

*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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5: Enforcement.**

#### ***Section 131: Expressions used in connection with enforcement***

This section defines a breach of planning control and sets out that enforcement action constitutes the issuing of an enforcement notice or breach of condition notice.

#### ***Section 132: Time limits***

This section sets out new time periods within which action may be taken in respect of breaches of planning control. Where the breach consists of carrying out without planning permission of building, engineering, mining or other operations no enforcement action may be taken after 5 years beginning with the date on which the operations were substantially completed. If the breach consists in the change of use of any building to use as a single dwelling-house, no enforcement action may be taken after 5 years beginning with the date of the breach.

In the case of any other breach of planning control, including other changes of use, no enforcement action may be taken after the end of 5 years beginning with the date of the breach.

#### ***Section 133: Power to require information about activities on land and***

#### ***Section 134: Penalties for non-compliance with planning contravention notice***

Section 133 provides for the issue of a planning contravention notice, giving a council power to obtain information prior to taking enforcement action, to encourage dialogue with any persons thought to be in breach of planning control and to secure their co-operation in taking corrective action. Failure to comply with a notice issued under section 133 within 21 days of its service is an offence. The fine for this offence has been raised to a fine not exceeding level 5 on the standard scale (currently £5000). In addition any person who makes a false or misleading statement in respect of a notice is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £ 5,000).

***Sections 135, 136 and 137: Temporary stop notices including restrictions and offences***

A council may serve a temporary stop notice to halt a breach of planning control for a period of up to 28 days as soon as the breach is identified, without first having had to issue an enforcement notice. A council has up to 28 days to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue. The provisions also impose certain limitations on activities on the land in question. Temporary stop notices issued under section 135 are not applicable to residences, or to other activities which the Department can specify in regulations. They cannot be issued for development or activities whose time limits for enforcement have passed. Only one notice can be issued unless further enforcement action is taken. Section 137 specifies that contravention of a notice issued under section 135 is a criminal offence, punishable on summary conviction by a fine of up to £100,000 (raised from £30,000) or on indictment by an unlimited fine.

***Section 138: Issue of enforcement notice by councils***

This section provides a council with the power to issue an enforcement notice to remedy a breach of planning control. An enforcement notice must be served within defined time periods on the owner or occupier of the land to which the notice relates and on any other person with an estate in the land.

***Section 139: Issue of enforcement notice by Department***

This section provides the Department with the power to issue an enforcement notice, however the Department must consult the appropriate council before doing so.

***Section 140: Contents and effect of enforcement notice***

An enforcement notice must state the breach of planning control which is alleged and what action is required to remedy this. A timeframe must be stated in the notice during which time all actions to remedy the breach must be completed. A council or the Department has the flexibility to require only partial remedy of a breach of planning control where, at the time of enforcement, a total remedy is not considered necessary.

***Sections 141 and 142: Variation and withdrawal of enforcement notices by councils or Department***

These sections allow for the withdrawal or variation of an enforcement notice by a council or Department without prejudice to their powers to issue a further notice.

***Section 143: Appeal against enforcement notice***

This section includes provisions which specify the grounds on which an appeal against an enforcement notice can be made and the procedures for making a

valid appeal. Before determining an appeal under these provisions the Planning Appeals Commission must provide all appellants, the relevant council or the Department the opportunity to appear before and be heard by the Commission.

***Section 144: Appeal against enforcement notice – general supplementary provisions***

This section provides that the Planning Appeals Commission must quash an enforcement notice, vary it or uphold it on appeal. The Commission may correct any mistakes in the notice or vary its terms as long as the correction or variation can be made without injustice to the appellant, a council or the Department.

***Section 145: Appeal against enforcement notice – supplementary provisions relating to planning permission***

When determining an appeal under section 143 the Planning Appeals Commission can grant planning permission for the matters the notice refers to, change the conditions of an existing permission or issue a certificate of lawfulness of existing use or development. The Planning Appeals Commission must notify the appellant of the amount of the planning application fee and specify the period within which it must be paid. If the fee is not paid within that period then the appeal on the planning merits will lapse.

