146 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I290 S. 146 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Offence where enforcement notice not complied with

147.—(1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

(2) Where the owner of the land is in breach of an enforcement notice that person shall be guilty of an offence.

(3) In proceedings against any person for an offence under subsection (2), it shall be a defence to show that that person did everything that person could be expected to do to secure compliance with the notice.

(4) A person who has control of or an estate in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.

(5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.

(6) An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.

(7) Where—

(a) a person charged with an offence under this section has not been served with a copy of the enforcement notice; and

(b) the notice is not contained in the appropriate register kept under section 242,

it shall be a defence for that person to show that that person was not aware of the existence of the notice.

(8) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding £100,000;

(b) on conviction on indictment, to a fine.

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C61 S. 147 applied with modification(s) (1.4.2015) by The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (S.R. 2015/61), regs. 1, 18, Sch. 3 Pts. 2, **3**

C62 S. 147 applied with modification(s) (16.10.2015) by The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015 (S.R. 2015/344), regs. 1, **22**, **Sch. 3 Pts. 2**, **3**

Commencement Information

I291 S. 147 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I292 S. 147 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Effect of planning permission, etc., on enforcement or breach of condition notice

148.—(1) Where, after the service of—

(a) a copy of an enforcement notice; or

(b) a breach of condition notice,

planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

(2) Where after a breach of condition notice has been served any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.

(3) The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section does not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C63 S. 148 applied with modification(s) (1.4.2015) by The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (S.R. 2015/61), regs. 1, 18, Sch. 3 Pts. 2, **3**

C64 S. 148 applied with modification(s) (16.10.2015) by The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015 (S.R. 2015/344), regs. 1, **22**, **Sch. 3 Pts. 2**, **3**

Commencement Information

I293 S. 148 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I294 S. 148 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Enforcement notice to have effect against subsequent development

149.—(1) Compliance with an enforcement notice whether in respect of—

(a) the completion, removal or alteration of any buildings or works; or

(b) the discontinuance of any use of land,

or in respect of any other requirement contained in the enforcement notice, shall not discharge the enforcement notice.

(2) Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part 3; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.

(3) Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered; and, subject to subsection (4), section 146 shall apply accordingly.

(4) Where, at any time after an enforcement notice takes effect—

(a) any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with the notice, and

(b) the council proposes, under section 146(1), to take any steps required by the enforcement notice for the removal or alteration of the buildings or works in consequence of the reinstatement or restoration,

the council must, not less than 28 days before taking any such steps, serve on the owner and occupier of the land a notice of its intention to do so.

(5) A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £7,500; and no person shall be liable under section 147(2) for failure to take any steps required to be taken by an enforcement notice by way of removal or alteration of what has been so reinstated or restored.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C65 S. 149 applied with modification(s) (1.4.2015) by The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (S.R. 2015/61), regs. 1, 18, Sch. 3 Pts. 2, **3**

C66 S. 149 applied with modification(s) (16.10.2015) by The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015 (S.R. 2015/344), regs. 1, **22**, **Sch. 3 Pts. 2**, **3**

Commencement Information

I295 S. 149 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I296 S. 149 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Service of stop notices by councils

150.—(1) Where the council considers it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, it may, when it serves the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a "stop notice") referring to, and having annexed to it a copy of, the enforcement notice and prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.

(2) In this section and section 185 "relevant activity" means any activity specified in the enforcement notice as an activity which the council requires to cease and any activity carried out as part of that activity or associated with that activity.

(3) A stop notice may not be served where the enforcement notice has taken effect.

(4) A stop notice shall not prohibit any person from continuing to use any building, caravan or other structure situated upon the land as that person's permanent residence whether as owner, occupier, tenant, patient, guest or otherwise.

(5) A stop notice shall not take effect until such date as it may specify (and it cannot be contravened until that date).

(6) The date specified in a stop notice must be the date when the notice is served, unless the council considers that there are special reasons for specifying a later date, but the date specified in the notice must, in any case, be a date not later than 28 days from the date when the notice is first served on any person.

(7) A stop notice shall not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than 5 years ending with the service of the notice; and for the purposes of this subsection no account is to be taken of any period during which the activity was authorised by planning permission.

(8) Subsection (7) does not prevent a stop notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.

(9) A stop notice shall cease to have effect when—

(a) the enforcement notice referred to in it is withdrawn or quashed; or

(b) the period for compliance with the enforcement notice expires; or

(c) notice of withdrawal of the stop notice is first served under subsection (11); or

(d) if or to the extent that the activities prohibited by it cease, on a variation of the enforcement notice referred to in it, to be relevant activities.

(10) A stop notice may be served by the council on any person who appears to it to have an estate in the land or to be engaged in any activity prohibited by the notice; and where a stop notice has been served in respect of any land, the council may display there a notice (in this section referred to as a "site notice") stating—

(a) that a stop notice has been served; and

(b) that any person contravening the stop notice may be prosecuted for an offence under this section, giving the date when the stop notice takes effect and indicating its requirements.

(11) The council may at any time withdraw a stop notice (without prejudice to its power to serve another)—

(a) by serving notice to that effect on persons served with the stop notice; and

(b) if a site notice was displayed in respect of the stop notice, displaying a notice of the withdrawal in place of the site notice.

(12) A person who contravenes a stop notice after a site notice has been displayed or the stop notice has been served on that person shall be guilty of an offence.

(13) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.

(14) References in this section to contravening a stop notice include causing or permitting its contravention.

(15) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding £100,000;

(b) on conviction on indictment, to a fine.

(16) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have

regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

(17) In proceedings for an offence under this section it is a defence for the accused to prove that the stop notice was not served on the accused and that the accused did not know, and could not reasonably have been expected to know, of its existence.

(18) A stop notice shall not be invalid by reason that a copy of the enforcement notice to which it relates was not served as required by section 138 or, as the case may be, 139 if it is shown that the council took all such steps as were reasonably practicable to effect proper service.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I297 S. 150 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I298 S. 150 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Service of stop notices by Department

151.—(1) The Department may serve a stop notice.

(2) The Department must not serve a stop notice without consulting the appropriate council.

(3) A notice served by the Department under subsection (1) shall have the same effect as if it had been served by a council.

(4) The provisions of section 150 shall apply, with any necessary modifications, to the service of a stop notice by the Department as they apply to the service of a stop notice by a council.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I299 S. 151 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I300 S. 151 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Breach of condition notices

Enforcement of conditions

152.—(1) This section applies where planning permission for carrying out any development of land has been granted subject to conditions.

(2) The council may, if any of the conditions is not complied with, serve a notice (in this Act referred to as a "breach of condition notice") on—

(a) any person who is carrying out or has carried out the development; or

(b) any person having control of the land,

requiring that person to secure compliance with such of the conditions as are specified in the notice.

(3) References in this section to the person responsible are to the person on whom the breach of condition notice has been served.

(4) The conditions which may be specified in a notice served by virtue of subsection (2)(b) are any of the conditions regulating the use of the land.

(5) A breach of condition notice must specify the steps which the council considers ought to be taken, or the activities which the council considers ought to cease, to secure compliance with the conditions specified in the notice.

(6) The council may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve a further breach of condition notice on that person in respect of the conditions specified in the earlier notice or any other conditions.

(7) The period allowed for compliance with the notice is—

(a) such period of not less than 28 days beginning with the date of service of the notice as may be specified in the notice; or

(b) that period as extended by a further notice served by the council on the person responsible.

(8) If, at any time after the end of the period allowed for compliance with the notice—

(a) any of the conditions specified in the notice is not complied with; and

(b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,

the person responsible is in breach of the notice.

(9) If the person responsible is in breach of the notice that person shall be guilty of an offence.

(10) An offence under subsection (9) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent

offence under that subsection by reference to any period of time following the preceding conviction for such an offence.

(11) It shall be a defence for a person charged with an offence under subsection (9) to prove—

(a) that that person took all reasonable measures to secure compliance with the conditions specified in the notice; or

(b) where the notice was served under subsection (2)(b), that that person no longer had control of the land.

(12) A person who is guilty of an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) In this section—

(a) "conditions" includes limitations; and

(b) references to carrying out any development include causing or permitting another to do so.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I301 S. 152 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I302 S. 152 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Fixed penalties

Fixed penalty notice where enforcement notice not complied with

153.—(1) Where on any occasion an authorised officer of a council has reason to believe that a person has committed an offence under section 147 in the district of that council, the officer may give that person a notice offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty to the council.

(2) Where a person is given a notice under this section in respect of an offence—

(a) no proceedings may be instituted for that offence before the expiration of the period of 28 days following the date of the notice; and

(b) the person shall not be convicted of that offence if the person pays the fixed penalty before the expiration of that period.

(3) A notice under this section must specify—

(a) the step specified, under subsection (3) of section 140, in the enforcement notice which has not been taken; or

(b) the activity so specified which has not ceased.

(4) A notice under this section must also state—

(a) the period during which, by virtue of subsection (2), proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid.

(5) The council must not serve more than one notice under this section in relation to a particular step or activity.

(6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (4)(c) at the address so mentioned.

(7) Where a letter is sent in accordance with subsection (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(8) The form of a notice under this section shall be such as the Department may prescribe.

(9) The fixed penalty payable to the council under this section is such amount as may be prescribed.

(10) But if payment is made within the first 14 days of the period mentioned in subsection (2) the amount payable is reduced by 25%.

(11) In any proceedings a certificate which—

(a) purports to be signed on behalf of the clerk of the council, and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(12) In this section "authorised officer", in relation to a council, means an employee of a council who is authorised in writing by the council for the purpose of giving notices under this section.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I303 S. 153 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I304 S. 153 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Fixed penalty notice where breach of condition notice not complied with

154.—(1) Where on any occasion an authorised officer of a council has reason to believe that a person has committed an offence under subsection (9) of section 152 in the district of that council, the officer may give that person a notice offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty to the council.

(2) Where a person is given a notice under this section in respect of an offence—

(a) no proceedings may be instituted for that offence before the expiration of the period of 28 days following the date of the notice; and

(b) the person shall not be convicted of that offence if the person pays the fixed penalty before the expiration of that period.

(3) A notice under this section must—

(a) specify the step specified under subsection (5) of section 152 in the breach of condition notice which has not been taken; or

(b) the activity so specified which has not ceased.

(4) A notice under this section must also state—

(a) the period during which, by virtue of subsection (2), proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid.

(5) The council must not serve more than one notice under this section in relation to a particular step or activity.

(6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (4)(c) at the address so mentioned.

(7) Where a letter is sent in accordance with subsection (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(8) The form of a notice under this section shall be such as the Department may prescribe.

(9) The fixed penalty payable to the council under this section is such amount as may be prescribed.

(10) But if payment is made within the first 14 days of the period mentioned in subsection (2) the amount payable is reduced by 25%.

(11) In any proceedings a certificate which—

(a) purports to be signed on behalf of the clerk of the council, and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(12) In this section "authorised officer", in relation to a council, means an employee of a council who is authorised in writing by the council for the purpose of giving notices under this section.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I305 S. 154 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I306 S. 154 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Use of fixed penalty receipts

155.—(1) This section applies in relation to amounts paid to a council in pursuance of notices under section 153 or 154 (its "fixed penalty receipts").

(2) A council may use its fixed penalty receipts only for the purposes of—

(a) its functions under this Part;

(b) such other of its functions as may be specified in regulations made by the Department.

(3) Regulations under subsection (2)(b) may, in particular, have the effect that a council may use its fixed penalty receipts for the purposes of any of its functions.

(4) A council must supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.

(5) The Department may by regulations—

(a) make provision for what a council is to do with its fixed penalty receipts—

(i) pending their being used for the purposes of functions of the council referred to in subsection (2);

(ii) if they are not so used before such time after their receipt as may be specified by the regulations;

(b) make provision for accounting arrangements in respect of a council's fixed penalty receipts.

(6) The provision that may be made under subsection (5)(a)(ii) includes, in particular, provision for the payment of sums to a person (including the Department) other than the council.

(7) Before making regulations under this section, the Department shall consult—

(a) councils;

(b) such other persons as the Department thinks fit.

Modifications etc. (not altering text)

C41 Ss. 105-155: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I307 S. 155 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I308 S. 155 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Injunctions

Injunctions

156.—(1) Where the council considers it necessary or expedient for—

(a) any actual or apprehended breach of planning control;

(b) any actual or apprehended contravention of sections 85(1) or (5), 126 or 127; or

(c) any actual or apprehended contravention of hazardous substances control,

to be restrained by injunction, it may apply to the court for an injunction, whether or not it has exercised or is proposing to exercise any of its other powers under this Part.

(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court and county court rules may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this section “the court” means the High Court or the county court.

Commencement Information

I309 S. 156 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I310 S. 156 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Listed buildings

Issue of listed building enforcement notices by councils

157.—(1) Where it appears to a council that any works have been or are being executed to a listed building in its district and are such as to involve a contravention of section 85(1) or (5), then, subject to subsection (3), the council may, if it considers it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice—

(a) specifying the alleged contravention; and

(b) requiring such steps as may be specified in the notice to be taken—

(i) for restoring the building to its former state; or

(ii) where the council considers that such restoration would not be reasonably practicable, or would be undesirable, for executing such further works specified in the notice as it considers necessary to alleviate the effect of the works which were carried out without listed building consent; or

(iii) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.

(2) A notice under this section is referred to in this Act as a "listed building enforcement notice".

(3) A listed building enforcement notice shall not be served in relation to a contravention of section 85(1) or (5) which occurred before 9th December 1978.

(4) A listed building enforcement notice—

(a) must specify the date on which it is to take effect and, subject to section 159, shall take effect on that date; and

(b) must specify the period within which any steps are required to be taken and may specify different periods for different steps,

and where different periods apply to different steps, references in this Part to the period for compliance with a listed building enforcement notice, in relation to any steps, are to the period within which the step is required to be taken.

(5) Where a listed building enforcement notice imposes any such requirement as is mentioned in subsection (1)(b)(ii), listed building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

(6) Sections 138(2) and (3), 141, 146 and 147 shall, with any necessary modifications, apply to a listed building enforcement notice issued by a council as those sections apply to an enforcement notice issued by a council.

Modifications etc. (not altering text)

C67 S. 157 applied (with modifications) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I311 S. 157 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I312 S. 157 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Issue of listed buildings enforcement notices by Department

158.—(1) If it appears to the Department to be expedient that a listed building enforcement notice should be issued in respect of any land, it may issue such a notice.

(2) Before the Department issues such a notice under subsection (1), it must consult the appropriate council.

(3) A listed building enforcement notice issued by the Department shall have the same effect as a notice issued by a council.

(4) Sections 139(2) to (4), 142, 146 and 147 shall, with any necessary modifications apply to a listed building enforcement notice issued by the Department as they apply to an enforcement notice issued by the Department.

Modifications etc. (not altering text)

C68 S. 158 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

C69 Ss. 158-161: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I313 S. 158 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I314 S. 158 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Appeal against listed building enforcement notice

159.—(1) A person having an estate in the building to which a listed building enforcement notice relates or a person to whom subsection (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice on any of the following grounds—

(a) that the matters alleged to constitute a contravention of section 85 have not occurred;

(b) that those matters (if they occurred) do not constitute such a contravention;

(c) that the contravention of that section alleged in the notice occurred before 9th December 1978;

(d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, 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, and that the works carried out were limited to the minimum measures immediately necessary;

(e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged or different conditions substituted;

(f) that copies of the notice were not served as required by section 138(2) and (3), as applied by section 157(6), or, as the case may be, section 139(2) to (4), as applied by section 158(4);

(g) that the period specified in the notice as the period within which any step required thereby is to be taken falls short of what should reasonably be allowed;

(h) except in relation to such a requirement as is mentioned in section 157(1)(b)(ii) or (iii), the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;

(i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;

(j) that steps required to be taken by virtue of section 157(1)(b)(ii) exceed what is necessary to alleviate the effect of the works executed to the building;

(k) that steps required to be taken by virtue of section 157(1)(b)(iii) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.

