

STATUTORY INSTRUMENTS

1991 No. 1220 (N.I. 11)

The Planning (Northern Ireland) Order 1991

- - - - - 21st May 1991

Modifications etc. (not altering text)

- C1** Order modified by [Waste Management Licensing Regulations \(Northern Ireland\) 2003](#) (S.R. 2003/493), Sch. 3 Pt. I para. 11 (as substituted (8.4.2011) by [Waste Regulations \(Northern Ireland\) 2011](#) (S.R. 2011/127), regs. 1(1), **40** (with reg. 9(2)))

PART I

INTRODUCTORY

Title and commencement

- 1.**—(1) This Order may be cited as the Planning (Northern Ireland) Order 1991.
- (2) Subject to paragraph (3), this Order shall come into operation on the expiration of 3 months from the day on which it is made.
- (3) Articles 28, 53 to 63 and 81 shall come into operation on such day or days as the Head of the Department may by order appoint^{F1}.

F1 fully exercised SR 1992/264; 1993/276

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“Act” includes an Act of the Parliament of the United Kingdom;

“the Act of 1965” means the Land Development Values (Compensation) Act (Northern Ireland) 1965;

“advertisement” means any word, letter, model, sign, placard, board, notice,^{F2} awning, blind,] device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the preceding provisions of this definition) includes any hoarding or similar structure used,^{F2} or designed] or adapted for use^{F2} and anything else principally used, or designed or

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adapted principally for use], for the display of advertisements, and references to the display of advertisements shall be construed accordingly;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing lands, meadow land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes;

[^{F2}“breach of condition notice” has the meaning assigned to it by Article 76A;]

[^{F2}“breach of planning control” has the meaning assigned to it by Article 67A;]

“building” includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;

“buildings or works” includes waste materials, refuse and other matters deposited on land, and references to the erection or construction of buildings or works shall be construed accordingly; [^{F2} and references to the removal of buildings or works include demolition of buildings]

[^{F2}“building operations” has the meaning assigned to it by Article 11;

“building preservation notice” has the meaning assigned to it by Article 42A(1);]

“conservation area” has the meaning assigned to it by Article 50;

“contravention of hazardous substances control” has the meaning assigned to it by Article 61(2);

“the Department” means the Department of the Environment;

“development” has the meaning assigned to it by Article 11;

“development order” has the meaning assigned to it by Article 13;

[^{F3}“electricity undertaker” means a holder of a licence under Article 10(1) of the Electricity Order (Northern Ireland) 1992;]

“enactment” includes an enactment in any local or private Act of Parliament, and an order, rule, regulation, bye-law or scheme made under an Act of Parliament;

“enforcement notice” means a notice under Article 68;

“engineering operations” includes the formation or laying out of means of access to roads;

“enterprise zone scheme” means a scheme or modified scheme under Part II of the Enterprise Zones (Northern Ireland) Order 1981 having effect to grant planning permission by virtue of Article 19;

“erection” in relation to buildings includes extension, alteration and re-erection;

[^{F4}“gas undertaker” means a holder of a licence under Article 8 of the Gas (Northern Ireland) Order 1996;]

“hazardous substances consent” means consent required by Article 53;

“hazardous substances contravention notice” has the meaning assigned to it by Article 81(3);

“lease” includes an underlease and an agreement for a lease or underlease, but does not include an option to take a lease or a mortgage, and “leasehold interest” means the interest of the tenant under a lease as so defined;

“listed building” has the meaning assigned to it by Article 42;

“listed building consent” has the meaning assigned to it by Article 44;

“listed building enforcement notice” has the meaning assigned to it by Article 77;

“means of access” includes any means of access, whether private or public, for vehicles or for foot passengers, and includes a street;

“minerals” includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working, except that it does not include turf cut for purposes other than sale;

“mining operations” means the winning and working of minerals in, on, or under land whether by surface or underground working;

“mortgage” includes any charge or lien on any property for securing money or money's worth;

“outline planning permission” has the meaning assigned to it by Article 35(1);

“owner” in relation to land, means a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let;

[^{F2}“planning contravention notice” has the meaning assigned to it by Article 67C(1);]

“planning decision” means a decision made on an application in accordance with Part IV;

“planning permission” means permission under Part IV^{F2}. . . ;

“planning permission granted for a limited period” has the meaning assigned to it by Article 27(2);

“prescribed” means prescribed by regulations under this Order;

“public body” has the same meaning as in the Local Government Act (Northern Ireland) 1972;

“purchase notice” means a notice served under Article 94;

[^{F5}“regional development strategy” means the strategy formulated by the Department for Regional Development under the Strategic Planning (Northern Ireland) Order 1999;]

“re-location of population or industry”, in relation to any area, means the rendering available elsewhere than in that area (whether in an existing community or a community to be newly established) of accommodation for residential purposes or for the carrying on of business or other activities, together with all appropriate public services, facilities for public worship, recreation and amenity, and other requirements, being accommodation to be rendered available for persons or undertakings who are living or carrying on business or other activities in that area and whose continued or resumed location in that area would be inconsistent with the proper planning thereof;

“replacement of open space”, in relation to any area, means the rendering of land available for use as an open space, or otherwise in an undeveloped state, in substitution for land in that area which is so used;

“road” has the same meaning as in the Roads (Northern Ireland) Order^{F6} 1993] but includes land in respect of which street planning functions, as defined in the Private Streets (Northern Ireland) Order 1980, have been exercised under Article 3(1) of that Order;

“simplified planning zone” and

“simplified planning zone scheme” shall be construed in accordance with Article 14;

“statutory provision” has the same meaning as in the Interpretation Act (Northern Ireland) 1954;

“statutory undertaker” means persons authorised by any statutory provision to carry on any railway, road transport,^{F7} . . . water transport, inland navigation, dock or harbour undertaking, or^{F4} a gas undertaker^{F3} or an electricity undertaker], or^{F8} a universal service provider (within the meaning of the Postal Services Act 2000) in connection with the provision of a universal postal service (within the meaning of that Act)^{F7} or the airport operator (within the meaning

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of the Airports (Northern Ireland) Order 1994) of any airport to which Article 25 of that Order applies];

“stop notice” has the meaning assigned to it by Article 73;

“tenancy” includes a tenancy created by an agreement for a lease and a tenancy created under any enactment, but does not include—

- (a) a mortgage term; or
- (b) a tenancy for a year (or any shorter term) or from year to year (or any other periodic tenancy) having reference to any period less than a year; or
- (c) a tenancy at will;

“transferred provision” has the same meaning as in the Interpretation Act (Northern Ireland) 1954;

“tree preservation order” has the meaning assigned to it by Article 65;

“trustee” includes an implied or constructive trustee and a personal representative;

“use” in relation to land, does not include the use of land for the carrying out of any building or other operations thereon.

(3) For the purposes of section 42(3) of the Northern Ireland Constitution Act 1973 (validity of Orders in Council under section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972) provisions of this Order which re-enact provisions of an Order in Council under the said section 1(3) shall be deemed to be provisions of such an Order.

F2 2003 NI 8
F3 1992 NI 1
F4 1996 NI 2
F5 1999 NI 4
F6 1993 NI 15
F7 1994 NI 1
F8 SI 2001/1149

VALID FROM 01/08/2006

[^{F9}Service of Notices and Documents

2A.—(1) This Article does not apply to—

- (a) Part VII, and so far as relating to that Part, Articles 3(2), 102 to 104, 121, 122, 125 and 130;
- (b) Articles 100 and 101, and Article 103 so far as relating to the making of an order under Article 100; or
- (c) Articles 110, 111(1) to (3) and (5) and 127(1)(c).

(2) Without prejudice to section 24(2) of the Interpretation Act (Northern Ireland) 1954, any notice or other document required or authorised to be served on or sent or given to any person under the provisions of this Order may be served, sent or given, in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (3), to that person at that address (subject to paragraph (4)).

(3) The condition mentioned in paragraph (2) is that the notice or other document shall be—

- (a) capable of being accessed by the recipient;

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(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference,

and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if served or given by means of a notice or document in printed form.

(4) Paragraph (2) shall not apply to—

(a) service of a copy of a notice under Article 23(4);

(b) service of a building preservation notice under Article 42A;

(c) giving of notice of the making of a tree preservation order or the service of a copy of such an order, in accordance with regulations under Article 65;

(d) service of a planning contravention notice under Article 67C;

(e) service of a temporary stop notice under Article 67E;

(f) service of a copy of an enforcement notice under Article 68;

(g) the variation or withdrawal of an enforcement notice under Article 68B;

(h) service of a stop notice, or notice of withdrawal of a stop notice under Article 73;

(i) service under Article 76(4) of a notice of the Department's intention to take steps required by an enforcement notice;

(j) service of a breach of condition notice under Article 76A;

(k) service of a copy of a listed building enforcement notice, or notice of variation or withdrawal of a listed building enforcement notice under Article 77;

(l) service of a copy of a hazardous substances contravention notice, or notice of withdrawal of a hazardous substances contravention notice under Article 81;

(m) service of a copy of a notice varying a hazardous substances contravention notice under Article 81A;

(n) service of a notice under Article 125 requiring information as to estates in land.

(5) Where a person uses electronic communications to transmit any notice or other document for any purpose of this Order which is capable of being carried out electronically he shall be taken to have agreed, except where a contrary intention appears, to the use of such communications and that his address for that purpose is the address incorporated into, or otherwise logically associated with the notice or document.

(6) Where a person is no longer willing to accept the use of electronic communications for any purpose of this Order which is capable of being carried out electronically, he shall give notice in writing—

(a) withdrawing any address notified to the Department or the planning appeals commission for that purpose; or

(b) revoking any agreement entered into or deemed to have been entered into with the Department or the planning appeals commission for that purpose,

and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.]

F9 Art. 2A inserted (1.8.2006) by [Planning \(Electronic Communications\) Order \(Northern Ireland\) 2006 \(S.R. 2006/276\)](#), [art. 3](#)

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PART II

FUNCTIONS OF DEPARTMENT OF THE ENVIRONMENT WITH RESPECT TO DEVELOPMENT OF LAND

General functions of Department of the Environment with respect to development of land

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

[^{F10}(1A) The Department shall ensure that any such policy is [^{F11} in general conformity with] the regional development strategy.]

(2 ^{F12} The Department may undertake, or cause to be undertaken, such surveys or studies as it may consider necessary, including surveys or studies relating to any of the following matters—

- (a) the physical and economic characteristics of any area, including the purposes for which land is used;
- (b) the size, composition and distribution of the population of an area;
- (c) the communications, transport system and traffic of an area;
- (d) any changes in relation to the foregoing matters and the effect which the changes are likely to have on the development of Northern Ireland or any part thereof or the planning of that development.

F10 1999 NI 4

F11 2003 NI 8

F12 functions transferred SR 1999/481

PROSPECTIVE

[^{F13}Statement of community involvement

^{F14}3A].

F13 Art. 3A inserted (prosp.) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(3), **3**

F14 [Pts. II-VI](#) repealed (1.4.2015 except for the repeal of Pt. III) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 7](#) (with s. 211); S.R. 2015/49, art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

PART III

DEVELOPMENT PLANS

Development plans

4.—(1) The Department may at any time make a development plan for any area or alter, repeal or replace a development plan adopted by it for any area.

[^{F15}(1A) A development plan for an area must be^{F16} in general conformity with] the regional development strategy.]

(2) A development plan for an area shall consist of—

- (a) a map and a written statement formulating, in such detail as the Department thinks appropriate, proposals for the development or other use of land in the area to which the plan relates; and
- (b) such diagrams, illustrations and descriptive matter as the Department thinks appropriate to explain or illustrate the proposals in the plan.

^{F17}(3) Where a development plan has not been adopted for an area, any provision of this Order which requires or authorises regard to be had to the development plan shall have effect in relation to that area as if any reference to the development plan were omitted.

F15 1999 NI 4

F16 2003 NI 8

F17 prosp. insertion by 2003 NI 8

Publicity and consultation

5.—(1) Where the Department proposes to make, alter, repeal or replace a development plan for an area, it shall proceed in accordance with this Article, unless Article 6 (which provides a short procedure for certain alterations, etc.) applies.

(2) The Department shall consult with the district council for the area or any part of the area to which the plan or proposed plan relates.

(3) The Department shall take such steps as will in its opinion secure—

- (a) that adequate publicity is given, in the area to which the plan or proposed plan relates, to the Department's proposals or to the issues involved;
- (b) that persons who may be expected to wish to make representations to the Department about those proposals or issues are made aware that they are entitled to do so;
- (c) that such persons are given an adequate opportunity of making such representations,

and the Department shall consider any representations made to it within the prescribed period.

(4) The Department shall then prepare the relevant documents, that is, the plan, alterations, instrument of repeal or replacement plan, as the case may be, and shall make copies of the documents available for inspection at such places as the Department considers appropriate.

(5) Each copy of the documents made available for inspection shall be accompanied by a statement of the prescribed period within which objections may be made to the Department.

(6) The Department shall then take such steps as may be prescribed for the purpose of advertising—

- (a) the fact that the documents are available for inspection;
- (b) the places and times at which, and period during which, they may be inspected; and
- (c) the prescribed period within which objections may be made to the Department.

Publicity and consultation-short procedure for certain alterations, etc.

6.—(1) Where the Department proposes to alter, repeal or replace a development plan for an area and it appears to the Department that the issues involved are not of sufficient importance to warrant the full procedure set out in Article 5, the Department may proceed instead in accordance with this Article.

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(2) The Department shall consult with the district council for the area or any part of the area to which the plan relates.

(3) The Department shall prepare the relevant documents, that is, the alteration, instrument of repeal or replacement plan, as the case may be, and shall make copies of the documents available for inspection at such place as the Department considers appropriate.

(4) Each copy of the documents made available for inspection shall be accompanied by a statement of the prescribed period within which representations or objections may be made to the Department.

(5) The Department shall then take such steps as may be prescribed for the purpose of—

- (a) advertising the fact that the documents are available for inspection and the places and times at which, and period during which, they may be inspected; and
- (b) inviting the making of representations or objections in accordance with regulations,

and shall consider any representations or objections made to it within the prescribed period.

Inquiries relating to development plans

7. The Department may cause a public local inquiry to be held by the planning appeals commission for the purpose of considering objections to a development plan or to the alteration, repeal or replacement of a development plan.

Adoption by Department

8.—(1) After the expiry of the period afforded for making objections to a development plan or to the alteration, repeal or replacement of a development plan or, if such objections have been duly made within that period, after considering the objections so made, and, where a public local inquiry is held, the report of the planning appeals commission, the Department may by order adopt the plan, alteration, repeal or replacement in whole or in part (whether with or without modifications) or reject it.

(2) A development plan or any alteration, repeal or replacement of a development plan shall become operative on a date appointed for the purpose in the order under paragraph (1) adopting the plan or the alteration, repeal or replacement.

Incorporation in development plans of certain orders and schemes

9.—(1) Any development plan for an area which includes land to which an order or scheme listed in paragraph (2) relates shall have effect as if the provisions of the order or scheme were included in the plan.

(2) The orders and schemes mentioned in paragraph (1) are—

- (a) an order under section 1 of the New Towns Act (Northern Ireland) 1965;
- (b) an order under Article^{F18} 14 or 15] of the Roads (Northern Ireland) Order^{F18} 1993];
- (c) a redevelopment scheme approved under Article 49 of the Housing (Northern Ireland) Order 1981;
- (d) an enterprise zone scheme;
- (e) a simplified planning zone scheme; and
- (f) a development scheme adopted under Article 86.

F18 1993 NI 15

Regulations as to development plans

10. Without prejudice to Articles 4 to 9, the Department may make regulations with respect to—
- (a) the form and content of development plans; and
 - (b) the procedure to be followed in connection with the making, alteration, repeal and replacement of development plans.

PROSPECTIVE

[^{F19}Sustainable development

10A.—(1) Where the Department or the planning appeals commission exercises any function under Article 3(1) or this Part, the Department or, as the case may be, the commission shall exercise that function with the objective of contributing to the achievement of sustainable development.

(2) For the purposes of paragraph (1) the Department and the commission shall have regard to policies and guidance issued by—

- (a) the Department;
- (b) the Department for Regional Development.]

F19 Art. 10A inserted (prosp.) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(3)(a), 6

PART IV

PLANNING CONTROL

“Development” and requirement of planning permission

Meaning of “development”

11.—(1) In this Order, subject to paragraphs (2) to (4), “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

[^{F20}(1A) For the purposes of this Order “building operations” includes—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alteration of or addition to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.]

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

- (a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building;
- (b) the carrying out by a district council or statutory undertaker of any works for the purpose of inspecting, repairing or renewing any mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

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- (c) the use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such;
 - (d) the use of any land for the purposes of agriculture or forestry and the use for any of those purposes of any building occupied together with land so used;
 - (e) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Department for the purpose of this Article, the use of the buildings or other land or, subject to the provisions of the order, of any part thereof for any other purpose of the same class.
 - [^{F20}(f) the demolition of any description of building specified in a direction given by the Department.]
- (3) For the purposes of this Article—
- (a) the use as two or more separate dwelling-houses of any building previously used as a single dwelling-house involves a material change in the use of the building and of each part thereof which is so used;
 - (b) the deposit of refuse or waste material on land involves a material change in the use thereof, notwithstanding that the land is comprised in a site already used for that purpose, if either the superficial area of the deposit is thereby extended, or the height of the deposit is thereby extended and exceeds the level of the land adjoining the site.
- (4) Without prejudice to any regulations made under this Order relating to the control of advertisements, a use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this Article as involving a material change in the use of that part of the building.

F20 2003 NI 8

Development requiring planning permission

12.—[^{F21}(1)] Subject to this Order, planning permission is required for the carrying out of any development of land.

[^{F21}(2) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted.

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

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

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

F21 2003 NI 8

Development orders

Development orders

13.—(1) The Department shall by order (in this Order referred to as a “development order”) provide for the granting of planning permission.

(2) A development order may either—

- (a) itself grant planning permission for development specified in the order or for development of any class so specified; or
- (b) in respect of development for which planning permission is not granted by the order itself, provide for the grant of planning permission by the Department on an application in that behalf made to the Department in accordance with the order.

(3) A development order may be made either—

- (a) as a general order applicable, except so far as the order otherwise provides, to all land, but which may make different provision with respect to different descriptions of land; or
- (b) as a special order applicable only to such land or descriptions of land as may be specified in the order.

