

*These notes refer to the Planning Act (Northern Ireland)
2011 (c.25) which received Royal Assent on 4 May 2011*

Planning Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Additional Planning Control.

This Part of the Act is divided into five chapters covering the control of development affecting buildings of special architectural or historic interest (“listed buildings”) and areas of special architectural or historical interest (“conservation areas”), hazardous substances, trees, review of mineral planning permissions and advertisements.

Section 80: Lists of buildings of special architectural or historic interest

This section will ensure that the Department will continue to compile lists for buildings of special architectural or historical interest. The Department will continue to consult with the Historic Buildings Council and the appropriate council before it compiles or amends any list.

Section 81: Temporary listing: building preservation notices

Under this section a council may serve a building preservation notice on an owner or occupier of a building, in its district, which is not a listed building and which is in danger of demolition or alteration which would affect its character.

Section 82: Temporary listing in urgent cases

This section enables a council, where it appears urgent that a building preservation notice should come into force, to fix the notice conspicuously to an object on the building instead of serving the notice on the owner or occupier.

Section 83: Lapse of building preservation notices

This section applies where a building preservation notice ceases to be in force after the 6 month expiry period has lapsed or by departmental notification. A person who commits an offence under section 85 or section 147 while the building preservation notice is current can still be prosecuted and punished even after the notice has ceased to be in force under section 83. However, any applications for listed building consent – or any consent granted - while the notice was in force shall lapse. Likewise, any listed building enforcement notice served while the notice was in force shall cease to have effect.

Section 84: Issue of certificate that building is not intended to be listed

This section describes the circumstances in which the Department can issue a certificate that it does not intend to list a building. This also precludes the Department from listing that building for a period of 5 years or for a council to issue a building preservation notice during that period.

Section 85: Control of works for demolition, alteration or extension of listed buildings

This section provides that carrying out unauthorised works on a listed building is an offence. It sets out the penalties for an offence and provides for a number of defences. It further establishes when works for demolition, alteration or extension are authorised and excludes ecclesiastical buildings from the provision. The maximum fine on summary conviction is raised from £30,000 to £100,000.

Section 86: Applications for listed building consent

This section specifies that applications for listed building consent must be made in a manner and format specified in regulations. Regulations will require applications for consent to include statements about design principles and how access issues have been dealt with. Regulations may also specify publicity arrangements for applications and requirements as to consultation as well as requirements for councils, or the Department, to take account of responses from consultees.

Section 87: Notification of applications for listed building consent to certain persons

This section sets out the requirements to be satisfied before a council will entertain an application for listed building consent.

Section 88: Call in of certain applications for listed building consent to Department

Under this section the Department may direct that certain applications (including those where the Secretary of State or Department of Justice has certified that an application raises national security or security of premises issues) be referred to it instead of being determined by a council. The direction may relate to individual applications or to a class of buildings as may be specified in the direction. The section also allows the Department to cause a public local inquiry to be held by the Planning Appeals Commission or a person appointed by the Department. Alternatively the Department may issue a notice on the applicant and appropriate council indicating the decision it proposes to make. An inquiry route must be held if an application raises issues of national security or the security of premises. The decision of the Department on the application is final.

Section 89: Duty to notify Department of applications for listed building consent

This section places a duty on a council, where it intends to grant an application for listed building consent, to first notify the Department providing details of the works for which consent is required. This allows the Department to decide if it wishes to call the application in.

Section 90: Directions concerning notification of applications, etc.

This section enables the Department to direct, in applications for listed buildings consent which it may specify, that section 89 does not apply. While such a direction is in force, councils may determine applications of the type specified in the direction in any way they think fit. The Department may also direct councils to notify the Department and other specified persons of any listed building consent applications and council decisions on those applications.

Section 91: Decision on application for listed building consent

This power ensures that an application for listed building consent may be refused, granted without conditions or granted subject to conditions. It also establishes the factors a council or the Department must consider when deciding to grant listed building consent or any conditions that it wishes to attach to the consent.

