

*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

A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

Part 1: Functions of Department with respect to development of land.

Section 1: General functions of Department of the Environment with respect to development of land

This section sets out the Department's duty to formulate and co-ordinate planning policy which must be in general conformity with the Regional Development Strategy. A statutory duty is imposed on the Department in exercising these functions to do so with the objective of furthering sustainable development and promoting or improving well-being. This section also provides for the Department to continue to undertake such surveys or studies as it considers necessary.

Section 2: Preparation of statement of community involvement by Department

This section sets out the requirement for the Department to produce a statement of its policy for involving the community in its planning control functions. The Department must publish its statement within one year of the section coming into operation.

Part 2: Local Development Plans.

Section 3: Survey of district

This section requires a council to keep under review matters which are likely to affect the development of its district or the planning of that development. A council may also keep matters in any neighbouring district under review, to the extent that those matters might affect the area of a council, and in doing so they must consult a council for the neighbouring district concerned.

Section 4: Statement of Community Involvement

This section defines a council's statement of community involvement as a statement of its policy for involving interested parties in matters relating to the development in its district. It requires a council and the Department to attempt to agree the terms of the statement and provides a power of direction for the Department where agreement is not possible. This statement will apply to the preparation and revision of a local development plan and to the exercise of a council's functions in relation to planning control.

Section 5: Sustainable development

This section imposes a statutory duty on any person or body who exercises any function in relation to local development plans to do so with the objective of furthering sustainable development. In doing so they are required to take account of policies and guidance issued by the Office of the First Minister and deputy First Minister, the Department of the Environment and the Department for Regional Development.

Section 6: Local development plan

This section sets out the definition of a local development plan and clarifies the position in relation to potential conflicts between local development plan policies; the conflict must always be resolved in favour of the policy contained in the last development plan document to be adopted or approved. It also confirms in law the status of a development plan in the determination of planning decisions. Where regard is to be had to the local development plan, the determination must be in accordance with the plan unless material considerations indicate otherwise.

Section 7: Preparation of Timetable

This section places a requirement on a council to prepare and keep under review a timetable for the preparation and adoption of its local development plan. A council must attempt to agree the timetable with the Department, however if the timetable cannot be agreed then the Department may direct that the timetable is in the terms specified in the direction.

Sections 8 and 9: Plan Strategy and Local Policies Plan

Sections 8 and 9 impose a statutory duty on a council to prepare a plan strategy and a local policies plan. These documents taken together constitute a local development plan. The local development plan must set out a council's objectives and policies in relation to the development and use of land in its district and any other matters prescribed by regulations. A council must take account of the matters listed in these sections, including the Regional Development Strategy and must carry out a sustainability appraisal for the proposals in each document. The Department may prescribe the form and content of both the plan strategy and the local policies plan.

Section 10: Independent examination

This section requires a council to submit its plan strategy and local policies plan to the Department for independent examination and makes provision for the Department to cause an independent examination to be carried out by the Planning Appeals Commission or a person appointed by the Department. The Department must not appoint an examiner other than the Planning Appeals Commission unless it has had regard to a council's timetable and considers it expedient to do so. The purpose of the examination will be to determine whether the plan strategy or local policies plan is sound and whether it satisfies the requirements relating to its preparation. Any person who makes representations seeking a change to the plan strategy or local policies plan has a right, if they so request, to appear in person at the examination.

After completion of the independent examination, the person appointed to carry out the examination must make recommendations on the plan strategy or local policies plan and give reasons for those recommendations.

Section 11: Withdrawal of development plan documents

This section enables a council to withdraw its plan strategy or local policies plan at anytime before it submits it to the Department for independent examination. However, if either of these documents has been submitted for independent examination, it can only be withdrawn by direction of the Department.

Section 12: Adoption

This section requires the Department to consider the recommendations of the independent examination and provides a power of direction for the Department to undertake one of three options at this stage. It can direct a council to adopt the development plan document as originally prepared, adopt the document with such modifications as may be specified in the direction or direct a council to withdraw the development plan document. A council must comply with the direction within such time as may be prescribed and adopt the plan strategy or local policies plan by resolution of the council.

Section 13: Review of local development plan

This section requires a council to carry out a review of its development plan at such times as the Department may prescribe and to report to the Department on the findings of the review.

Section 14: Revision of plan strategy or local policies plan

This section empowers a council to revise a plan strategy or local policies plan at any time (after adoption). If a review under section 13 indicates that it should do so, or it is directed to do so by the Department, then it must carry out a revision. Revisions to a plan strategy or local policies plan must comply with the same requirements as those which apply to the preparation of a plan strategy or local policies plan.

Section 15: Intervention by Department

This section allows the Department, if it thinks that a plan strategy or local policies plan is unsatisfactory, to direct a council to modify the plan strategy or local policies plan at any time before it is adopted. The council must comply with the direction.

Section 16: Department's default powers

This section contains default powers for the Department to prepare or revise a council's plan strategy or local policies plan if it thinks a council is failing properly to carry out these functions itself. A council must reimburse the Department for any expenditure it incurs in exercising these powers.