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

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

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

(7) For the purpose of enabling development to be carried out in accordance with planning permission, or otherwise for the purpose of promoting proper development in accordance with a development plan, a development order may authorise the Department to suspend the operation of any enactment contained in a local Act or of any regulations, orders, or bye-laws made at any time under any statutory provision in relation to any development specified under the order.

Simplified planning zone schemes

Simplified planning zones

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

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

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

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

- (a) the development or classes of development permitted by the scheme;
- (b) the land in relation to which permission is granted; and
- (c) any conditions, limitations or exceptions subject to which it is granted;

and shall contain such other matters as may be prescribed.

(5) The Department may at any time make a simplified planning zone scheme in respect of any area or alter a scheme adopted by it in respect of any area.

(6) Articles 5, 6, 7 and 8(1) shall, with any necessary modifications, apply to the making or alteration of a simplified planning zone scheme as they apply to the making or alteration of a development plan.

(7) Without prejudice to paragraph (6), the Department may make regulations with respect to—

- (a) the form and content of simplified planning zone schemes; and
- (b) the procedure to be followed in connection with the making or alteration of such schemes.

Simplified planning zone schemes: conditions and limitations on planning permission

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

- (a) conditions or limitations in respect of all development permitted by the scheme or in respect of particular descriptions of development so permitted; and
- (b) conditions or limitations requiring the consent, agreement or approval of the Department in relation to particular descriptions of permitted development;

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

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

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

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

Duration of simplified planning zone scheme

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

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

(3) The provisions of Article 37(2) to (6) apply to planning permission under a simplified planning zone scheme where development has been begun but not completed by the time the area ceases to be a simplified planning zone.

(4) The provisions of Article 36(1) apply in determining for the purposes of this Article when development shall be taken to be begun.

Alteration of simplified planning zone scheme

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

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

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

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

(5) The adoption of alterations providing for—

- (a) the exclusion of land from the simplified planning zone;
- (b) the withdrawal of planning permission; or
- (c) the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject,

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

(6) The adoption of alterations to a scheme does not affect planning permission under the scheme in any case where the development authorised by it has been begun before the adoption of alterations has effect; and the provisions of Article 36(1) apply in determining for the purposes of this paragraph when development shall be taken to be begun.

Exclusion of certain descriptions of land

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

- (a) land in a conservation area;
- (b) land in an area which is—
 - (i) designated as a National Park under Article 12 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
 - (ii) designated as an area of outstanding natural beauty under Article 14 of that Order;
 - (iii) declared to be an area of special scientific interest under^{F22} Article 28 of the Environment (Northern Ireland) Order 2002];
- (c) land declared to be a national nature reserve under Article 18 of that Order;
- (d) land identified in the development plan for the area as a green belt or part of a green belt;
- (e) land of such other description as may be prescribed.

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

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

- (a) in relation to an area of land specified in the order or to areas of land of a description so specified; or
- (b) for development of a description specified in the order.

(4) An order under paragraph (3) has effect to withdraw such planning permission under a simplified planning zone scheme already in force with effect from the date on which the order comes

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into force, except in a case where the development authorised by the permission has been begun before that date; and the provisions of Article 36(1) apply in determining for the purposes of this paragraph when development shall be taken to be begun.

F22 2002 NI 7

Grant of planning permission in enterprise zones

Grant of planning permission in enterprise zones

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

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

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

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

- (a) a specified development; or
- (b) a specified class of development; or
- (c) a specified class of development in a specified area within the enterprise zone.

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

(6) The Department may by regulations make provision—

- (a) as to the procedure for giving a direction under paragraph (4);
- (b) as to the method and procedure relating to the approval of matters specified in a scheme or modified scheme as mentioned in paragraph (5),

and such regulations may modify any provision of this Order other than this Article.

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

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

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

(10) Paragraphs (2) to (6) of Article 37 shall apply to planning permission under the scheme where development has been begun but not completed by the time the area ceases to be an enterprise zone.

(11) Article 36(1) shall apply in determining for the purposes of this Article when development shall be taken to be begun.

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

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

Planning applications

Form and content of applications

20.—(1) Any application to the Department for planning permission—

- (a) shall be made in such manner as may be specified by a development order;
- (b) shall include such particulars, and be verified by such evidence, as may be required by a development order or by any directions given by the Department thereunder.

(2) Provision shall be made by a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by the Department and in particular—

- (a) for requiring the Department before granting or refusing planning permission for any development to consult with the district council for the area in which the land is situated and with such authorities or persons as may be specified by the order;
- (b) for requiring the Department to give to any applicant for planning permission, within such time as may be specified by the order, such notice as may be so specified as to the manner in which his application has been dealt with.

(3) Paragraphs (1) and (2)(b) shall apply to applications to the Department for any consent, agreement or approval of the Department required by a condition imposed on a grant of planning permission as they apply to applications for planning permission.

Publication of notices of applications

21 ^{F23}.—(1) Subject to paragraph (2), where an application for planning permission is made to the Department, the Department—

- (a) shall publish notice of the application in at least one newspaper circulating in the locality in which the land to which the application relates is situated; and
- (b) shall not determine the application before the expiration of 14 days from the date on which notice of the application is first published in a newspaper in pursuance of sub-paragraph (a).

(2) A development order may provide that paragraph (1) shall not apply to an application for planning permission for development of any class specified by the order.

(3) Where an application for planning permission for development of a class specified under paragraph (2) is made to the Department, the Department shall not determine the application before the expiration of 21 days from the date on which it is received by the Department.

F23 mod. SR 1999/338

Notification of applications to certain persons

22.—(1) Subject to paragraph (2), the Department shall not entertain an application for planning permission in relation to any land (in this Article and in Article 23 referred to as “the designated land”) unless it is accompanied by one or other of the following certificates, that is to say,—

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

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- (i) a legal or equitable fee simple absolute, a legal or equitable fee tail or a legal or equitable life estate;
 - (ii) a tenancy of which not less than 40 years of the term thereof remain unexpired;
- (b) a certificate stating that the application is made by or on behalf of the trustees of a trust or settlement which affects all the designated land and that, at the date of the application—
 - (i) a beneficiary under the trust or settlement is in the actual possession of the designated land; and
 - (ii) no person other than a beneficiary under the trust or settlement is entitled to enter into the actual possession of the designated land within a period of 40 years;
- (c) a certificate stating that the requisite notice of the application has been given by or on behalf of the applicant to each person who at the beginning of the period of 21 days ending with the date of the application, in relation to the designated land or any part thereof fell into any of the following classes, namely—
 - (i) that he was such a person as is described in sub-paragraph (a) or (b);
 - (ii) that (not being such a person as is described in sub-paragraph (a) or (b)) he was in the actual possession of the designated land;
 - (iii) that (not being a person falling under head (i) or (ii)) he was entitled to enter into the actual possession of the designated land within a period of 40 years;
- (d) a certificate stating—
 - (i) that the applicant is unable to issue a certificate in accordance with sub-paragraph (a) or (b); and
 - (ii) that he has made due inquiries and is of the opinion, for the reasons specified in the certificate, that he is unable to issue a certificate which would satisfy the requirements of sub-paragraph (c); and
 - (iii) that he has given the requisite notice of the application to any person who, at the beginning of the period of 21 days ending with the date of the application, was in the actual possession of any part of the designated land.
- (2) Paragraph (1) shall not apply to an application for planning permission made—
 - (a) by the Northern Ireland Housing Executive in pursuance of a redevelopment scheme approved by the Department or proposed by the Executive;
 - (b) by^[F24] an electricity undertaker] to place an electricity line above or below ground across any land.
 - ^[F25](c) by a gas undertaker to lay pipes for the conveyance or supply of gas;
- (3) A certificate for the purposes of sub-paragraph (c) or (d) of paragraph (1) shall set out the names and addresses of the persons to whom the requisite notice was given in accordance with that sub-paragraph and the date of service of the notice.
- (4) Where an application for planning permission is accompanied by such a certificate as is mentioned in paragraph (1)(c) or (d), the Department shall not determine the application before the end of the period of 14 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate.
- (5) Where a tenancy subsists in any land, and—
 - (a) it is necessary, for the purposes of this Article, to determine whether a person is entitled to enter into the actual possession of that land; and

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

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

(6) If any person—

- (a) issues a certificate which purports to comply with the requirements of this Article and which contains a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular;

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding^{F26} level 5] on the standard scale.

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

F24 1992 NI 1

F25 1996 NI 2

F26 2003 NI 8

Notice requiring planning application

23.—(1) Where it appears to the Department that development has been carried out—

- (a) without the grant of the planning permission required in that behalf in accordance with this Part; or
- (b) without the grant of any approval of the Department required in that behalf under a development order;

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

(2) A notice under this Article may be issued only within the period of four years from the date on which the development to which it relates was begun; and the provisions of Article 36(1) apply in determining for the purpose of this Article when development shall be taken to be begun.

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

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

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

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

- (a) was, at the time when the copy of the notice under this Article was served on him, the owner of the land to which the notice relates; but
- (b) has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of that land,

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he shall, upon a complaint duly made by him and on giving to the prosecution not less than three days' notice of his intention, be entitled to have the person who then became the owner of the land (in paragraph (7) referred to as the "subsequent owner") brought before the court in the proceedings.

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

- (a) the subsequent owner may be convicted of the offence; and
- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the notice, shall be acquitted of the offence.

(8) If, after a person has been convicted under paragraphs (5) to (7), the application referred to in the notice under this Article is not made to the Department, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day following his first conviction on which the offence continues.

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

(10) If it does so the Department shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.

(11) Any reference in this Article and Article 24 to the period allowed for compliance with a notice under this Article is a reference to the period mentioned in paragraph (1) or such extended period as may be allowed by the Department for compliance with the notice.

(12) For the purposes of this Article an application to the Department for any planning permission or approval shall not be taken to be made unless it is accompanied by the fee prescribed under Article 127 in relation to that application.

Appeal against notice under Article 23

24.—(1) A person on whom a copy of a notice has been served under Article 23 may, at any time before the end of the period allowed for compliance with that notice, appeal to the planning appeals commission against the notice.

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

- (a) that the matters alleged in the notice do not constitute development;
- (b) that the development alleged in the notice has not taken place;
- (c) that the period of four years referred to in Article 23(2) had elapsed at the date when the notice was issued.

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

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

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

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

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

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

(7) The validity of a notice under Article 23 shall not, except by way of an appeal under this Article, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

Determination of planning applications

Determination of planning applications

25.—(1) Subject to this Part, where an application is made to the Department for planning permission, the Department, in dealing with the application, shall have regard to the development plan, so far as material to the application, and to any other material considerations, and—

- (a) subject to Articles 34 and 35, may grant planning permission, either unconditionally or subject to such conditions as it thinks fit; or
- (b) may refuse planning permission.

(2) In determining any application for planning permission for development of any class to which Article 21(1) applies, the Department shall take into account any representations relating to that application which are received by it before the expiration of the period of 14 days from the date on which notice of the application is first published in a newspaper.

(3) Where an application for planning permission is accompanied by such a certificate as is mentioned in Article 22(1)(c) or (d), the Department—

- (a) in determining the application, shall take into account any representations relating thereto which are made to it by any person who satisfies it that, in relation to any of the designated land, he is such a person as is described in Article 22(1)(c); and
- (b) shall give notice of its decision on the application to every person who made representations which it was required to take into account under sub-paragraph (a).

[^{F27}Power of Department to decline to determine applications

25A.—(1) The Department may decline to determine an application for planning permission for the development of any land if—

- (a) within the period of 2 years ending with the date on which the application is received—
 - (i) the Department has refused a similar application under Article 31; or
 - (ii) the planning appeals commission has dismissed an appeal against the refusal of a similar application; and
- (b) in the opinion of the Department there has been no significant change since the refusal or, as the case may be, dismissal mentioned in sub-paragraph (a) in the development plan, so far as material to the application, or in any other material considerations.

(2) For the purposes of this Article an application for planning permission for the development of any land shall only be taken to be similar to a later application if the development and the land to which the applications relate are in the opinion of the Department the same or substantially the same.

(3) The reference in paragraph (1)(a)(ii) to an appeal against the refusal of an application includes an appeal under Article 33 in respect of an application.]

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VALID FROM 10/06/2006

[^{F28}Power to decline to determine overlapping application

25AA.—(1) The Department may decline to determine an application for planning permission for the development of any land which is made at a time when any of the conditions in paragraphs (2) to (4) applies in relation to a similar application.

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

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

(a) the Department in pursuance of Article 31; or

(b) the planning appeals commission on an appeal under Article 32 or 33,

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

(4) The condition is that a similar application—

(a) has been granted by the Department;

(b) has been refused by the Department; or

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

and the time within which an appeal could be made to the planning appeals commission under Article 32 or 33 has not expired.

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

(6) The determination period is—

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

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

F28 Arts. 25A, 25AA substituted (10.6.2006) for art. 25A by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), **9(1)** (with art. 9(5))

[^{F29}Assessment of environmental effects

25B.—(1) The Department may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.

(2) The regulations may make the same provision as, or provision similar or corresponding to, any provision made, for the purposes of any Community obligation of the United Kingdom about the assessment of the likely effects of the development on the environment, under section 2(2) of the European Communities Act 1972.]

F29 [2003 NI 8](#)

Duty to draw attention to certain provisions for benefit of disabled

26.—(1) When granting planning permission for any development which will result in the provision—

- (a) of a building or premises to which section 4 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 applies (buildings or premises to which the public are to be admitted whether on payment or otherwise);
- (b) of a building intended for the purposes of an educational institution;
- (c) of any of the following, being in each case, premises in which persons are employed to work,—
 - (i) office premises and shop premises to which the Office and Shop Premises Act (Northern Ireland) 1966 applies;
 - (ii) premises which are deemed to be such premises for the purposes of that Act; or
 - (iii) factories as defined by section 175 of the Factories Act (Northern Ireland) 1965,

the Department shall draw the attention of the person to whom the permission is granted—

- (i) to the relevant provisions of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978; and
- (ii) to the Code of Practice for Access for the Disabled to Buildings.

(2) In paragraph (1)—

“the Code of Practice for Access for the Disabled to Buildings” has the same meaning as in section 4(1A) of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978;

“educational institution” means any of the following—

- (a) a university;
- (b) a school within the meaning of the Education and Libraries (Northern Ireland) Order 1986;
- (c) a college of education or other establishment for the training of teachers maintained in pursuance of Article 66 of that Order or in respect of which grants are paid under that Article; or
- (d) [^{F30}an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997 or an institution providing further education in respect of which grants are paid under Article 5(1)(b) of that Order; and]

“the relevant provisions of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978” means—

- (a) for the purposes of sub-paragraph (a), sections 4 and 7;
- (b) for the purposes of sub-paragraph (b), sections 7 and 8(1) and (2); and
- (c) for the purposes of sub-paragraph (c), sections 7 and 8(1) and (3).

F30 1997 NI 15

Conditional grant of planning permission

27.—(1) Without prejudice to the generality of Article 25(1), conditions may be imposed on the grant of planning permission—

- (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the

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carrying out of works on any such land, so far as appears to the Department to be expedient for the purposes of or in connection with the development authorised by the permission;

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

(2) Any planning permission granted subject to such a condition as is mentioned in paragraph (1) (b) is in this Order referred to as “planning permission granted for a limited period”.

PROSPECTIVE

[^{F31}Power to impose aftercare conditions on grant of mineral planning permission

^{F14}27A].

F14 Pts. II-VI repealed (1.4.2015 except for the repeal of Pt. III) by [Planning Act \(Northern Ireland\) 2011](#) (c. 25), s. 254(1)(2), [Sch. 7](#) (with s. 211); S.R. 2015/49, art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

F31 Art. 27A inserted (prosp.) by [Planning Reform \(Northern Ireland\) Order 2006](#) (S.I. 2006/1252 (N.I. 7)), arts. 1(3)(d), [26](#)

Permission to develop land without compliance with conditions previously attached

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

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

- (a) the form and content of such applications; and
- (b) the procedure to be followed in connection with such applications.

(3) On such an application the Department shall consider only the question of the conditions subject to which planning permission should be granted, and—

- (a) if it decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, the Department shall grant planning permission accordingly; and
- (b) if it decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, the Department shall refuse the application.

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

[^{F32}Planning permission for development already carried out

28A.—(1) On an application made to the Department, the planning permission which may be granted includes planning permission for development carried out before the date of the application.

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

- (a) without planning permission;
- (b) in accordance with planning permission granted for a limited period; or

- (c) without complying with some condition subject to which planning permission was granted.
- (3) Planning permission for such development may be granted as to have effect from—
 - (a) the date on which the development was carried out; or
 - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.]

F32 2003 NI 8

Art. 29 rep. by 2003 NI 8

Effect of planning permission

30.—(1) Without prejudice to Articles 34 to 38, any grant of planning permission to develop land shall (except insofar as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being having an estate therein.

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

Special procedure for major planning applications

31 ^{F33}.—(1) Where, in relation to an application for planning permission, or an application for any approval required under a development order, the Department considers that the development for which the permission or approval is sought would, if permitted—

- (a) involve a substantial departure from the development plan for the area to which it relates; or
- (b) be of significance to the whole or a substantial part of Northern Ireland; or
- (c) affect the whole of a neighbourhood; or
- (d) consist of or include the construction, formation, laying out or alteration of a means of access to a trunk road or of any other development of land within 67 metres of the middle of such a road, or of the nearest part of a special road;

the Department may within two months from the date of the application serve on the applicant a notice in such form as may be specified by a development order applying this Article to the application.

(2) For the purpose of considering representations made in respect of an application to which this Article applies, the Department may cause a public local inquiry to be held by the planning appeals commission.

(3) Where a public local inquiry is not held under paragraph (2), the Department shall, before determining the application, serve a notice on the applicant indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) the applicant so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(4) In determining an application to which this Article applies, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.

(5) The decision of the Department on an application to which this Article applies shall be final.

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(6) In this Article “road” includes a proposed road and “special road”, “trunk road” and “proposed road” have the same meaning as in the Roads (Northern Ireland) Order 1980.

F33 mod. SR 1999/73

Appeals

Appeals

32.—(1) Where an application is made to the Department—

- (a) for planning permission to develop land; or
- (b) for any consent, agreement or approval of the Department required by a condition imposed on a grant of planning permission; or
- (c) for any approval of the Department required under a development order;

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

(2) Paragraph (1) shall not apply to any application in relation to which the Department has served a notice under Article 31(1).