Sections 92 and 93: Power to decline to determine subsequent or overlapping application for listed building consent

These sections set out the cases where applications for subsequent (repeat) or overlapping listed building applications may be declined.

Section 94: Duration of listed building consent

This section requires listed building consent to be granted subject to a condition that the works must begin within 5 years of the grant of consent or any other such time as a council or Department may direct.

Section 95: Consent to execute works without compliance with conditions previously attached

This section relates to applications for listed building consent for the execution of works to a building without complying with conditions attached to a previous consent. An applicant can apply to the council, or the Department if it granted the original consent, to have the conditions (other than those relating to time limits) changed or set aside if it is considered that they are no longer appropriate.

Section 96: Appeal against decision

Under this section an applicant can appeal to the Planning Appeals Commission where an application to a council for listed building consent or approval is refused or where the applicant objects to any conditions that have been

imposed. As with appeals under section 58 for planning applications, the appeal must be lodged with the Commission within 4 months or such other period as may be prescribed. If the applicant or council wish, they may appear before and be heard by the Commission.

Section 97: Appeal against failure to take decision

An applicant may appeal to the Planning Appeals Commission if a council has failed to determine an application for listed building consent within a specified period or extended period as agreed in writing between the applicant and a council.

Section 98: Revocation or modification of listed building consent by council

A council may revoke or modify listed building consent. Such action can only be taken before authorised works are completed.

Section 99: Procedure for section 98 orders: opposed cases

Under this section, section 98 orders made by a council but which have been opposed by the parties specified in the section, shall not take effect unless confirmed by the Department (following a hearing by the Planning Appeals Commission if requested by an opposing party).

Section 100: Procedure for section 98 orders: unopposed cases

This section applies where a council has made an order under section 98 revoking or modifying a listed building consent and the owner or occupier of the land and all persons who a council think will be affected by the order have notified a council in writing that they have no objections. The Department's confirmation is not required in such cases.

Section 101: Revocation or modification of listed building consent by the Department

This section enables the Department to make an order revoking or modifying listed building consent to such an extent as it considers expedient but the Department must consult with the relevant council before doing so.

Section 102: Applications to determine whether listed building consent required

Under this section if a person proposing to execute any works to a listed building wishes to have it determined as to whether the works would involve the alteration or extension of the building in a manner which would affect its character as a building of special architectural or historic interest, they may apply to a council to determine the question.

Section 103: Acts causing or likely to result in damage to listed buildings

This section states that anyone carrying out unauthorised works on a listed building will be guilty of an offence. It also states that a person who fails to prevent damage or further damage resulting from this offence is guilty of a further offence. Fines have been raised to the statutory maximum. Also the fine payable on summary conviction when a person fails to prevent damage or further damage is raised from one tenth of a level 3 fine to one tenth of a level 5 fine on the standard scale. Offences may also be convicted on indictment.

Section 104: Conservation areas

This section sets out the procedures whereby a council can designate areas within its district which it considers of special architectural or historic interest with the objective to preserve or enhance their character or appearance. The section also enables the Department to designate a conservation area but it must consult with the relevant council before doing so. A council or the Department must pay special regard to enhancing the character or appearance of these areas where the opportunity to do so arises. This amendment is the Department's response to the High Court case of South Lakeland District Council v Secretary of State for the Environment and Carlisle Diocesan Parsonages Board [1992] 2 WLR 204.

Section 105: Control of demolition in conservation areas

This section prevents the demolition of unlisted buildings in conservation areas without consent. Such buildings cannot be demolished without the consent of the appropriate council or Department. The Department may specify by direction buildings to which this section does not apply. An addition to this section, following the judgement in Shimizu (UK) Ltd v Westminster City Council, provides that structural alteration of buildings to which this section applies, where the alteration consists of partial demolition, will also require consent.

Section 106: Grants in relation to conservation areas

This section permits the Department to continue to make grants or loans to offset expenditure incurred in the promotion, preservation or enhancement of the character or appearance of any conservation area.