Section 17: Joint plans

This section enables two or more councils to jointly prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan. It also sets out the arrangements which are to apply in such a case. If any council withdraws from an agreement to prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan, it will be possible for the remaining council(s) to continue with the preparation of the plan strategy or local policies plan if it satisfies the conditions required for it to be treated as a "corresponding document".

Section 18: Power of Department to direct councils to prepare joint plans

This section enables the Department to direct two or more councils to prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan. In the instance of the Department issuing such a direction no council may withdraw from the joint working and the preparation of (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan must follow the preparation requirements under this Part to its natural conclusion.

Section 19: Exclusion of certain representations

This section allows a council, Planning Appeals Commission or person appointed by the Department to disregard representations in relation to a plan strategy or local policies plan if the representations are made in respect of anything that is done or proposed under certain orders or schemes made under the New Towns Act (Northern Ireland) 1965, the Housing (Northern Ireland) Order 1981, Part 7 of the Planning (Northern Ireland) Order 1991, the Roads (Northern Ireland) Order 1993, or a simplified planning zone scheme or an enterprise zone scheme under this Act. These Orders and this Act set out specific procedures for considering the representations and objections concerned.

Section 20: Guidance

This section requires that any body in carrying out any function under this part must have regard to any relevant guidance issue by the Department, the

Department for Regional Development, or the Office of First Minister and deputy First Minister.

Section 21: Annual monitoring report

This section requires councils to report annually to the Department on whether the policies in the plan strategy or local policies plan are being achieved. The section also provides powers for the Department to make regulations prescribing what information an annual report must contain, the period it must cover, when it must be made and the form it must take.

Section 22: Regulations

This section gives the Department the power to make regulations in connection with the exercise by any person of local development plan functions.

Part 3: Planning Control.

Section 23: Meaning of “development”

This section re-enacts the broad definition of the meaning of development and clarifies what is deemed to be included under the term, “building operations”. It also lists the operations or uses of land which, for the purposes of the Act, do not involve development of land. An amendment is included to exclude (for certain buildings specified by direction) structural alteration consisting of partial demolition from the definition of development.

Section 24: Development requiring planning permission

This section re-enacts the requirement for planning permission to be sought for developing land. Permission is not required to return to a former land use after planning permission which is time bound expires. Development orders can grant planning permission without applications being required. Where an enforcement notice has been issued permission is not required for the use of the land for any purpose it could have been legally used for if the development which is being enforced against had not been carried out.

Section 25: Hierarchy of Developments

A new hierarchy of developments is defined and the Department can make regulations as to the classes of development which fall into either the major developments or local developments categories. The Department can require a specific application which would normally be a local development to be dealt with as if it is a major development.

Section 26: Development’s jurisdiction in relation to developments of regional significance

This section allows the Department to make regulations as to which applications falling within the major developments category should be submitted directly

to it. Where a proposed development exceeds specific thresholds set out in Regulations, the applicant must, before submitting an application for planning permission, consult with the Department to enable the Department decide if the proposed development will fall to be determined by the Department or the relevant council. If the Department considers that the application is regionally significant based on the criteria indicated at section 26(4), then it will deal with it itself. An exception is made for urgent development by the Crown where an application can be made directly to the Department. Applications under this section follow the process similar to that previously used for Article 31 applications under the Planning (Northern Ireland) Order 1991, with the option for a public 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 appropriate council indicating the decision it proposes to make. If an application raises national security or security of premises issues, an inquiry must be held. The decision of the Department is final on these applications.

Section 27: Pre-application community consultation

Obligations are placed on the developer to consult the community in advance of submitting an application if the development falls within the major category. This includes those major developments which the Department will determine because they are of regional significance. The minimum period of consultation is 12 weeks, and regulations will prescribe the minimum requirements for the developer. Additional requirements may be placed on the consultation arrangements for a particular development if a council or Department considers it appropriate.

Section 28: Pre-application community consultation report

After the community consultation in section 27, a report must be produced and this is to be submitted with the application for planning permission. Regulations can be made as to the form the report must take.

Section 29: Call in of applications, etc., to Department

This allows the Department to direct that certain applications (including those where either the Secretary of State or the Department of Justice has certified that an application raises issues relating to national security or the security of premises) be referred to it instead of being dealt with by a council. The process for determination is then the same as for the regionally significant developments mentioned in section 26, with the option for a public inquiry. 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 30: Pre-determination hearings

The Department may, by subordinate legislation, require a council to provide the opportunity for the applicant to have a hearing before a council, as part of

the application process, for certain types of applications. The procedures for the hearings will be decided by a council concerned, and it will decide on the parties which will have a right to attend the hearing.

Section 31: Local developments: schemes of delegation

This section requires each council to prepare a scheme of delegation, stating the application types where a decision may be taken by an appointed officer rather than a council. The scheme must be kept under regular review. The decision will have the same effect as one taken by a council. In individual cases a council will be able to decide that an application which would normally fall within this scheme be determined by a council.