(3) Any notice under this Article shall be served on the planning appeals commission within six months from the date of notification of the decision to which it relates or such longer period as the commission may allow.

(4) Where an appeal is brought under this Article from a decision of the Department, the planning appeals commission, subject to paragraphs (5) and (6), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part thereof or not and may deal with the application as if it had been made to it in the first instance.

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

[^{F34}(5A) If at any time before or during the determination of an appeal under this Article it appears to the planning appeals commission that the appellant is responsible for undue delay in the progress of the appeal, it may—

- (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
- (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.]

(6) Subject to paragraph (5), Articles[^{F34} 21, 22 and 25 to 28A] shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this Article as they apply to an application for planning permission.

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Appeal in default of planning decision

33. Where any such application as is mentioned in Article 32(1) is made to the Department, then unless within such period as may be specified by a development order, or within such extended period as may be agreed upon in writing between the applicant and the Department, the Department either—

- (a) gives notice to the applicant of its decision on the application; or
- (b) gives notice to him that the application is one to which Article 31 applies, [^{F35} or
- (c) gives notice to him that it has exercised its power under Article 25A to decline to determine the application,]

Article 32 shall apply in relation to the application—

- (i) as if the permission, consent, agreement or approval to which it relates had been refused by the Department; and
- (ii) as if notification of the Department's decision had been received by the applicant at the end of the period so specified, or at the end of the said extended period, as the case may be.

F35 2003 NI 8

Duration of planning permission

Duration of planning permission

34.—(1) Subject to this Article, every planning permission granted[^{F36} or deemed to be granted] shall be granted[^{F36} or, as the case may be, deemed to be granted,] subject to the condition that the development to which it relates must be begun within—

- (a) five years of the date on which the permission is granted; or
- (b) such other period (whether longer or shorter) as the Department considers appropriate.

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

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

- (a) to any outline planning permission;
- (b) to any planning permission granted by a development order;
- (c) to any planning permission granted for a limited period;
- (d) to any planning permission[^{F36} granted for development carried out before the grant of that permission];
- (e) to any planning permission granted by an enterprise zone scheme; or
- (f) to any planning permission granted by a simplified planning zone scheme.

F36 2003 NI 8

Duration of outline planning permission

35.—(1) In this Article and in Article 34 “outline planning permission” means planning permission granted in accordance with the provisions of a development order, conditional on the subsequent approval by the Department of the particulars of the proposed development (in this Article referred to as “reserved matters”).

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

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- (a) that in the case of any reserved matter application for approval must be made within three years of the date of the grant of outline planning permission; and
- (b) that the development to which the permission relates must be begun by whichever is the later of the following dates—
 - (i) the expiration of five years from the date of the grant of outline planning permission; or
 - (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- (3) If outline planning permission is granted without the conditions required by paragraph (2), it shall be deemed to have been granted subject to those conditions.
- (4) The Department may, in applying paragraph (2), substitute for the periods of three years, five years or two years referred to in that paragraph, such other periods respectively (whether longer or shorter) as it considers appropriate.
- (5) The Department may, in applying paragraph (2), specify separate periods under paragraph (2)
 - (a) in relation to separate parts of the development to which the planning permission relates; and
 - if it does so, the condition required by paragraph (2)(b) shall then be framed correspondingly by reference to those parts, instead of by reference to the development as a whole.

Provisions supplementary to Articles 34 and 35

36.—(1) For the purposes of Articles 34 and 35, development shall be taken to be begun on the earliest date on which any of the following operations comprised in the development begins to be carried out—

- (a) where the development consists of or includes the erection of a building, any work of construction in the course of the erection of the building;
- (b) where the development consists of or includes alterations to a building, any work involved in the alterations;
- (c) where the development consists of or includes a change of use of any building or other land, that change of use;
- (d) where the development consists of or includes mining operations, any of those operations.

(2) For the purposes of Article 35(2), a reserved matter shall be treated as finally approved when an application for approval is granted, or, where there is an appeal under Article 32, on the date of the determination of the appeal.

(3) Where the Department grants planning permission on an application to which Article 31 does not apply the fact that any of the conditions of the permission are required by this Order to be imposed or are deemed by this Order to be imposed, shall not prevent the conditions being the subject of an appeal under Article 32 against the decision of the Department.

(4) Where a planning permission (whether outline or other) has conditions attached to it by or under Article 34 or 35—

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

Termination of planning permission by reference to time limit

37.—(1) Paragraphs (2) to (6) shall have effect where by virtue of Article 34 or 35, a planning permission is subject to a condition that the development to which the permission relates must be begun before the expiration of a particular period and that development has been begun within that period but the period has elapsed without the development having been completed.

(2) If the Department is of the opinion that the development will not be completed within a reasonable period, it may make an order (in this Article referred to as a “completion order”) whereby the planning permission will cease to have effect at the expiration of a further period specified in the order, being a period of not less than 12 months after the order takes effect.

(3) Before making a completion order, the Department shall serve notice of its intention to make the order on the owner and occupier of the land affected and on any other person who in its opinion would be affected by the order; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) any person on whom the notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(4) Where a completion order is made, the planning permission therein referred to shall at the expiration of the period specified in the order be invalid except so far as it authorises any development carried out thereunder up to the end of that period.

(5) Where the Department makes an order under this Article it shall serve a notice on any person mentioned in paragraph (3) stating the general effect of the order.

(6) The Department may withdraw a completion order at any time before the expiration of the period specified therein as the period at the expiration of which the planning permission is to cease to have effect; and if it does so it shall forthwith give notice of the withdrawal to every person who was served with notice of the making of the order.

Revocation or modification of planning permission

Revocation or modification of planning permission

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

(2) Before making an order under this Article, the Department shall serve notice on the owner and occupier of the land affected and on any other person who in its opinion would be affected by the order; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) any person on whom notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

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

- (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) where the permission relates to a change of use of any land, at any time before the change has taken place;

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

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

(5) Where the Department makes an order under this Article it shall serve a notice on any person mentioned in paragraph (2) stating the general effect of the order.

Additional powers of control

Orders requiring discontinuance of use or alteration or removal of buildings or works

39.—(1) If it appears to the Department that it is expedient in the interests of the proper planning of an area (including the interests of amenity), regard being had to the development plan and to any other material considerations—

- (a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance of a use of land; or
- (b) that any buildings or works should be altered or removed;

the Department may by order require the discontinuance of that use within such time as may be specified in the order, or impose such conditions as may be so specified on the continuance thereof, or require such steps as may be so specified to be taken within such time as may be so specified for the alteration or removal of the buildings or works, as the case may be.

(2) An order under this Article may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order; and the provisions of Article 38 shall apply in relation to any planning permission granted by an order under this Article as they apply in relation to planning permission granted by the Department on an application made under this Part.

[^{F37}(3) The planning permission which may be granted by an order under this Article includes planning permission, subject to such conditions as may be specified in the order, for development carried out before the date on which the order was made; and planning permission for such development may be granted so as to have effect from—

- (a) the date on which the development was carried out; or
- (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.]

(4) Before making an order under this Article, the Department shall serve notice on the owner and occupier of the land affected and on any other person who in its opinion would be affected by the order; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) any person on whom notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(5) Where the Department makes an order under this Article it shall serve a copy of the order on the owner and occupier of the land to which the order relates and on any other person who in its opinion would be affected by the order.

(6) Where the requirements of an order under this Article will involve the displacement of persons residing in any premises, it shall be the duty of the Northern Ireland Housing Executive, in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement.

[F38] Planning agreements

40.—(1) Any person who has an estate in land may enter into an agreement with the Department (referred to in this Article and Articles 40A and 40B as "a planning agreement"), enforceable to the extent mentioned in paragraph (4)—

- (a) facilitating or restricting the development or use of the land in any specified way;
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;
- (c) requiring the land to be used in any specified way; or
- (d) requiring a sum or sums to be paid to the Department on a specified date or dates or periodically.

(2) A planning agreement may—

- (a) be unconditional or subject to conditions;
- (b) impose any restriction or requirement mentioned in paragraph(1)(a) to (c) either indefinitely or for such period or periods as may be specified; and
- (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the agreement is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.

(3) Before entering into a planning agreement, the Department shall consult with the district council for the area in which the land which is the subject of the proposed agreement is situated.

(4) Subject to paragraph (5) a planning agreement is enforceable by the Department—

- (a) against the person entering into the agreement; and
- (b) against any person deriving title from that person.

(5) The instrument by which a planning agreement is entered into may provide that a person shall not be bound by the agreement in respect of any period during which he no longer has an estate in the land.

(6) A restriction or requirement imposed under a planning agreement is enforceable by injunction.

(7) Without prejudice to paragraph (6), if there is a breach of a requirement in a planning agreement to carry out any operations in, on, under or over the land to which the agreement relates, the Department may—

- (a) enter the land and carry out the operations; and
- (b) recover from the person or persons against whom the agreement is enforceable any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(8) Before the Department exercises its power under paragraph (7)(a) it shall give not less than 21 days' notice of its intention to do so to any person against whom the planning agreement is enforceable.

(9) Any person who wilfully obstructs a person acting in the exercise of a power under paragraph (7)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) A planning agreement may not be entered into except by an instrument under seal which—

- (a) states that the agreement is a planning agreement for the purposes of this Article;
- (b) identifies the land in which the person entering into the agreement has an estate; and
- (c) identifies the person entering into the agreement and states what his estate in the land is.

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(11) If a person against whom an agreement is enforceable requests the Department to supply him with a copy of the agreement, it shall be the duty of the Department to do so free of charge.

(12) Any sum or sums required to be paid under a planning agreement and any expenses recoverable by the Department under paragraph (7)(b) shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the person against whom the planning agreement is enforceable.

(13) The charge created by paragraph (12) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Department by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the Department may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 (c. 41) on mortgages by deed accordingly.

(14) In this Article "specified" means specified in the instrument by which the planning agreement is entered into.]

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Modification and discharge of planning agreements

40A.—(1) A planning agreement may not be modified or discharged except—

- (a) by agreement between the Department and the person or persons against whom the agreement is enforceable; or
- (b) in accordance with this Article and Article 40B.

(2) Before entering into an agreement falling within paragraph (1)(a), the Department shall consult with the district council for the area in which the land which is the subject of the proposed agreement is situated.

(3) An agreement falling within paragraph (1)(a) shall be contained in an instrument under seal.

(4) A person against whom a planning agreement is enforceable may, at any time after the expiry of the relevant period, apply to the Department for the agreement—

- (a) to have effect subject to such modifications as may be specified in the application; or
- (b) to be discharged.

(5) In paragraph (4) "the relevant period" means—

- (a) such period as may be prescribed; or
- (b) if no period is prescribed, the period of 5 years beginning with the date on which the agreement is entered into.

(6) An application under paragraph (4) for the modification of a planning agreement may not specify a modification imposing an obligation on any other person against whom the agreement is enforceable.

(7) Where an application is made to the Department under paragraph (4), the Department may determine—

- (a) that the planning agreement shall continue to have effect without modification;
- (b) if the agreement no longer serves a useful purpose, that it shall be discharged; or
- (c) if the agreement continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

(8) The Department shall give notice of its determination to the applicant within such period as may be prescribed.

(9) Where the Department determines that a planning agreement shall have effect subject to modifications specified in the application, the agreement as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.

(10) Regulations may make provision with respect to—

- (a) the form and content of applications under paragraph (4);
- (b) the publication of notices of such applications;
- (c) the procedures for considering any representations made with respect to such applications; and
- (d) the notices to be given to applicants of determinations under paragraph (7).

(11) Article 5 of the Property (Northern Ireland) Order 1978 (NI 4) (power of Lands Tribunal to modify or extinguish impediments) shall not apply to a planning agreement.

Appeals

40B.—(1) Where the Department—

- (a) fails to give notice as mentioned in Article 40A(8); or
- (b) determines that a planning agreement shall continue to have effect without modifications; the applicant may appeal to the planning appeals commission.

(2) For the purposes of an appeal under paragraph (1)(a), it shall be assumed that the Department has determined that the planning agreement shall continue to have effect without modification.

(3) An appeal under this Article shall be made by notice served within such period and in such manner as may be prescribed.

(4) Paragraphs (7) to (10) of Article 40A apply in relation to appeals to the planning appeals commission under this Article as they apply in relation to applications to the Department under that Article.

(5) Before determining the appeal the planning appeals commission shall, if either the applicant or the Department so wishes, afford to each of them an opportunity of appearing before and being heard by the planning appeals commission.

(6) The determination of an appeal by the planning appeals commission under this Article shall be final.

Art. 41 rep. by 2003 NI 8

PART V

ADDITIONAL PLANNING CONTROL

Buildings of special architectural or historic interest

Lists of buildings of special architectural or historic interest

42.—(1) The Department—

- (a) shall compile lists of buildings of special architectural or historic interest; and
- (b) may amend any list so compiled.

(2) In considering whether to include a building in a list compiled under this Article the Department may take into account not only the building itself but also—

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- (a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part; and
 - (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building which consists of a man-made object or structure fixed to the building or which forms a part of the land and which is comprised within the curtilage of the building.
- (3) Before compiling or amending any list under this Article, the Department shall consult with the Historic Buildings Council and with the appropriate district council.
- (4) As soon as may be after any list has been compiled under this Article, or any amendments of such a list have been made, the Department shall cause a copy of so much of the list, or so much of the amendments, as relates to the area of a district council to be deposited with the clerk of that council.
- (5) As soon as may be after the inclusion of any building in a list under this Article, whether on the compilation of the list or by its amendment, or as soon as may be after any such list has been amended by the exclusion of any building from it, the Department shall serve a notice in the prescribed form on every owner and occupier of the building, stating that the building has been included in, or excluded from, the list, as the case may be.
- (6) The Department shall keep available for inspection by the public at all reasonable hours copies of lists and amendments of lists compiled or made under this Article.
- (7) In this Order “listed building” means a building which is for the time being included in a list compiled under this Article; and, for the purposes of the provisions of this Order relating to listed buildings, the following shall be treated as part of the building—
- (a) any object or structure within the curtilage of the building and fixed to the building;
 - (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st October 1973.

[^{F39}Temporary listing: building preservation notices

42A.—(1) If it appears to the Department that a building which is not a listed building—

- (a) is of special architectural or historic interest; and
- (b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest,

it may serve on the owner and occupier of the building a notice (in this Order referred to as a “building preservation notice”).

(2) A building preservation notice served by the Department shall—

- (a) state that the building appears to the Department to be of special architectural or historic interest and that it is considering including it in a list compiled under Article 42; and
- (b) explain the effect of paragraphs (3) to (5) and Article 42C.

(3) A building preservation notice—

- (a) shall come into force as soon as it has been served on both the owner and occupier of the building to which it relates; and
- (b) subject to paragraph (4), shall remain in force for 6 months from the date when it is served or, as the case may be, last served.

(4) A building preservation notice shall cease to be in force if the Department—

- (a) includes the building in a list compiled under Article 42, or
- (b) notifies the owner and the occupier of the building to which the notice relates in writing that it does not intend to do so.

(5) While a building preservation notice is in force with respect to a building, the provisions of this Order (other than Article 49) shall have effect in relation to the building as if it were a listed building.

(6) Following a notification by the Department under paragraph (4)(b) no further building preservation notice in respect of the building shall be served by the Department within the period of 12 months beginning with the date of the notification.]

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Temporary listing in urgent cases

^{F40}**42B.**—(1) If it appears to the Department to be urgent that a building preservation notice should come into force, it may, instead of serving the notice on the owner and occupier of the building, affix the notice conspicuously to some object on the building.

(2) The affixing of a notice under paragraph (1) shall be treated for all the purposes of Article 42A, this Article, Article 42C and Articles 45 to 47 and Schedule 1 as service of the notice.

(3) A notice which is so affixed must explain that by virtue of being so affixed it is treated as being served for those purposes.

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Lapse of building preservation notices

^{F41}**42C.**—(1) This Article applies where a building preservation notice ceases to be in force by virtue of—

- (a) the expiry of the 6 month period mentioned in paragraph (3)(b) of Article 42A; or
- (b) the service of a notification by the Department under paragraph (4)(b) of that Article.

(2) The fact that the notice has ceased to be in force shall not affect the liability of any person to be prosecuted and punished for an offence under Article 44 or 72 (as applied by Article 77(6)) committed with respect to the building while it was in force.

(3) Any proceedings on or arising out of an application for listed building consent with respect to the building made while the notice was in force and any such consent granted while it was in force shall lapse.

(4) Any listed building enforcement notice served by the Department while the building preservation notice was in force shall cease to have effect.

(5) Any proceedings relating to a listed building enforcement notice served by the Department while the building preservation notice was in force under Articles 77 and 78 shall lapse.

(6) Notwithstanding paragraph (4), Article 74(1) and (2) (as applied by Article 77(6)) shall continue to have effect as respects any expenses incurred by the Department, owner or occupier as mentioned in that Article and with respect to any sums paid on account of such expenses.

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Issue of certificate that building is not intended to be listed

43.—(1) Where—

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(a) application has been made for planning permission for any development involving the alteration, extension or demolition of a building; or

(b) any such planning permission has been granted,

the issue by the Department, on the application of any person, of a certificate stating that it does not intend to list the building shall preclude the Department, for a period of five years from the date of issue of the certificate, from exercising in relation to that building any of the powers conferred on it by Article 42.

(2) An application for the issue of a certificate under paragraph (1) shall be made to the Department in writing and Article 22 shall apply in relation to an application for the issue of a certificate under paragraph (1) as it applies in relation to an application for planning permission.

(3) Before issuing any certificate under paragraph (1), the Department shall consult with the Historic Buildings Council and with the district council for the area in which the building is situated.

Control of works for demolition, alteration or extension of listed buildings

44.—(1) Subject to this Part, if a person executes or causes to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, and the works are not authorised under paragraph (2), he shall be guilty of an offence.

(2) Works for the demolition, alteration or extension of a listed building are authorised under this Part if—

(a) written consent for the execution of the works has been granted by the Department and the works are carried out in accordance with the terms of the consent and any conditions which may be attached to the consent; and

(b) in the case of demolition—

(i) a person duly authorised in writing by the Department has been afforded reasonable access to the building for a period of at least one month following the grant of listed building consent and before the commencement of the works, for the purpose of recording it; or

(ii) the Department has stated in writing that it has completed its recording of the building or that it does not wish to record it.

(3) If written consent is granted by the Department for the retention of works for the demolition of a listed building, or for its alteration or extension, which have been executed without consent under paragraph (2), the works are authorised under this Part from the grant of the consent under this paragraph.