***Section 146: Execution and cost of works required by enforcement notice***

This section includes provisions which allow a council or the Department to enter land and carry out steps to ensure compliance with an enforcement notice and to recover from the land owner any reasonable expenses in doing so. It is an offence, punishable on summary conviction to a fine not exceeding level 3 on the standard scale, to wilfully obstruct anyone authorised to carry out those steps.

***Section 147: Offence where enforcement notice not complied with***

This section deals with offences for not complying with an enforcement notice. The maximum level of fine, on summary conviction, is increased to £100,000. A person can be convicted and fined on indictment for this type of offence. The courts when determining the level of fine shall have regard to any financial benefit which has accrued or appears likely to have accrued, in consequence of the offence. The section also provides that a person found guilty of an offence, and who continues not to comply with a notice, may be guilty of a further offence, and subsequently, of still further offences until there is compliance with a notice.

***Section 148: Effect of planning permission etc., on enforcement or breach of condition notice***

If planning permission is subsequently granted for development mentioned in an enforcement notice or a breach of condition notice, the notice ceases to have effect in relation to the part or parts of the development which has permission.

This does not remove any previous liability of a person for non-compliance with either notice.

***Section 149: Enforcement notice to have effect against subsequent development***

Once an enforcement notice has been complied with the requirements within it continue to stand for future use of the land to which it relates. Discontinuance of use must be permanent, as must alteration or removal of buildings. To breach this requirement is now punishable by a fine not exceeding £7,500.

***Section 150 and 151: Service of stop notices by councils or the Department***

These sections allow a council or the Department to issue a stop notice requiring that an activity for which an enforcement notice has been issued should cease. The Department must consult the appropriate council before serving a stop notice. A stop notice has immediate effect unless a council or Department state otherwise. The contravention of a stop notice is an offence and the maximum level of fine for contravention of a stop notice is increased to £100,000 on summary conviction. A person may be convicted and fined on indictment for this type of offence and courts are required to take account of any benefits accrued or which appear likely to accrue as a result of the offence.

***Section 152: Enforcement of conditions***

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

***Section 153 and 154: Fixed penalty notice where enforcement notice not complied with or breach of condition notice not complied with***

Sections 153 and 154 enable an authorised officer of a council to issue a fixed penalty notice for the offences of failure to comply with an Enforcement Notice or Breach of Condition Notice, offering the offender an opportunity to discharge any liability for the offence without having to go to court. The amount of the penalty can be such amount as may be prescribed. The fixed penalty payable is reduced by 25% if paid within 14 days.

***Section 155: Use of fixed penalty receipts***

This section enables councils to use the receipts from fixed penalty notices issued under sections 153 and 154 for the purposes of enforcement functions or other functions specified in regulations.

### ***Section 156: Injunctions***

This section gives a council a power to apply to the courts for an injunction to prevent any actual or threatened breach of planning control. This power also applies in relation to unauthorised demolition or works to a listed building, breaches of a tree preservation order and certain acts in respect of trees in a conservation area; and, any actual or apprehended breach of hazardous substances control.

### ***Section 157: Issue of listed building enforcement notices by councils***

This section enables a council to issue a listed building enforcement notice where the requirement to obtain listed building consent for works to a listed building has not been complied with. This includes if conditions associated with that consent are not being adhered to. The notice must set out the steps to be taken to remedy the breach and the timeframe allowed.

### ***Section 158: Issue of listed buildings enforcement notices by Department***

The Department may issue a listed building enforcement notice, after consulting the appropriate council, and this has the same effect as a notice issued by a council.

### ***Section 159: Appeal against listed building enforcement notice***

Notices issued under sections 157 or 158 may be appealed and this section sets out the timing and possible grounds for appeal. Appeals are determined by the Planning Appeals Commission, and the Commission can grant listed building consent or discharge/substitute any condition attached to previous consent.

### ***Section 160: Effect of listed building consent on listed building enforcement notice***

If listed building consent is subsequently granted to development mentioned in a listed building enforcement notice, the notice ceases to have effect in relation to the part or parts of the development which has consent. This does not remove any previous liability of a person for non-compliance.