Section 32: Development orders

The Department must make a development order stating the types of development which by virtue of the order are granted planning permission and those for which permission must be applied for. The grant of permission can include permission with conditions if necessary. In the case of permitted development, a council and Department will have the power to direct in relation to a particular case or area of land that the permission which would otherwise be granted by the order does not apply, and an application must be made.

Section 33: Simplified planning zones

This section makes provision for simplified planning zones by defining them and by prescribing their content and effect. The effect of a simplified planning zone is to grant planning permission for development specified in the scheme or for development of any specified class.

Section 34: Making and alteration of simplified planning zone schemes

This section enables a council to make or alter a simplified planning zone scheme at any time in any area of its district. The exception is where a scheme has been approved by the Department rather than adopted by a council. In such cases, the consent of the Department is required before a scheme may be altered by the relevant council.

In making or altering a simplified planning zone scheme councils must take account of the Regional Development Strategy, any guidance issued by the Department and any other matters either prescribed in regulations or contained in a direction given by the Department.

Section 35: Simplified planning zone schemes: conditions and limitations on planning permission

This section describes the types of conditions and limitations which may be placed on planning permission specified in a simplified planning zone scheme. It also covers the effects of a simplified planning zone on development other than that for which permission has been granted under the scheme.

Section 36: Duration of simplified planning zone scheme

This section provides that a simplified planning zone scheme shall last for a period of ten years from the date when it was adopted by a council or approved by the Department. Upon expiry of the scheme, the planning permission granted by the scheme shall no longer have effect except where development authorised by it has already been commenced.

Section 37: Alteration of simplified planning zone scheme

This section sets out the effect of alterations to an existing simplified planning zone scheme.

Section 38: Exclusion of certain descriptions of land or development

This section prescribes the areas to be excluded from a Simplified Planning Zone scheme. There are two categories: those that are mandatorily excluded by subsection (1), and those which may be excluded by order of the Department under subsection (3). The first category includes land designated as a National Park, land designated as an area of outstanding natural beauty, land declared to be an area of special scientific interest and land declared to be a national nature reserve.

Section 39: Grant of planning permission in enterprise zones

This section declares the effect of an enterprise zone designation in planning terms. It also describes the effect where modifications to an existing scheme are made. Planning permission granted under an enterprise zone scheme will not apply in relation to certain developments where a direction to that effect is made by the Department.

Section 40: Form and content of applications

The format of applications for planning permission is governed by this section. A development order may specify the information and documents which must accompany an application and the form and content of it. This section requires certain applications for planning permission and consent to be accompanied by a statement about the design principles and concepts that have been applied to the development and a statement about how issues relating to access to the development have been dealt with.

Section 41: Notice, etc., of applications for planning permission

The publicity requirements for applications for planning permission is governed by this section. A development order may set out the detailed publicity requirements. A council or the Department must not consider an application if the publicity requirements are not satisfied.

Section 42: Notification of applications to certain persons

This section requires certain certificates to be submitted with each planning application to satisfy a council or Department that the owner has consented to, or is aware of, the application for development of their land. It also covers land held on a tenancy, and makes it an offence to issue a false certificate. The form of these certificates are to be prescribed by development order.

Section 43: Notice requiring planning application to be made

A council may serve a notice on an owner or occupier requiring him or her to apply for planning permission for development which has been carried out without planning permission having been granted. The notice must now be served within 5 years of the date upon which the development was begun. It is an offence not to comply with this in the time specified within the notice. Provision is made to deal with changes in ownership and the withdrawal of notices.

Section 44: Appeal against notice under section 43

Three grounds for appealing against notices under section 43 are set out in this section. Appeals are made to the Planning Appeals Commission and the appellant has the opportunity to appear before and be heard by the Commission, as does a council.

Section 45: Determination of planning applications

A council, or the Department, is empowered under this section either to grant planning permission (unconditionally or subject to such conditions as it sees fit) or to refuse permission. This is subject to a number of conditions including the obligation to have regard to the local development plan (so far as material to the application) and to any other material considerations, and to take account of representations made to it.

Sections 46 to 49: Power to decline to determine subsequent or overlapping applications

These sections set out the cases where a council or the Department may decline to determine subsequent, repeat or overlapping applications. Existing powers within the Planning (Northern Ireland) Order 1991 are expanded to allow councils to decline to determine a repeat application where the Planning Appeals Commission has refused a similar deemed planning application within the last 2 years. Councils may also decline to determine overlapping applications made on the same day as a similar application and where similar applications are under consideration by the Planning Appeals Commission.

Section 50: Duty to decline to determine application where section 27 not complied with

If the pre-application community consultation requirements in section 27 have not been complied with, a council or Department must decline to determine the

application. A council or Department can request additional information in order to decide whether to decline the application.

Section 51: Assessment of environmental effects

This section sets out the power of the Department to make regulations requiring the environmental effects of development to be considered when determining a planning application.

Section 52: Conditional grant of planning permission

Planning permission can be granted by a council or Department with conditions. These can relate to, amongst other things, regulation of the land use, or restoration of the land at the end of a specified period of time.