(4) Consent under paragraph (2) or (3) is referred to in this Order as “listed building consent”.

(5) Without prejudice to paragraph (1), if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent he shall be guilty of an offence.

[^{F42}(6) A person guilty of an offence under paragraph (1) or (5) shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £30,000, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both;

and in determining the amount of any fine imposed on a person convicted of an offence under paragraph (1) or (5) the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to him in consequence of the offence.]

(7) In proceedings for an offence under this Article it shall be a defence to prove the following matters—

- (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
- (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
- (c) that the works carried out were limited to the minimum measures immediately necessary; and
- (d) that notice in writing justifying in detail the carrying out of the works was given to the Department as soon as reasonably practicable.

(8) This Article shall not apply to works for the demolition, alteration or extension of—

- (a) an ecclesiastical building which is for the time being used for ecclesiastical purposes or would be so used but for the works; or
- ^[F43](b) a building for the time being included in the schedule of monuments compiled and maintained under Article 3 of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995;]

and for the purposes of this paragraph, a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office shall be treated as not being an ecclesiastical building.

(9) Paragraph (8) shall cease to have effect on such date as the Department may by order appoint.

F42 2003 NI 8

F43 1995 NI 9

Provisions supplementary to Article 44

45.—(1) In considering whether to grant planning permission for development which affects a listed building or its setting, and in considering whether to grant listed building consent for any works, the Department shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

(2) Listed building consent may be refused, or granted either unconditionally or subject to conditions.

(3) Without prejudice to the generality of paragraph (2), the conditions subject to which listed building consent may be granted include conditions with respect to—

- (a) the preservation of particular features of the building either as part of it or after severance therefrom;
- (b) the making good, after the works are completed, of any damage caused to the building by the works; and
- (c) the reconstruction of the building or any part of it following the execution of any works, with the use of original materials so far as practicable and with such alterations of the interior of the building as may be specified in the conditions.

(4) Listed building consent may be granted subject to a condition reserving specified details of the works (whether or not set out in the application) for subsequent approval by the Department.

(5) Listed building consent for the demolition of a listed building may be granted subject to a condition that the building shall not be demolished before a contract for the carrying out of works of redevelopment of the site has been made, and planning permission has been granted for the redevelopment for which the contract provides.

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(6) Schedule 1 shall have effect in relation to applications for listed building consent and appeals against decisions on such applications.

Duration of listed building consent

46.—(1) Subject to the provisions of this Article, every listed building consent shall be granted subject to the condition that the works to which it relates must be begun not later than the expiration of—

- (a) five years beginning with the date on which the consent is granted; or
- (b) such other period (whether longer or shorter) beginning with the said date as the Department may direct, being a period which the Department considers appropriate having regard to any material considerations.

(2) If listed building consent is granted without the condition required by paragraph (1), it shall be deemed to have been granted subject to the condition that the works to which it relates must be begun not later than the expiration of five years beginning with the date of the grant.

(3) Nothing in this Article applies to any consent to the retention of works granted under Article 44(3).

Revocation or modification of listed building consent

47.—(1) If it appears to the Department, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify listed building consent in respect of any works to a building, being consent granted on an application made under this Part, the Department may, subject to paragraphs (2) to (4), by order revoke or modify the consent to such extent as (having regard to those matters) it considers expedient.

(2) Before making an order under this Article the Department shall serve notice on the owner and occupier of the building affected and on any other person who in its opinion would be affected by the order; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) any person on whom notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(3) The power conferred by this Article to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed, but the revocation or modification shall not affect so much of those works as has been previously carried out.

(4) Where the Department makes an order under this Article it shall serve a notice on any person mentioned in paragraph (2) stating the general effect of the order.

Applications to determine whether listed building consent required

48.—(1) If any person who proposes to execute or cause to be executed any works to a listed building wishes to have it determined whether those works would involve the alteration or extension of the building in any manner which would affect its character as a building of special architectural or historic interest, he may apply to the Department to determine that question.

(2) The provisions of paragraphs 1(1), 7 and 8 of Schedule I shall, subject to any necessary modifications, apply in relation to any application under this Article, and to the determination thereof, as they apply in relation to applications for listed building consent and to the determination of such applications.

(3) Where an application for listed building consent is made to the Department and it appears to the Department that the execution of the works specified in the application does not involve the alteration or extension of a listed building in any manner which would affect its character as

a building of special architectural or historic interest, the Department may treat the application for listed building consent as an application under this Article and may make an appropriate determination.

Acts causing or likely to result in damage to listed buildings

49.—(1) Where a building, not being a building excluded by paragraph (8) of Article 44 from the operation of that Article, is included in a list compiled under Article 42, then, if any person who, but for this Article, would be entitled to do so—

- (a) does or permits the doing of any act which causes or is likely to result in damage to the building (other than an act for the execution of excepted works); and
- (b) does or permits the act with the intention of causing such damage;

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) In paragraph (1) “excepted works” means—

- (a) works authorised by planning permission granted in pursuance of an application under this Order; or
- (b) works for which listed building consent has been given under this Order.

(3) Where a person convicted under this Article fails to take such reasonable steps as may be necessary to prevent any damage or further damage resulting from the offence, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which the failure continues.

Areas of special architectural or historic interest

Conservation areas

50.—(1) The Department may designate areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance.

(2) The Department may vary or cancel a designation under paragraph (1).

(3) Before making, varying or cancelling a designation under this Article, the Department shall consult with the Historic Buildings Council and with any appropriate district council.

(4) The Department shall publish notice of the designation of any conservation area and of any variation or cancellation of any such designation, with sufficient particulars to identify the area affected, in at least one newspaper circulating in the locality of the area.

(5) Where any area is for the time being designated as a conservation area, special attention shall be paid to the desirability of preserving or enhancing its character or appearance in the exercise, with respect to any buildings or other land in that area, of any powers under this Order.

(6) In this Order “conservation area” means an area designated under paragraph (1).

Control of demolition in conservation areas

51.—(1) This Article applies to all buildings in conservation areas other than—

- (a) listed buildings;
- (b) buildings of a class specified in Article 44(8);
- (c) buildings in relation to which a direction under paragraph (3) is for the time being in force.

(2) A building to which this Article applies shall not be demolished without the consent of the Department.

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(3) The Department may—

- (a) direct that this Article shall not apply to a description of buildings specified in the direction; and
- (b) vary or revoke that direction by a further direction.

(4) Where the Department gives a direction under paragraph (3), it shall publish a copy of the direction in the Belfast Gazette and in a newspaper circulating in the area in which the buildings are situated.

(5) The following provisions, namely—

- (a) Articles 44 to 48, 77 to 79, 94 and 113(1)(b) and (4); and
- (b) Article 65 of the Planning (Northern Ireland) Order 1972,

shall have effect in relation to buildings to which this Article applies as they have effect in relation to listed buildings, subject to such exceptions and modifications as may be prescribed.

(6) If this Article ceases to apply to a building—

- (a) any proceedings on or arising out of an application for listed building consent made while this Article applied to the building shall lapse;
- (b) any listed building consent granted with respect to the building shall also lapse;
- (c) the cesser shall not affect the liability of any person to be prosecuted and punished for an offence under Article 44 or 77 committed by him with respect to the building while this Article applied to it.

Grants in relation to conservation areas

52.—(1) The Department may, in relation to any conservation area, make grants or loans for the purpose of defraying in whole or in part any expenditure incurred or to be incurred in or in connection with, or with a view to the promotion of, the preservation or enhancement of the character or appearance of the area or any part thereof.

(2) A grant or loan under this Article may be made subject to such conditions as the Department thinks fit.

(3) Any loan under this Article shall be made on such terms as to repayment, payment of interest and otherwise as the Department may with the approval of the Department of Finance and Personnel determine; and all sums received by the Department by way of interest on, or repayment of, such a loan shall be paid into the Consolidated Fund.

Hazardous substances

Requirement of hazardous substances consent

53.—(1) Subject to the provisions of this Part, the presence of a hazardous substance on, over or under land requires the consent of the Department (in this Order referred to as “hazardous substances consent”) unless the aggregate quantity of the substance—

- (a) on, over or under the land;
- [^{F44}(aa) on, over or under other land which is controlled by the same person and which, in all the circumstances (including in particular the purpose for which the land and the land mentioned in sub-paragraph (a) is used) forms with the land so mentioned a single establishment;]
- (b) on, over or under other land which is within 500 metres of [^{F44} the land mentioned in sub-paragraph (a)] and controlled by the same person; or

(c) in or on a structure controlled by the same person any part of which is within 500 metres of^{F44} the land mentioned in sub-paragraph (a)],
is less than the controlled quantity.

^{F44}(1A) A quantity of a substance which falls within more than one sub-paragraph of paragraph (1) shall only be counted once;]

^{F44}(2) The temporary presence of a hazardous substance while it is being transported from one place to another is not to be taken into account unless—

- (a) it is unloaded; or
 - (b) it is present on, over or under land in respect of which there is a hazardous substances consent for any substance, or in respect of which (not taking into account the quantity of the substance being transported) there is required to be such a consent for any substance.]
- (3) The Department—
- (a) shall by regulations specify—
 - (i) the substances that are hazardous substances for the purposes of this Order;
 - (ii) the quantity which is to be the controlled quantity of any such substance;
 - (b) may by regulations provide that hazardous substances consent is not required or is only required—
 - (i) in relation to land of prescribed descriptions;
 - (ii) by reason of the presence of hazardous substances in prescribed circumstances;
 - (c) may by regulations provide that, except in such circumstances as may be prescribed, all hazardous substances falling within a group specified in the regulations are to be treated as a single substance for the purposes of this Order.
- (4) Regulations which—
- (a) are made by virtue of sub-paragraph (a)(i) of paragraph (3); or
 - (b) are made by virtue of sub-paragraph (a)(ii) of that paragraph and reduce the controlled quantity of a substance,

may make such transitional provision as appears to the Department to be appropriate.

(5) The power to make such transitional provision includes, without prejudice to its generality, power to apply paragraph 4 of Schedule 4, subject to such modifications as appear to the Department to be appropriate.

(6) Bodies corporate which are inter-connected for the purposes of the Fair Trading Act 1973 are to be treated as being one person for the purposes of this Article and Articles 54 to 61 and 81.

F44 SR 2000/101

Applications for hazardous substances consent

54.—(1) Provision may be made by regulations with respect to—

- (a) the form and manner in which applications for hazardous substances consent are to be made;
- (b) the particulars which they are to contain and the evidence by which they are to be verified;
- (c) the manner in which they are to be advertised; and
- (d) the time within which they are to be dealt with.

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(2) Regulations may provide that an application for hazardous substances consent, or an appeal against the refusal of such an application or against the imposition of a condition on such a consent, shall not be entertained unless it is accompanied by a certificate in the prescribed form and corresponding to one or other of those described in Article 22(1)(a) to (d); and any such regulations may—

- (a) include requirements corresponding to Articles 22(4) and 25(3); and
- (b) make provision as to who is to be treated as in actual possession of land for the purposes of any provision of the regulations.

(3) If any person issues a certificate which purports to comply with the requirements of regulations made by virtue of paragraph (2) and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Regulations—

- (a) may require an applicant for hazardous substances consent or the Department or both to give publicity to an application for hazardous substances consent in such manner as may be prescribed;
- (b) may require the Department to consult with the^{F45} Health and Safety Executive for Northern Ireland], the district council for the area in which the land is situated and with such other bodies or persons as may be prescribed before determining applications for hazardous substances consent;
- (c) may provide for the manner in which such a consultation is to be carried out and the time within which—
 - (i) such a consultation;
 - (ii) any stage in such a consultation,
 is to be completed;
- (d) may require the Department to determine applications for hazardous substances consent within such time as may be prescribed.

F45 1998 NI 18

Determination of applications for hazardous substances consent

55.—(1) Subject to the following provisions of this Order, where an application is made to the Department for hazardous substances consent, the Department, in dealing with the application, shall have regard to any material considerations, and—

- (a) may grant hazardous substances consent, either unconditionally or subject to such conditions as it thinks fit; or
- (b) may refuse hazardous substances consent.

(2) Without prejudice to the generality of paragraph (1), in dealing with an application the Department shall have regard—

- (a) to any current or contemplated use of the land to which the application relates;
 - (b) to the way in which land in the vicinity is being used or is likely to be used;
 - (c) to any planning permission that has been granted for development of land in the vicinity;
- and

- (d) to the provisions of the development plan.
- (3) If an application relates to more than one hazardous substance, the Department may make different determinations in relation to each.
- (4) It shall be the duty of the Department, when granting hazardous substances consent, to include in that consent—
 - (a) a description of the land to which the consent relates;
 - (b) a description of the hazardous substance or substances to which it relates; and
 - (c) in respect of each hazardous substance to which it relates, a statement of the maximum quantity permitted by the consent to be present at any one time and of all conditions relating to that substance subject to which the consent is granted.
- (5) Without prejudice to the generality of paragraph (1), the Department may grant hazardous substances consent subject to conditions with respect to any of the following—
 - (a) how and where any hazardous substance to which the consent relates is to be kept or used;
 - (b) times between which any such substance may be present;
 - (c) the permanent removal of any such substance—
 - (i) on or before a date specified in the consent; or
 - (ii) before the end of a period specified in it and commencing on the date on which it is granted;
 - (d) the consent being conditional on the commencement or partial or complete execution of development on the land which is authorised by a specified planning permission.

Special procedure for major applications

56.—(1) Where, in relation to an application for hazardous substances consent, the Department considers that the presence of any hazardous substance on, over or under land for which consent is sought, would—

- (a) involve a substantial departure from the development plan for the area in which the land is situated;
- (b) be of significance to the whole or a substantial part of Northern Ireland; or
- (c) affect the whole of a neighbourhood,

the Department may within two months from the date of the application serve on the applicant a notice in such form as may be prescribed applying this Article to the application.

(2) For the purpose of considering representations made in respect of an application to which this Article applies, the Department may cause a public local inquiry to be held by the planning appeals commission.

(3) Where a public local inquiry is not held under paragraph (2), the Department shall, before determining the application, serve a notice on the applicant indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) the applicant so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(4) In determining an application to which this Article applies, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.

(5) The decision of the Department on an application to which this Article applies shall be final.

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Appeals

57.—(1) Where an application for hazardous substances consent is made to the Department, then if that consent is refused or is granted subject to conditions the applicant may by notice in writing under this Article appeal to the planning appeals commission.

(2) Paragraph (1) shall not apply to any application in relation to which the Department has served a notice under Article 56(1).

(3) Any notice under this Article shall be served on the planning appeals commission within six months from the date of notification of the decision to which it relates or such longer period as the commission may allow.

(4) Where an appeal is brought under this Article the planning appeals commission—

- (a) shall publish notice of the appeal in at least one newspaper circulating in the locality in which the land to which the appeal relates is situated; and
- (b) shall not determine the appeal before the expiration of 14 days from the date on which notice of the appeal is first published in a newspaper in pursuance of sub-paragraph (a).

(5) Where an appeal is brought under this Article from a decision of the Department, the planning appeals commission, subject to paragraph (6), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part thereof or not, and may deal with the application as if it had been made to it in the first instance.

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

(7) Where an application for hazardous substances consent is made to the Department then unless within the prescribed period, or within such extended period as may be agreed upon in writing between the applicant and the Department, the Department either—

- (a) gives notice to the applicant of its decision on the application; or
- (b) gives notice to him that the application is one to which Article 56 applies,

paragraphs (1) to (6) shall apply in relation to the application—

- (i) as if the consent to which it relates had been refused by the Department; and
- (ii) as if notification of the Department's decision had been received by the applicant at the end of the prescribed period, or at the end of the said extended period, as the case may be.

Grant of hazardous substances consent without compliance with conditions previously attached

58.—(1) This Article applies to an application for hazardous substances consent without a condition subject to which a previous hazardous substances consent was granted.

(2) On such an application the Department shall consider only the question of the conditions subject to which hazardous substances consent should be granted, and—

- (a) if it determines that hazardous substances consent should be granted subject to conditions differing from those subject to which the previous consent was granted, or that it should be granted unconditionally, the Department shall grant hazardous substances consent accordingly; and
- (b) if it determines that hazardous substances consent should be granted subject to the same conditions as those subject to which the previous consent was granted, the Department shall refuse the application.

(3) Where—

(a) hazardous substances consent has been granted for the presence on, over or under land of more than one hazardous substance; and

(b) an application under this Article does not relate to all the substances,

the Department shall only have regard to any condition relating to a substance to which the application does not relate to the extent that it has implications for a substance to which the application does relate.

(4) Where—

(a) more than one hazardous substances consent has been granted in respect of the same land; and

(b) an application under this Article does not relate to all the consents,

the Department shall only have regard to any consent to which the application does not relate to the extent that it has implications for consent to which the application does relate.

Revocation or modification of hazardous substances consent

59.—(1) If it appears to the Department that—

(a) there has been a material change of use of land to which a hazardous substances consent relates; or

(b) planning permission has been granted for development the carrying out of which would involve a material change of use of such land and the development to which the permission relates has been commenced,

it may by order—

(i) if the consent relates only to one substance, revoke it;

(ii) if it relates to more than one, revoke it or revoke it so far as it relates to a specified substance.

(2) The Department may by order—

(a) revoke a hazardous substances consent which relates to only one substance if it appears to the Department that that substance has not for at least 5 years been present on, over or under the land to which the consent relates in a quantity equal to or exceeding the controlled quantity; and

(b) revoke a hazardous substances consent which relates to a number of substances if it appears to the Department that none of those substances has for at least 5 years been so present.

(3) The Department may by order revoke a hazardous substances consent or modify it to such extent as it considers expedient if it appears to the Department, having regard to any material consideration, that it is expedient to revoke or modify it.

(4) An order under this Article shall specify the grounds on which it is made.

(5) Before making an order under this Article, the Department shall serve notice—

(a) on any person who is an owner of the whole or any part of the land to which the order relates;

(b) on any person other than an owner who appears to it to be in control of the whole or any part of that land;

(c) on any other person who in its opinion will be affected by the order;

and if within the period specified in that behalf in the notice (not being less than 28 days from the service thereof) any person on whom the notice is served so requests in writing, the Department shall afford to that person an opportunity of appearing before, and being heard by, the planning appeals commission.

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(6) Where an order under this Article has been made, the Department shall serve a copy of the order on every person who was entitled to be served with notice under paragraph (5).