(2) This subsection applies to a person who—

(a) on the date on which the listed building enforcement notice is issued occupies the building to which it relates by virtue of a licence; and

(b) continues to occupy the building when the appeal is brought.

(3) Subsections (4) to (7) of section 143 and section 144 shall, with any necessary modifications, apply to an appeal under this section against a listed building enforcement notice as they apply to an appeal under section 143 against an enforcement notice.

(4) On the determination of an appeal under this section, the planning appeals commission may—

(a) grant listed building consent for the works to which the listed building enforcement notice relates or for part only of those works;

(b) discharge any condition or limitation subject to which listed building consent was granted and substitute any other condition, whether more or less onerous.

(5) Any listed building consent granted by the planning appeals commission under subsection (4) shall, subject to subsection (6), have the like effect as a listed building consent granted under Part 4.

(6) The decision of the commission in relation to the grant of listed building consent under subsection (4) shall be final.

(7) The validity of a listed building enforcement notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

Modifications etc. (not altering text)

C69 Ss. 158-161: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

C70 S. 159 applied (with modifications) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I315 S. 159 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I316 S. 159 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Effect of listed building consent on listed building enforcement notice

160.—(1) If, after the issue of a listed building enforcement notice, consent is granted under section 85(3) for the retention of any work to which the listed building enforcement notice relates, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken which would involve the works not being retained in accordance with the consent.

(2) If the consent is granted so as to permit the retention of works without complying with some condition subject to which a previous listed building consent was granted, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.

(3) The preceding provisions of this section shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the listed building enforcement notice before the relevant provisions of that notice ceased to have effect.

Modifications etc. (not altering text)

C69 Ss. 158-161: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

C71 S. 160 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I317 S. 160 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I318 S. 160 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Urgent works to preserve building

161.—(1) Where it appears to a council that works are urgently necessary for the preservation of—

(a) a listed building in its district, or

(b) a building in respect of which a direction has been given by the Department that this section shall apply,

the council may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.

(2) The ground on which the Department may give a direction that this section shall apply to a building is that the building is in a conservation area and it appears to the Department that its preservation is important for maintaining the character or appearance of the conservation area.

(3) If it appears to the Department that any works are urgently necessary for the preservation of—

(a) a listed building, or

(b) a building in respect of which a direction has been given by the Department that this section shall apply,

it may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.

(4) If the building is occupied works may be carried out only to those parts which are not in use.

(5) The owner of the building must be given not less than 7 days' notice in writing of the intention to carry out the works and the notice must describe the works proposed to be carried out.

(6) Subsections (7) to (11) have effect for enabling the expenses of works executed under this section to be recovered by the council or, as the case may be, the Department.

(7) The council or, as the case may be, the Department may give notice to the owner of the building requiring the owner to pay the expenses of the works.

(8) Where the works consist of or include works for affording temporary support or shelter for the building—

(a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used; and

(b) notices under subsection (7) in respect of any such continuing expenses may be given from time to time.

(9) The owner may within 28 days of the service of the notice appeal to the planning appeals commission against the notice on any of the following grounds—

(a) that some or all of the works were unnecessary for the preservation of the building;

(b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time;

(c) that the amount specified in the notice is unreasonable or that the recovery of it would cause the owner hardship.

(10) The planning appeals commission must give notice of its determination, the reasons for it and the amount recoverable to the owner of the building and to the council or, as the case may be, the Department and the determination of the appeals commission shall be final.

(11) Any expenses recoverable by the council or the Department under this section shall be a civil debt recoverable summarily.

Modifications etc. (not altering text)

C69 Ss. 158-161: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I319 S. 161 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I320 S. 161 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Hazardous substances

Hazardous substances contravention notice

162.—(1) Subject to subsection (2), where it appears to a council that there is or has been a contravention of hazardous substances control in its district, it may issue a hazardous substances contravention notice if it considers it expedient to do so having regard to any material consideration.

(2) The council must not issue a hazardous substances contravention notice where it appears to the council that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.

(3) In this Act "hazardous substances contravention notice" means a notice—

(a) specifying an alleged contravention of hazardous substances control; and

(b) requiring such steps as may be specified in the notice to be taken to remedy wholly or partly the contravention.

(4) A copy of a hazardous substances contravention notice must be served—

(a) on the owner and on the occupier of the land to which it relates;

(b) on any person other than the owner or occupier who appears to the council to be in control of that land; and

(c) on such other persons as may be prescribed.

(5) A hazardous substances contravention notice must also specify—

(a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect;

(b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.

(6) Where the council issues a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of subsection (3)(b), if the council thinks it expedient, include a requirement that the hazardous substance be removed from the land.

(7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect

or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substance which is required to be removed.

(8) The council may withdraw a hazardous substances contravention notice (without prejudice to its power to issue another) at any time before or after it takes effect.

(9) If the council does so, it shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice or would, if the notice were re-issued, be served with a copy of it.

(10) The Department must by regulations provide for—

(a) appeals to the planning appeals commission against hazardous substances contravention notices;

(b) the persons by whom, grounds upon which and time within which such an appeal may be brought;

(c) the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of sections 143 to 145.

(11) If any person appeals against a hazardous substances contravention notice, the notice shall, subject to regulations made under this section, be of no effect pending the final determination or the withdrawal of the appeal.

(12) The Department may by regulations—

(a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by this section;

(b) direct that any of the provisions of sections 146 to 150 and 185 of this Act shall have effect in relation to hazardous substances contravention notices subject to such modifications as it may specify in the regulations;

(c) make such other provision as it considers necessary or expedient in relation to hazardous substances contravention notices.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I321 S. 162 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I322 S. 162 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Variation of hazardous substances contravention notices

163.—(1) The council may waive or relax any requirement of a hazardous substances contravention notice issued by it and, in particular, may extend any period specified in accordance with section 162(5)(b) in the notice.

(2) The powers conferred by subsection (1) may be exercised before or after the notice takes effect.

(3) The council must, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice or would, if the notice were re-issued, be served with a copy of it.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I323 S. 163 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I324 S. 163 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Trees

Enforcement of duties as to replacement of trees

164.—(1) If it appears to a council that—

(a) the provisions of section 125; or

(b) any conditions of a consent given under a tree preservation order which require the replacement of trees,

are not complied with in the case of any tree or trees in its district, the council may serve on the owner of the land a notice requiring the owner, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified.

(2) A notice under subsection (1) may only be served within 5 years from the date of the alleged failure to comply with those provisions or conditions.

(3) A notice under subsection (1) must specify a period at the end of which it is to take effect.

(4) The specified period must be a period of not less than 28 days beginning with the date of service of the notice.

(5) The duty imposed by section 125(1) may only be enforced as provided by this section and not otherwise.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I325 S. 164 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I326 S. 164 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Appeals against section 164 notices

165.—(1) A person on whom a notice under section 164(1) is served may appeal to the planning appeals commission against the notice on any of the following grounds—

(a) that the provisions of section 125 or, as the case may be, the conditions mentioned in section 164(1)(b) are not applicable or have been complied with;

(b) that in all the circumstances of the case the duty imposed by section 125(1) should be dispensed with in relation to any tree;

(c) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;

(d) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;

(e) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.

(2) An appeal under subsection (1) shall be made by serving written notice of the appeal on the planning appeals commission before the end of the period specified in accordance with section 164(3) and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(3) On any such appeal the planning appeals commission must, if either the appellant or the council so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(4) Where an appeal is brought under this section, the notice under section 164(1) shall be of no effect pending the final determination or the withdrawal of the appeal.

(5) On an appeal under this section the planning appeals commission may—

(a) correct any defect, error or misdescription in the notice; or

(b) vary any of its requirements,

if it is satisfied that the correction or variation will not cause injustice to the appellant or the council.

(6) Where the planning appeals commission determines to allow the appeal, it may quash the notice.

(7) The planning appeals commission must give any directions necessary to give effect to its determination on the appeal.

(8) Where any person has appealed to the planning appeals commission under this section against a notice, neither that person nor any other shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I327 S. 165 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I328 S. 165 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Execution and cost of works required by section 164 notice

166.—(1) If, within the period specified in a notice under section 164(1) for compliance with it, or within such extended period as the council may allow, any trees which are required to be planted by a notice under that section have not been planted, the council may—

(a) enter the land and plant those trees; and

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(2) Where such a notice has been served—

(a) any expenses incurred by the owner of any land for the purpose of complying with the notice; and

(b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the council in planting trees required by such a notice to be planted,

shall be deemed to be incurred or paid for the use and at the request of any person, other than the owner, responsible for the cutting down, destruction or removal of the original tree or trees.

(3) Subsections (3) to (9) of section 146 shall with any necessary modifications apply to a notice under this section as those subsections apply to an enforcement notice.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I329 S. 166 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I330 S. 166 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Enforcement of controls as respects trees in conservation areas

167.—(1) If any tree to which section 127 applies—

(a) is removed, uprooted or destroyed in contravention of that section; or

(b) is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of the provisions of such regulations under subsection (1) of section 128 as are mentioned in subsection (3) of that section,

it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as the owner reasonably can.

(2) The duty imposed by subsection (1) does not apply to an owner if on application by the owner the council dispenses with it.

(3) The duty imposed by subsection (1) on the owner of any land attaches to the person who is from time to time the owner of the land and may be enforced as provided by section 164 and not otherwise.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I331 S. 167 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I332 S. 167 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Discontinuance orders

Enforcement of orders under section 73

168.—(1) Any person who, without the grant of planning permission in that behalf, uses land, or causes or permits land to be used—

(a) after the expiry of the period allowed for compliance with an order under section 73, for any purpose for which an order under that section has required that its use shall be discontinued; or

(b) in contravention of any condition imposed by such an order by virtue of subsection (1)(a) of that section,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If the use is continued after the conviction of a person of an offence under subsection (1), that person 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 the use is so continued.

(3) It shall be a defence for a person charged with an offence under subsection (1) or (2) to prove that that person took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or herself or by any person under his or her control.

(4) If in any case the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending 7 days before the hearing, that person has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in the first mentioned person's possession.

(5) If any steps required by an order under section 73 to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, a person authorised in writing by the council may enter the land and take those steps, and the council may recover from the person who is then the owner of the land any expenses reasonably incurred by it in that behalf; and those expenses shall be a civil debt recoverable summarily.

(6) Where a copy of an order under section 73 has been served on the person who, at the time when the copy was served on that person, was the owner of the land to which the order relates, then, if any steps required by the order to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, that person shall

be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) If a person against whom proceedings are brought under subsection (6) has, at some time before the end of the period allowed for compliance with the order, ceased to be the owner of the land, that person shall, upon a complaint duly made and on giving to the prosecution not less than 3 days' notice of his or her intention, be entitled to have the person who then became the owner of the land (in subsection (8) referred to as "the subsequent owner") brought before the court in the proceedings.

(8) If after it has been proved, in a case to which subsection (7) applies, that any steps required by the order under section 73 have not been taken within the period allowed for compliance with the order, the original defendant proves that the failure to take those steps was attributable, in whole or in part, to the default of the subsequent owner—

(a) the subsequent owner may be convicted of the offence; and

(b) the original defendant, if that person further proves that he or she took all reasonable steps to secure compliance with the order, shall be acquitted of the offence.

(9) If after a person has been convicted of an offence under subsections (6) to (8) that person does not as soon as practicable do everything in his or her power to secure compliance with the order under section 73 in so far as it requires steps to be taken for the alteration or removal of any buildings or works, that person 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 following the first conviction on which any requirements of the order remain unfulfilled.

(10) Any reference in this section to the period allowed for compliance with an order under section 73 is a reference to the period specified in the order for compliance with it or such extended period as may be allowed by the council or, as the case may be, by the Department for compliance with the order.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I333 S. 168 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I334 S. 168 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Certificate of lawful use or development

Certificate of lawfulness of existing use or development

169.—(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

that person may make an application for the purpose to the appropriate council specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this section, the council is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the council or a description substituted by it, the council must issue a certificate to that effect; and in any other case it must refuse the application.

(5) A certificate under this section must—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 23(3)(e), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following statutory provisions, as if it were a grant of planning permission—

(a) section 3(3) of the Caravans Act (Northern Ireland) 1963 (c. 17);

(b) Article 8(3) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19).

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I335 S. 169 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I336 S. 169 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Certificate of lawfulness of proposed use or development

170.—(1) If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land,

would be lawful, that person may make an application for the purpose to the appropriate council specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the council is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it must issue a certificate to that effect; and in any other case it shall refuse the application.

(3) A certificate under this section must—

(a) specify the land to which it relates;

(b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 23(3)(e), identifying it by reference to that class);

(c) give the reasons for determining the use or operations to be lawful; and

(d) specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material

change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I337 S. 170 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I338 S. 170 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Certificates under sections 169 and 170: supplementary provisions

171.—(1) An application for a certificate under section 169 or 170 must be made in such manner as may be specified by a development order and must include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the council.

(2) Provision may be made by a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by councils.

(3) In particular, such an order may provide for requiring the council—

(a) to give to any applicant within such time as may be specified by the order such notice as may be so specified as to the manner in which the applicant's application has been dealt with; and

(b) to give to such persons as may be specified by or under the order, such information as may be so specified with respect to such applications, including information as to the manner in which any application has been dealt with.

(4) A certificate under either of those sections may be issued—

(a) for the whole or part of the land specified in the application; and

(b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and must be in such form as may be specified by a development order.

(5) A certificate under section 169 or 170 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.

(6) In section 242 (planning register) references to applications for planning permission shall include references to applications for certificates under section 169 or 170.

(7) The council may revoke a certificate under either of those sections if, on the application for the certificate—

(a) a statement was made or document used which was false in a material particular; or

(b) any material information was withheld.

(8) Provision may be made by a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I339 S. 171 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I340 S. 171 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Offences

172.—(1) If any person, for the purpose of procuring a particular decision on an application (whether by that person or another) for the issue of a certificate under section 169 or 170—

(a) knowingly or recklessly makes a statement which is false or misleading in a material particular;

(b) with intent to deceive, uses any document which is false or misleading in a material particular; or

(c) with intent to deceive, withholds any material information,

that person shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

(3) Notwithstanding Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26), a magistrates' court may hear and determine a complaint in respect of an offence under subsection (1) whenever made.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I341 S. 172 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I342 S. 172 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Appeals against refusal or failure to give decision on application

173.—(1) Where an application is made to a council for a certificate under section 169 or 170 and—

(a) the application is refused or is refused in part; or

(b) the council does not give notice to the applicant of its decision on the application within such period as may be specified by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the council,

the applicant may by notice appeal to the planning appeals commission—

(i) in the case described in paragraph (a), within the period of 4 months from the date on which the application is refused or is refused in part or such other period as may be prescribed;

(ii) in the case described in paragraph (b), within the period of 4 months from the end of the period referred to in that paragraph or such other period as may be prescribed.