Section 53: Power to impose aftercare conditions on grant of mineral planning permission

The power to impose aftercare conditions is made available to councils and the Department to ensure mineral sites are restored to the required standard once development has finished. A condition may set out the steps to be taken to bring land to the required standard for use for ecological purposes, or agricultural, forestry or amenity.

Section 54: Permission to develop land without compliance with conditions previously attached

A person who has been granted planning permission with conditions can apply under this section to have them changed or set aside, provided the time limit has not expired on the planning permission. The form and content of such applications may be set out in a development order.

Section 55: Planning permission for development already carried out

This section allows a council or Department to grant planning permission retrospectively on application. This can cover development which has no planning permission or which did not comply with conditions attached to permission, including a time condition.

Section 56: Directions etc. as to method of dealing with applications

The Department may make a development order to specify how applications are to be dealt with. It can direct that a council is restricted in its power to grant permission for some developments, and require it to consider conditions suggested by the Department before granting permission on an application. A development order may require councils and the Department to consult specified authorities or persons before determining applications. A development order can also specify the person to whom applications need to be sent to under the Act, and who should in turn be sent copies.

Section 57: Effect of planning permission

This provision states that once planning permission is granted it has effect for the benefit of the land and of anyone who has an interest in the land at the time. If the permission includes the erection of a building, it can specify the use to which this building should be put.

Section 58: Appeals

If an application made to a council is refused or granted subject to conditions the applicant may appeal to the Planning Appeals Commission. The previous time limit for lodging an appeal is reduced from 6 months to 4 or such other period as may be prescribed by development order. If the applicant or council so wish, they may appear before and be heard by the Commission.

Section 59: Matters which may be raised in an appeal under section 58

A party to the proceedings of an appeal under section 58 will not be able to raise any matter that was not in front of a council or the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the Planning Appeals Commission, that the matter could not have been raised before that time or that its not being raised was due to exceptional circumstances.

Section 60: Appeal against failure to take planning decision

An applicant may ask the Planning Appeals Commission to determine their planning application if a council has not done so within a specified or agreed time (a “non determination appeal”).

Section 61: Duration of planning permission

Every planning permission granted or deemed to be granted, will be subject to the condition that the development must begin within 5 years of the date on which permission is granted (or such other period as considered appropriate by the Department or council which granted the permission).

Section 62: Duration of outline planning permission

Outline planning permission establishes for the applicant whether a proposal is acceptable in principle before embarking on the preparation of detailed plans (“reserved matters”). Unless provided otherwise reserved matters must be submitted for approval within 3 years of the grant of outline planning permission and development must be begun within 5 years of the grant of outline permission or 2 years from the final approval of reserved matters.

Section 63: Provisions supplementary to sections 61 and 62

This section includes ancillary provisions required for the working of sections 61 and 62 above. These include defining planning authority as a council, the Department, the Planning Appeals Commission (when planning permission is

granted on appeal) and the Department of Enterprise Trade and Investment when planning permission is deemed to be granted under Schedule 8 to the Electricity (Northern Ireland) Order 1992. Those operations which establish the time of commencement of development are also defined.

Section 64: Termination of planning permission by reference to time limit

This section allows a council to issue a “completion notice” to require a development which has a time bound planning permission, and which has been begun, to be completed. A council must give at least one year for the completion. Notices can be withdrawn by a council if appropriate.

Section 65: Effect of completion notice

Completion notices issued by a council under section 64 must be confirmed by the Department before they take effect. The person on whom it is served can request a hearing before the Planning Appeals Commission, as can a council. Once it takes effect the planning permission expires at the end of the period allowed for the development’s completion.

Section 66: Power of Department to serve completion notices

This allows the Department to issue completion notices which have the same effect as those issued by a council. It must consult a council before doing so.

Section 67: Power to make non-material changes to planning permission

Councils may make a change to a planning permission already granted on application. The change must not have any material effect on the permission, and it includes the power to amend or remove conditions or impose new ones.

Section 68: Revocation or modification of planning permission by council

This section allows a council to revoke or modify any planning permission, provided the operations have not been completed or change of use has not yet occurred.

Section 69: Aftercare conditions imposed on revocation or modification of mineral planning permission

This section permits a council to impose aftercare conditions where a mineral planning permission has been modified or revoked by an order served under section 68.

Section 70: Procedure for section 68 orders: opposed cases

This section requires that an opposed modification or revocation order served under section 68 by a council must be confirmed by the Department before it can take effect. The person on whom it is served can request a hearing before the Planning Appeals Commission, as can a council. The Department may confirm an order with or without modification.

Section 71: Procedure for section 68 orders: unopposed cases

This section allows for an expedited procedure for section 68 cases which are not opposed.

Section 72: Revocation or modification of planning permission by the Department

This gives the Department the power to revoke or modify planning permission after consulting a council. A council may request to appear before and be heard by the planning appeals commission. The notice has the same effect as if it was issued by a council.

Section 73: Orders requiring discontinuance of use of alteration or removal of buildings or works

A council can issue an order requiring a particular land use to stop or require buildings to be removed or altered. The NI Housing Executive has a duty to house anyone whose place of residence is displaced if there is no reasonable alternative accommodation.