Effect of hazardous substances consent and change of control of land

60.—(1) Without prejudice to the provisions of this Part, any hazardous substances consent shall (except in so far as it otherwise provides) enure for the benefit of the land to which it relates and of all persons for the time being having an estate therein.

(2) A hazardous substances consent shall cease to have effect if there is a change of the person in control of part of the land to which it relates, unless an application for the continuation of the consent has previously been made to the Department.

(3) Regulations may make provision in relation to applications under paragraph (2) corresponding to any provision that may be made by regulations under Article 54 in relation to applications for hazardous substances consent.

(4) When such an application is made, the Department, having regard to any material consideration—

- (a) may modify the consent in any way it considers appropriate; or
- (b) may revoke it.

(5) Without prejudice to the generality of paragraph (4), in dealing with an application the Department shall have regard to the matters to which it is required to have regard by Article 55(2).

(6) If an application relates to more than one consent, the Department may make different determinations in relation to each.

(7) If a consent relates to more than one hazardous substance, the Department may make different determinations in relation to each.

(8) It shall be the duty of the Department, when continuing hazardous substances consent, to attach to the consent one of the following—

- (a) a statement that it is unchanged in relation to the matters included in it by virtue of Article 55(4);
- (b) a statement of any change in respect of those matters.

(9) The modifications which the Department may make by virtue of paragraph (4)(a) include, without prejudice to the generality of that sub-paragraph, the making of the consent subject to conditions with respect to any of the matters mentioned in Article 55(5).

(10) Subject to paragraph (11), Article 57 shall have effect in relation to applications under paragraph (2) and to decisions on such applications as though they were applications for hazardous substances consent.

(11) In the application of Article 57 by virtue of paragraph (10)—

- (a) paragraph (2) of that Article shall be omitted; and
- (b) in paragraph (7) of that Article for the words from “either” to the end there shall be substituted the words “ gives notice to the applicant of its decision on the application, the application shall be deemed to have been granted. ”.

Offences

61.—(1) Subject to this Part, if there is a contravention of hazardous substances control, the appropriate person shall be guilty of an offence.

(2) There is a contravention of hazardous substances control—

- (a) if a quantity of a hazardous substance equal to or exceeding the controlled quantity is or has been present on, over or under land and either—
 - (i) there is no hazardous substances consent for the presence of the substance; or
 - (ii) there is hazardous substances consent for its presence but the quantity present exceeds the maximum quantity permitted by the consent;
 - (b) if there is or has been a failure to comply with a condition subject to which a hazardous substances consent was granted.
- (3) In paragraph (1) “the appropriate person” means—
- (a) in relation to a contravention falling within sub-paragraph (a) of paragraph (2)—
 - (i) any person knowingly causing the substance to be present on, over or under the land;
 - (ii) any person allowing it to be so present; and
 - (b) in relation to a contravention falling within sub-paragraph (a) or (b) of that paragraph, the person in control of the land.
- [^{F46}(4) A person guilty of an offence under this Article shall be liable—
- (a) on summary conviction, to a fine not exceeding £30,000;
 - (b) on conviction on indictment, to a fine,
- and in determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.]
- (5) In any proceedings for an offence under this Article it shall be a defence for the accused to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or
 - (b) that commission of the offence could be avoided only by the taking of action amounting to a breach of a statutory duty.
- (6) In any proceedings for an offence consisting of a contravention falling within paragraph (2) (a), it shall be a defence for the accused to prove that at the time of the alleged commission of the offence he did not know, and had no reason to believe,—
- (a) if the case falls within sub-paragraph (a)(i)—
 - (i) that the substance was present; or
 - (ii) that it was present in a quantity equal to or exceeding the controlled quantity;
 - (b) if the case falls within sub-paragraph (a)(ii), that the substance was present in a quantity exceeding the maximum quantity permitted by the consent.
- (7) In any proceedings for an offence consisting of a contravention falling within paragraph (2) (b), it shall be a defence for the accused to prove that he did not know, and had no reason to believe, that there was a failure to comply with a condition subject to which hazardous substances consent had been granted.

F46 2003 NI 8

Modifications etc. (not altering text)

C2 Art. 61 referred to (31.12.2009) by [Planning \(Control of Major-Accident Hazards\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/399\)](#), **reg. 5(1)** (with **reg. 4(2)(3)**)

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Emergencies

62.—(1) If it appears to the Department—

(a) either—

(i) that the community or part of it is being or is likely to be deprived of an essential service or commodity; or

(ii) that there is or is likely to be a shortage of such a service or commodity affecting the community or part of it; and

(b) that the presence of a hazardous substance on, over or under land specified in the direction in circumstances such that hazardous substances consent would be required, is necessary for the effective provision of that service or commodity,

it may direct that, subject to such conditions or exceptions as it thinks fit, the presence of the substance on, over or under the land is not to constitute a contravention of hazardous substances control so long as the direction remains in force.

(2) A direction under this Article—

(a) may be withdrawn at any time;

(b) shall in any case cease to have effect at the end of the period of three months beginning with the day on which it was given, but without prejudice to the Department's power to give a further direction.

(3) The Department shall send a copy of any such direction to the district council in whose area any land affected by the direction is situated and to the^{F47} Health and Safety Executive for Northern Ireland].

F47 1998 NI 18

Health and safety requirements

63.—(1) Nothing in—

(a) any hazardous substances consent granted or deemed to be granted under—

(i) the preceding provisions of this Order; or

(ii) paragraph 4 of Schedule 4; or

(b) any hazardous substances contravention notice issued under Article 81,

shall require or allow anything to be done in contravention of any of the relevant statutory provisions or any prohibition notice or improvement notice served under or by virtue of any of those provisions; and to the extent that such a consent or notice purports to require or allow any such thing to be done, it shall be void.

(2) Where it appears to the Department after it has granted, or is deemed to have granted, a hazardous substances consent or has issued a hazardous substances contravention notice that the consent or notice or part of it is rendered void by paragraph (1), the Department shall, as soon as is reasonably practicable, consult the^{F48} Health and Safety Executive for Northern Ireland] with regard to the matter.

(3) If^{F48} the Executive] advises the Department that the consent or notice is rendered wholly void, the Department shall revoke it.

(4) If^{F48} the Executive] advises that part of the consent or notice is rendered void, the Department shall so modify it as to render it wholly operative.

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(5) In this Article “relevant statutory provisions”, “improvement notice” and “prohibition notice” have the same meanings as in the Health and Safety at Work (Northern Ireland) Order 1978.

F48 1998 NI 18

PROSPECTIVE

[^{F49}Review of mineral planning permissions
^{F14}63A].

F14 Pts. II-VI repealed (1.4.2015 except for the repeal of Pt. III) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 7](#) (with s. 211); S.R. 2015/49, art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by S.R. 2016/159, art. 2)
F49 Art. 63A inserted (prosp.) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(3)(d), [27\(1\)](#)

Trees

Duty of Department in relation to trees

64. The Department shall—
- (a) ensure wherever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and
 - (b) make such orders under Article 65 as appear to the Department to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.

Tree preservation orders

- 65.—(1) Where it appears to the Department that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in any area, it may for that purpose make an order (in this Order referred to as a “tree preservation order”) with respect to such trees, groups of trees or woodlands as may be specified in the order; and in particular, provision may be made by any such order—
- (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping^{F50}, uprooting, wilful damage] or wilful destruction of trees except with the consent of the Department, and for enabling the Department to give its consent subject to conditions;
 - (b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the order;
 - (c) for applying, in relation to any consent under the order and to applications for such consent, any of the provisions of Part IV, subject to such adaptations and modifications as may be specified in the order.

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^{F50}(1A) A tree preservation order may be made so as to apply, in relation to trees to be planted pursuant to any such conditions as are mentioned in Article 64(a), as from the time when those trees are planted.

(1B) A tree preservation order shall not take effect until it is confirmed by the Department and the Department may confirm any such order either without modification or subject to such modifications as it considers expedient.]

^{F50}(2) The Department may make regulations as to the form of tree preservation orders and the procedure to be followed in connection with the making and confirmation of such orders; and the regulations may, in particular, make provision as follows—

- (a) that, before a tree preservation order is confirmed by the Department, notice of the making of the order shall be given to the owners and occupiers of land affected by the order and to such other persons, if any, as may be specified in the regulations;
- (b) that objections and representations with respect to the order, if duly made in accordance with the regulations, shall be considered before the order is confirmed by the Department; and
- (c) that copies of the order, when confirmed by the Department, shall be served on such persons as may be specified in the regulations.]

(3) Without prejudice to any other exemptions for which provision may be made by a tree preservation order, no such order shall apply to the cutting down,^{F50} uprooting,] topping or lopping of trees which are dying or dead or have become dangerous or the cutting down,^{F50} uprooting,] topping or lopping of any trees in compliance with any obligations imposed by or under any statutory provision or so far as may be necessary for the prevention or abatement of a nuisance.

F50 2003 NI 8

^{F51}Provisional tree preservation orders

65A.—(1) If it appears to the Department that a tree preservation order proposed to be made by it should take effect immediately without previous confirmation, it may include in the order as made by it a direction that this Article shall apply to the order.

(2) Notwithstanding Article 65(1), an order which contains such a direction—

- (a) shall take effect provisionally on such date as may be specified in it; and
- (b) shall continue in force by virtue of this Article until—
 - (i) the expiration of a period of 6 months beginning with the date on which the order was made; or
 - (ii) the date on which the order is confirmed,
 whichever first occurs.]

F51 2003 NI 8

Replacement of trees

65B.—(1) If any tree in respect of which a tree preservation order is for the time being in force—

- (a) is removed, uprooted or destroyed in contravention of the order; or

(b) except in the case of a tree to which the order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of Article 65 on the grounds that it is dying or dead or has become dangerous, it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.

(2) The duty imposed by paragraph (1) does not apply to an owner if on application by him the Department dispenses with it.

(3) In respect of trees in a woodland it shall be sufficient for the purposes of this Article to replace the trees removed, uprooted or destroyed by planting the same number of trees—

(a) on or near the land on which the trees removed, uprooted or destroyed stood; or

(b) on such other land as may be agreed between the Department and the owner of the land, and in such places as may be designated by the Department.

(4) In relation to any tree planted pursuant to this Article, the relevant tree preservation order shall apply as it applied to the original tree.

(5) The duty imposed by paragraph (1) on the owner of any land shall attach to the person who is from time to time the owner of the land.

Penalties for contravention of tree preservation orders

66.—(1) If any person, in contravention of a tree preservation order, cuts down^[F52], uproots] or wilfully destroys a tree, or^[F52] wilfully damages,] tops or lops a tree in such a manner as to be likely to destroy it, he shall be guilty of an offence ^[F52] and liable—

(a) on summary conviction, to a fine not exceeding £30,000;

(b) on conviction on indictment, to a fine.]

^[F52](1A) In determining the amount of any fine to be imposed on a person convicted of an offence under paragraph (1), the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.]

(2) If any person contravenes a tree preservation order otherwise than as mentioned in paragraph (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding^[F52] level 4] on the standard scale.

Para. (3) rep. by 2003 NI 8

F52 2003 NI 8

^[F53]Preservation of trees in conservation areas

66A.—(1) Subject to the provisions of this Article and Article 66B, any person who, in relation to a tree to which this Article applies, does any act which might by virtue of Article 65(1)(a) be prohibited by a tree preservation order shall be guilty of an offence.

(2) Subject to Article 66B, this Article applies to any tree in a conservation area in respect of which no tree preservation order is for the time being in force.

(3) It shall be a defence for a person charged with an offence under paragraph (1) to prove—

(a) that he served notice of his intention to do the act in question (with sufficient particulars to identify the tree) on the Department; and

(b) that he did the act in question—

(i) with the consent of the Department; or

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(ii) after the expiry of the period of 6 weeks from the date of the notice but before the expiry of the period of 2 years from that date.

(4) Article 66 shall apply to an offence under this Article as it applies to a contravention of a tree preservation order.]

F53 2003 NI 8

Power to disapply Article 66A

66B.—(1) The Department may by regulations direct that Article 66A shall not apply in such cases as may be specified in the regulations.

(2) Regulations under paragraph (1) may, in particular, be framed so as to exempt from the application of that Article cases defined by reference to all or any of the following matters—

- (a) acts of such descriptions or done in such circumstances or subject to such conditions as may be specified in the regulations;
- (b) trees in such conservation areas as may be so specified;
- (c) trees of a size or species so specified; or
- (d) trees belonging to persons or bodies of a description so specified.

(3) Regulations under paragraph (1) may, in particular, exempt from the application of Article 66A cases exempted from Article 65 by paragraph (3) of that Article.

Advertisements

Control of advertisements

67.—(1) Subject to this Article, provision shall be made by regulations under this Order for restricting or regulating the display of advertisements so far as appears to the Department to be expedient in the interests of amenity or public safety.

(2) Without prejudice to paragraph (1), any such regulations may provide—

- (a) for regulating the dimensions, appearance and position of advertisements which may be displayed, the sites on which advertisements may be displayed and the manner in which they are to be affixed to the land;
- (b) for requiring the consent of the Department to be obtained for the display of advertisements;
- (c) for applying in relation to any such consent and to applications for such consent any of the provisions of Part IV or VIII of this Order or Part 111 of the Act of 1965 subject to such adaptations and modifications as may be specified in the regulations.

(3) Areas of special control for the purposes of regulations under this Article may be defined by means of orders made by the Department in accordance with the regulations.

(4) Where the Department is authorised by the regulations to make any such order as is mentioned in paragraph (3), the regulations shall provide for the publication of notice of the proposed order in such manner as may be prescribed by the regulations, for the consideration of objections duly made thereto and for the holding of such inquiries or other hearings by the planning appeals commission as may be so prescribed before the order is made.

(5) Where the display of advertisements in accordance with regulations made under this Article involves development of land, planning permission for that development shall be deemed to be granted by virtue of this Article, and no application shall be necessary in that behalf under Part IV.

PART VI ENFORCEMENT

[^{F54}Introductory

F54 2003 NI 8

Expressions used in connection with enforcement

67A.—(1) For the purposes of this Order—

- (a) carrying out development without the planning permission required; or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted,

constitutes a breach of planning control.

(2) For the purposes of this Order—

- (a) the issue of an enforcement notice; or
- (b) the service of a breach of condition notice,

constitutes taking enforcement action.

Time limits

67B.—(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling-house, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.

(4) The preceding paragraphs do not prevent—

- (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
- (b) taking further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the Department has taken or purported to take enforcement action in respect of that breach.]

[^{F55}Planning contravention notices

F55 2003 NI 8

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Power to require information about activities on land

67C.—(1) Where it appears to the Department that there may have been a breach of planning control in respect of any land, it may serve notice to that effect (referred to in this Order as a “planning contravention notice”) on any person who—

- (a) is the owner or occupier of the land or has any other estate in it; or
- (b) is carrying out operations on the land or is using it for any purpose.

(2) A planning contravention notice may require the person on whom it is served to give such information as to—

- (a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land; and
- (b) any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted,

as may be specified in the notice.

(3) Without prejudice to the generality of paragraph (2), the notice may require the person on whom it is served, so far as he is able—

- (a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;
- (b) to state when any use, operations or activities began;
- (c) to give the name and address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;
- (d) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operations;
- (e) to state the nature of his estate (if any) in the land and the name and address of any other person known to him to have an estate in the land.

(4) A planning contravention notice may give notice of a time and place at which—

- (a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to refrain from carrying out any operations or activities or to undertake remedial works; and
- (b) any representations which he may wish to make about the notice,

will be considered by the Department, and the Department shall give him an opportunity to make in person any such offer or representations at that time and place.

(5) A planning contravention notice must inform the person on whom it is served—

- (a) of the likely consequences of his failing to respond to the notice and, in particular, that enforcement action may be taken; and
- (b) of the effect of Article 67(5)(b) of the Planning (Northern Ireland) Order 1972 (NI 17).

(6) Any requirement of a planning contravention notice shall be complied with by giving information in writing to the Department.

(7) The service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control.

(8) In this Article references to operations or activities on land include operations or activities in, under or over the land.

Penalties for non-compliance with planning contravention notice

67D.—(1) If, at any time after the end of the period of 21 days beginning with the day on which a planning contravention notice has been served on any person, he has not complied with any requirement of the notice, he shall be guilty of an offence.

(2) An offence under paragraph (1) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.

(3) It shall be a defence for a person charged with an offence under paragraph (1) to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If any person—

(a) makes any statement purporting to comply with a requirement of a planning contravention notice which he knows to be false or misleading in a material particular; or

(b) recklessly makes such a statement which is false or misleading in a material particular, he shall be guilty of an offence.

(6) A person guilty of an offence under paragraph (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.]

VALID FROM 10/06/2006

F⁵⁶Temporary stop notices

F56 Arts. 67E-67G and preceding cross heading inserted (10.6.2006) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), **13(1)**

Temporary stop notice

67E.—(1) This Article applies if the Department thinks—

- (a) that there has been a breach of planning control in relation to any land; and
- (b) that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.

(2) The Department may issue a temporary stop notice.

(3) The notice shall be in writing and shall—

- (a) specify the activity which the Department thinks amounts to the breach;
- (b) prohibit the carrying on of the activity (or of so much of the activity as is specified in the notice);
- (c) set out the Department's reasons for issuing the notice.

(4) A temporary stop notice may be served on any of the following—

- (a) the person who the Department thinks is carrying on the activity;
- (b) a person who the Department thinks is an occupier of the land;
- (c) a person who the Department thinks has an estate in the land.

(5) The Department shall display on the land—

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- (a) a copy of the notice;
- (b) a statement of the effect of the notice and of Article 67G.

(6) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of paragraph (5).

(7) A temporary stop notice ceases to have effect—

- (a) at the end of the period of 28 days starting on the day the copy notice is so displayed;
- (b) at the end of such shorter period starting on that day as is specified in the notice; or
- (c) if it is withdrawn by the Department.

Temporary stop notice: restrictions

67F.—(1) A temporary stop notice does not prohibit—

- (a) any person from continuing to use any building, caravan or other structure situated on land to which the temporary stop notice relates as his permanent residence whether as owner, occupier, tenant, patient, guest or otherwise;
- (b) the carrying out of an activity of such description or in such circumstances as is prescribed.

(2) A temporary stop notice does not prohibit the carrying out of any activity which has been carried out (whether continuously or not) for a period of 4 years ending with the day on which the copy of the notice is first displayed as mentioned in Article 67E(6).

