

*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 6: Compensation

Section 179: Compensation where planning permission is revoked or modified

Section 179(1) transfers the functions under sections 26, 27 and of the Land Development Values (Compensation) Act 1965 (“the 1965 Act”) from the Department to councils on the day of transfer. This excludes certain functions which will be retained by the Department, namely setting the time within which the compensation claim is to be made (section 20(2) as applied by section 26(6)), the power to make regulations relating to the determination of the claim (section 23 as applied by section 27(3)) and compensation recovery (section 24 as applied by section 27(5)). Section 179(3) ensures that references to the Department in any relevant statutory instrument or provision passed before the transfer date will, so far as necessary for the purpose of the transfer of functions to councils, be construed as references to a council.

Sections 26 and 27 of the 1965 Act provide for the payment of compensation by a council when planning permission is revoked or modified. Section 26(5) applies section 29 of the 1965 Act which makes provision for how compensation is measured in instances where it relates to new development or “Schedule 1 development”. Schedule 1 development, so called because it is specified in Schedule 1 to the 1965 Act, includes a number of relatively minor types of development (more generally known as existing use) which might be expected to receive planning permission as a matter of course. New development is development not specified in this schedule. Section 26(6) applies section 22 specifying how compensation is to be paid. Section 27 allows a council to apportion compensation between different parts of the land to which the claim relates and also to register details of the apportionment. Section 40 provides powers of entry for a council to carry out surveys or valuations in connection with a compensation claim.

Section 180: Modification of the Act of 1965 in relation to minerals

This section makes provision corresponding to Article 97 of the Planning (Northern Ireland) Order 1972. It modifies section 26(1) of the 1965 Act so that

a claim for expenditure or loss when planning permission for the winning and working of minerals is revoked or modified shall not be entertained in respect of buildings plant or machinery unless the claimant can prove that they are unable to use them except at the loss claimed. The reason is that such machinery can often be moved and the provision ensures that only the net loss is paid on revocation.

Section 181: Compensation where listed building consent revoked or modified

This section provides that compensation is payable when listed building consent is revoked or modified by a council under section 98 or by the Department under section 101. The section specifies that a claim may be made for abortive expenditure or loss or damage, but not for expenditure on work carried out before the grant of listed building consent nor for other loss or damage arising out of anything done or omitted to be done before the grant of consent. Section 181(4) applies the provisions from the 1965 Act relating to revocation and modification to this provision.

Section 182: Compensation in respect of orders under section 73, 75 or 112.

This section provides for compensation when a discontinuance order is made by a council under section 73 or by the Department under section 75. Section 182(5) ensures that no compensation is payable if a purchase notice has been served in respect of an estate in the land and if the estate has been purchased by a council under Part 7. It also provides for compensation when hazardous substances consent is revoked or modified under section 112.

Section 183: Compensation in respect of tree preservation orders

Under this section a tree preservation order may make provision for the payment of compensation if consent is refused to fell, lop or top a tree which is the subject of a tree preservation order or is granted subject to conditions where there is a consequent loss or damage.

Section 184: Compensation where hazardous substances consent modified or revoked under section 116

This section provides that compensation is payable when there is a change in the person in control of part of the land to which a hazardous substances consent relates and a council revokes or modifies the consent upon an application for its continuation under section 116(2).

Section 185: Compensation for loss due to stop notice

Compensation is payable when a stop notice is served by a council (under section 150) or the Department (under section 151). A person who has an estate in or occupies the land is entitled to compensation if the enforcement notice to which the stop notice relates is quashed on grounds other than on the grounds mentioned in section 143(3)(a) (planning permission granted for those items

contained in the stop notice on appeal); if the enforcement notice is varied, other than on the grounds mentioned in section 143(3)(a), so that the activity prohibited by the stop notice ceases to be relevant, if the enforcement notice is withdrawn for reasons other than the grant of planning permission, or if the stop notice is withdrawn.

Section 186: Compensation for loss or damage caused by service of building preservation notice

This section provides that compensation is payable for loss or damage when a building preservation notice ceases to have effect without the building being included on the list of buildings of special architectural or historic interest compiled by the Department under section 80.

Section 187: Compensation for loss due to temporary stop notice

This section applies if a temporary stop notice is issued to halt an alleged breach of planning control and the activity specified is authorised either by a planning permission or development order, if a certificate in respect of the activity is issued under section 169 (certificate of lawfulness of existing use or development) or granted by virtue of an appeal against a decision not to issue a certificate under section 173, or if a council withdraws the temporary stop notice. The section provides for compensation for any loss that may have occurred under these circumstances.

Section 188: Compensation where planning permission assumed for other development

A claim for compensation following modification or revocation of planning permission can be made to a council under section 26 of the 1965 Act. It may, however, appear to a council that planning permission could have been granted for development other than that which gave rise to the claim. In such cases a council may direct that it shall be assumed that permission for that other development would be granted either unconditionally or conditionally when assessing the amount of compensation payable.

Section 189: Compensation: decision taken by council or Department where consultee fails to respond under section 229.

A statutory consultee is required, under section 229, to respond (within a specified timeframe) when a council or the Department is determining a planning application. If a council or the Department determines the application without this response, and if it is later necessary to revoke or modify the permission because of information received in a subsequent response, the consultee's sponsoring Department (if any) must pay to a council the amount of any compensation payable.

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Section 190: Interpretation of Part 6

This section provides that Part 6, “compensatable estate” has the same meaning as in the 1965 Act.