Section 74: Confirmation by Department of section 73 orders

The Department must confirm (with or without modification) an order issued by a council under section 73 before it takes effect. Notification requirements for a council are contained in this section. The person on whom the notice is served has the opportunity to appear before and be heard by the Planning Appeals Commission.

Section 75: Power of Department to make section 73 orders

This allows the Department to issue an order under section 73 instead of a council. It must consult the council before doing so.

Section 76: Planning agreements

This section enables any person who has an estate in land to enter into a planning agreement with either a council or the Department (whichever is the relevant authority). A planning agreement may facilitate or restrict the development or use of the land in any specified way, require operations or activities to be carried out, or require the land to be used in any specified way. An agreement may also require a sum or sums to be paid to the relevant authority or to a Northern Ireland department on a specified date or dates or periodically. The relevant authority has the power to enforce a planning agreement by entering the land and carrying out the operations itself. Any expenses incurred in doing so are recoverable from the person or persons against whom the agreement is enforceable.

Section 77: Modification and discharge of planning agreements

This section provides that a planning agreement may not be modified or discharged except by agreement between the relevant authority and the person

or persons against whom the agreement is enforceable. It sets out the conditions under which a planning agreement may be modified or discharged and enables regulations to be made with respect to applications under subsection (4) and determinations under subsection (7).

Section 78: Appeals

This section enables a person who applies for the modification or discharge of a planning agreement to appeal to the Planning Appeals Commission where the relevant authority fails to give notice of its determination to the applicant within such period as may be prescribed, or determines that a planning agreement shall continue to have effect without modifications.

Section 79: Land belonging to councils and development by councils

This section introduces new powers setting out the procedure for dealing with councils' own applications for planning permission. The new powers are introduced to ensure councils do not face a conflict of interest in dealing with their own proposals for development. Provisions are introduced for councils to grant planning permission for their own development or for development carried out jointly with another person and for development to be carried out on land owned by councils.

Specifically, the new powers enable the Department to make regulations modifying the application of Parts 3 (Planning Control), 4 (Additional Planning Control - apart from Chapters 1 and 2 of that Part) and 5 (Enforcement) of the Planning Act in relation to land of interested councils; and the development of any land by interested councils jointly with any other persons. The regulations will deal with governance arrangements and will ensure that conflicts of interest are avoided.

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 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.

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.

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.

Section 190: Interpretation of Part 6

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

Part 7: Purchase of estates in certain land affected by planning decisions.

Section 191: Service of purchase notice

This section enables a land owner, who claims their land is left without any reasonable beneficial use by virtue of a planning decision, to issue a purchase notice to seek to have a council acquire it. A purchase notice must be served within the time and manner specified by a development order.

Section 192: Purchase notices: Crown land

This section sets out the conditions whereby a purchase notice may be served in respect of Crown land.

Section 193: Action by council following service of purchase notice

Under this section after a purchase notice is served on a council it may respond in a number of ways. A council may serve a notice that it is willing to comply with the purchase notice or it may serve a counter-notice by way of objection. A counter-notice must state the reasons why a council does not wish to comply with the purchase notice.

Section 194: Further ground of objection to purchase notice

This section allows a council to object to development of land which although incapable of beneficial development in its existing state, ought to remain undeveloped in accordance with a condition attached to a previous planning permission.

Section 195: Reference of counter-notices to Lands Tribunal

This section empowers the Lands Tribunal to decide if either the purchase notice or a council's counter-notice should be upheld.

Section 196: Effect of valid purchase notice

This section states that when a purchase notice has been accepted, a council is deemed to have entered into a contract to purchase the land to which the notice applies. It also sets out arrangements for payment.

Section 197: Special provision as to compensation under this Part

Under this section if compensation is payable in respect of expenditure incurred in carrying out any work on land under section 26 of the 1965 Act, then, if a purchase notice is served on that land, the compensation payable in respect of the acquisition of that estate in pursuance of the purchase notice shall be reduced to an appropriate value.

Part 8: Further provisions as to historic buildings.

Section 198: Historic Buildings Council

This section authorises the continuance of the Historic Buildings Council. It also outlines the functions of a council as keeping under review the general state of preservation of listed buildings, advising the Department on the preservation of such buildings as the Department may refer to it and such other functions as conferred on it by statutory provision.

Section 199: Grants and loans for preservation or acquisition of listed buildings

Under this section the Department has the power to make a contribution to expenditure (through grants or loans) incurred in the repair or maintenance of a listed building or in the upkeep of land comprising any such building or repair or in the maintenance of objects kept in the building. The Department, in conjunction with Department of Finance and Personnel, can make grants or loans to the National Trust towards the cost of acquiring a listed building, any land associated with any such building, or any objects which are usually kept in the building.

Section 200: Acquisition of listed buildings by agreement

Under this section the Department may acquire a listed building or land comprising such a building by agreement, purchase, lease or otherwise or by gift. The Department may also acquire objects which have been kept in a listed building or an estate vested in the Department or in a listed building under its control or management. The Department may at its discretion make arrangements for the management, custody and use of property acquired or accepted by it.