(3) Paragraph (2) does not prevent a temporary stop notice prohibiting—

- (a) activity consisting of or incidental to building, engineering, mining or other operations; or
- (b) the deposit of refuse or waste materials.

(4) For the purposes of paragraph (2) any period during which the activity is authorised by planning permission shall be ignored.

(5) A second or subsequent temporary stop notice shall not be issued in respect of the same activity unless the Department has first taken some other enforcement action in relation to the breach of planning control which is constituted by the activity.

(6) In paragraph (5) enforcement action includes obtaining the grant of an injunction under Article 76B.

Temporary stop notice: offences

67G.—(1) A person commits an offence if he contravenes a temporary stop notice—

- (a) which has been served on him; or
- (b) a copy of which has been displayed in accordance with Article 67E(5).

(2) Contravention of a temporary stop notice includes causing or permitting the contravention of the notice.

(3) An offence under this Article may be charged by reference to a day or a longer period of time.

(4) A person may be convicted of more than one such offence in relation to the same temporary stop notice by reference to different days or periods of time.

(5) A person does not commit an offence under this Article if he proves—

- (a) that the temporary stop notice was not served on him; and

(b) that he did not know, and could not reasonably have been expected to know, of its existence.

(6) A person convicted of an offence under this Article is liable—

(a) on summary conviction, to a fine not exceeding 163 30,000;

(b) on conviction on indictment, to a fine.

(7) In determining the amount of the fine the court shall have regard in particular to any financial benefit which has accrued or has appeared to accrue to the person convicted in consequence of the offence.]

Enforcement notices

[^{F57} Issue of enforcement notice

68.—(1) The Department may issue a notice (in this Order referred to as an “enforcement notice”) where it appears to it—

(a) that there has been a breach of planning control; and

(b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

(2) A copy of an enforcement notice shall be served—

(a) on the owner and on the occupier of the land to which it relates; and

(b) on any other person having an estate in the land, being an estate which, in the opinion of the Department, is materially affected by the notice.

(3) The service of the notice shall take place—

(a) not more than 28 days after its date of issue; and

(b) not less than 28 days before the date specified in it as the date on which it is to take effect.]

F57 2003 NI 8

Contents and effect of enforcement notice

68A.—(1) An enforcement notice shall state—

(a) the matters which appear to the Department to constitute the breach of planning control; and

(b) the sub-paragraph of Article 67A(1) within which, in the opinion of the Department, the breach falls.

(2) A notice complies with paragraph (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.

(3) An enforcement notice shall specify the steps which the Department requires to be taken, or the activities which the Department requires to cease, in order to achieve, wholly or partly, any of the following purposes.

(4) Those purposes are—

(a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or

(b) remedying any injury to amenity which has been caused by the breach.

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(5) An enforcement notice may, for example, require—

- (a) the alteration or removal of any buildings or works;
- (b) the carrying out of any building or other operations;
- (c) any activity on the land not to be carried on except to the extent specified in the notice; or
- (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.

(6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this Article referred to as a “replacement building”) which, subject to paragraph (7), is as similar as possible to the demolished building.

(7) A replacement building—

- (a) must comply with any requirement imposed by any statutory provision applicable to the construction of buildings;
- (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;
- (c) must comply with any regulations made for the purposes of this paragraph (including regulations modifying sub-paragraphs (a) and (b)).

(8) An enforcement notice shall specify the date on which it is to take effect and, subject to Article 69(8), shall take effect on that date.

(9) An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

(10) An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under Article 68 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under Article 69.

(11) Where—

- (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and
- (b) all the requirements of the notice have been complied with,

then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of Article 28A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

(12) Where—

- (a) an enforcement notice requires the construction of a replacement building; and
- (b) all the requirements of the notice with respect to that construction have been complied with,

planning permission shall be treated as having been granted by virtue of Article 28A in respect of development consisting of that construction.

Variation and withdrawal of enforcement notices

68B.—(1) The Department may—

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- (a) withdraw an enforcement notice issued by it; or
 - (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with Article 68A(9).
- (2) The powers conferred by paragraph (1) may be exercised whether or not the notice has taken effect.
- (3) The Department shall, immediately after exercising the powers conferred by paragraph (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.
- (4) The withdrawal of an enforcement notice does not affect the power of the Department to issue a further enforcement notice.

Appeal against enforcement notice

69.—(1) A person having an estate in the land to which an enforcement notice relates or a person to whom paragraph (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice, whether or not a copy of it has been served on him.

(2) This paragraph applies to a person who—

- (a) on the date on which the enforcement notice is issued occupies the land to which it relates by virtue of a licence^{F58} . . . ; and
- (b) continues to occupy the land as aforesaid when the appeal is brought.

[^{F58}(3) An appeal may be brought on any of the following grounds—

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the enforcement notice were not served as required by Article 68;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with Article 68A(9) falls short of what should reasonably be allowed.

(4) An appeal under this Article shall be made by serving written notice of the appeal on the planning appeals commission before the date specified in the enforcement notice as the date on which it is to take effect and such notice shall indicate the grounds of the appeal and state the facts on which it is based.]

(5) Where it receives a notice of appeal under this Article against an enforcement notice relating to any land, the planning appeals commission shall notify the district council for the district within which the land is situated and in exercising its powers under Article 71 the commission shall take into account any representations received by the commission from the district council.

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

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(7) Articles 21 and 25(2) shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this Article as they apply to an application for planning permission to the Department.

(8) Where an appeal is brought under this Article, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(9) Subject to paragraph (10), the validity of an enforcement notice shall not, except by way of an appeal under this Article, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(10) Paragraph (9) shall not apply to proceedings brought under^{F58} Article 72] against a person who—

- (a) has held an estate in the land since before the enforcement notice was issued;
- (b) did not have a copy of the enforcement notice served on him; and
- (c) satisfies the court that—
 - (i) he did not know and could not reasonably have been expected to know that the enforcement notice had been issued; and
 - (ii) his interests have been substantially prejudiced by the failure to serve him with a copy of it.

F58 2003 NI 8

Appeal against enforcement notice-general supplementary provisions

70.—(1) On an appeal under Article 69 the planning appeals commission shall quash the enforcement notice, vary the terms of the notice or uphold the notice.

(2) On such an appeal the planning appeals commission may correct any^{F59} misdescription], defect or error in the enforcement notice, or vary its terms, if it is satisfied that the correction or variation can be made without injustice to the appellant or to the Department.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the planning appeals commission may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

F59 2003 NI 8

[^{F60} Appeal against enforcement notice – supplementary provisions relating to planning permission

71.—(1) On the determination of an appeal under Article 69, the planning appeals commission may—

- (a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;
- (b) discharge any condition or limitation subject to which planning permission was granted;
- (c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation

subject to which planning permission was granted was lawful and, if so, issue a certificate under Article 83A.

(2) The provisions of Articles 83A to 83D mentioned in paragraph (3) shall apply for the purposes of paragraph (1)(c) as they apply for the purposes of Article 83A, but as if—

- (a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
- (b) references to the Department were references to the planning appeals commission.

(3) Those provisions are Articles 83A(5) to (7), 83C(4) (so far as it relates to the form of the certificate), (6) and (7) and 83D.

(4) In considering whether to grant planning permission under paragraph (1), the planning appeals commission shall have regard to the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations; and planning permission that may be granted under paragraph (1) is any planning permission that might be granted on an application under Part IV; and where under that paragraph the planning appeals commission discharges a condition or limitation, it may substitute another condition or limitation for it, whether more or less onerous.

(5) Where an appeal against an enforcement notice is brought under Article 69, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control and, in relation to any exercise by the planning appeals commission of its powers under paragraph (1)—

- (a) any planning permission granted under that paragraph shall be treated as granted on that application;
- (b) in relation to a grant of planning permission or a determination under that paragraph, the decision of the planning appeals commission shall be final; and
- (c) subject to sub-paragraph (b), any planning permission granted under that paragraph shall have the like effect as a permission granted under Part IV.

(6) Where—

- (a) the notice under paragraph (4) of Article 69 indicates the ground mentioned in paragraph (3)(a) of that Article;
- (b) any fee is payable under regulations made by virtue of Article 127 in respect of the application deemed to be made by virtue of the appeal; and
- (c) the planning appeals commission gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.]

F60 2003 NI 8

[^{F61}Offence where enforcement notice not complied with

72.—(1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

(2) Where the owner of the land is in breach of an enforcement notice he shall be guilty of an offence.

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(3) In proceedings against any person for an offence under paragraph (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.

(4) A person who has control of or an estate in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.

(5) A person who, at any time after the end of the period for compliance with the notice, contravenes paragraph (4) shall be guilty of an offence.

(6) An offence under paragraph (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the paragraph in question by reference to any period of time following the preceding conviction for such an offence.

(7) Where—

(a) a person charged with an offence under this Article has not been served with a copy of the enforcement notice; and

(b) the notice is not contained in the appropriate register kept under Article 124,

it shall be a defence for him to show that he was not aware of the existence of the notice.

(8) A person guilty of an offence under this Article shall be liable—

(a) on summary conviction, to a fine not exceeding £30,000;

(b) on conviction on indictment, to a fine.

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.]

F61 2003 NI 8

Power to stop further development pending proceedings on enforcement notice

73.—^{F62}(1) Where the Department considers it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, it may, when it serves the copy of the enforcement notice or afterwards, serve a notice (in this Order referred to as a “stop notice”) referring to, and having annexed to it a copy of, the enforcement notice and prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.

(2) In this Article and Article 67 of the Planning (Northern Ireland) Order 1972 (NI 17) “relevant activity” means any activity specified in the enforcement notice as an activity which the Department requires to cease and any activity carried out as part of that activity or associated with that activity.

(3) A stop notice may not be served where the enforcement notice has taken effect.

(3A) A stop notice shall not prohibit any person from continuing to use any building, caravan or other structure situated upon the land as his permanent residence whether as owner, occupier, tenant, patient, guest or otherwise.

(3B) A stop notice shall not take effect until such date as it may specify (and it cannot be contravened until that date).

(3C) The date specified in a stop notice shall be the date when the notice is served, unless the Department considers that there are special reasons for specifying a later date, but the date specified in the notice shall, in any case, be a date not later than 28 days from the date when the notice is first served on any person.

(3D) A stop notice shall not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than 4 years ending with the service of the notice; and for the purposes of this paragraph no account is to be taken of any period during which the activity was authorised by planning permission.

(3E) Paragraph (3D) does not prevent a stop notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.]

(4) A stop notice shall cease to have effect when—

- (a) the enforcement notice referred to in it is withdrawn or quashed; or
- (b) the^[F62] period for compliance with the enforcement notice expires; or
- (c) notice of withdrawal of the stop notice is first served under paragraph (6); or
- (d) if or to the extent that the activities prohibited by it cease, on a variation of the enforcement notice referred to in it,^[F62] relevant activities].

(5) A stop notice may be served by the Department on any person who appears to it to have an estate in the land or to be engaged in any activity prohibited by the notice; and where a stop notice has been served in respect of any land, the Department may display there a notice (in this Article referred to as a “site notice”) stating—

- (a) that a stop notice has been served; and
- (b) that any person contravening the stop notice may be prosecuted for an offence under this Article, giving the date when the stop notice takes effect and indicating its requirements.

(6) The Department may at any time withdraw a stop notice (without prejudice to its power to serve another)—

- (a) by serving notice to that effect on persons served with the stop notice; and
- (b) if a site notice was displayed in respect of the stop notice, displaying a notice of the withdrawal in place of the site notice.

^[F62](7) If any person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on him he shall be guilty of an offence.

(7A) An offence under this Article may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this Article by reference to any period of time following the preceding conviction for such an offence.

(7B) References in this Article to contravening a stop notice include causing or permitting its contravention.

(7C) A person guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to a fine not exceeding £30,000;
- (b) on conviction on indictment, to a fine.

(7D) In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.]

(8) In proceedings for an offence under this Article it shall be a defence for the accused to prove that the stop notice was not served on him and that he did not know, and could not reasonably have been expected to know, of its existence.

(9) A stop notice shall not be invalid by reason that a copy of the enforcement notice to which it relates was not served as required by Article^[F62] 68] if it is shown that the Department took all such steps as were reasonably practicable to effect proper service.

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F62 2003 NI 8

Execution and cost of works required by enforcement notice

74.—^{F63}(1) Where any steps required by an enforcement notice to be taken are not taken within the period allowed for compliance with the notice, a person authorised in writing by the Department may—

- (a) enter the land and take the steps; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.]

(2) Any expenses incurred by the owner or occupier of any land for the purposes of complying with an enforcement notice in respect of any breach of planning control, and any sums paid by the owner of any land under paragraph (1), in respect of expenses incurred by the Department in taking steps required to be taken by such a notice, shall be deemed to be incurred for the use and at the request of the person by whom the breach of planning control was committed.

(3) The Department may sell any materials which have been removed by it from any land when carrying into effect this Part if, before the expiration of three days from their removal, they are not claimed by their owner and taken away by him.

(4) Where the Department sells any materials under paragraph (3), it shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by it from him.

(5) Paragraphs (3) and (4) do not apply to refuse removed by the Department.

(6) Where the Department claims to recover any expenses under this Article from a person as being the owner of the land in respect of which the expenses were incurred and that person proves that he—

- (a) is receiving the rent of that land merely as agent or trustee for some other person; and
- (b) has not, and since the date of the service on him of a demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the Department,

his liability shall be limited to the total amount of the money which he has or has had in his hands as mentioned in sub-paragraph (b), but the Department where it is, or would be, debarred by this paragraph from recovering the whole of any such expenses from an agent or trustee may recover the whole of any unpaid balance thereof from the person on whose behalf the agent or trustee receives the rent.

(7) Any expenses recoverable by the Department under this Article shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the owner of the land and of any person deriving title from him.

(8) The charge created by paragraph (7) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Department by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the Department may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgagees by deed accordingly.

^{F63}(9) Any person who wilfully obstructs a person acting in the exercise of powers under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

F63 2003 NI 8

[^{F64}Effect of planning permission, etc., on enforcement or breach of condition notice

75.—(1) Where, after the service of—

- (a) a copy of an enforcement notice; or
- (b) a breach of condition notice,

planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

(2) Where after a breach of condition notice has been served any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.

(3) The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this Article shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.]

F64 2003 NI 8

Enforcement notice to have effect against subsequent development

76.—(1) Compliance with an enforcement notice whether in respect of—

- (a) the completion,[^{F65} removal] or alteration of any buildings or works, or
- (b) the discontinuance of any use of land,

or in respect of any other requirement contained in the enforcement notice, shall not discharge the enforcement notice.

(2) Without prejudice to paragraph (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part IV; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.

(3) Without prejudice to paragraph (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been[^{F65} removed] or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were[^{F65} removed] or altered; and, subject to paragraph (4), Article 74 shall apply accordingly.

(4) Where, at any time after an enforcement notice takes effect—

- (a) any development is carried out on land by way of reinstating or restoring buildings or works which have been[^{F65} removed] or altered in compliance with the notice, and
- (b) the Department proposes, under Article 74(1), to take any steps required by the enforcement notice for the[^{F65} removal] or alteration of the buildings or works in consequence of the reinstatement or restoration,

the Department shall, not less than 28 days before taking any such steps, serve on the owner and occupier of the land a notice of its intention to do so.

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(5) A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been^{F65} removed] or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and no person shall be liable under^{F65} Article 72(2)] for failure to take any steps required to be taken by an enforcement notice by way of^{F65} removal] or alteration of what has been so reinstated or restored.

F65 2003 NI 8

^{F66}Breach of condition

F66 2003 NI 8

Enforcement of conditions

76A.—(1) This Article applies where planning permission for carrying out any development of land has been granted subject to conditions.

(2) The Department may, if any of the conditions is not complied with, serve a notice (in this Order referred to as a “breach of condition notice”) on—

- (a) any person who is carrying out or has carried out the development; or
- (b) any person having control of the land,

requiring him to secure compliance with such of the conditions as are specified in the notice.

(3) References in this Article to the person responsible are to the person on whom the breach of condition notice has been served.

(4) The conditions which may be specified in a notice served by virtue of paragraph (2)(b) are any of the conditions regulating the use of the land.

(5) A breach of condition notice shall specify the steps which the Department considers ought to be taken, or the activities which the Department considers ought to cease, to secure compliance with the conditions specified in the notice.

(6) The Department may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve on him a further breach of condition notice in respect of the conditions specified in the earlier notice or any other conditions.

(7) The period allowed for compliance with the notice is—

- (a) such period of not less than 28 days beginning with the date of service of the notice as may be specified in the notice; or
- (b) that period as extended by a further notice served by the Department on the person responsible.

(8) If, at any time after the end of the period allowed for compliance with the notice—

- (a) any of the conditions specified in the notice is not complied with; and
- (b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,

the person responsible is in breach of the notice.

(9) If the person responsible is in breach of the notice he shall be guilty of an offence.

(10) An offence under paragraph (9) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.

(11) It shall be a defence for a person charged with an offence under paragraph (9) to prove—

- (a) that he took all reasonable measures to secure compliance with the conditions specified in the notice; or
- (b) where the notice was served on him by virtue of paragraph (2)(b), that he no longer had control of the land.

(12) A person who is guilty of an offence under paragraph (9) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) In this Article—

- (a) “conditions” includes limitations; and
- (b) references to carrying out any development include causing or permitting another to do so.]

F⁶⁷ Injunctions

F67 2003 NI 8

Injunctions

76B.—(1) Where the Department considers it necessary or expedient for—

- (a) any actual or apprehended breach of planning control;
- (b) any actual or apprehended contravention of Articles 44(1) or (5), 66 or 66A; or
- (c) any actual or apprehended contravention of hazardous substances control,

to be restrained by injunction, it may apply to the court for an injunction, whether or not it has exercised or is proposing to exercise any of its other powers under this Part.

(2) On an application under paragraph (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court and county court rules may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this Article “the court” means the High Court or the county court.]

Listed buildings

Listed building enforcement notices

77.—(1) Where it appears to the Department that any works have been or are being executed to a listed building and are such as to involve a contravention of Article 44(1) or (5), then, subject to paragraph (3), the Department may, if it considers it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice—

- (a) specifying the alleged contravention; and
- (b) requiring such steps as may be specified in the notice to be taken^{F68}. . .
 - (i) for restoring the building to its former state; or
 - (ii) where the Department considers that such restoration would not be reasonably practicable, or would be undesirable, for executing such further works specified in

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the notice as it considers necessary to alleviate the effect of the works which were carried out without listed building consent; or

- (iii) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.