(2) On any such appeal, if and so far as the planning appeals commission is satisfied—

(a) in the case of an appeal under subsection (1)(a), that the council's refusal is not well-founded; or

(b) in the case of an appeal under subsection (1)(b), that if the council had refused the application its refusal would not have been well-founded,

the planning appeals commission must grant the appellant a certificate under section 169 or, as the case may be, 170 accordingly or, in the case of a refusal in part, modify the certificate granted by the council on the application.

(3) If and so far as the planning appeals commission is satisfied that the council's refusal is or, as the case may be, would have been well-founded, the commission must dismiss the appeal.

(4) References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I343 S. 173 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I344 S. 173 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Further provisions as to appeals under section 173

174.—(1) Before determining an appeal to it under section 173(1), the planning appeals commission must, if either the appellant or the council so wish, afford to each of them an opportunity of appearing before, and being heard by, the planning appeals commission.

(2) Where the planning appeals commission grants a certificate under section 169 or 170 on such an appeal, it shall give notice to the council of that fact.

(3) The decision of the planning appeals commission on such an appeal shall be final.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I345 S. 174 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I346 S. 174 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Advertisements

Enforcement of advertisement control

175.—(1) The matters for which provision may be made by regulations under section 130 shall include provision for enabling a council to require the removal of any advertisement which is being displayed in contravention of the

regulations, or the discontinuance of the use for the display of advertisements of any site which is being so used in contravention of the regulations, and for that purpose for applying any of the provisions of this Act with respect to enforcement notices, subject to such adaptations and modifications as may be specified in the regulations.

(2) Without prejudice to any provision included in regulations made under section 130 by virtue of subsection (1), if any person displays an advertisement in contravention of the regulations that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and, in the case of a continuing offence, to a fine not exceeding one-tenth of level 4 on the standard scale for each day during which the offence continues after conviction.

(3) For the purposes of subsection (2) and without prejudice to the generality of that subsection, a person shall be deemed to display an advertisement if—

(a) the advertisement is displayed on land of which that person is the owner or occupier; or

(b) the advertisement gives publicity to that person's goods, trade, business or other concerns,

but a person shall not be guilty of an offence under subsection (2) by reason only that an advertisement is displayed on land of which that person is the owner or occupier, or that that person's goods, trade, business or other concerns are given publicity by the advertisement, if that person proves either of the matters specified in subsection (4).

(4) The matters are that—

(a) the advertisement was displayed without the person's knowledge; or

(b) the person took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal.

Modifications etc. (not altering text)

C72 Ss. 162-175: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I347 S. 175 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I348 S. 175 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Rights of entry for enforcement purposes

Rights to enter without warrant

176.—(1) Any person duly authorised in writing by a council may at any reasonable time enter any land—

(a) to ascertain whether there is or has been any breach of planning control on the land or any other land;

(b) to ascertain whether an offence has been, or is being, committed with respect to any building on the land or any other land, under section 85, section 85 as applied by section 105(6), section 103 or 147 or section 147, as applied by section 157(6);

(c) to ascertain whether an offence has been committed under section 117, 126 or 127;

(d) for the purpose of exercising any of the functions conferred by section 161;

(e) to determine whether any of the powers conferred on the council by this Part should be exercised in relation to the land or any other land;

(f) to determine how any such power should be exercised in relation to the land or any other land;

(g) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land,

if there are reasonable grounds for entering for the purpose in question.

(2) Any person duly authorised in writing by the Department may at any reasonable hour enter any land to determine whether an enforcement notice, a stop notice or a listed building enforcement notice should be issued in relation to the land or any other land, if there are reasonable grounds for entering for that purpose.

(3) The Department must not so authorise any person without consulting the council.

(4) Admission to any building used as a dwelling-house shall not be demanded as of right by virtue of subsection (1) or (2) unless 24 hours' notice of the intended entry has been given to the occupier of the building.

[[F5](5) In this section and in sections 177 and 178, "the Department" means—

(a) in relation to the enforcement of stop notices and enforcement notices, the Department for Infrastructure;

(b) in relation to the enforcement of listed building enforcement notices, the Department for Communities.**]**

Textual Amendments

F5 S. 176(5) inserted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 80** (with art. 9(2))

Modifications etc. (not altering text)

C73 Ss. 176-178: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C74 Ss. 176-178: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I349 S. 176 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I350 S. 176 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Right to enter under warrant

177.—(1) If it is shown to the satisfaction of a lay magistrate on a complaint on oath—

(a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 176(1) or (2); and

(b) that—

(i) admission to the land has been refused, or a refusal is reasonably apprehended; or

(ii) the case is one of urgency,

the lay magistrate may issue a warrant authorising any person duly authorised in writing by the council or, as the case may be, the Department to enter the land.

(2) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.

(3) A warrant authorises entry on one occasion only and that entry must be—

(a) within one month from the date of the issue of the warrant; and

(b) at a reasonable time, unless the case is one of urgency.

Modifications etc. (not altering text)

C73 Ss. 176-178: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C74 Ss. 176-178: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I351 S. 177 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I352 S. 177 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Rights of entry: supplementary provisions

178.—(1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 176 or 177 (referred to in this section as "a right of entry")—

(a) must, if so required, produce evidence of his or her authority and state the purpose of entry before so entering;

(b) may be accompanied by such other persons as may be necessary; and

(c) on leaving the land must, if the owner or occupier is not then present, leave it as effectively secured against trespassers as that person found it.

(2) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If any damage is caused to property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the council or, as the case may be, the Department.

(4) Any question of disputed compensation recoverable under subsection (3) shall be determined by the Lands Tribunal.

(5) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by that person while on the land as to any manufacturing process or trade secret, that person shall be guilty of an offence.

(6) Subsection (5) does not apply if the disclosure is made by a person in the course of performing a duty in connection with the purpose for which that person was authorised to enter the land.

(7) A person who is guilty of an offence under subsection (5) shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum;

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine, or both.

Modifications etc. (not altering text)

C73 Ss. 176-178: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C74 Ss. 176-178: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I353 S. 178 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I354 S. 178 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Part 6

Compensation

Compensation where planning permission is revoked or modified

179.—(1) The functions which immediately before the day on which this section comes into operation (in this section referred to as "the transfer date") are exercisable by the Department under or for the purposes of the provisions of the Act of 1965 listed in subsection (2) are hereby transferred as from that day to councils.

(2) The provisions are—

(a) section 26(1) to (6) (except in so far as section 26(6) applies section 20(2)); and

(b) section 27 (except in so far as section 27(3) applies section 23 and section 27(5) applies section 24); and

(c) section 40, in so far as that section relates to claims for compensation under the provisions mentioned in paragraph (a).

(3) In the construction of and for the purposes of any statutory provision or instrument passed, made or issued before the transfer date, any reference to, or which is to be construed as a reference to, the Department shall, so far as may be necessary for the purpose of the transfer of functions by subsection (1), be construed as a reference to a council.

(4) The Act of 1965 has effect subject to the amendments set out in Schedule 4.

Commencement Information

I355 S. 179 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I356 S. 179 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Modification of the Act of 1965 in relation to minerals

180.—(1) Where any planning permission for development consisting of the winning and working of minerals is revoked or modified, a claim for expenditure or loss shall not be entertained under section 26(1) of the Act of 1965 in respect of buildings, plant or machinery unless the claimant proves that he or she is unable to use the buildings, plant or machinery or (as the case may be) to use them except at the loss claimed.

(2) For the purposes of a claim for expenditure or loss to which subsection (1) applies the Lands Tribunal may give a direction that the claim be severed from the remainder of the claim and be dealt with at such later date as may be fixed by the Tribunal either in such direction or subsequently on application by either party.

Commencement Information

I357 S. 180 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I358 S. 180 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Compensation where listed building consent revoked or modified

181.—(1) Where listed building consent is revoked or modified by an order under section 98 or 101, then if on a claim made to the council within the time and in the manner prescribed it is shown that a person interested in the building—

(a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or

(b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the council must pay to that person compensation in respect of that expenditure, loss or damage.

(2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to that work, shall be taken to be included in the expenditure incurred in carrying out that work.

(3) Subject to subsection (2), compensation shall not be paid under this section in respect of—

(a) any work carried out before the grant of the listed building consent which is revoked or modified; or

(b) any other loss or damage (not being loss or damage consisting of depreciation of the value of a compensatable estate in any land) arising out of anything done or omitted to be done before the grant of that consent.

(4) Sections 22, 27, 30, 31, 33 and 37 of the Act of 1965 shall, subject to any necessary modifications, have effect for the purposes of a claim for compensation or compensation payable under this section as they have effect for the purposes of a claim for compensation or compensation payable under section 26 of that Act.

(5) Claims under this section shall be made to and paid by the council which made the order in question or, where the order was made by the Department under section 101, the council which is treated as having made it under that section, and references in this section to the council shall be construed accordingly.

Modifications etc. (not altering text)

C75 Ss. 181-186 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, **11**

C76 S. 181 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I359 S. 181 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I360 S. 181 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Compensation in respect of orders under section 73, 75 or 112

182.—(1) This section shall have effect where—

(a) an order is made under section 73 or 75 requiring a use of land to be discontinued, or imposing conditions on the continuance thereof, or requiring any building or works on land to be altered or removed; or

(b) an order is made under section 112(3) revoking or modifying a hazardous substances consent for the presence of a hazardous substance on, over or under land.

(2) If, on a claim made to the council in accordance with subsection (6), it is shown that any person has suffered damage in consequence of the order by depreciation of the value of an interest in the land to which that person is entitled

or by being disturbed in his or her enjoying of the land, the council must pay to that person compensation in respect of that damage.

(3) Without prejudice to subsection (2), any person who carries out any works in compliance with an order under section 73 or section 112(3) shall be entitled, on a claim made to the council in accordance with subsection (6), to recover from the council compensation in respect of any expenses reasonably incurred by that person in that behalf.

(4) Any compensation payable to a person under this section in respect of such an order as is mentioned in subsection (1)(a) or (b) shall be reduced by the value to that person of any timber, apparatus or other materials removed for the purpose of complying with the order.

(5) No compensation shall be payable under this section in respect of an order under section 73 or 75 if—

(a) a purchase notice in respect of an estate in land is served in consequence of such an order; and

(b) that estate is purchased by the council in accordance with Part 7.

(6) A claim under subsection (2) or (3) must be made in writing to the council within 6 months from the date of the order in respect of which the claim is made or within such extended period as the council may allow.

(7) Any question of disputed compensation under this section shall be determined by the Lands Tribunal.

(8) Claims made under this section shall be made to and paid by the council which made the order in question or, where the order was made by the Department under section 75, the council which is treated as having made it under that section, and references in this section to the council shall be construed accordingly.

Modifications etc. (not altering text)

C75 Ss. 181-186 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, **11**

Commencement Information

I361 S. 182 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I362 S. 182 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Compensation in respect of tree preservation orders

183.—(1) A tree preservation order may make provision for the payment by the council, subject to such exceptions and conditions as may be specified in

the order, of compensation in respect of loss or damage caused or incurred in consequence—

(a) of the refusal of any consent required under the order; or

(b) of the grant of any such consent subject to conditions.

(2) In assessing compensation payable under subsection (1) account shall be taken of—

(a) any compensation under subsection (1) which has been paid whether to the claimant or to any other person, in respect of the same tree; and

(b) any injurious affect on any land of the claimant which would result from the felling of the tree which is the subject of the claim.

(3) Except in so far as may be otherwise provided by any tree preservation order, any question of disputed compensation under subsection (1) shall be referred to and determined by the Lands Tribunal.

(4) Claims made under this section shall be made to and paid by the council which made the order in question or, where the order was made by the Department under section 124, the council which is treated as having made it and references in this section to the council shall be construed accordingly.

Modifications etc. (not altering text)

C75 Ss. 181-186 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, **11**

Commencement Information

I363 S. 183 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I364 S. 183 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Compensation where hazardous substances consent modified or revoked under section 116

184.—(1) Where—

(a) there is a change of the person in control of part of the land to which a hazardous substances consent relates; and

(b) on an application made under section 116(2), the council modifies or revokes the consent,

it must pay to the person in control of the whole of the land before the change compensation in respect of any loss or damage sustained by that person and directly attributable to the modification or revocation.

(2) Any question of disputed compensation under this section shall be determined by the Lands Tribunal.

Modifications etc. (not altering text)

C75 Ss. 181-186 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, **11**

Commencement Information

I365 S. 184 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I366 S. 184 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Compensation for loss due to stop notice

185.—(1) A person who, when a stop notice under section 150 or 151 is first served, has an estate in or occupies the land to which the stop notice relates shall, in any of the circumstances mentioned in subsection (2), be entitled to be compensated by the council in respect of any loss or damage directly attributable to the prohibition contained in the notice (or, in a case within paragraph (b) of that subsection, the prohibition of such of the activities prohibited by the stop notice as cease to be relevant activities).

(2) A person shall be entitled to compensation under subsection (1) in respect of a prohibition contained in a stop notice in any of the following circumstances—

(a) the enforcement notice is quashed on grounds other than those mentioned in section 143(3)(a);

(b) the enforcement notice is varied, otherwise than on the grounds mentioned in section 143(3)(a), so that any activity the carrying out of which is prohibited by the stop notice ceases to be a relevant activity;

(c) the enforcement notice is withdrawn by the council or the Department otherwise than in consequence of the grant of planning permission for the development to which the notice relates;

(d) the stop notice is withdrawn.

(3) A claim for compensation under this section shall be made to the council within the time and in the manner specified by a development order.

(4) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition shall include a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.

(5) No compensation is payable under this section—

(a) in respect of the prohibition in a stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or

(b) in the case of a claimant who was required to provide information under section 133 or 240 in respect of any loss or damage suffered by the claimant which could have been avoided if he or she had provided the information or had otherwise co-operated with the council or, as the case may be, the Department when responding to the notice.

(6) Any question of disputed compensation under this section shall be determined by the Lands Tribunal.

(7) Claims under this section shall be made to and paid by the council which served the notice in question or, where the notice was served by the Department under section 151, the council which is treated as having served it under that section and references in that section to the council shall be construed accordingly.

Modifications etc. (not altering text)

C75 Ss. 181-186 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, **11**

Commencement Information

I367 S. 185 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I368 S. 185 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Compensation for loss or damage caused by service of building preservation notice

186.—(1) This section applies where a building preservation notice ceases to have effect without the building having been included in a list compiled by the Department under section 80.

(2) Any person who at the time when the notice was served had an estate in the building shall, on making a claim to the council within the prescribed time and in the prescribed manner, be entitled to be paid compensation by the council in respect of any loss or damage directly attributable to the effect of the notice.

(3) The loss or damage in respect of which compensation is payable under subsection (2) shall include a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.

Modifications etc. (not altering text)

C75 Ss. 181-186 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, **11**

Commencement Information

I369 S. 186 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I370 S. 186 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Compensation for loss due to temporary stop notice

187.—(1) This section applies if and only if a temporary stop notice is issued and at least one of the following paragraphs applies—

(a) the activity which is specified in the notice is authorised by planning permission or a development order;

(b) a certificate in respect of the activity is issued under section 169 or granted under that section by virtue of section 173;

(c) the council withdraws the notice.

(2) Subsection (1)(a) does not apply if the planning permission is granted on or after the date on which a copy of the notice is first displayed as mentioned in section 135(5).

(3) Subsection (1)(c) does not apply if the notice is withdrawn following the grant of planning permission as mentioned in subsection (2).

(4) A person who at the time the notice is served has an estate in the land to which the notice relates is entitled to be compensated by the council in respect of any loss or damage directly attributable to the prohibition effected by the notice.