Section 201: Acceptance by Department of endowments in respect of listed buildings

This section sets out arrangements for the acceptance by the Department of endowments in respect of listed buildings.

Section 202: Compulsory acquisition of listed buildings

Under this section the Department may intervene and compulsorily acquire a listed building and any land associated with the building if the Department determines it necessary to preserve the building or for its proper control or management. Compulsory acquisition procedures are set out within the section.

Part 9: The Planning Appeals Commission (Planning Appeals Commission).

Section 203: The Planning Appeals Commission (Planning Appeals Commission)

This section describes the continued governance arrangements of the Planning Appeals Commission including its senior structure, impartiality and administration. These provisions were transferred to OFMdfM by the [Departments \(Transfer of Functions\) Order \(NI\) 2001, SR 2001, No. 229](#).

Section 204: Procedure of appeals commission

This section describes the procedures of the Planning Appeals Commission, including the appointment of members of the appeals commission to hear appeals, inquiries / independent examinations or hearings and after consultation with the commission and the Department (OFMdfM), the appointment of assessors to sit with the members appointed to advise the member on any matters arising. OFMdfM may make rules regulating the procedure for proceedings before the Planning Appeals Commission.

Section 205: Power to award costs

This section enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will normally come to an agreement amongst themselves, but in the event agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court.

Section 206: Orders as to costs; supplementary

This section applies the provisions relating to award of costs to circumstances where a hearing has been cancelled.

Part 10: Assessment of Council's performance or decision making.

Section 207: Assessment of council's performance

This section introduces new powers for the Department to conduct an assessment of a council's performance or to appoint a person to do so. The assessment may cover a council's performance of its planning functions in general or of a particular function.

Section 208: Assessment of council's decision making

This section gives the Department or a person appointed by the Department the power to conduct an assessment of how a council deals with applications for planning permission. This power is limited to exclude decisions made within the year preceding the date that a council are notified of the assessment. The assessment may cover the basis for determinations, the processes by which

they have been made and whether they were in accordance with the local development plan or conformed with advice given by the Department.

Section 209: Further provision as respects assessment of performance or decision making

This section details the arrangement for assessments of councils' performance or decision making. The Department is required to notify a council of its intention to carry out an assessment, and to indicate its intended scope and, where it appoints a person to carry out the assessment, it is to advise a council who the appointed person is. The Department will have powers to determine that the scope of an assessment under section 208 may relate to a type of application, a period of time or a geographical area. For the purposes of any assessment the Department or the appointed person may require access to any premises of a council and any documents which appear to be necessary for the purposes of the assessment. The section allows the Department or the appointed person to require a person to give them such information as necessary and to attend in person to give the information or documents and requires a council to provide the Department or the appointed person with every facility and all information which may reasonably be required. The Department or the appointed person must give 3 clear days notice of any requirement under this section and produce a document of identification if required to do so.

Section 210: Report of assessment

The Department or the appointed person is required to prepare a report (an assessment report), and issue it to a council. The report may recommend improvements which a council should make. A council is required to prepare and submit a response report to the Department within 3 months of receipt of the assessment report. Both reports must be published. The Department may issue a direction specifying actions where a council declines to implement recommendations or appears not to be carrying out what it proposes in its response report. The Department must publish any such direction or variation of a direction.

Part 11: Application of Act to Crown Land.

Section 211: Application to the Crown

Section 211 applies the provisions of the Act to the Crown with the exception of enforcement functions covered by sections 146, 156, 161 and 166 of the Act, subject to express provisions detailed in the remainder of Part 11. This means that the Crown requires planning permission or consent in accordance with the Act and relevant subordinate legislation.

Section 212: Interpretation of Part 11

This section deals with the interpretation of Part 11 and includes various definitions.

Section 213 Urgent Crown development and section 214 Urgent works relating to listed buildings on Crown land

Section 213 covers instances where development by Crown bodies will be considered to be of significant public importance and require the processing of applications more quickly than permitted by the processing procedures of councils. The new powers aim to streamline the process and provide for the direct submission of planning applications to the Department. A similar procedure is introduced for urgent works to a listed building on Crown land.

Section 215: Enforcement in relation to the Crown

This section provides that the Crown should remain immune from prosecution for any offence under the Act. A council or the Department is able to initiate enforcement action by, for example, serving enforcement notices but is not able to enforce them by entering land or making applications to the court without the consent of the appropriate authority (appropriate authority is defined in section 212 of the Act). In granting such consent the appropriate authority may impose such conditions as it considers relevant. This might mean, for example, that any site visit by the Department has to be accompanied, to take place at a pre-arranged time and/or to exclude certain parts of the site.

Section 216: References to an estate in land

This section deals with references to an estate in land and states that references to an “estate” in land includes a Crown estate.

Section 217: Applications for planning permission, etc. by Crown

This section sets out that, through subordinate legislation, the Department may modify or exclude any statutory provision relating to the making and determination of applications for planning permission or consent etc by the Crown.