### ***Section 161: Urgent works to preserve building***

A council or the Department may carry out and recover the costs of urgent works to either a listed building or one which the Department has directed that this section shall apply. The Department may direct this section applies to buildings in a conservation area. A notice issued to the owner can be appealed to the Planning Appeals Commission on the grounds specified in this section.

### ***Sections 162 and 163: Hazardous substances contravention notice (including variation)***

These sections enable councils to issue a hazardous substances contravention notice for a contravention of hazardous substances control. Service requirements

and specifics to be contained within the notice are outlined in section 162. A notice can be withdrawn, and the Department is required to make regulations to cover appeals and may make further regulations as to the specific requirements of the notice. Section 163 allows a council to vary a notice which it has already issued, regardless of whether the notice has taken effect.

***Sections 164 and 165: Enforcement of duties as to replacement of trees and appeals against section 164 notices***

These provisions include enforcement measures in respect of the protection of trees that are subject to a Tree Preservation Order with a power for a council to enforce the duty to replace trees subject to a Tree Preservation Order. They also set out (in section 165) specific grounds and methods of appeal against enforcement notices issued under section 164 in relation to trees.

***Section 166 and 167: Execution and cost of works required by section 164 notice and enforcement of controls as respects trees in conservation areas***

Section 166 enables a council to enter onto land to replant trees subject to a Tree Preservation Order, and to recover any costs incurred as a civil debt. Section 167 places a duty on an owner to replace trees that are removed in a conservation area.

***Section 168: Enforcement of orders under section 73***

This section includes provisions dealing with the enforcement of orders (issued under section 73) requiring the discontinuance of use or alteration or removal of buildings or works. A council or the Department is permitted to enter the land and carry out any works required by the order, and recover the costs as a civil debt. Provisions cover changes in ownership of land and the failure to comply being the fault of a third party.

***Sections 169 and 170: Certificate of lawfulness of existing use or development and Certificate of lawfulness of proposed use or development***

Section 169 enables a person to apply to a council for a certificate to establish whether any existing use or development, or non compliance with a condition of a planning approval, is lawful. Provisions cover the circumstances for issue and actual requirements of the certificate. Section 170 enables any person to apply to a council to establish whether any proposed use or development, or any operations to be carried out in, on, over or under land is lawful. Again, provisions cover the circumstances for issue and actual requirements of this certificate.

***Sections 171 to 174: Certificates under sections 169 and 170, supplementary provisions, offences, appeals against refusal or failure to give decision on applications, further provision as to appeals under section 173***

Section 171 makes provision for supplementary provisions associated with procedures for obtaining/revoking the certificates under sections 169 and 170 to be specified by development order. Section 172 deals with offences and

sets out that any person who makes a false or misleading statement in respect of procuring a certificate will, on summary conviction, be liable to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both. Section 173 provides a right of appeal to the Planning Appeals Commission against a council's refusal or failure to give a decision on applications for a certificate. The Planning Appeals Commission can grant the appellant the certificate or dismiss the appeal if it considers a council's decision appropriate. The applicant must appeal to the Planning Appeals Commission within 4 months from the date on which the application was refused or refused in part. In relation to appeals section 174 provides the opportunity for all appellants and a council to appear before and be heard by the commission.

***Section 175: Enforcement of advertisement control***

This section allows a council to deal with enforcement of advertisement control. On conviction for display of an advertisement contravening regulations made under section 130 for the control of advertisements, a person is liable to a maximum fine of up to level 4 on the standard scale (currently £2,500). The defendant may be a landowner / occupier or those whose advertisement is being displayed.

***Sections 176, 177 and 178: Rights to enter without warrant, under warrant and supplementary provisions***

Section 176 allows any person authorised by a council to enter land without a warrant to carry out enforcement functions under this Act. The provisions also enable the Department to enter land prior to issuing an enforcement notice, listed building enforcement notice, stop notice, following consultation with a council. Section 177 provides that if entry to land has been refused or the case is urgent, a council or Department can obtain a warrant to enter the land. Section 178 covers administrative arrangements for the entering of land either with or without a warrant, and includes offence provisions e.g. an offence of obstructing the entry of authorised persons.