(5) A claim for compensation under this section shall be made to the council within the time and in the manner specified by a development order.

(6) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition shall include a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.

(7) No compensation is payable under this section—

(a) in respect of the prohibition in a temporary stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or

(b) in the case of a claimant who was required to provide information under section 133 or 240 in respect of any loss or damage suffered by that person which could have been avoided if he or she had provided the information or had otherwise co-operated with the council when responding to the notice.

(8) Any question of disputed compensation under this section shall be determined by the Lands Tribunal.

Commencement Information

I371 S. 187 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I372 S. 187 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Compensation where planning permission assumed for other development

188 Where a claim for compensation is made to a council under section 26 of the Act of 1965 in relation to an order, the council may, if it appears to it that planning permission might reasonably be expected to be granted (either unconditionally or subject to conditions) for some development of the land to which the claim relates, direct that in assessing the compensation payable in respect of the order it shall be assumed that permission for that development would be granted either unconditionally or subject to such conditions as may be specified in the direction.

Commencement Information

I373 S. 188 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I374 S. 188 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Compensation: failure of consultee to respond under section 229

189 Where a consultee fails to respond to a council or departmental consultation in accordance with section 229(3) and—

(a) that council or, as the case may be, the Department—

(i) takes a decision under this Act to grant planning permission in the absence of such a response; and

(ii) subsequently receives information which the council or the Department could reasonably expect to have been included in that response; and

(iii) decides to revoke or modify planning permission under section 68, or make an order under section 73, due to the information referred to in sub-paragraph (ii); and

(b) compensation is payable by a council under section 26 of the Act of 1965 in connection with the decision under sub-paragraph (iii),

the sponsoring department (if any) shall pay to the council the amount of compensation payable.

Modifications etc. (not altering text)

C77 S. 189: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I375 S. 189 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I376 S. 189 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Interpretation of Part 6

190 In this Part, "compensatable estate" has the same meaning as in the Act of 1965.

Commencement Information

I377 S. 190 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I378 S. 190 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Part 7

Purchase of estates in certain land affected by planning decisions

Modifications etc. (not altering text)

C78 Pt. 7 (except s. 192) applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, **11**

C79 Pt. 7: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Service of purchase notice

191.—(1) Where—

(a) on an application for planning permission to develop any land, permission is refused or is granted subject to conditions; or

(b) by an order under section 68 or 72 planning permission in respect of any land is revoked, or is modified by the imposition of conditions,

then if any owner of the land claims—

(i) that the land has become incapable of reasonably beneficial use in its existing state; and

(ii) in a case where planning permission was granted subject to conditions, or was modified by the imposition of conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions; and

(iii) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been granted,

the owner may serve on the council within whose district the land is situated a notice requiring the council to purchase the owner's estate in the land in accordance with this Part.

(2) Where—

(a) on an application for listed building consent in respect of a building, consent is refused or is granted subject to conditions; or

(b) by an order under section 98 or 101, listed building consent in respect of a building is revoked or is modified by the imposition of conditions,

then if the owner of the land claims—

(i) that the land has become incapable of reasonably beneficial use in its existing state; and

(ii) in a case where consent was granted subject to conditions with respect to the execution of the works or, as the case may be, was modified by the imposition of such conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the works in accordance with those conditions; and

(iii) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other works for which listed building consent has been granted,

the owner may serve on the council within whose district the land is situated a notice requiring the council to purchase the owner's estate in the land in accordance with this Part.

(3) If any person entitled to an estate in land in respect of which an order is made under section 73 claims—

(a) that by reason of the order the land is incapable of reasonably beneficial use in its existing state; and

(b) that it cannot be rendered capable of reasonably beneficial use by the carrying out of any development for which planning permission has been granted, whether by that order or otherwise,

that person may serve on the council within whose district the land is situated a notice requiring the council to purchase the estate in the land in accordance with this Part.

(4) A notice under this section—

(a) shall be served within the time and in the manner specified by a development order; and

(b) is referred to in this Act as a "purchase notice".

(5) Where, for the purpose of determining whether the conditions in subsection (1)(i) to (iii), subsection (2)(i) to (iii) or subsection (3)(a) and (b) are fulfilled in relation to any land, any question arises as to what is a reasonably beneficial use of that land, then in determining that question for that purpose no account shall be taken of any prospective use of that land which would involve the carrying out of new development as defined in section 43(1) of the Act of 1965, or of any works requiring listed building consent which might be executed to the building.

(6) For the purposes of this section, the conditions referred to in sections 61, 62 and 94 shall be disregarded.

(7) A person on whom there has been served a repairs notice under section 202(4) shall not in any case be entitled to serve a purchase notice in respect of the building in question until the expiration of three months beginning with the date of the service of the repairs notice; and if during that period the Department commences proceedings for the compulsory acquisition of the building in the exercise of its powers under section 202, that person shall not be so entitled unless and until those proceedings are discontinued.

(8) In subsection (2) and in the other provisions of this Part as they apply for the purposes of a purchase notice served under subsection (2) "the land" means the building in respect of which listed building consent has been refused, or granted subject to conditions, or revoked or modified by the imposition of conditions, and in respect of which its owner serves a notice under subsection (2), together with any land comprising the building, or contiguous or adjacent to it, and owned with it, being land as to which the owner claims that its use is substantially inseparable from that of the building and that it ought to be treated, together with the building, as a single holding.

Modifications etc. (not altering text)

C80 S. 191 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, 15, **Sch. 2**

Commencement Information

I379 S. 191 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I380 S. 191 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Purchase notices: Crown land

192.—(1) A purchase notice may be served in respect of Crown land only as mentioned in this section.

(2) The owner of a private estate in Crown land shall not serve a purchase notice unless—

(a) the owner first offers to dispose of his or her estate to the appropriate authority on equivalent terms; and

(b) the offer is refused by the appropriate authority.

(3) An offer is made on equivalent terms if the price payable for the estate is equal to (and, in default of agreement, determined in the same manner as) the compensation which would be payable if it were acquired in pursuance of a purchase notice.

(4) Expressions used in this section and in Part 11 shall be construed in accordance with that Part.

Commencement Information

I381 S. 192 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I382 S. 192 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Action by council following service of purchase notice

193.—(1) Where a purchase notice is served on a council, it shall serve on the person by whom the notice was served—

(a) a notice that the council is willing to comply with the purchase notice; or

(b) a counter-notice, objecting to the purchase notice, stating that for the reasons specified the council is not willing to comply with the purchase notice; or

(c) a counter-notice, objecting to the purchase notice and stating that the council considers that—

(i) in the case of a purchase notice served under section 191(1) or (3), planning permission for any other development might reasonably be expected to be granted, being development which in the opinion of the council would if carried out render the land capable of reasonably beneficial use;

(ii) in the case of a purchase notice served under section 191(2), listed building consent for any other works might reasonably be expected to be granted, being works which in the opinion of the council would if carried out render the land capable of reasonably beneficial use.

(2) The council must comply with subsection (1)—

(a) in any case where an appeal under section 58, 96, 143 or 159 relating to the land—

(i) is pending on the date on which the purchase notice was served; or

(ii) is made within two months of that date,

within two months of the date on which the appeal is disposed of;

(b) in any other case, within two months of the date on which the purchase notice was served.

Commencement Information

I383 S. 193 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I384 S. 193 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Further ground of objection to purchase notice

194.—(1) This section has effect where, on an application for planning permission to develop any land which consists of or includes the whole or part of any land which has a restricted use by virtue of a previous planning permission, permission is refused or granted subject to conditions and the owner of the land serves a purchase notice.

(2) For the purposes of this section, land has a restricted use by virtue of a previous planning permission if it is part of a larger area in respect of which planning permission was previously granted (and has not been revoked) and either—

(a) it remains a condition of the planning permission (however expressed) that that part shall remain undeveloped or be preserved or laid out in a particular way as amenity land in relation to the remainder; or

(b) the planning permission was granted on an application which contemplated (expressly or by necessary implication) that the part should not be comprised in the development for which planning permission was sought, or should be preserved or laid out as aforesaid.

(3) If a purchase notice is served on a council, the council although satisfied that the land to which the purchase notice relates (or part of that land) has become incapable of reasonably beneficial use, may nevertheless serve a counter-notice if it appears to the council that the land to which the purchase notice relates (or part of that land) ought, in accordance with the previous planning permission, to remain undeveloped or, as the case may be, to remain or be preserved or laid out as amenity land in relation to the remainder of the larger area for which that planning permission was granted.

Commencement Information

I385 S. 194 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I386 S. 194 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Reference of counter-notices to Lands Tribunal

195.—(1) Where a council serves a counter-notice under section 193(1)(b) or (c), the owner who served the purchase notice may, within two months of the date of receipt of the counter-notice, refer the matter to the Lands Tribunal.

(2) On any such reference, if the counter-notice is not withdrawn, the Lands Tribunal must consider the matters set out in the purchase notice and the reasons specified in the counter-notice and must determine whether the purchase notice or the counter-notice should be upheld.

(3) If the Tribunal determines to uphold the purchase notice it must declare it valid.

Commencement Information

I387 S. 195 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I388 S. 195 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Effect of valid purchase notice

196.—(1) Where a purchase notice has been served and either—

(a) a notice is served under section 193(1)(a); or

(b) where a counter-notice has been served, the objection is withdrawn, or on a reference to the Lands Tribunal, is not upheld by the Tribunal; or

(c) the period referred to in section 193(2) has expired,

the council shall, on the date of acceptance, be deemed to have entered into a contract to purchase the estate of the person who served the purchase notice in respect of which the notice is effective and that person shall, on that date, be deemed to have entered into a contract to sell that estate to the council.

(2) The amount to be paid for an estate by the council under a contract deemed to have effect under subsection (1) shall be the amount which the council would have paid for the estate if it had compulsorily acquired it on that date.

(3) Any dispute as to the amount to be paid under subsection (2) for an estate shall be determined by the Lands Tribunal.

(4) A person who has served a purchase notice in relation to an estate in land may withdraw that notice at any time before the amount to be paid for the estate has been agreed with the council or determined by the Lands Tribunal or at any time before the end of 6 weeks beginning with the date on which that amount is so agreed or determined; and where a purchase notice is withdrawn by virtue of this subsection any contract deemed to have been made under subsection (1) in consequence thereof shall be deemed not to have been made.

(5) The date for the completion of the purchase of an estate in pursuance of a contract deemed to have effect under subsection (1) shall, unless the owner of the estate and the council otherwise agree, be 3 months from the date on which they agree upon the amount to be paid for that estate or, in default of agreement on that amount, from the date on which the Lands Tribunal determines that amount.

(6) If on the date for the completion of a contract deemed to have effect under subsection (1), the council fails to pay to the claimant the amount payable to the claimant under this section, the council shall, unless that failure arises from a cause other than the council's act or default, pay to the claimant, from that date until the date on which it pays that amount, interest on that amount at such rate as may for the time being be determined by the Department of Finance and Personnel under paragraph 18(2) of Schedule 6 to the Local Government Act (Northern Ireland) 1972 (c. 9).

(7) For the purposes of determining the amount to be paid for an estate under a contract deemed to have effect under subsection (1), for any reference in Articles 12 and 13 of the Land Compensation (Northern Ireland) Order 1982 (NI 9) to the date of acquisition or the date on which the vesting order becomes effective there shall be substituted a reference to the date of acceptance.

(8) In this section "the date of acceptance"—

(a) in a case where the Lands Tribunal, on a reference to it, does not uphold an objection, is the date of the Tribunal's determination;

(b) in any other case, is the date on which a notice is served under section 193(1)(a) or the date on which the period referred to in section 193(2) expires, whichever is the earlier.

Commencement Information

I389 S. 196 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I390 S. 196 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Special provision as to compensation under this Part

197 Where by virtue of section 26 of the Act of 1965 compensation is payable in respect of expenditure incurred in carrying out any work on land, then, if a

purchase notice is served in respect of an estate in that land, any compensation payable in respect of the acquisition of that estate in pursuance of the purchase notice shall be reduced by an amount equal to the value of the works in respect of which compensation is payable under that section.

Commencement Information

I391 S. 197 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I392 S. 197 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Part 8

Further provisions as to historic buildings

Modifications etc. (not altering text)

C81 Pt. 8: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Historic Buildings Council

198.—(1) There shall continue to be a body called "the Historic Buildings Council".

(2) The functions of the Historic Buildings Council are—

(a) to keep under review, and from time to time report to the Department on, the general state of preservation of listed buildings;

(b) to advise the Department on such matters relating to the preservation of buildings of special architectural or historic interest as the Department may refer to it;

(c) such other functions as are conferred on it by any statutory provision.

(3) Schedule 5 has effect with respect to the Historic Buildings Council.

Commencement Information

I393 S. 198 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I394 S. 198 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Grants and loans for preservation or acquisition of listed buildings

199.—(1) The Department may make grants or loans towards the whole or part of any expenditure incurred or to be incurred in the repair or maintenance of a listed building or in the upkeep of any land comprising, or contiguous or adjacent to, any such building, or in the repair or maintenance of any objects ordinarily kept in the building.

(2) The Department may, on such terms and conditions as the Department, with the approval of the Department of Finance and Personnel, thinks fit, make grants or loans to the National Trust for Places of Historic Interest or Natural Beauty towards the cost of acquiring—

(a) any listed building;

(b) any land comprising, or contiguous or adjacent to, any such building;

(c) any objects ordinarily kept in any such building.

(3) Grants under subsection (2) to the National Trust for Places of Historic Interest or Natural Beauty may, if the Department thinks fit, be made by way of endowment.

(4) The Department may attach to any grant or loan under subsection (1) or (2) such conditions as it thinks fit for securing public access to the whole or part of the property to which the grant or loan relates.

(5) Any loan under subsection (1) or (2) 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.

Commencement Information

I395 S. 199 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I396 S. 199 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Acquisition of listed buildings by agreement

200.—(1) The Department may acquire by agreement, whether by purchase, lease or otherwise, or may accept the gift of—

(a) any listed building;

(b) any land comprising, or contiguous or adjacent to, any such building.

(2) The Department may purchase by agreement, or accept a gift of, any objects which are or have been ordinarily kept in a listed building which, or any estate in which, is vested in the Department, or in a listed building which is under its control or management.

(3) The Department may make such arrangements as it thinks fit for the management, custody and use of any property acquired or accepted by it under this section.

(4) Where the Department is of the opinion that any property acquired by it under this section would be more expediently or efficiently managed or preserved by—

(a) the National Trust for Places of Historic Interest or Natural Beauty; or

(b) any government department; or

(c) a council; or

(d) such other body as the Department thinks suitable,

the Department may, with the approval of the Department of Finance and Personnel, convey either for value or otherwise and upon such terms and conditions as the Department may think fit, that property to that Trust, government department, council or other body, and may—

(i) impose such restrictions as the Department may think necessary on the user of the land so conveyed; and

(ii) grant or reserve such rights over such land as the Department thinks fit.

Commencement Information

I397 S. 200 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I398 S. 200 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Acceptance by Department of endowments in respect of listed buildings

201.—(1) Where any instrument coming into operation after 1st November 1972 contains a provision purporting to be a gift of property to the Department upon trust to use the income thereof (either for a limited time or in perpetuity) for or towards the upkeep of a listed building or other property acquired or accepted by the Department under section 200 or a building which the Department proposes so to acquire or accept, the Department may accept the gift, and if it does so, and the provision does not constitute a charitable trust, subsections (2) to (7) shall have effect.