Section 218: Service of notices on the Crown

This section deals with the service of notices on the Crown and states that notices under the Planning Act must be served on the appropriate authority. In addition Section 24 of the Interpretation Act (Northern Ireland) 1954 in relation to the service of such notices has been disapplied.

Part 12: Correction of Errors.

Section 219: Correction of errors in decision documents

The power to allow the Department to correct errors in its decision documents/notices was introduced by [The Planning Reform \(NI\) Order 2006 \(No. 1252 NI 7\)](#). power has now been amended by the current Act. Firstly, the power to correct errors is now transferred to councils and secondly, the requirement to first obtain the written consent of the applicant (or the landowner if that is not

the applicant) has been removed. The section also allows a council to correct an error if requested in writing by any person and if it sends a written statement to the applicant explaining the error and stating that it intends to make a correction.

Section 220: Correction notice

Under this section a council must, after making any correction or deciding not to make any correction, issue a notice in writing specifying the correction of the error or giving notice of its decision not to correct the error.

Section 221: Effect of correction

This section describes the impact where a correction is made or where a correction is not made.

Section 222: Supplementary

This section defines a decision document and a correctable error for the purposes of this Part.

Part 13: Financial Provisions.

Section 223: Fees and charges

This section enables the Department to make regulations for the payment of charges or fees for the recovery of the costs of performing council or departmental functions including determining planning applications. OFMdFM may also make regulations for the payment of a charge or fee in respect of deemed planning applications or planning appeals. This section also introduces new provisions for charging multiple fees for retrospective planning applications and where deemed planning applications are submitted to the Planning Appeals Commission on foot of an enforcement appeal.

Section 224: Grants for research and bursaries

This section allows the Department to make grants to research or education institutions relating to the planning and design of the physical or built environment. Students undertaking particular courses may be awarded bursaries.

Section 225: Grants to bodies providing assistance in relation to certain development proposals

These provisions allow the Department to award a grant to an organisation which is assisting the community with understanding planning policy, or which is providing technical expertise to allow development proposals to be easily understood. Grants may also be made to organisations which aim to further the preservation, conservation and regeneration of historic buildings. The organisations being funded must not be profit making bodies.

Section 226: Contributions by councils and statutory undertakers

This section creates a discretionary power to allow statutory undertakers or other councils to contribute to the costs of a council carrying out a review under section 3 – matters affecting development. Also available is a discretionary power allowing statutory undertakers or other councils to contribute to another council's costs when discharging specified planning functions under the Act. Finally, the Department will be able to require councils to contribute to another council's compensation costs when that council is carrying out certain specified functions under the Act.

Section 227: Contributions by departments towards compensation paid by councils

This section provides a discretionary power whereby a government department can contribute to the compensation costs of a council if those costs were incurred by a council decision or order made in the interest of services provided by that government department.

Part 14: Miscellaneous and General Provisions

Section 228: Review of Planning Act

This section requires the Department to review and issue a report on the implementation of the Act 3 years after the commencement of Part 3 of the Act and at least once in every 5 years after that.

Section 229: Duty to respond to consultation

This section introduces a requirement that those persons or bodies which a council or the Department are required to consult before determining certain applications for planning permission or consent must respond to consultation requests within a prescribed period. The section also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.

Section 230: Minerals

This section provides for the application of the Act to development consisting of the winning and working of minerals, subject to modifications. The circumstances under which mining operations are considered to be a "use" of land are stipulated.

Section 231: Local inquiries

This section allows the Department to hold a public inquiry when carrying out any of the functions of this Act. The provisions of the [Interpretation Act \(NI\) 1954 \(c.33\)](#) apply to these inquiries. The Department may make rules for the procedures to be followed during the inquiry process. Such rules will be subject to negative resolution.

Section 232: Inquiries to be held in public subject to certain exceptions

Given the changes in the role of the Secretary of State and the new role of the Department of Justice, following devolution of policing and justice powers, these provisions clarify the responsibilities of the Secretary of State and the Department of Justice in relation to inquiries. The provisions deal with procedures for planning applications, etc, where, in the opinion of the Secretary of State/the Department of Justice, the consideration by a council or Department of objections or representations received in relation to the application raise issues of national security or the security of Crown or other premises and that the disclosure of related information would be contrary to the national or public interest.

The Secretary of State will have responsibility for issuing a relevant direction under section 232 in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information relating to:

- (a) national security; or
- (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 government department or held in trust for Her Majesty for the purposes of a government department; or
- (c) 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.

The provisions also set out that the Department of Justice will have responsibility for issuing the relevant direction under section 232 in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information (contrary to the public interest) relating to the measures to be taken to ensure the security of any premises or property other than premises or property mentioned above.

Section 233: Directions: Secretary of State

This section sets out that the Secretary of State may direct that certain evidence may only be heard by, or be open to inspection by, certain persons. If the Secretary of State is considering giving such a direction, 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 such evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.

Section 234: Directions: Department of Justice

This section sets out that the Department of Justice may direct that certain evidence may only be heard by, or open to inspection by, certain persons. If the Department of Justice is considering giving such a direction, the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting such evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.