Section 107: Application of Chapter 1, etc., to land and works of councils

This section introduces new powers setting out the procedures for dealing with councils' own applications for listed building consent. The provisions of the Act which apply are listed and there is an enabling power to allow the Department by regulations, to modify and to make exceptions from certain provisions of the Act in their application to councils.

Section 108: Requirement of hazardous substances consent

This section makes provision for the control of hazardous substances and the requirement for hazardous substances consent.

Section 109: Applications for hazardous substances consent

This section makes provision for the form and content of consent applications to be set out in regulations and makes it an offence to supply false information. Regulations made under this section may also require a council to consult the Health and Safety Executive (HSENI) before determining an application for hazardous substances consent.

Section 110: Determination of applications for hazardous substances consent

This section gives a council power to grant or refuse hazardous substances consents, outlines certain factors that a council must have regard to and gives a council the power to attach conditions to any consent. A council must have regard to the advice given by the HSENI during the consultation required by section 109. A council may only grant consent if the conditions are those which the HSENI has advised a council that any consent it might grant should contain.

Section 111: Grant of hazardous substances consent without compliance with conditions previously attached

Any person who has been granted hazardous substances consent with conditions attached may apply under this section to have the conditions changed or set aside. The form and content of applications may be set out in regulations.

Section 112: Revocation or modification of hazardous substances consent

Under this section where it appears to a council that there has been a material change of use of land, or planning permission has been granted for development and the carrying out of development would involve a material change of use of such land, and the development to which the permission relates has been commenced, it may revoke the related hazardous substances consent. A council may revoke the consent if it relates to only one substance or, if it relates to more than one substance it may revoke it or revoke so far as it relates to a specified substance.

Section 113: Confirmation by Department of section 112 orders

This section confirms that an order under section 112 will not take effect unless it is confirmed by the Department. The Department may confirm the order either without modification or subject to such modification as it thinks fit. When a council submits a section 112 order for confirmation it must also notify the landowner, any person who appears to it to be in charge of the land or any other person who, in its opinion, will be affected by the order. This notice must also specify the period within which any person on whom the notice is served

can appear before and be heard by the Planning Appeals Commission. The Department must give such an opportunity to both that person and the council.

Section 114: Call in of certain applications for hazardous substances consent to Department

Under this section the Department may direct that certain applications (including those where the Secretary of State or Department of Justice has certified that an application raises issues of national security or the security of premises) be referred to it instead of being determined by a council. The direction may relate to individual applications or to a class of buildings as may be specified in the direction. The section also allows the Department to cause a public local inquiry to be held by the Planning Appeals Commission or a person appointed by the Department. Alternatively the Department may issue a notice of opinion to the applicant and the appropriate council indicating the decision it proposes to make. An inquiry must be held if an application raises national security or security of premises issues. The decision of the Department is final for these applications.

Section 115: Appeals

This section gives a right of appeal when an application for hazardous substances consent is refused or granted subject to conditions. The appeal is made to the Planning Appeals Commission and must now be made within 4 months or such other period as may be prescribed.

Section 116: Effect of hazardous substances consent and change of control of land

This section ensures that hazardous substances consent ceases to have effect if there is a change in the control of part of the land and requires that anyone taking control of the land must make a fresh application, unless an application for the continuation of the consent has previously been made to a council. A council is responsible for the grant of an application for the continuance of the consent and the Department will have no role in this regard.

In dealing with an application a council must have regard to any advice given by the HSENI in relation to the application. The provisions do not apply when control of the land passes from one emanation of the Crown to another.

Section 117: Offences

Under this section if there is a contravention of hazardous substances control the appropriate person will be guilty of an offence. This is the case when a quantity of hazardous substance (equal to exceeding a controlled quantity) is present on or has been present on, over or under land and there is no hazardous substances consent for the presence of that substance. Alternatively, an offence is committed if the quantity exceeds the maximum permitted by the consent or there has been a failure to comply with any conditions attached to the consent. The maximum fine on summary conviction is raised from £30,000 to £100,000.