(2) The validity of the gift and of the trust to use the income as mentioned in subsection (1) (in this section referred to as "the endowment trust") shall be deemed not to be, or ever to have been, affected by any rule of law or equity which would not have affected their validity if the trust had been charitable.

(3) In relation to the property (of any nature) comprised in the gift and any property for the time being representing that property (in this section collectively referred to as "the trust fund") the Department shall during the continuance

of the endowment trust have the like powers of management, disposition and investment as in the case of settled land are conferred by law on the tenant for life and the trustees of the settlement in relation to the land and the proceeds of its sale, respectively.

(4) Subsection (3) does not prejudice any additional or larger powers conferred on the Department by the trust instrument.

(5) If while the endowment trust continues an event happens such that immediately after that event the Department is neither entitled to any estate in the building to which the trust relates nor has the building under its control or management, and apart from this subsection the endowment trust would not then be determined or be deemed to have failed, then on the happening of that event the endowment trust shall cease by virtue of this subsection and the trust fund shall devolve accordingly as on a failure of the trust.

(6) If the trust instrument contains a provision whereby, on the failure or determination of the endowment trust, the trust fund purports to be given, or to be directed to be held, on charitable trusts, the validity of that gift or direction shall be deemed not to be, or ever to have been, affected by any rule of law or equity relating to perpetuities.

(7) In this section "gift" includes devise, bequest, appointment, conveyance, assignment, transfer and any other assurance of property, and "property" means real or personal property of any description.

Commencement Information

I399 S. 201 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I400 S. 201 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Compulsory acquisition of listed buildings

202.—(1) If it appears to the Department that, in the case of a listed building to which this subsection applies, reasonable steps are not being taken for properly preserving it, the Department may, if it considers it expedient in order to preserve the building, compulsorily acquire the building and any land comprising or contiguous or adjacent to it which appears to the Department to be required for preserving the building or its amenities, or for affording access to it, or for its proper control or management.

(2) Subsection (1) applies to any listed building, except—

(a) a building which is under the guardianship of the Department under the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 (NI 9); or

(b) a building for the time being included in the schedule of monuments compiled and maintained under Article 3 of that Order.

(3) Where the Department desires to acquire, otherwise than by agreement, any land under subsection (1), the Department may make an order vesting that land in the Department and Articles 87 to 93 of the Planning (Northern Ireland) Order 1991 (NI 11) shall, with any necessary modifications, apply in relation to such acquisitions accordingly as those Articles apply to acquisitions of the Department for Social Development.

(4) The Department must not commence proceedings for the compulsory acquisition of a building under this section unless at least two months previously it has served on the owner of the building, and not withdrawn, a notice (in this section referred to as a "repairs notice")—

(a) specifying the works which the Department considers reasonably necessary for the proper preservation of the building; and

(b) explaining the effect of this section.

(5) Where the Department has served a repairs notice, the demolition of the building after the service of the notice shall not prevent the Department from being authorised under this section to acquire compulsorily the site of the building, if the Department is satisfied that it would have made a vesting order in respect of the building had it not been demolished.

(6) The Department may at any time withdraw a repairs notice served by it; and if it does so, it shall, as soon as reasonably possible, give notice of the withdrawal to the person who was served with the repairs notice.

(7) This section does not permit the acquisition of any estate in Crown land unless—

(a) it is an estate which is for the time being held otherwise than by or on behalf of the Crown; and

(b) the appropriate authority consents to the acquisition.

(8) "Appropriate authority" and "Crown land" shall be construed in accordance with section 212(1).

Commencement Information

I401 S. 202 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I402 S. 202 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Part 9

The Planning Appeals Commission

Modifications etc. (not altering text)

C82 Pt. 9: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 1 Pt. 5** (with art. 9(2))

The Planning Appeals Commission

203.—(1) There shall continue to be a planning appeals commission (in this Part referred to as the "appeals commission").

(2) The appeals commission shall consist of the following persons appointed by the **[**[F6]Department**]** —

(a) a chief commissioner and deputy chief commissioner; and

(b) such number, if any, of other commissioners as the Department may, with the consent of the Department of Finance and Personnel, determine.

(3) A commissioner must not engage, whether directly or indirectly, or be a partner of any person who engages, in a gainful profession, occupation or business if to do so would in any way be incompatible with the commissioner's functions under this Act.

(4) There shall be paid to a commissioner such remuneration and allowances and to, or in respect of the service of, the commissioner, such pensions, allowances or benefits as the Department may determine with the approval of the Department of Finance and Personnel.

(5) The Department may appoint persons to assist the appeals commission in the performance of its functions, and there shall be paid to persons so appointed such remuneration and allowances and to, or in respect of the services of, those persons such pensions, allowances or benefits as the Department may determine with the approval of the Department of Finance and Personnel.

(6) In this Part, except in section 204(9), "the Department" means the Office of the First Minister and deputy First Minister.

Textual Amendments

F6 Words in s. 203(2) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 15** (with art. 9(2))

Commencement Information

I403 S. 203 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I404 S. 203 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Procedure of appeals commission

204.—(1) Where, under this Act or any other statutory provision, the appeals commission may determine an appeal—

(a) the appeal shall be heard by such member or members of the appeals commission as the chief commissioner may appoint in that behalf;

(b) except where an appeal is to be decided solely by reference to written representations, the chief commissioner may, after consultation with the appeals commission and the Department, appoint an assessor to sit with the member or members appointed under paragraph (a) at the appeal to advise the member or members on any matters arising;

(c) notwithstanding paragraphs (a) and (b), any decision on the appeal shall, subject to any provision in rules made under subsection (5), be made by the appeals commission.

(2) Where, under this Act or any other statutory provision, the appeals commission may hold an inquiry, independent examination or hearing—

(a) the inquiry, independent examination or hearing shall be held by such member or members of the appeals commission as the chief commissioner may appoint in that behalf;

(b) the chief commissioner may, after consultation with the appeals commission and the Department, appoint an assessor to sit with the member or members appointed under paragraph (a) at the inquiry, independent examination or hearing to advise the member or members on any matters arising;

(c) notwithstanding paragraphs (a) and (b), any report on the inquiry, independent examination or hearing shall, subject to any provision in rules made under subsection (5), be made by the appeals commission.

(3) The appeals commission may pay to any assessor appointed under subsection (1)(b) or (2)(b) such fees and allowances as the commission, with the approval of the Department, may approve.

(4) Where, under this Act or any other statutory provision, the appeals commission may determine an appeal in relation to a decision of a council or any other body, the commission may confirm, reverse or vary the decision and any determination of the commission on the appeal shall have the like effect as a decision of the council or, as the case may be, the body, for the purpose of this Act or any such statutory provision, except a provision relating to appeals.

(5) The Department, after consultation with the appeals commission, may make rules for regulating the procedure for proceedings before the appeals

commission and, subject to the provisions of this Act and any such rules, that procedure shall be such as the appeals commission may determine.

(6) Rules under subsection (5) which provide for the taking of any decision may, in particular, provide for that decision to be taken—

(a) by a panel of not fewer than 4 commissioners; or

(b) by a single commissioner.

(7) Rules under subsection (5) which provide for the making of any report may, in particular, provide for that report to be made—

(a) by a panel of commissioners;

(b) by a single commissioner.

(8) Rules made under subsection (5) shall be subject to negative resolution.

(9) Where, under this Act or any other statutory provision, a person has been afforded an opportunity of appearing before and being heard by the appeals commission or the appeals commission holds an inquiry or independent examination the appeals commission must make a report on the hearing, inquiry or independent examination to the relevant department and that department must consider that report.

Modifications etc. (not altering text)

C83 S. 204(1) applied (15.3.2016) by The Emissions Performance Standard Monitoring and Enforcement Regulations (Northern Ireland) 2016 (S.R. 2016/28), regs. 1, 12, **Sch. 1**

C84 S. 204(1)(3)(4) applied (12.11.2020) by The Greenhouse Gas Emissions Trading Scheme Order 2020 (S.I. 2020/1265), art. 2(1), **Sch. 10 para. 4(1)** (with art. 76)

C85 S. 204(3)-(5) applied (15.3.2016) by The Emissions Performance Standard Monitoring and Enforcement Regulations (Northern Ireland) 2016 (S.R. 2016/28), regs. 1, 12, **Sch. 1**

Commencement Information

I405 S. 204 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I406 S. 204 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Power to award costs

205.—(1) The appeals commission may make an order as to the costs of the parties to an appeal under any of the provisions of this Act mentioned in subsection (2) and as to the parties by whom the costs are to be paid.

(2) The provisions are—

(a) sections 58, 60, 96, 97, 115, 143, 159, 165 and 173;

(b) sections 96 and 97 (as applied by section 105(6));

(c) in Schedule 2, paragraph 6(11) and (12) and paragraph 11(1);

(d) in Schedule 3, paragraph 9.

(3) An order made under this section shall have effect as if it had been made by the High Court.

(4) Without prejudice to the generality of subsection (3), the Master (Taxing Office) shall have the same powers and duties in relation to an order made under this section as the Master has in relation to an order made by the High Court.

(5) Proceedings before the appeals commission shall, for the purposes of the Litigants in Person (Costs and Expenses) Act 1975 (c. 47), be regarded as proceedings to which section 1(1) of that Act applies.

Commencement Information

I407 S. 205 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I408 S. 205 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Orders as to costs: supplementary

206.—(1) This section applies where—

(a) for the purpose of any proceedings under this Act—

(i) the appeals commission is required, before a decision is reached, to give any person an opportunity, or ask any person whether that person wishes, to appear before and be heard by it; and

(ii) arrangements are made for a hearing to be held;

(b) the hearing does not take place; and

(c) if it had taken place, the appeals commission would have had power to make an order under section 205 requiring any party to pay any costs of any other party.

(2) Where this section applies the power to make such an order may be exercised, in relation to costs incurred for the purposes of the hearing, as if the hearing had taken place.

Commencement Information

I409 S. 206 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I410 S. 206 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Part 10

Assessment of council's performance or decision making

Modifications etc. (not altering text)

C86 Pts. 10-12: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Assessment of council's performance

207 The Department may conduct, or appoint a person (referred to in sections 209 and 210 as the "appointed person") to conduct on its behalf, an assessment of a council's performance—

(a) of functions generally under this Act, or

(b) of particular functions under this Act,

(not being an assessment which may be conducted under section 208).

Commencement Information

I411 S. 207 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I412 S. 207 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Assessment of council's decision making

208.—(1) The Department may conduct, or appoint a person (referred to in sections 209 and 210 as the "appointed person") to conduct on its behalf, an assessment of how a council deals with applications for planning permission, and in particular as to the basis on which determinations have been made, the processes by which they have been made and as to whether they have been made in accordance with the local development plan or in conformity with advice given to the council by the Department.

(2) No such assessment is to have regard to a decision made by a council within the period of one year which immediately precedes the assessment being notified under section 209(1).

Commencement Information

I413 S. 208 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I414 S. 208 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Further provision as respects assessment of performance or decision making

209.—(1) Before conducting, or appointing a person to conduct, an assessment under section 207 or 208, the Department is to notify the council of its intention in that regard and as to the intended scope of the assessment; and on making any such appointment, it is to advise the council as to the identity of the appointed person.

(2) Without prejudice to the generality of subsection (1), in determining for the purposes of that subsection the intended scope of an assessment under section 208 the Department may in particular relate its determination to any or all of the following—

(a) a type of application for planning permission,

(b) a period of time within which such an application was made, or

(c) a geographical area.

(3) For the purposes of any assessment conducted under section 207 or 208, the Department or the appointed person may require access at all reasonable times—

(a) to any premises of the council, and

(b) to any document relating to the council which appears to the Department, or as the case may be to the appointed person, to be necessary for the purposes of the assessment.

(4) As the case may be—

(a) the Department may require a person holding or accountable for any such document—

(i) to give the Department such information and explanation as it thinks necessary for those purposes, and

(ii) to attend in person to give the information or explanation or to produce the document, or

(b) the appointed person may require a person so holding or accountable—

(i) to give the appointed person such information and explanation as the appointed person thinks necessary for those purposes, and

(ii) to attend in person before the appointed person to give the information or explanation or to produce the document.

(5) The council must provide the Department, or as the case may be, the appointed person, with—

(a) every facility, and

(b) all information,

which the Department or the appointed person may reasonably require to be provided for the purposes of the assessment.

(6) The Department or, as the case may be, the appointed person, must—

(a) give 3 days' notice of any requirement under this section, and

(b) if reasonably required to do so by the council, produce a document of identification.

Commencement Information

I415 S. 209 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I416 S. 209 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Report of assessment

210.—(1) On completion of an assessment conducted by the Department under section 207 or 208, the Department must—

(a) prepare a report, and

(b) issue it to the council.

(2) On completion of an assessment conducted by an appointed person under section 207 or 208 that person must—

(a) prepare a report,

(b) submit it to the Department, and

(c) issue it to the council.

(3) A report prepared under subsection (1) or (2) is in this section referred to as an "assessment report".

(4) The assessment report may—

(a) in the case of an assessment carried out under section 207, recommend improvements which the council should make as to how it carries out its functions under this Act, and

(b) in the case of an assessment carried out under section 208, recommend improvements which the council should make as to how it deals with applications for planning permission.

(5) A council receiving an assessment report must, within the 3 months which immediately follow such receipt or within such longer period as may be agreed between the council and the Department, prepare and submit to the Department a report (in this section referred to as a "response report") as to—

(a) the extent to which, the manner in which and the period within which it proposes to implement the recommendations of the assessment report, or

(b) in so far as it declines to implement those recommendations, the council's reasons for so declining.

(6) Any person who—

(a) issues an assessment report to a council, or

(b) submits a response report to the Department,

must publish it.

(7) If—

(a) the council declines to implement recommendations of the assessment report, or

(b) it appears to the Department that the council is not timeously carrying out such implementation as the council proposed in the response report,

the Department may issue a direction to the council requiring it to take such action as is specified in the direction.

(8) The Department must publish—

(a) any direction issued under subsection (7), and

(b) any variation or revocation of such a direction.

(9) In this section, "publish" includes, without prejudice to that expression's generality, publish by electronic means.

Commencement Information

I417 S. 210 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I418 S. 210 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Part 11

Application of Act to Crown land

Crown land

Application to the Crown

211.—(1) This Act, except sections 146 (including that section as applied by section 157(6)), 156, 161 and 166, binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) But subsection (1) is subject to express provision made by the following provisions of this Part.

Commencement Information

I419 S. 211 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I420 S. 211 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Interpretation of Part 11

212.—(1) In this Part—

"the appropriate authority", in relation to any land, means—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;

(b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;

(c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

"Crown estate" means any of the following—

(a) an estate belonging to Her Majesty in right of the Crown;

(b) an estate belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

(c) such other estate as the Department may specify by order subject to affirmative resolution;

"Crown land" means land in which there is a Crown estate;

"government department" means a department of the Government of the United Kingdom or a Northern Ireland department;

"private estate" means an estate which is not a Crown estate.

(2) For the purposes of an application for planning permission made by or on behalf of the Crown in respect of land which does not belong to the Crown or in respect of which it has no estate a reference to the appropriate authority must be construed as a reference to the person who makes the application.

Commencement Information

I421 S. 212 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I422 S. 212 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Application of Act as respects Crown land

Urgent Crown development

213.—(1) This section applies to a development if the appropriate authority certifies—

(a) that the development is of significant public importance, and

(b) that it is necessary that the development is carried out as a matter of urgency.