(2) A notice under this Article is referred to in this Order as a “listed building enforcement notice”.

(3) A listed building enforcement notice shall not be served in relation to a contravention of Article 44(1) or (5) which occurred before 9th December 1978.

[^{F68}(4) A listed building enforcement notice—

- (a) shall specify the date on which it is to take effect and, subject to Article 78, shall take effect on that date; and
- (b) shall specify the period within which any steps are required to be taken and may specify different periods for different steps,

and where different periods apply to different steps, references in this Part to the period for compliance with a listed building enforcement notice, in relation to any steps, are to the period within which the step is required to be taken.]

(5) Where a listed building enforcement notice imposes any such requirement as is mentioned in paragraph (1)(b)(ii), listed building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

(6) Articles [^{F68} 68(2) and (3), 68B,] and 72 and 74 shall, with any necessary modifications, apply to a listed building enforcement notice as they apply to an enforcement notice.

F68 2003 NI 8

Appeal against listed building enforcement notice

78.—(1) A person having an estate in the building to which a listed building enforcement notice relates or a person to whom paragraph (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice on any of the following grounds—

- [^{F69}(a) that the matters alleged to constitute a contravention of Article 44 have not occurred;
- (b) that those matters (if they occurred) do not constitute such a contravention;]
- (c) that the contravention of that Article alleged in the notice occurred before 9th December 1978;
- (d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged or different conditions substituted;
- (f) that copies of the notice were not served as required by Article [^{F69} 68(2) and (3)] as applied by Article 77(6);
- (g) that the period specified in the notice as the period within which any step required thereby is to be taken falls short of what should reasonably be allowed;

- (h) except in relation to such a requirement as is mentioned in Article 77(1)(b)(ii) or (iii), the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
 - (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
 - (j) that steps required to be taken by virtue of Article 77(1)(b)(ii) exceed what is necessary to alleviate the effect of the works executed to the building;
 - (k) that steps required to be taken by virtue of Article 77(1)(b)(iii) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.
- (2) This paragraph applies to a person who—
- (a) on the date on which the listed building enforcement notice is issued occupies the building to which it relates by virtue of a licence^{F69} . . . ; and
 - (b) continues to occupy the building as aforesaid when the appeal is brought.
- (3) Paragraphs (4) to (8) of Article 69 and Article 70 shall, with any necessary modifications, apply to an appeal under this Article against a listed building enforcement notice as they apply to an appeal under Article 69 against an enforcement notice.
- (4) On the determination of an appeal under this Article, the planning appeals commission may—
- (a) grant listed building consent for the works to which the listed building enforcement notice relates or for part only of those works;
 - (b) discharge any condition or limitation subject to which listed building consent was granted and substitute any other condition, whether more or less onerous.
- (5) Any listed building consent granted by the planning appeals commission under paragraph (4) shall, subject to paragraph (6), have the like effect as a listed building consent granted under Part V.
- (6) The decision of the commission in relation to the grant of listed building consent under paragraph (4) shall be final.
- (7) The validity of a listed building enforcement notice shall not, except by way of an appeal under this Article, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

F69 2003 NI 8

Effect of listed building consent on listed building enforcement notice

79.—(1) If, after the issue of a listed building enforcement notice, consent is granted under Article 44(3) for the retention of any work to which the listed building enforcement notice relates, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken which would involve the works not being retained in accordance with the consent.

(2) If the consent is granted so as to permit the retention of works without complying with some condition subject to which a previous listed building consent was granted, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.

(3) The preceding provisions of this Article shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the listed building enforcement notice before the relevant provisions of that notice ceased to have effect.

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Urgent works to preserve building

80.—(1) Where it appears to the Department that works are urgently necessary for the preservation of—

- (a) a listed building, or
- (b) a building in respect of which a direction has been given by the Department that this Article shall apply,

the Department may, subject to the following provisions of this Article, execute the works, which may consist of or include works for affording temporary support or shelter for the building.

(2) The ground on which the Department may give a direction that this Article shall apply to a building is that the building is in a conservation area and it appears to the Department that its preservation is important for maintaining the character or appearance of the conservation area.

(3) If the building is occupied works may be carried out only to those parts which are not in use.

(4) The owner of the building shall be given not less than seven days' notice in writing of the intention to carry out the works and the notice shall describe the works proposed to be carried out.

(5) Paragraphs (6) to (10) have effect for enabling the expenses of works executed under this Article to be recovered by the Department.

(6) The Department may give notice to the owner of the building requiring him to pay the expenses of the works.

(7) Where the works consist of or include works for affording temporary support or shelter for the building—

- (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used; and
- (b) notices under paragraph (6) in respect of any such continuing expenses may be given from time to time.

(8) The owner may within 28 days of the service of the notice appeal to the planning appeals commission against the notice on any of the following grounds—

- (a) that some or all of the works were unnecessary for the preservation of the building;
- (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time;
- (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause him hardship.

(9) The planning appeals commission shall give notice of its determination, the reasons for it and the amount recoverable to the owner of the building and to the Department and the determination of the appeals commission shall be final.

(10) Any expenses recoverable by the Department under this Article shall be a civil debt recoverable summarily.

Hazardous substances

Hazardous substances contravention notice

81.—(1) Subject to paragraph (2), where it appears to the Department that there is or has been a contravention of hazardous substances control, it may issue a hazardous substances contravention notice if it considers it expedient to do so having regard to any material consideration.

(2) The Department shall not issue a hazardous substances contravention notice where it appears to the Department that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.

- (3) In this Order “hazardous substances contravention notice” means a notice—
- (a) specifying an alleged contravention of hazardous substances control; and
 - (b) requiring such steps as may be specified in the notice to be taken to remedy^[F70] wholly or partly] the contravention.
- (4) A copy of a hazardous substances contravention notice shall be served—
- (a) on the owner and on the occupier of the land to which it relates;
 - (b) on any person other than the owner or occupier who appears to the Department to be in control of that land; and
 - (c) on such other persons as may be prescribed.
- (5) A hazardous substances contravention notice shall also specify—
- (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect;
 - (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.
- (6) Where the Department issues a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of paragraph (3)(b), if the Department thinks it expedient, include a requirement that the hazardous substance be removed from the land.
- (7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substance which is required to be removed.
- (8) The Department may withdraw a hazardous substances contravention notice (without prejudice to its power to issue another) at any time before^[F70] or after] it takes effect.
- (9) If the Department does so, it shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice^[F70] or would, if the notice were re-issued, be served with a copy of it].
- (10) The Department shall by regulations provide for—
- (a) appeals to the planning appeals commission against hazardous substances contravention notices;
 - (b) the persons by whom, grounds upon which and time within which such an appeal may be brought;
 - (c) the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of Articles 69 to 71.
- (11) If any person appeals against a hazardous substances contravention notice, the notice shall^[F70], subject to regulations made under this Article,] be of no effect pending the final determination or the withdrawal of the appeal.
- (12) The Department may by regulations—
- (a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by this Article;
 - (b) direct that any of the provisions of Articles 72 to 76 and Article 67 of the Planning (Northern Ireland) Order 1972 shall have effect in relation to hazardous substances contravention notices subject to such modifications as it may specify in the regulations;
 - (c) make such other provision as it considers necessary or expedient in relation to hazardous substances contravention notices.

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F70 2003 NI 8

[^{F71}Variation of hazardous substances contravention notices

81A.—(1) The Department may waive or relax any requirement of a hazardous substances contravention notice issued by it and, in particular, may extend any period specified in accordance with Article 81(5)(b) in the notice.

(2) The powers conferred by paragraph (1) may be exercised before or after the notice takes effect.

(3) The Department shall, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice or would, if the notice were re-issued, be served with a copy of it.]

F71 2003 NI 8

Trees

Enforcement of duties as to replacement of trees

82.—[^{F72}(1) If it appears to the Department that—

- (a) the provisions of Article 65B, or
- (b) any conditions of a consent given under a tree preservation order which require the replacement of trees,

are not complied with in the case of any tree or trees, the Department may serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified.

(2) A notice under paragraph (1) may only be served within 4 years from the date of the alleged failure to comply with those provisions or conditions.

(3) A notice under paragraph (1) shall specify a period at the end of which it is to take effect.

(4) The specified period shall be a period of not less than 28 days beginning with the date of service of the notice.

(5) The duty imposed by Article 65B(1) may only be enforced as provided by this Article and not otherwise.]

F72 2003 NI 8

[^{F73}Appeals against Article 82 notices

82A.—(1) A person on whom a notice under Article 82(1) is served may appeal to the planning appeals commission against the notice on any of the following grounds—

- (a) that the provisions of Article 65B or, as the case may be, the conditions mentioned in Article 82(1)(b) are not applicable or have been complied with;
- (b) that in all the circumstances of the case the duty imposed by Article 65B(1) should be dispensed with in relation to any tree;
- (c) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;

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(d) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;

(e) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.

(2) An appeal under paragraph (1) shall be made by serving written notice of the appeal on the planning appeals commission before the end of the period specified in accordance with Article 82(3) and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(3) On any such appeal the planning appeals commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(4) Where an appeal is brought under this Article, the notice under Article 82(1) shall be of no effect pending the final determination or the withdrawal of the appeal.

(5) On an appeal under this Article the planning appeals commission may—

(a) correct any defect, error or misdescription in the notice; or

(b) vary any of its requirements,

if it is satisfied that the correction or variation will not cause injustice to the appellant or the Department.

(6) Where the planning appeals commission determines to allow the appeal, it may quash the notice.

(7) The planning appeals commission shall give any directions necessary to give effect to its determination on the appeal.

(8) Where any person has appealed to the planning appeals commission under this Article against a notice, neither that person nor any other shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

F73 2003 NI 8

Execution and cost of works required by Article 82 notice

82B.—(1) If, within the period specified in a notice under Article 82(1) for compliance with it, or within such extended period as the Department may allow, any trees which are required to be planted by a notice under that Article have not been planted, the Department may—

(a) enter the land and plant those trees; and

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(2) Where such a notice has been served—

(a) any expenses incurred by the owner of any land for the purpose of complying with the notice; and

(b) any sums paid by the owner of any land under paragraph (1) in respect of expenses incurred by the Department in planting trees required by such a notice to be planted,

shall be deemed to be incurred or paid for the use and at the request of any person, other than the owner, responsible for the cutting down, destruction or removal of the original tree or trees.

(3) Paragraphs (3) to (9) of Article 74 shall with any necessary modifications apply to a notice under this Article as those paragraphs apply to an enforcement notice.

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F73 2003 NI 8

Enforcement of controls as respects trees in conservation areas

82C.—(1) If any tree to which Article 66A applies—

- (a) is removed, uprooted or destroyed in contravention of that Article; or
- (b) is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of the provisions of such regulations under paragraph (1) of Article 66B as are mentioned in paragraph (3) of that Article,

it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.

(2) The duty imposed by paragraph (1) does not apply to an owner if on application by him the Department dispenses with it.

(3) The duty imposed by paragraph (1) on the owner of any land attaches to the person who is from time to time the owner of the land and may be enforced as provided by Article 82 and not otherwise.]

F73 2003 NI 8

Discontinuance orders

Enforcement of orders under Article 39

83.—(1) Any person who, without the grant of planning permission in that behalf, uses land, or causes or permits land to be used—

- (a) after the expiry of the period allowed for compliance with an order under Article 39, for any purpose for which an order under that Article has required that its use shall be discontinued; or
- (b) in contravention of any condition imposed by such an order by virtue of paragraphs (1) (a) of that Article,

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

(2) If the use is continued after the conviction of a person of an offence under paragraph (1), he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the use is so continued.

(3) It shall be a defence for a person charged with an offence under paragraph (1) or (2) to prove that he took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.

(4) If in any case the defence provided by paragraph (3) involves an allegation that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending seven days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

(5) If any steps required by an order under Article 39 to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, a person authorised in writing by the Department may enter the land and take those steps, and the

Department may recover from the person who is then the owner of the land any expenses reasonably incurred by it in that behalf; and those expenses shall be a civil debt recoverable summarily.

(6) Where a copy of an order under Article 39 has been served on the person who, at the time when the copy was served on him, was the owner of the land to which the order relates, then, if any steps required by the order to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) If a person against whom proceedings are brought under paragraph (6) has, at some time before the end of the period allowed for compliance with the order, ceased to be the owner of the land, he shall, upon a complaint duly made by him and on giving to the prosecution not less than three days' notice of his intention, be entitled to have the person who then became the owner of the land (in paragraph (8) referred to as "the subsequent owner") brought before the court in the proceedings.

(8) If after it has been proved, in a case to which paragraph (7) applies, that any steps required by the order under Article 39 have not been taken within the period allowed for compliance with the order, the original defendant proves that the failure to take those steps was attributable, in whole or in part, to the default of the subsequent owner—

- (a) the subsequent owner may be convicted of the offence; and
- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the order, shall be acquitted of the offence.

(9) If after a person has been convicted of an offence under paragraphs (6) to (8) he does not as soon as practicable do everything in his power to secure compliance with the order under Article 39 in so far as it requires steps to be taken for the alteration or removal of any buildings or works, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day following his first conviction on which any requirements of the order remain unfulfilled.

(10) Any reference in this Article to the period allowed for compliance with an order under Article 39 is a reference to the period specified in the order for compliance therewith or such extended period as may be allowed by the Department for compliance with the notice.

F⁷⁴ Certificate of lawful use or development

F74 2003 NI 8

Certificate of lawfulness of existing use or development

83A.—(1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the Department specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Order uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

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- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
- (3) For the purposes of this Order any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
 - (a) the time for taking enforcement action in respect of the failure has then expired; and
 - (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.
- (4) If, on an application under this Article, the Department is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the Department or a description substituted by it, the Department shall issue a certificate to that effect; and in any other case it shall refuse the application.
- (5) A certificate under this Article shall—
 - (a) specify the land to which it relates;
 - (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under Article 11(2)(e), identifying it by reference to that class);
 - (c) give the reasons for determining the use, operations or other matter to be lawful; and
 - (d) specify the date of the application for the certificate.
- (6) The lawfulness of any use, operations or other matter for which a certificate is in force under this Article shall be conclusively presumed.
- (7) A certificate under this Article in respect of any use shall also have effect, for the purposes of the following statutory provisions, as if it were a grant of planning permission—
 - (a) section 3(3) of the Caravans Act (Northern Ireland) 1963 (c. 17);
 - (b) Article 7(2) of the Pollution Control and Local Government (Northern Ireland) Order 1978 (NI 19); and
 - (c) Article 8(3) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19).

Certificate of lawfulness of proposed use or development

83B.—(1) If any person wishes to ascertain whether—

- (a) any proposed use of buildings or other land; or
- (b) any operations proposed to be carried out in, on, over or under land,

would be lawful, he may make an application for the purpose to the Department specifying the land and describing the use or operations in question.

(2) If, on an application under this Article, the Department is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it shall issue a certificate to that effect; and in any other case it shall refuse the application.

(3) A certificate under this Article shall—

- (a) specify the land to which it relates;
- (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under Article 11(2)(e), identifying it by reference to that class);
- (c) give the reasons for determining the use or operations to be lawful; and
- (d) specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this Article shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

Certificates under Articles 83A and 83B: supplementary provisions

83C.—(1) An application for a certificate under Article 83A or 83B shall be made in such manner as may be specified by a development order and shall include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the Department.

(2) Provision may be made by a development order for regulating the manner in which applications for certificates under those Articles are to be dealt with by the Department.

(3) In particular, such an order may provide for requiring the Department—

- (a) to give to any applicant within such time as may be specified by the order such notice as may be so specified as to the manner in which his application has been dealt with; and
- (b) to give to such persons as may be specified by or under the order, such information as may be so specified with respect to such applications, including information as to the manner in which any application has been dealt with.

(4) A certificate under either of those Articles may be issued—

- (a) for the whole or part of the land specified in the application; and
- (b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and shall be in such form as may be specified by a development order.

(5) A certificate under Article 83A or 83B shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.

(6) In Article 124 references to applications for planning permission shall include references to applications for certificates under Article 83A or 83B.

(7) The Department may revoke a certificate under either of those Articles if, on the application for the certificate—

- (a) a statement was made or document used which was false in a material particular; or
- (b) any material information was withheld.

(8) Provision may be made by a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

Offences

83D.—(1) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under Article 83A or 83B—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
- (c) with intent to deceive, withholds any material information,

he shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable—

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- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

(3) Notwithstanding Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26), a magistrates' court may hear and determine a complaint in respect of an offence under paragraph (1) whenever made.

Appeals against refusal or failure to give decision on application

83E.—(1) Where an application is made to the Department for a certificate under Article 83A or 83B and—

- (a) the application is refused or is refused in part; or
- (b) the Department does not give notice to the applicant of its decision on the application within such period as may be specified by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the Department,

the applicant may by notice appeal to the planning appeals commission.

(2) On any such appeal, if and so far as the planning appeals commission is satisfied—

- (a) in the case of an appeal under paragraph (1)(a), that the Department's refusal is not well-founded; or
- (b) in the case of an appeal under paragraph (1)(b), that if the Department had refused the application its refusal would not have been well-founded,

the planning appeals commission shall grant the appellant a certificate under Article 83A or, as the case may be, 83B accordingly or, in the case of a refusal in part, modify the certificate granted by the Department on the application.

(3) If and so far as the planning appeals commission is satisfied that the Department's refusal is or, as the case may be, would have been well-founded, the commission shall dismiss the appeal.

(4) References in this Article to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.

Further provisions as to appeals under Article 83E

83F.—(1) Before determining an appeal to it under Article 83E(1), the planning appeals commission shall, if either the appellant or the Department so wish, afford to each of them an opportunity of appearing before, and being heard by, the planning appeals commission .

(2) Where the planning appeals commission grants a certificate under Article 83A or 83B on such an appeal, it shall give notice to the Department of that fact.

(3) The decision of the planning appeals commission on such an appeal shall be final.]

Advertisements

Enforcement of advertisement control

84.—(1) The matters for which provision may be made by regulations under Article 67 shall include provision for enabling the Department to require the removal of any advertisement which is being displayed in contravention of the regulations, or the discontinuance of the use for the display of advertisements of any site which is being so used in contravention of the regulations, and for that purpose for applying any of the provisions of this Order with respect to enforcement notices, subject to such adaptations and modifications as may be specified in the regulations.