Section 235: National security

This section contains the procedures for planning applications, consents and approvals where, in the opinion of the Secretary of State or, as the case may be, the Department of Justice, the consideration by a council or the Department of objections or representations received in relation to the application raise issues of national security or matters relating to the security of Crown or other properties and the public disclosure of such information would be contrary to the national or public interest. Procedures will enable decisions to be made where, for security reasons, details of the development cannot be revealed but where to withhold such details would impact on the ability of interested parties to fully participate in the planning process. The Department will be required to hold a public local inquiry in such circumstances. The roles of the Secretary of State and the Department of Justice in relation to certification under this section are split. The Secretary of State will have responsibility for the making of rules in circumstances where he has certified under this section, the Department of Justice will have responsibility for the making of corresponding rules where that Department issues the relevant certification under this section.

Section 236: Rights of entry

This section gives councils and the Department the powers of entry they require to discharge their functions under this Act. Powers of entry are also given to the Department of Finance and Personnel and the Planning Appeals Commission in respect of their functions under this Act.

Section 237: Supplementary provisions as to powers of entry

This section sets out the obligations on a person exercising powers of entry under section 236 to provide notice to occupiers and, if required, identification on arrival. Provisions covering trade secrets and damages to property are addressed.

Section 238: Supplementary provisions as to powers of entry: Crown land

Additional provisions for the exercise of the powers of entry under section 236 when the land is owned by the Crown are contained in this section. Advance permission must be obtained from the appropriate authority.

Section 239: Service of notices and documents

This section allows for the service of notices to be completed via electronic communication where the recipient has agreed to this. Provisions are contained for permission to be withdrawn and a list of notices to which this cannot apply is listed in subsection (3).

Section 240: Information as to estates in land

This section allows a council or the Department to require occupiers of premises to provide information to them on the owner and to enable them to serve a notice or other document on the owner. Failure to give this information within the stipulated timeframe is an offence.

Section 241: Information as to estates in Crown land

This section disapplies section 240 when the land is Crown land. Powers are given to the Department to request the same information as that in section 240, and the authority must generally comply with this request.

Section 242: Planning Register

This section requires all councils to keep and make available a planning register containing copies of the items listed, which includes all applications for planning permission. A development order may require the Department to populate the register of the relevant council when an application is submitted directly to it, or it issues a notice under departmental reserved powers.

Section 243: Power to appoint advisory bodies or committees

This section allows the Minister to appoint bodies to assist the Department in any of its functions under this Act.

Section 244: Time limit for certain summary offences under this Act

This section gives jurisdiction to the magistrates' court to hear complaints on offences relating to breach of condition notices if the complaint is made within 3 years from the time when the offence was committed or ceased to continue.

Section 245: Registration of matters in Statutory Charges Register

This section sets out the matters which must be registered in the Statutory Charges Register.

Section 246: Directions

This section confirms that any directions which may or must be given by a council or the Department may be withdrawn, varied or revoked by a subsequent direction.

Section 247: Regulations and orders

This section details the Assembly controls which will apply to regulations and orders under the Act. Regulations under sections 153 and 154 must not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Section 248: Amendment of certain time periods in relation to enforcement

This section relates to the new 5 year enforcement time limit provisions contained in the Planning Act and makes similar provision in relation to the Planning (Northern Ireland) Order 1991 by means of amendments to that Order.

Initially it was planned that the provisions setting the time limits for breaches of planning control to 5 years would be commenced with the provisions of the rest of the Act and within a time scale to be agreed. This section enables the Department to bring these limits into effect in a shorter timeframe. This is achieved by amending the Planning (Northern Ireland) Order 1991. Amending provisions are required to specifically adjust Articles 23, 24, 67B, 67F, 73 and 82 of the Planning (Northern Ireland) Order 1991.

Section 249: Increased penalties for certain offences under the Planning (Northern Ireland) Order 1991

Section 249 raises fines from £30,000 to £100,000 for certain offences (relating to control of works for demolition, alteration or extension of a listed building and contravention of tree preservation orders) under Articles 44(6) and 66(1) of the Planning (Northern Ireland) Order 1991.

The section also provides that the provisions amending the Planning (Northern Ireland) Order 1991, increasing fines from £30,000 to £100,000, do not have effect in relation to any relevant offence committed before the commencement date. The increased fines are effective from Royal Assent.

Part 15: Supplementary

Section 250: Interpretation

This section contains interpretation provisions and defines a number of terms used throughout the Act.

Section 251: Further provision

This section allows the Department to make subordinate legislation to give full effect to the Act including transitional or transitory provisions and savings in connection with the coming into operation of any provisions. A draft of such an order must be laid before and be approved by resolution of the Assembly.

Section 252: Minor and consequential amendments

This section provides for the amendments set out in Schedule 6 to have effect.

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

Section 253: Repeals

This section provides for the repeals set out in Schedule 7 to have effect.

Section 254: Commencement

This section concerns the commencement of the Act and enables the Department to make commencement orders. Orders made under Part 3 of the Act shall be laid before and be approved by a resolution of the Assembly. Section 249 comes into operation on Royal Assent.

Section 255: Short title

This section provides a short title for the Act.