(2) The appropriate authority must, instead of making an application for planning permission to the council in accordance with Part 3, make an application for planning permission to the Department under this section.

(3) Subsections (5) to (9) of section 29 apply to an application under this section as they apply to an application in respect of which a direction under section 29(1) has effect.

Commencement Information

I423 S. 213 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I424 S. 213 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Urgent works relating to listed buildings on Crown land

214.—(1) This section applies to any works proposed to be executed in connection with any building which is on Crown land if the appropriate authority certifies—

(a) that the works are of significant public importance, and

(b) that it is necessary that the works are carried out as a matter of urgency.

(2) The appropriate authority may, instead of making an application for consent to the council in accordance with Part 4, make an application for consent to the Department under this section.

(3) If the appropriate authority proposes to make the application to the Department it must publish in one or more newspapers circulating in the locality of the building a notice—

(a) describing the proposed works, and

(b) stating that the authority proposes to make the application to the Department.

(4) For the purposes of an application under this section the appropriate authority must provide to the Department a statement of the authority's grounds for making the application.

(5) If the appropriate authority makes an application under this section, subsections (6) to (8) apply.

(6) The Department may require the authority to provide such further information as the Department thinks necessary to enable it to determine the application.

(7) The Department must in accordance with such requirements as may be prescribed publish notice of the application and of the fact that such documents and other material are available for inspection.

(8) The Department must consult—

(a) the council for the district to which the proposed development relates, and

(b) such other persons as may be prescribed,

about the application.

(9) Subsections (5) to (9) of section 88 apply to an application under this section as they apply to an application in respect of which a direction under section 88 has effect.

Commencement Information

I425 S. 214 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I426 S. 214 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Enforcement in relation to the Crown

215.—(1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act.

(2) But subsection (1) does not have effect to prohibit the doing of anything by or on behalf of the Crown which falls within the circumstances described in section 85(7)(a) to (d).

(3) A council or the Department must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.

(4) The appropriate authority may give consent under subsection (3) subject to such conditions as it thinks appropriate.

(5) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.

(6) A step taken for the purposes of enforcement includes—

(a) entering land;

(b) bringing proceedings;

(c) the making of an application.

(7) A step taken for the purposes of enforcement does not include—

(a) service of a notice;

(b) the making of an order (other than by a court).

Commencement Information

I427 S. 215 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I428 S. 215 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

References to an estate in land

216.—(1) Subsection (2) applies to the extent that an estate in land is a Crown estate.

(2) Anything which requires or is permitted to be done by or in relation to the owner of the estate in land shall be done by or in relation to the appropriate authority.

(3) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of this section as having an estate in that land.

Commencement Information

I429 S. 216 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I430 S. 216 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Applications for planning permission, etc. by Crown

217.—(1) This section applies to an application made by or on behalf of the Crown for—

(a) planning permission, listed building consent, hazardous substances consent or conservation area consent; or

(b) a determination under section 102 or a certificate under section 170.

(2) The Department may by regulations modify or exclude any statutory provision relating to the making and determination of such applications.

Commencement Information

I431 S. 217 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I432 S. 217 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Service of notices on the Crown

218.—(1) Any notice or other document required under this Act to be served on the Crown shall be served on the appropriate authority.

(2) Section 24 of the Interpretation Act (Northern Ireland) 1954 (c. 33) does not apply for the purposes of the service of such a notice or document.

Commencement Information

I433 S. 218 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I434 S. 218 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

PROSPECTIVE

Part 12

Correction of errors

Correction of errors in decision documents

219.—(1) This section applies if—

(a) a council issues a decision document which contains a correctable error; or

(b) the Department issues a decision document (other than a document referred to in section 222(2)(d) or (e)) which contains a correctable error.

(2) The council may correct the error—

(a) if it is requested to do so in writing by any person;

(b) if it sends a statement in writing to the applicant which explains the error and states that it is considering making the correction.

(3) But the council must not correct the error unless not later than the end of the relevant period it—

(a) receives a request mentioned in subsection (2)(a); or

(b) sends a statement mentioned in subsection (2)(b).

(4) The relevant period is the period specified for the purposes of subsection (3) in a development order.

(5) In this section references to "the council" means—

(a) in relation to a decision document issued by a council, the council which issued the document;

(b) in relation to a decision document issued by the Department, the council within whose district the land to which the decision document relates is situated.

Correction notice

220.—(1) If paragraph (a) or (b) of section 219(2) applies the council must as soon as practicable after making any correction or deciding not to make any correction issue a notice in writing (a correction notice) which—

(a) specifies the correction of the error; or

(b) gives notice of its decision not to correct such an error.

(2) The council must give the correction notice to—

(a) the applicant;

(b) if the applicant is not the owner of the land in respect of which the original decision was made, the owner;

(c) if the correction was requested by any other person, that person.

Effect of correction

221.—(1) If a correction is made in pursuance of section 219—

(a) the original decision is taken not to have been made;

(b) the decision is taken for all purposes to have been made on the date the correction notice is issued.

(2) If a correction is not made—

(a) the original decision continues to have full force and effect;

(b) nothing in this Part affects anything done in pursuance of or in respect of the decision.

Supplementary

222.—(1) This section applies for the purposes of this Part.

(2) A decision document is a document which records any of the following decisions—

(a) a decision to grant or refuse planning permission;

(b) a decision to grant outline planning permission;

(c) a decision to approve reserved matters (within the meaning of section 62);

(d) a decision to grant or to refuse to grant a certificate under section 169 or 170;

(e) any decision relating—

(i) to an application for consent under a tree preservation order,

(ii) to an application for consent under any regulations made under section 130, or

(iii) to any certificate or direction under any such order or regulations;

(f) a decision on an application for listed building consent under section 85(2) or (3);

(g) a decision relating to any consent under section 105 (conservation area consent);

(h) a decision under section 110 (determination of applications for hazardous substances consent);

(i) any other decision under this Act which is of a description specified by the Department in a development order.

(3) A correctable error is an error—

(a) which is contained in any part of the decision document which records the decision; but

(b) which is not part of any reasons given for the decision.

(4) The applicant is in the case of a decision made on an application under this Act, the person who made the application.

(5) Error includes omission.

Part 13

Financial provisions

Fees and charges

223.—(1) The Department may by regulations make such provision as it thinks fit for the payment of a charge or fee of the prescribed amount in respect of—

(a) the performance by a council or the Department of any function the council or the Department has under this Act;

(b) anything done by a council or the Department which is calculated to facilitate or is conducive or incidental to the performance of any such function.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for the payment of a charge or fee in respect of a function mentioned in subsection (3)(a) to be a multiple of the charge or fee payable in respect of a function mentioned in subsection (3)(b).

(3) The functions are—

(a) functions relating to the determination of an application for planning permission for development begun before the application was made;

(b) functions relating to the determination of an application for planning permission other than an application referred to in paragraph (a).

(4) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for the payment of a charge or fee in respect of a function mentioned in subsection (5)(a) to be a multiple of the charge or fee payable in respect of a function mentioned in subsection (5)(b).

(5) The functions are—

(a) functions relating to the determination of an application for an approval under a development order for development begun before the application was made;

(b) functions relating to the determination of an application for an approval under a development order other than an application referred to in paragraph (a).

(6) Section 63(2) shall apply in determining for the purposes of this section when development shall be taken to be begun.

(7) The Office of the First Minister and deputy First Minister may by regulations make such provision as it thinks fit for the payment of a charge or fee of the prescribed amount in respect of—

(a) an application for planning permission which is deemed to be made to the planning appeals commission under this Act;

(b) an appeal to the planning appeals commission under this Act.

(8) Without prejudice to the generality of subsection (7), regulations made under that subsection may provide for the payment of a charge or fee in respect of an application mentioned in paragraph (a) of that subsection to be a multiple of the charge or fee to be paid under regulations made under subsection (1) in relation to the determination by a council or the Department of an application for planning permission for development not begun before the application was made.

(9) Regulations under this section may prescribe—

(a) the person by whom any charge or fee is payable;

(b) provision as to the calculation of any charge or fee (including provision as to who is to make the calculation);

(c) circumstances in which no charge or fee is to be paid;

(d) circumstances in which any charge or fee paid is to be remitted or refunded (in whole or in part);

(e) circumstances in which a charge or fee is to be transferred from one council to another.

Modifications etc. (not altering text)

C87 S. 223 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, **11**

C88 Ss. 223224: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C89 S. 223(7): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 1 Pt. 5** (with art. 9(2))

C90 S. 223(7)(b) applied with modification(s) (15.3.2016) by The Emissions Performance Standard Monitoring and Enforcement Regulations (Northern Ireland) 2016 (S.R. 2016/28), regs. 1, 12, **Sch. 1 para. 4**

C91 S. 223(7)(b) modified (12.11.2020) by The Greenhouse Gas Emissions Trading Scheme Order 2020 (S.I. 2020/1265), art. 2(1), **Sch. 10 para. 1(2)** (with art. 76)

Commencement Information

I435 S. 223 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I436 S. 223 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Grants for research and bursaries

224.—(1) The Department may, with the consent of the Department of Finance and Personnel, make grants for assisting establishments engaged in promoting or assisting research relating to, and education with respect to, the planning and design of the physical or built environment.

(2) For the purpose of enabling persons to undertake a course in town planning, the Department may, with the consent of the Department of Finance and Personnel, make provision for the payment by the Department of sums by way of bursaries in respect of those persons.

Modifications etc. (not altering text)

C88 Ss. 223224: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I437 S. 224 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I438 S. 224 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Grants to bodies providing assistance in relation to certain planning policy or development proposals

225.—(1) The Department may make grants to any body of persons (not being a body carried on for profit) which appears to the Department to have among its principal objectives—

(a) furthering an understanding of planning policy proposals and of the planning and other technical aspects of other proposals made by any body or person for the development, redevelopment or improvement of land; and

(b) providing assistance to the community, or to a section of the community, in relation to such proposals.

(2) The Department may make grants to any body of persons (not being a body carried on for profit) which appears to the Department to have among its principal objectives furthering the preservation, conservation and regeneration of historic buildings.

(3) Grants under subsection (1) or (2) shall be of such amounts and subject to such terms and conditions as the Department thinks fit.

Modifications etc. (not altering text)

C92 S. 225(1): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C93 S. 225(2): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

C94 S. 225(3): transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C95 S. 225(3): transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

Commencement Information

I439 S. 225 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I440 S. 225 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Contributions by councils and statutory undertakers

226.—(1) Any statutory undertaker may contribute towards any expenses incurred by a council for the purposes of carrying out a review under section 3.

(2) Any council may contribute towards any expenses incurred by any other council for the purposes of carrying out a review under section 3.

(3) Any statutory undertaker may contribute towards any expenses incurred by a council in or in connection with the performance of any of its functions under—

(a) Part 3;

(b) Part 4;

(c) Part 5 (except for sections 161, 164, 176 and 177);

(d) Part 6;

(e) Part 7.

(4) Any council may contribute towards any expenses incurred by any other council in or in connection with the performance of the second mentioned council's functions under any of the provisions mentioned in subsection (3)(a) to (e).

(5) Where any expenses are incurred by a council in the payment of compensation payable in consequence of anything done under any provision mentioned in section 227(2) (except for anything done under section 176 or 177), the Department may, if it appears to it to be expedient to do so, require any other council to contribute towards those expenses such sum as appears to the Department to be reasonable, having regard to any benefit accruing to that council by reason of the proceeding giving rise to the compensation.

Modifications etc. (not altering text)

C96 S. 226(5): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I441 S. 226 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I442 S. 226 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Contributions by departments towards compensation paid by councils

227.—(1) Where—

(a) compensation is payable by a council under this Act or the Act of 1965 in consequence of any decision or order to which this section applies, and

(b) that decision or order was given or made wholly or partly in the interest of a service which is provided by a Northern Ireland department and the cost of which is defrayed by money provided by the Assembly,

the department responsible for the administration of that service may pay to that council a contribution of such amount as that department may with the consent of the Department of Finance and Personnel determine.

(2) This section applies to any decision or order given or made under Part 3, 4, 5 or 7.

Commencement Information

I443 S. 227 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I444 S. 227 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Part 14

Miscellaneous and general provisions

Review of Act

Review of Act

228.—(1) The Department must—

(a) not later than 3 years after the commencement of Part 3 of this Act, and

(b) at least once in every period of 5 years thereafter,

review and publish a report on the implementation of this Act.

(2) Regulations under this section shall set out the terms of the review.

Modifications etc. (not altering text)

C97 Ss. 228-235: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I445 S. 228 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I446 S. 228 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Duty to respond to consultation

Duty to respond to consultation

229.—(1) This section applies to a prescribed requirement to consult any person or body (the consultee) which exercises functions for the purposes of any statutory provision.

(2) A prescribed requirement to consult is a requirement—

(a) with which the council or the Department must comply before granting any permission or consent under or by virtue of this Act; and

(b) which is prescribed for the purposes of this subsection.

(3) The consultee must give a substantive response to any consultation mentioned in subsection (2) before the end of—

(a) the period prescribed for the purposes of this subsection, or

(b) such other period as is agreed in writing between the consultee and the council or the Department (as the case may be).

(4) The Department may also prescribe—

(a) the procedure to be followed for the purposes of this section;

(b) the information to be provided to the consultee for the purposes of the consultation;

(c) the requirements of a substantive response.

(5) Anything prescribed for the purposes of subsections (1) to (4) must be prescribed by development order.

(6) A development order may—

(a) require consultees to give the Department a report as to their compliance with subsection (3);

(b) specify the form and content of the report;

(c) specify the times at which the report is to be made.

Modifications etc. (not altering text)

C97 Ss. 228-235: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I447 S. 229 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I448 S. 229 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Application of Act in special cases

Minerals

230.—(1) This Act shall apply to development consisting of the winning and working of minerals subject to the adaptations and modifications specified in subsection (2).

(2) For the purposes of this Act "use" in relation to the development of land does not include the use of land by the carrying out of mining operations, so, however, that—

(a) section 23(5) shall apply in relation to the deposit of refuse or waste materials in the course of mining operations; and

(b) in the following provisions—

(i) section 24;

(ii) section 52(1)(b);

(iii) section 68(3);

(iv) section 73 or section 76;

(v) sections 133, 140(4), 145, 149 and 152;

(vi) section 168, 169 or 170,

references to the use of land or the purpose for which land may be used shall include the carrying out of mining operations and references to the continuance or discontinuance of a use of land shall include the continuance or discontinuance of mining operations.

Modifications etc. (not altering text)

C97 Ss. 228-235: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I449 S. 230 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I450 S. 230 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Inquiries

Local inquiries

231.—(1) The Department may cause a public local inquiry to be held for the purpose of the exercise of any of its functions under this Act.

(2) Schedule A1 to the Interpretation Act (Northern Ireland) 1954 (c. 33) applies in relation to a public local inquiry held under this Act as it applies in relation to a local inquiry held under an enactment passed or made as mentioned in section 23 of that Act.

(3) Without prejudice to the provisions of Schedule A1 to the Interpretation Act (Northern Ireland) 1954, the Department may make rules regulating the procedure (except the procedure in relation to any matter for which rules under subsection (3) of section 233, subsection (3) of section 234 or subsection (2)

or (5) of section 235 may make provision) to be followed in connection with inquiries held by or on behalf of the Department under this Act.

(4) Rules made under subsection (3) shall be subject to negative resolution.

Modifications etc. (not altering text)

C97 Ss. 228-235: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I451 S. 231 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I452 S. 231 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Inquiries to be held in public subject to certain exceptions

232.—(1) Subject to subsections (2) and (4), at any public local inquiry or independent examination held under this Act oral evidence shall be heard in public and documentary evidence shall be open to public inspection.