Section 118: Emergencies

The Department may make a direction that the presence of a hazardous substance specified in the direction is necessary for the effective provision of a service or commodity if it appears that the community is likely to be deprived of an essential service or commodity.

Section 119: Health and safety requirements

Under this section where there is any conflict between a hazardous substance consent or a hazardous substances contravention notice and any requirement of the Health and Safety at Work (Northern Ireland) Order 1978 or a prohibition notice or improvement notice issued thereunder, then the Health and Safety at Work (Northern Ireland) Order 1978 or a prohibition notice or improvement notice issued thereunder prevail.

Section 120: Applications by councils for hazardous substances consent

This section introduces new powers setting out the procedures for dealing with councils' own applications for hazardous substances consent. The provisions of the Act which apply are listed with an enabling power given to the Department to allow regulations to modify and to make exceptions from certain provisions of the Act in their application to councils.

Section 121: Planning permission to include appropriate provision for trees

This section places a duty on councils and the Department to make provision for the preservation or planting of trees when granting planning permission.

Section 122: Tree preservation orders: councils

This section allows councils to make Tree Preservation Orders. Tree Preservation Orders prohibit the cutting down or damaging of protected trees, groups of trees or woodlands and can also secure the replanting of felled trees. The Department may make regulations as to the form of Tree Preservation Orders and the procedure to be followed in the making of such orders. No Tree Preservation 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 any statutory provision or where necessary for the prevention or abatement of a nuisance. The exception for dying trees has been removed.

Section 123: Provisional tree preservation orders

This section allows a tree preservation order to be made with immediate effect by a council, in circumstances which it deems to be urgent. Unlike Tree Preservation Orders made under section 123 provisional orders do not require prior confirmation by a council.

Section 124: Power for Department to make tree preservation orders

Under this section the Department, after it has consulted the relevant council, can decide to make a tree preservation order or amend or revoke an order.

Section 125: Replacement of trees

This section gives a council the power to require the owner of land where a Tree Preservation Order is in force to replace any trees that have been removed, uprooted or destroyed.

Section 126: Penalties for contravention of tree preservation orders

This section provides for penalties to be imposed in respect of the contravention of a Tree Preservation Order. It also makes it an offence to cut down, destroy or damage a tree in contravention of a tree preservation order, or to top or lop a tree in such a way as is likely to destroy it. The maximum fine on summary conviction is raised from £30,000 to £100,000.

Section 127: Preservation of trees in conservation areas

This section applies the protection given by a Tree Preservation Order to trees within conservation areas. Thus it is an offence to carry out works to a tree within a conservation area unless notice was served of the intention to carry out works to the tree, consent was given, or the works were carried out 6 weeks after the notice was issued and before the end of 2 years from the issue of the notice.

Section 128: Power to disapply section 127

The Department can make regulations under this section to disapply the requirement to preserve trees in conservation areas (section 127). This can relate to specified conservation areas, trees of specified species or size, trees belonging to specified persons or bodies or specified acts that may be carried out on the trees.

Section 129: Review of mineral planning permissions

This section and the provisions introduced by Schedules 2 and 3 enable councils to start a process resulting in an initial review of all mineral permissions granted in Northern Ireland thereby ensuring that their conditions meet modern expectations and current environmental standards. The provisions also prevent dormant sites from reopening without a review of the conditions attached to their permissions. A further duty is placed on councils to instigate additional periodic reviews of all mineral sites. Although the majority of these functions will fall to councils, the Department will be able to require that certain applications for review are referred to it.

Section 130: Control of advertisements

This section enables the Department to make regulations for controlling the display of advertisements in the interests of amenity or public safety. The

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regulations may also prohibit the display in any area of special control (defined by means of orders made or approved by the Department) of all advertisements except advertisements of such classes as may be prescribed. Finally, planning permission is deemed to be granted where the display of advertisements, in accordance with regulations made under this section, involves the development of land.