(2) If the Secretary of State is satisfied in the case of any public local inquiry or independent examination—

(a) that giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in subsection (3); and

(b) that the public disclosure of that information would be contrary to the national interest,

the Secretary of State may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry or examination by such persons or persons of such descriptions as may be specified in the direction.

(3) The matters referred to in subsection (2)(a) are—

(a) national security;

(b) the measures taken or to be taken to ensure the security of any premises or property belonging to Her Majesty in right of the Crown or belonging to a department of the government of the United Kingdom or held in trust for Her Majesty for the purposes of such a department;

(c) the measures taken or to be taken to ensure the security of any premises or property which is used for the purposes of the armed forces of the Crown or the Ministry of Defence Police.

(4) If the Department of Justice is satisfied in the case of any public local inquiry or independent examination—

(a) that giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in subsection (5); and

(b) that the public disclosure of that information would be contrary to the public interest,

the Department of Justice may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry or examination by such persons or persons of such descriptions as may be specified in the direction.

(5) The matters referred to in subsection (4)(a) are the measures taken or to be taken to ensure the security of any premises or property (other than premises or property mentioned in subsection (3)(b) or (c)) except where those matters are matters of national security.

Modifications etc. (not altering text)

C97 Ss. 228-235: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I453 S. 232 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I454 S. 232 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Directions: Secretary of State

233.—(1) If the Secretary of State is considering giving a direction under section 232(2), 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 any evidence at any inquiry or examination if the direction is given.

(2) If before the Secretary of State gives a direction under section 232(2) no person is appointed under subsection (1), the Advocate General for Northern Ireland may at any time appoint a person as mentioned in subsection (1) for the purposes of the inquiry or examination.

(3) The Lord Chancellor may by rules make provision—

(a) as to the procedure to be followed by the Secretary of State before a direction is given under section 232(2) in a case where a person has been appointed under subsection (1);

(b) as to the functions of a person appointed under subsection (1) or (2).

(4) Rules made under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a

statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(5) If a person is appointed under subsection (1) or (2) (the appointed representative) the Secretary of State may direct any person who the Secretary of State thinks is interested in the inquiry or examination in relation to a matter mentioned in section 232(3) (the responsible person) to pay the fees and expenses of the appointed representative.

(6) If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount shall be determined by the Secretary of State.

(7) The Secretary of State shall cause the amount agreed between the appointed representative and the responsible person or determined by the Secretary of State to be certified.

(8) An amount so certified is recoverable from the responsible person as a civil debt.

Modifications etc. (not altering text)

C97 Ss. 228-235: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I455 S. 233 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I456 S. 233 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Directions: Department of Justice

234.—(1) If the Department of Justice is considering giving a direction under section 232(4) the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at any inquiry or examination if the direction is given.

(2) If before the Department of Justice gives a direction under section 232(4) no person is appointed under subsection (1), the Attorney General may at any time appoint a person as mentioned in subsection (1) for the purposes of the inquiry or examination.

(3) The Department of Justice may by rules make provision—

(a) as to the procedure to be followed by that Department before a direction is given under section 232(4) in a case where a person has been appointed under subsection (1);

(b) as to the functions of a person appointed under subsection (1) or (2).

(4) Rules made under subsection (3) shall be subject to negative resolution.

(5) If a person is appointed under subsection (1) or (2) (the appointed representative) the Department of Justice may direct any person who that Department thinks is interested in the inquiry or examination in relation to a matter mentioned in section 232(5) (the responsible person) to pay the fees and expenses of the appointed representative.

(6) If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount shall be determined by the Department of Justice.

(7) The Department of Justice shall cause the amount agreed between the appointed representative and the responsible person or determined by that Department to be certified.

(8) An amount so certified is recoverable from the responsible person as a civil debt.

Modifications etc. (not altering text)

C97 Ss. 228-235: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I457 S. 234 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I458 S. 234 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

National security

235.—(1) Where, in relation to an application for planning permission or an application for any consent or approval under this Act or a development order, the Secretary of State is of the opinion—

(a) that the consideration by the council or, as the case may be, the Department of the Environment of the application or of any representations or objections made in respect of the application raises matters relating to—

(i) national security;

(ii) the measures taken or to be taken to ensure the security of any premises or property belonging to Her Majesty in right of the Crown or belonging to a department of the government of the United Kingdom or held in trust for Her Majesty for the purposes of such a department;

(iii) the measures taken or to be taken to ensure the security of any premises or property which is used for the purposes of the armed forces of the Crown or the Ministry of Defence Police; and

(b) that the public disclosure of information as to any of those matters would be contrary to the national interest,

the Secretary of State may certify that the application is one to which this subsection applies.

(2) The Secretary of State may by rules make provision—

(a) for the procedure to be followed in relation to the issue of a certificate under subsection (1);

(b) enabling the Department of the Environment to dispense with an inquiry where that Department or the relevant council has not received any objections or representations in respect of an application to which subsection (1) applies or where every objection or representation made in respect of such an application is withdrawn.

(3) Rules made under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(4) Where, in relation to an application for planning permission or an application for any consent or approval under this Act or a development order, the Department of Justice is of the opinion—

(a) that the consideration by the council or, as the case may be, the Department of the Environment of the application or of any representations or objections made in respect of the application raises matters relating to the measures taken or to be taken to ensure the security of any premises or property, other than premises or property mentioned in subsection (1)(a)(ii) or (iii); and

(b) that the public disclosure of information as to any of those matters would be contrary to the public interest,

the Department of Justice may certify that the application is one to which this subsection applies.

(5) The Department of Justice may by rules make provision—

(a) for the procedure to be followed in relation to the issue of a certificate under subsection (4);

(b) enabling the Department of the Environment to dispense with an inquiry where that Department or the relevant council has not received any objections or representations in respect of an application to which subsection (4) applies or where every objection or representation made in respect of such an application is withdrawn.

(6) Rules made under subsection (5) shall be subject to negative resolution.

Modifications etc. (not altering text)

C97 Ss. 228-235: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I459 S. 235 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I460 S. 235 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Rights of entry

Rights of entry

236.—(1) Any person duly authorised in writing by a council may at any reasonable time enter any land for the purpose—

(a) of surveying it in connection with—

(i) the preparation, revision or adoption of a local development plan relating to the land under Part 2;

(ii) the making or altering of a simplified planning zone scheme relating to the land;

(iii) any application under Part 3 or 4, or under any order or regulations made thereunder, for any permission, consent, agreement, approval or determination to be given or made in connection with that land or any other land under Part 3 or 4 or under any such order or regulations;

(iv) any proposal by the council to make, issue or serve any order or notice under Part 3 or 4, or under any order or regulations made thereunder;

(b) of ascertaining—

(i) whether any listed building on the land is being maintained in a proper state of repair;

(ii) whether any order or notice made, issued or served as mentioned in paragraph (a)(iv) in respect of the land has been complied with;

(c) of affixing a notice in accordance with section 82(1) or displaying a notice in accordance with section 150(10) or (11).

(2) Any person duly authorised in writing by the Department may at any reasonable time enter any land for the purpose—

(a) of surveying it in connection with—

(i) the preparation, revision or approval of a local development plan relating to the land under Part 2;

(ii) any application under Part 3 or 4, or under any order or regulations made thereunder, for any permission, consent, agreement, approval or determination to be given or made in connection with that land or any other land under Part 3 or 4 or under any such order or regulations;

(iii) any proposal by the Department to make, issue or serve any order or notice under Part 3 or 4, or under any order or regulations made thereunder, or any notice under section 202;

(b) of surveying any building on the land in connection with a proposal to include the building in, or exclude it from, a list compiled under section 80;

(c) of ascertaining—

(i) whether any listed building on the land is being maintained in a proper state of repair;

(ii) whether any order or notice made, issued or served as mentioned in paragraph (a)(iii) in respect of the land has been complied with;

(d) of displaying a notice in accordance with section 150(10) or (11) (as applied by section 151).

(3) Any member of the planning appeals commission may at any reasonable time enter any land for the purpose of surveying it in connection with the exercise of the functions of the commission under this Act.

(4) Any person, being an officer of the Department of Finance and Personnel or a person duly authorised in writing by the **[**[F7]Department for Communities or the Department for Infrastructure**]** or a council, may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with—

(a) any proposal to acquire that land or any other land under this Act or any claim for compensation in respect of any such acquisition;

(b) any claim for compensation in respect of that land under any of sections 181 to 187.

(5) Any power conferred by this section to survey land shall be construed as conferring power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein, but a person shall not carry out any works authorised by virtue of this subsection unless notice of that person's intention to do so was included in the notice required by section 237(1)(b).

(6) Where it is proposed to search or bore in pursuance of subsection (5) in a street within the meaning of the Street Works (Northern Ireland) Order 1995 (NI 19)—

(a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works;

(b) Article 29 of that Order (requirements to be complied with where works likely to affect another person's apparatus in the street); and

(c) Article 42 of that Order (liability for damage or loss caused),

have effect in relation to the searching or boring as if they were street works within the meaning of that Order.

Textual Amendments

F7 Words in s. 236(4) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 81** (with art. 9(2))

Modifications etc. (not altering text)

C98 S. 236 (except subsections (2)(a) for specified purposes, (2)(b) and (c)(i)): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

C99 S. 236(2)(a): transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

C100 S. 236(2)(b): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

C101 S. 236(2)(c)(i): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

C102 S. 236(5) applied by S.I. 1981/607 (N.I. 15), art. 9(2) (as substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), **Sch. 6 para. 34** (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Commencement Information

I461 S. 236 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I462 S. 236 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Supplementary provisions as to powers of entry

237.—(1) A person authorised or permitted under section 236 to enter upon any land—

(a) must, if so required, produce evidence of that person's authority or of that person's appointment as a member of the planning appeals commission and state the purpose of entry before so entering;

(b) must not demand admission as of right to any land which is occupied unless 3 days' notice of the intended entry has been given to the occupier.

(2) Any person who wilfully obstructs a person acting in the exercise of powers under section 236 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If any person who, in compliance with section 236, is admitted into a factory, workshop or work place discloses to any person any information obtained by the first-mentioned person as to any manufacturing process or trade secret, that person shall, unless the disclosure is made in the course of performing a duty in connection with the survey or estimate for which that person was authorised to enter the land, be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

(4) Where any property is damaged in the exercise of a right of entry conferred under section 236, or in the making of a survey for the purpose of which any such right of entry has been so conferred, compensation in respect of that damage may be recovered by any person interested in the property from the council on whose behalf the entry was effected or, as the case may be, **[**[F8]the relevant department**]** .

(5) Any question of disputed compensation recoverable under subsection (4) shall be determined by the Lands Tribunal.

Textual Amendments

F8 Words in s. 237(4) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 82** (with art. 9(2))

Modifications etc. (not altering text)

C103 S. 237 applied by S.I. 1981/607 (N.I. 15), art. 9(2) (as substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), **Sch. 6 para. 34** (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

C104 S. 237: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

C105 S. 237: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I463 S. 237 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I464 S. 237 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Supplementary provisions as to powers of entry: Crown land

238.—(1) Section 236 applies to Crown land subject to the following modifications.

(2) A person must not enter Crown land unless that person has the relevant permission.

(3) Relevant permission is the permission of—

(a) a person appearing to the person seeking entry to the land to be entitled to give it; or

(b) the appropriate authority.

(4) In subsection (5) the words from ", but a person" to the end of that subsection shall be omitted.

(5) Section 237 does not apply to anything done by virtue of this section.

(6) "Appropriate authority" and "Crown land" shall be construed in accordance with section 212(1).

Commencement Information

I465 S. 238 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I466 S. 238 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Miscellaneous and general provisions

Service of notices and documents

239.—(1) Without prejudice to section 24(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33), any notice or other document required or authorised to be served on or sent or given to any person under the provisions of this Act may be served, sent or given, in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection (2), to that person at that address (subject to subsection (3)).

(2) The condition mentioned in subsection (1) is that the notice or other document is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference,

and for this purpose "legible in all material respects" means that the information contained in the notice or document is available to the recipient to no lesser

extent than it would be if served or given by means of a notice or document in printed form.

(3) Subsection (1) does not apply to—

(a) service of a copy of a notice under section 43(4);

(b) service of a building preservation notice under section 81;

(c) giving of notice of the making of a tree preservation order or the service of a copy of such an order, in accordance with regulations under section 122;

(d) service of a planning contravention notice under section 133;

(e) service of a temporary stop notice under section 135;

(f) service of a copy of an enforcement notice under section 138 or 139;

(g) the variation or withdrawal of an enforcement notice under section 141 or 142;

(h) service under section 149(4) of a notice of a council's intention to take steps required by an enforcement notice;

(i) service of a stop notice, or notice of withdrawal of a stop notice, under section 150 or 151;

(j) service of a breach of condition notice under section 152;

(k) service of a notice under section 153 or 154;

(l) service of a copy of a listed building enforcement notice, or notice of variation or withdrawal of a listed building enforcement notice under section 157 or 158;

(m) service of a copy of a hazardous substances contravention notice, or notice of withdrawal of a hazardous substances contravention notice under section 162;

(n) service of a copy of a notice varying a hazardous substances contravention notice under section 163;

(o) service of a notice under section 240 requiring information as to estates in land.

(4) Where a person uses electronic communications to transmit any notice or other document for any purpose of this Act which is capable of being carried out electronically that person shall be taken to have agreed, except where a contrary intention appears, to the use of such communications and that his or her address for that purpose is the address incorporated into, or otherwise logically associated with the notice or document.

(5) Where a person is no longer willing to accept the use of electronic communications for any purpose of this Act which is capable of being carried out electronically, he or she must give notice in writing—

(a) withdrawing any address notified to the council, the Department **[**[F9]for Communities, the Department for Infrastructure**]** or the planning appeals commission for that purpose; or

(b) revoking any agreement entered into or deemed to have been entered into with the council, the Department **[**[F10]for Communities, the Department for Infrastructure**]** or the planning appeals commission for that purpose,

and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice but not less than 7 days after the date on which the notice is given.

Textual Amendments

F9 Words in s. 239(5)(a) inserted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 83(a)** (with art. 9(2))

F10 Words in s. 239(5)(b) inserted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 83(b)** (with art. 9(2))

Commencement Information

I467 S. 239 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I468 S. 239 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Information as to estates in land

240.—(1) For the purpose of enabling a council **[**[F11]the Department for Infrastructure or the Department for Communities**]** to make an order or issue or serve a notice or other document which by any of the provisions of this Act a council **[**[F11]the Department for Infrastructure or the Department for Communities**]** is authorised or required to make, issue or serve, the council **[**[F11]the Department for Infrastructure or the Department for Communities**]** may by notice in writing require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises to give, in writing, within 21 days after the date on which the notice is served, or such longer time as may be specified in the notice or as the council **[**[F12]or the Department for Infrastructure or the Department for Communities, as the case may be**]** may allow, such information as to the matters mentioned in subsection (2) as may be specified.

(2) The matters referred to in subsection (1) are—

(a) the nature of the estate in the premises of the person on whom the notice is served;

(b) the name and postal address of any other person known to that person as having an estate in the premises;

(c) the purpose for which the premises are being used;

(d) the time when that use began;

(e) the name and postal address of any person known to the person on whom the notice is served as having used the premises for that purpose; and

(f) the time when any activities being carried out on the premises began.

(3) Any person who, without reasonable excuse, fails to comply with a notice served on that person under subsection (1), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Any person who having been required by a notice under subsection (1) to give any information knowingly makes any misstatement in respect of that information shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

Textual Amendments

F11 Words in s. 240(1) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 84(a)** (with art. 9(2))

F12 Words in s. 240(1) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 84(b)** (with art. 9(2))

Modifications etc. (not altering text)

C106 S. 240: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

C107 S. 240: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Commencement Information

I469 S. 240 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I470 S. 240 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Information as to estates in Crown land

241.—(1) This section applies to an estate in Crown land which is not a private estate.

(2) Section 240 does not apply to an estate to which this section applies.

(3) For a purpose mentioned in section 240(1) the Department may request the appropriate authority to give the Department such information as to the matters mentioned in section 240(2) as the Department specifies in the request.

(4) The appropriate authority must comply with a request under subsection (3) except to the extent—

(a) that the matter is not within the knowledge of the authority, or

(b) that to do so will disclose information as to any of the matters mentioned in section 232(3).

(5) Expressions used in this section and in Part 11 shall be construed in accordance with that Part.

Commencement Information

I471 S. 241 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I472 S. 241 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Planning register

242.—(1) A council must keep, in such manner as may be specified by a development order, one or more registers containing such information as may be so specified with respect to—

(a) applications made, or deemed to be made, under this Act to the council, to the Department or to the planning appeals commission for any permission, consent, approval or determination;

(b) the manner in which such applications have been dealt with;

(c) notices under section 27(2) (proposal of application notices);

(d) pre-application community consultation reports under section 28;

(e) the revocation or modification of any permission or consent granted under this Act;

(f) enforcement notices or listed building enforcement notices;

(g) stop notices;

(h) orders under section 73;

(i) simplified planning zones and enterprise zones;

(j) directions given by the Department under—

(i) section 105(4);

(ii) section 118; and

(iii) any provision included in a development order by virtue of section 32;

(k) hazardous substances contravention notices;

(l) tree preservation orders;

(m) notices under section 127;

(n) breach of condition notices;

(o) certificates under section 169 or 170;

(p) building preservation notices;

(q) temporary stop notices issued under section 135; and

(r) applications for a determination under paragraph 9 of Schedule 2 or paragraph 7 of Schedule 3.

(2) A development order may make provision for requiring **[**[F13]the Department for Infrastructure or the Department for Communities**]** to supply to a council such information as may be so specified in the order with regard to the matters mentioned in subsection (1)(a) to (j).

(3) Every register kept under subsection (1) must be available for inspection by the public at all reasonable hours.

(4) The council may provide a copy of, or of an extract from, any register kept under this section to any person on payment of such reasonable charge as the council may specify.

Textual Amendments

F13 Words in s. 242(2) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 85** (with art. 9(2))

Modifications etc. (not altering text)

C108 S. 242 applied with modification(s) (1.4.2015) by The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107), regs. 1, **11**

Commencement Information

I473 S. 242 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I474 S. 242 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Power to appoint advisory bodies or committees

[[F14]**243.**—(1) The Minister for Infrastructure may appoint such advisory bodies or committees as the Minister considers necessary to assist the Department for Infrastructure in the exercise and performance of the functions conferred on that Department by this Act.

(2) The Minister for Communities may appoint such advisory bodies or committees as the Minister considers necessary to assist the Department for

Communities in the exercise and performance of the functions conferred on that Department by this Act.**]**

Textual Amendments

F14 S. 243 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 86** (with art. 9(2))

Commencement Information

I475 S. 243 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I476 S. 243 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Time limit for certain summary offences under this Act

244 Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26), a magistrates' court shall have jurisdiction to hear and determine a complaint charging the commission of an offence under section 152 if the complaint is made within 3 years from the time when the offence was committed or ceased to continue.

Commencement Information

I477 S. 244 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I478 S. 244 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Registration of matters in Statutory Charges Register

245 In Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (c. 18) (matters requiring to be registered in the Statutory Charges Register) for entry 27 substitute the following entry—

"**27** Any of the following matters under the Planning Act (Northern Ireland) 2011—

(a) planning agreements under section 76;

(b) an entry in a list compiled under section 80;

(c) tree preservation orders;

(d) enforcement notices which take effect in relation to any land;

(e) listed building enforcement notices which take effect in relation to any land;

(f) any conditions imposed on the grant of planning permission—

(i) relating to the occupancy of a dwelling house; or

(ii) requiring that a dwelling house on any land which is under the control of the applicant be demolished or cease to be used as a dwelling house;

(g) notices under section 164 which take effect in relation to any land;

(h) orders under section 68, 72 or 73;

(i) any designation under section 104(1).”.

Commencement Information

I479 S. 245 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I480 S. 245 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Directions

246 Any directions which may be given, or must be given, under this Act may be withdrawn or may be varied or revoked by a subsequent direction.

Commencement Information

I481 S. 246 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I482 S. 246 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Regulations and orders

247.—(1) The Department may make regulations for prescribing anything which under this Act is authorised or required to be prescribed.

(2) Subject to subsection (3), any regulations made under this Act are subject to negative resolution.

(3) Regulations under sections 153(9) and 154(9) shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(4) Subject to subsection (5), orders made under sections 23(3)(e), 32, 38(3) and 251 are subject to negative resolution.

(5) Subsection (4) applies subject to section 251(4).

(6) Regulations and orders made by the Department under this Act may contain such incidental, supplementary, transitional and saving provisions as appear to the Department to be necessary or expedient.

Modifications etc. (not altering text)

C109 S. 247: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

C110 S. 247: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Amendment of the Planning (Northern Ireland) Order 1991

Amendment of certain time periods in relation to enforcement

248.—(1) In Article 23 of the Planning (Northern Ireland) Order 1991 (NI 11) (in this section referred to as "the 1991 Order") (notice requiring planning application) in paragraph (2) for "four" substitute " 5 ".

(2) In Article 24 of the 1991 Order (appeal against notice under Article 23) in paragraph (2)(c) for "four" substitute " 5 ".

(3) In Article 67B of the 1991 Order (time limits)—

(a) in paragraphs (1), (2) and (4)(b) for "4" substitute " 5 ";

(b) in paragraph (3) for "10" substitute " 5 ".

(4) In Article 67F of the 1991 Order (temporary stop notice: restrictions) in paragraph (2) for "4" substitute " 5 ".

(5) In Article 73 of the 1991 Order (service of stop notice) in paragraph (3D) for "4" substitute " 5 ".

(6) In Article 82 of the 1991 Order (enforcement of duties as to replacement of trees) in paragraph (2) for "4" substitute " 5 ".

Increased penalties for certain offences under the Planning (Northern Ireland) Order 1991

[F15]249 . . . . . .

Textual Amendments

F15 S. 249 repealed (1.4.2015) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), **Sch. 7** (with s. 211); S.R. 2015/49, art. 3, Sch. 1 (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Part 15

Supplementary

Interpretation

250.—(1) In this Act—

"the Act of 1965" means the Land Development Values (Compensation) Act (Northern Ireland) 1965 (c. 23);

"address" in relation to electronic communications, means any number or address used for such purposes;

"advertisement" means any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the preceding provisions of this definition) includes any hoarding or similar structure used or designed, or adapted for use and anything else principally used, or designed or adapted principally for use for the display of advertisements, and references to the display of advertisements shall be construed accordingly;

"aftercare condition" has the meaning given in section 53(2);

"aftercare scheme" has the meaning given in section 53(3);

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing lands, meadow land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes;

"breach of condition notice" has the meaning given in section 152;

"breach of planning control" has the meaning given in by section 131;

"building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;

"buildings or works" includes waste materials, refuse and other matters deposited on land, and references to the erection or construction of buildings or works shall be construed accordingly and references to the removal of buildings or works include demolition of buildings;

"building operations" has the meaning given in section 23;

"building preservation notice" has the meaning given in section 81(1);

"clerk of the council", in relation to a council, means the clerk appointed in accordance with section 41 of the Local Government Act (Northern Ireland) 1972 (c. 9);

[[F16]"current community plan" has the same meaning as in Part 10 (community planning) of the Local Government Act (Northern Ireland) 2014;**]**

"conservation area" has the meaning given in section 104(12);

"conservation area consent" has the meaning given in section 105(2);

"contravention of hazardous substances control" has the meaning given in section 117(2);

"council", except in Schedule 5, means a district council;

"the Department", except where otherwise specified, means the Department of the Environment;

"depositing of mineral waste" means any process whereby a mineral working deposit is created or enlarged and "depositing of refuse or waste materials" includes the depositing of mineral waste;

"development" has the meaning given in section 23;

"development order" has the meaning given in section 32;

"electricity undertaker" means a holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992 (NI 1);

"electronic communication" has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001 (c. 9);

"enforcement notice" means a notice under section 138 or 139;

"engineering operations" includes the formation or laying out of means of access to roads;

"enterprise zone scheme" means a scheme or modified scheme under Part II of the Enterprise Zones (Northern Ireland) Order 1981 (NI 15) having effect to grant planning permission by virtue of section 39;

"erection" in relation to buildings includes extension, alteration and re-erection;

"gas undertaker" means a holder of a licence under Article 8 of the Gas (Northern Ireland) Order 1996 (NI 2);

"hazardous substances consent" means consent required by section 108;

"hazardous substances contravention notice" has the meaning given in section 162(3);

"lease" includes an underlease and an agreement for a lease or underlease, but does not include an option to take a lease or a mortgage, and "leasehold interest" means the interest of the tenant under a lease as so defined;

"listed building" has the meaning given in section 80;

"listed building consent" has the meaning given in section 85;

"listed building enforcement notice" has the meaning given in section 157;

"means of access" includes any means of access, whether private or public, for vehicles or for foot passengers, and includes a street;

"mineral working deposit" means any deposit of material remaining after materials have been extracted from land or otherwise deriving from the carrying out of operations for the winning and working of minerals in, on or under land;

"minerals" includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working, except that it does not include turf cut for purposes other than sale;

"mining operations" means—

(a) the winning and working of minerals in, on, or under land whether by surface or underground working; and

(b) the management of waste resulting from the winning, working, treatment and storage of minerals,

and, for the purposes of paragraph (b), treatment does not include smelting, thermal manufacturing processes (other than the burning of limestone) and metallurgical processes;

[[F17]"Minister", except where otherwise specified, means the Minister for Infrastructure;**]**

"mortgage" includes any charge or lien on any property for securing money or money's worth;

"outline planning permission" has the meaning given in section 62(1);

"owner" in relation to land, means a person, other than a mortgagee not in possession, who, whether in his or her own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let;

"planning contravention notice" has the meaning given in section 133(1);

"planning decision" means a decision made on an application in accordance with Part 3;

"planning permission" means permission under Part 3;

"planning permission granted for a limited period" has the meaning assigned to it by section 52(3);

"prescribed" means prescribed by regulations under this Act;

"public body" has the same meaning as in the Local Government Act (Northern Ireland) 1972 (c. 9);

"purchase notice" means a notice served under section 191;

"regional development strategy" means the strategy formulated by the Department for Regional Development under the Strategic Planning (Northern Ireland) Order 1999 (NI 4);

"regulations" means regulations made by the Department;

"restoration condition" has the meaning given in section 53(2);

"road" has the same meaning as in the Roads (Northern Ireland) Order 1993 (NI 15) but includes land in respect of which street planning functions, as defined in the Private Streets (Northern Ireland) Order 1980 (NI 12), have been exercised under Article 3(1) of that Order;

"simplified planning zone" and "simplified planning zone scheme" shall be construed in accordance with section 33;

"statutory undertaker" means persons authorised by any statutory provision to carry on any railway, road transport, water transport, inland navigation, dock or harbour undertaking, or a gas undertaker or an electricity undertaker, or a universal service provider (within the meaning of the Postal Services Act 2000 (c. 26)) in connection with the provision of a universal postal service (within the meaning of that Act) or the airport operator (within the meaning of the Airports (Northern Ireland) Order 1994 (NI 1)) of any airport to which Article 25 of that Order applies or a water undertaker or sewerage undertaker;

"stop notice" has the meaning given in section 150;

"tenancy" includes a tenancy created by an agreement for a lease and a tenancy created under any statutory provision, but does not include—

(a) a mortgage term; or

(b) a tenancy for a year (or any shorter term) or from year to year (or any other periodic tenancy) having reference to any period less than a year; or

(c) a tenancy at will;

"the winning and working of minerals" includes the extraction of minerals from a mineral working deposit;

"tree preservation order" has the meaning given in section 122;

"trustee" includes an implied or constructive trustee and a personal representative;

"use" in relation to land, does not include the use of land for the carrying out of any building or other operations thereon.

(2) Where—

(a) an electronic communication is used for the purpose of giving or serving a notice or other document on or to any person for the purposes of this Act, and

(b) the communication is received by that person outside that person's business hours,

it shall be taken to have been received on the next working day, and in this subsection, "working day" means a day which is not a Saturday, Sunday or a public holiday.

Textual Amendments

F16 Words in s. 250(1) inserted (1.4.2015) by Local Government Act (Northern Ireland) 2014 (c. 8), **ss. 77(4)**, 129 (with ss. 77(5), 124(4)); S.R. 2015/209, art. 2, Sch. 1

F17 Words in s. 250(1) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 87** (with art. 9(2))

Modifications etc. (not altering text)

C111 S. 250(1) applied by S.I. 1991/1220 (N.I. 11), art. 2(2A) (as substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), **Sch. 6 para. 55(b)** (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Further provision

251.—(1) The Department may by order make such supplementary, incidental or consequential provision as it thinks appropriate—

(a) for the general purposes, or any particular purpose, of this Act;

(b) in consequence of any provision made by or under this Act, or for giving full effect to it.

(2) The Department may by order make such transitional or transitory provisions and savings as it considers appropriate in connection with—

(a) the coming into operation of any provision of this Act; or

(b) any provision made by an order under subsection (1).

(3) An order under this section may amend, modify or repeal any statutory provision (including a statutory provision restating, with or without modifications, a statutory provision amended by this Act).

(4) An order which does so shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(5) The powers conferred by this section are not restricted by any other provision of this Act.

Modifications etc. (not altering text)

C112 S. 251: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Minor and consequential amendments

252 The statutory provisions mentioned in Schedule 6 shall have effect with the amendments specified there.

Commencement Information

I483 S. 252 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I484 S. 252 in operation at 1.4.2015 in so far as not already in operation by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Repeals

253 The statutory provisions mentioned in Schedule 7 are repealed to the extent specified in the second column of that Schedule.

Commencement Information

I485 S. 253 in operation at 13.2.2015 for specified purposes by S.R. 2015/49, art. 2, **Sch. 1**

I486 S. 253 in operation at 1.4.2015 for specified purposes by S.R. 2015/49, art. 3, **Sch. 1** (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Commencement

254.—(1) This Act, apart from this section, section 250, 251 and section 255, shall come into operation on such day or days as the Department may by order appoint.

(2) No order shall be made under subsection (1) in respect of Part 3 unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(3) Section 249 comes into operation on Royal Assent.

Subordinate Legislation Made

P1 S. 254(1) power partly exercised: 1.12.2011 appointed for specified provisions by S.R. 2011/386, **art. 2**

Modifications etc. (not altering text)

C113 S. 254: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Short title

255 This Act may be cited as the Planning Act (Northern Ireland) 2011.

Status:
Point in time view as at 12/11/2020. This version of this Act contains provisions that are prospective.

Changes to legislation:
There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011.