(2) Without prejudice to any provision included in regulations made under Article 67 by virtue of paragraph (1), if any person displays an advertisement in contravention of the regulations he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and, in the case of a continuing offence, to a fine not exceeding one-tenth of level 3 on the standard scale for each day during which the offence continues after conviction.

(3) For the purposes of paragraph (2) and without prejudice to the generality thereof, a person shall be deemed to display an advertisement if—

(a) the advertisement is displayed on land of which he is the owner or occupier; or

(b) the advertisement gives publicity to his goods, trade, business or other concerns,

but a person shall not be guilty of an offence under paragraph (2) by reason only that an advertisement is displayed on land of which he is the owner or occupier, or that his goods, trade, business or other concerns are given publicity by the advertisement, if he proves that it was displayed without his knowledge or consent.

[^{F75}Rights of entry for enforcement purposes]

F75 2003 NI 8

[^{F75}Rights to enter without warrant]

84A.—(1) Any person duly authorised in writing by the Department may at any reasonable time enter any land—

(a) to ascertain whether there is or has been any breach of planning control on the land or any other land;

(b) to ascertain whether an offence has been, or is being, committed with respect to any building on the land or any other land, under Article 44, 49 or 72 (as applied by Article 77(6));

(c) to ascertain whether an offence has been committed under Article 61, 66 or 66A;

(d) for the purpose of exercising any of the functions conferred by Article 80;

(e) to determine whether any of the powers conferred on the Department by this Part should be exercised in relation to the land or any other land;

(f) to determine how any such power should be exercised in relation to the land or any other land;

(g) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land,

if there are reasonable grounds for entering for the purpose in question.

(2) Admission to any building used as a dwelling-house shall not be demanded as of right by virtue of paragraph (1) unless 24 hours' notice of the intended entry has been given to the occupier of the building.

Right to enter under warrant

84B.—(1) If it is shown to the satisfaction of a justice of the peace on a complaint on oath—

(a) that there are reasonable grounds for entering any land for any of the purposes mentioned in Article 84A(1); and

(b) that—

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- (i) admission to the land has been refused, or a refusal is reasonably apprehended; or
- (ii) the case is one of urgency,

the justice may issue a warrant authorising any person duly authorised in writing by the Department to enter the land.

(2) For the purposes of paragraph (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.

(3) A warrant authorises entry on one occasion only and that entry must be—

- (a) within one month from the date of the issue of the warrant; and
- (b) at a reasonable time, unless the case is one of urgency.

Rights of entry: supplementary provisions

84C.—(1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of Article 84A or 84B (referred to in this Article as “a right of entry”)—

- (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
- (b) may take with him such other persons as may be necessary; and
- (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.

(2) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If any damage is caused to property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the Department.

(4) Any question of disputed compensation recoverable under paragraph (3) shall be determined by the Lands Tribunal.

(5) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.

(6) Paragraph (5) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.

(7) A person who is guilty of an offence under paragraph (5) shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine, or both.

VALID FROM 10/06/2006

[^{F76}Rights of entry for enforcement purposes: Crown land

84D.—(1) Article 84A applies to Crown land subject to the following modifications.

(2) In paragraph (1) of Article 84A, sub-paragraphs (b) and (c) are omitted.

(3) A person shall not enter Crown land unless he has the relevant permission.

(4) Relevant permission is the permission of—

- (a) a person appearing to the person seeking entry to the land to be entitled to give it; or

(b) the appropriate authority.

(5) Articles 84B and 84C do not apply to anything done by virtue of this Article.

(6) “Appropriate authority” and “Crown land” shall be construed in accordance with Article 118(1).]]

F76 Art. 84D inserted (10.6.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(4), 21(3), **Sch. 1 para. 3**

PART VII

DEVELOPMENT SCHEMES AND ACQUISITION OF LAND

Development schemes

Development schemes

85 ^{F77}. Where the Department considers it expedient that any area should be developed, redeveloped or improved as a whole the Department may, after consultation with the appropriate district council, prepare a development scheme defining, by reference to a map, the area of the scheme and indicating in general terms the manner in which it is intended that the area should be laid out and the land therein used.

F77 functions transferred SR 1999/481

Adoption of development schemes

86 ^{F78}.—(1) The Department shall not adopt a development scheme under paragraph (2) or (3) until it has published in two successive weeks in one or more newspapers circulating in the locality to which the scheme relates a notice—

- (a) describing the area to which the scheme relates and referring to the preparation of the scheme;
- (b) specifying the place at which copies of the scheme may be inspected at reasonable times;
- (c) stating the time (not being less than 28 days from the last of the publications of the notice) during which objections to the scheme may be sent to the Department.

(2) If—

- (a) no objections are made to a development scheme; or
- (b) all objections to a development scheme are withdrawn;

the Department may by order adopt the scheme with or without amendment.

(3) If objections made to a development scheme are not withdrawn the Department shall, unless it considers them to be solely of a frivolous or vexatious nature,—

- (a) cause a public local inquiry to be held by the planning appeals commission; and
- (b) consider any objections not withdrawn and the report of that commission;

and may thereafter by order adopt the scheme with or without amendments.

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(4) The Department may at any time prepare proposals for amending an adopted development scheme in so far as it relates to the manner in which the area of the development scheme is to be laid out and the land therein used.

(5) The Department may by order adopt any proposals prepared under paragraph (4) with or without amendment and may amend the development scheme accordingly.

[^{F79}(6) A development scheme adopted or amended under this Article must be^{F80} in general conformity with] the regional development strategy.]

F78 functions transferred SR 1999/481

F79 1999 NI 4

F80 2003 NI 8

Acquisition of land, etc.

Acquisition of land for planning purposes

87 ^{F81}—(1) The Department may, by agreement or compulsorily, acquire any land where it is satisfied—

- (a) that the land is required in connection with a development scheme; or
- (b) that it is expedient in the public interest that the land should be held together with land so required; or
- (c) that the land is required for development or redevelopment, or both, as a whole for the purpose of providing for the relocation of population or industry or the replacement of open space in the course of the redevelopment or improvement of another area as a whole; or
- (d) that it is expedient to acquire the land for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

(2) Where the Department in exercise of the power conferred on it by paragraph (1) desires to acquire any land otherwise than by agreement, the Department may make an order (in this Article referred to as a “vesting order”) vesting the land in the Department.

(3) Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall, subject to the modifications specified in Schedule 2, apply for the purposes of the acquisition of land by means of a vesting order made under this Article in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act.

(4) The power to make a vesting order in respect of land—

- (a) which is the property of a public body which has power under any transferred provision to acquire land compulsorily; or
- (b) which is declared by or under any transferred provision to be inalienable,

shall not, where representations objecting to the proposal to make the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal to make the vesting order has been approved by a resolution of the Assembly.

(5) Before acquiring any land under paragraph (1) the Department shall consult with the district council in whose area the land is situated.

(6) Proceedings under this Article for the acquisition of land in connection with a development scheme may be taken concurrently (so far as practicable) with proceedings required by Article 86 to be taken for the purpose of the making of an order in relation to that development scheme, so, however, that a vesting order vesting any such land in the Department shall not be made until the order adopting the development scheme has been made.

(7) The Department may appropriate land for the purposes set out in paragraph (1).

(8) Where (whether before or after the coming into operation of this Article) the Department acquires a lesser estate than a fee simple in any land under Article 98, the Department may purchase such estates in the land as it considers appropriate or may make a vesting order in respect of the land under this Article.

(9) In this Part any reference to the acquisition or appropriation of land for planning purposes is a reference to its acquisition or appropriation under this Article.

F81 functions transferred SR 1999/481

Compensation where unfit houses are acquired under this Part

88^{F82}.—(1) Where—

- (a) land is acquired compulsorily or is proposed to be acquired compulsorily by the Department under this Part for the purposes of a development scheme or proposed development scheme; and
- (b) that land comprises a house in respect of which, if the development scheme or proposed development scheme had been a redevelopment scheme under Chapter III of Part III Housing (Northern Ireland) Order 1981 in the opinion of the Department, compensation would be, or would have been, payable in accordance with Article 91 of that Order (compensation for certain land restricted to site value);

the Department may, subject to paragraph (2), make an order, in such form as may be prescribed, declaring the house to be a house to which that Article applies.

(2) Before making an order under this Article, the Department shall serve notice of its intention to make the order and stating the effect of the proposed order on the owner and occupier of the house affected and on any other person who in its opinion would be affected by the order; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) any person on whom the notice is served so desires, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(3) Where the Department makes an order under this Article it shall serve a notice on any person mentioned in paragraph (2) stating the general effect of the order.

F82 functions transferred SR 1999/481

Appropriation of land held for planning purposes

89^{F83}. Where any land acquired or appropriated by the Department for planning purposes is for the time being held by the Department for those purposes, the Department may appropriate the land for any purpose for which it is or may be authorised in any capacity to acquire land under any transferred provision.

F83 functions transferred SR 1999/481

Disposal of land held for planning purposes

90^{F84}.—(1) Where any land acquired or appropriated by the Department for planning purposes is for the time being held by the Department for those purposes, the Department may dispose of the land to such person as may appear to it to be expedient in order to secure the best use of that or other

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land and any buildings or works which have been, or are to be, erected, constructed or carried out thereon, whether by itself or by any other person, or to secure the erection, construction or carrying out thereon of any buildings or works appearing to it to be needed for the proper planning of the area in which the land is situated.

(2) The Department shall dispose of any land under this Article so as to secure, so far as may be practicable, to persons who were living or carrying on business or other activities on any such land, who desire to obtain accommodation on such land and who are willing to comply with any requirements of the Department as to the development and use of such land, an opportunity to obtain thereon accommodation suitable to their reasonable requirements.

(3) Section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933 (which contains provisions with respect to the disposal of land by government departments) shall not apply to the disposal of any land under this Article.

F84 functions transferred SR 1999/481

Development of land held for planning purposes

91^{F85}.—(1) The Department may erect, construct or carry out any building or work on any land to which this Article applies.

(2) The Department may enter into an agreement with any person for the development of any land to which this Article applies.

(3) The Department may repair, maintain and insure any buildings or works on land to which this Article applies, and generally deal therewith in a proper course of management.

(4) This Article applies to any land which has been acquired or appropriated by the Department for planning purposes and is for the time being held by it for those purposes.

F85 functions transferred SR 1999/481

[^{F86}Powers of Department before the acquisition of land for planning purposes

91A.—(1) Where the Department proposes to acquire land compulsorily for planning purposes it may, at any time after the date of the publication of the notice mentioned in paragraph 2(a) of Schedule 6 to the Local Government Act (Northern Ireland) Act 1972 (as applied by Article 87(3))) in relation to that land—

- (a) enter into an agreement with any person for securing the disposal of the land (in accordance with Article 90) after that land has been acquired for planning purposes;
- (b) exercise the power under paragraph (2) of Article 91 in relation to the land as if the land were land to which that Article applies.]

F86 2003 NI 8

Recovery of possession of premises let by Department

92^{F87}. On the termination of any tenancy of any premises let by the Department under Article 90 possession of the premises may (without prejudice to any other method of recovery) be recovered by the Department in a summary manner under Articles 67 to 74 of the Magistrates' Courts (Northern Ireland) Order 1981 whatever may be the rent or term of the tenancy.

F87 functions transferred SR 1999/481

Supplementary provisions

93^{F88}. Where the Department proposes to acquire land for planning purposes by means of a vesting order, the Department may disregard any objection to the proposed order which, in the opinion of the Department, amounts in substance to an objection to the provisions of the development plan defining the proposed use of that or any other land.

F88 functions transferred SR 1999/481

PART VIII

PURCHASE OF ESTATES IN CERTAIN LAND AFFECTED BY PLANNING DECISIONS

Service of purchase notice

94.—(1) Where—

- (a) on an application for planning permission to develop any land, permission is refused or is granted subject to conditions; or
- (b) by an order under Article 38 planning permission in respect of any land is revoked, or is modified by the imposition of conditions,

then if any owner of the land claims—

- (i) that the land has become incapable of reasonably beneficial use in its existing state; and
- (ii) in a case where planning permission was granted subject to conditions, or was modified by the imposition of conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions; and
- (iii) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been granted,

he may serve on the Department a notice requiring the Department to purchase his estate in the land in accordance with this Part.

(2) Where—

- (a) on an application for listed building consent in respect of a building, consent is refused or is granted subject to conditions; or
- (b) by an order under Article 47, listed building consent in respect of a building is revoked or is modified by the imposition of conditions,

then if any owner of the land claims—

- (i) that the land has become incapable of reasonably beneficial use in its existing state; and
- (ii) in a case where consent was granted subject to conditions with respect to the execution of the works or, as the case may be, was modified by the imposition of such conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the works in accordance with those conditions; and
- (iii) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other works for which listed building consent has been granted,

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he may serve on the Department a notice requiring the Department to purchase his estate in the land in accordance with this Part.

(3) If any person entitled to an estate in land in respect of which an order is made under Article 39 claims—

- (a) that by reason of the order the land is incapable of reasonably beneficial use in its existing state; and
- (b) that it cannot be rendered capable of reasonably beneficial use by the carrying out of any development for which planning permission has been granted, whether by that order or otherwise,

he may serve on the Department a notice requiring the Department to purchase his estate in the land in accordance with this Part.

(4) A notice under this Article—

- (a) shall be served within the time and in the manner specified by a development order; and
- (b) is referred to in this Order as a “purchase notice”.

(5) Where, for the purpose of determining whether the conditions in paragraph (1)(i) to (iii), paragraph (2)(i) to (iii) or paragraph (3)(a) and (b) are fulfilled in relation to any land, any question arises as to what is a reasonably beneficial use of that land, then in determining that question for that purpose no account shall be taken of any prospective use of that land which would involve the carrying out of new development as defined in section 43(1) of the Act of 1965, or of any works requiring listed building consent which might be executed to the building.

(6) For the purposes of this Article, the conditions referred to in Articles 34, 35 and 46 shall be disregarded.

(7) A person on whom there has been served a repairs notice under Article 109(4) shall not in any case be entitled to serve a purchase notice in respect of the building in question until the expiration of three months beginning with the date of the service of the repairs notice; and if during that period the Department commences proceedings for the compulsory acquisition of the building in the exercise of its powers under Article 109, that person shall not be so entitled unless and until those proceedings are discontinued.

(8) In paragraph (2) and in the other provisions of this Part as they apply for the purposes of a purchase notice served under paragraph (2) “the land” means the building in respect of which listed building consent has been refused, or granted subject to conditions, or revoked or modified by the imposition of conditions, and in respect of which its owner serves a notice under paragraph (2), together with any land comprising the building, or contiguous or adjacent to it, and owned with it, being land as to which the owner claims that its use is substantially inseparable from that of the building and that it ought to be treated, together with the building, as a single holding.

VALID FROM 10/06/2006

[F89] Purchase notices: Crown land

94A.—(1) A purchase notice may be served in respect of Crown land only as mentioned in this Article.

(2) The owner of a private estate in Crown land shall not serve a purchase notice unless—

- (a) he first offers to dispose of his estate to the appropriate authority on equivalent terms; and
- (b) the offer is refused by the appropriate authority.

(3) An offer is made on equivalent terms if the price payable for the estate is equal to (and, in default of agreement, determined in the same manner as) the compensation which would be payable if it were acquired in pursuance of a purchase notice.

(4) Expressions used in this Article and in Part XII shall be construed in accordance with that Part.]

F89 Art. 94A inserted (10.6.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(4), 21(3), **Sch. 1 para. 7**

Action by Department following service of purchase notice

95.—(1) Where a purchase notice is served on the Department, it shall serve on the person by whom the notice was served—

- (a) a notice that the Department is willing to comply with the purchase notice; or
- (b) a counter-notice, objecting to the purchase notice, stating that for the reasons specified the Department is not willing to comply with the purchase notice; or
- (c) a counter-notice, objecting to the purchase notice and stating that the Department considers that—
 - (i) in the case of a purchase notice served under Article 94(1) or (3), planning permission for any other development might reasonably be expected to be granted, being development which in the opinion of the Department would if carried out render the land capable of reasonably beneficial use;
 - (ii) in the case of a purchase notice served under Article 94(2), listed building consent for any other works might reasonably be expected to be granted, being works which in the opinion of the Department would if carried out render the land capable of reasonably beneficial use.

(2) The Department shall comply with paragraph (1)—

- (a) in any case where an appeal under Article 32, 69 or 78 or paragraph 7 of Schedule 1 relating to the land—
 - (i) is pending on the date on which the purchase notice was served; or
 - (ii) is made within two months of that date,within two months of the date on which the appeal is disposed of;
- (b) in any other case, within two months of the date on which the purchase notice was served.

Further ground of objection to purchase notice

96.—(1) This Article shall have effect where, on an application for planning permission to develop any land which consists of or includes the whole or part of any land which has a restricted use by virtue of a previous planning permission, permission is refused or granted subject to conditions and the owner of the land serves a purchase notice.

(2) For the purposes of this Article, land has a restricted use by virtue of a previous planning permission if it is part of a larger area in respect of which planning permission was previously granted (and has not been revoked) and either—

- (a) it remains a condition of the planning permission (however expressed) that that part shall remain undeveloped or be preserved or laid out in a particular way as amenity land in relation to the remainder; or

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(b) the planning permission was granted on an application which contemplated (expressly or by necessary implication) that the part should not be comprised in the development for which planning permission was sought, or should be preserved or laid out as aforesaid.

(3) If a purchase notice is served on the Department, the Department although satisfied that the land to which the purchase notice relates (or part of that land) has become incapable of reasonably beneficial use, may nevertheless serve a counter-notice if it appears to the Department that the land to which the purchase notice relates (or part of that land) ought, in accordance with the previous planning permission, to remain undeveloped or, as the case may be, to remain or be preserved or laid out as amenity land in relation to the remainder of the larger area for which that planning permission was granted.

Reference of counter-notices to Lands Tribunal

97.—(1) Where the Department serves a counter-notice under Article 95(1)(b) or (c), the owner who served the purchase notice may, within two months of the date of receipt of the counter-notice, refer the matter to the Lands Tribunal.

(2) On any such reference, if the counter-notice is not withdrawn, the Lands Tribunal shall consider the matters set out in the purchase notice and the reasons specified in the counter-notice and shall determine whether the purchase notice or the counter-notice should be upheld.

(3) If the Tribunal determines to uphold the purchase notice it shall declare it valid.

Effect of valid purchase notice

98.—(1) Where a purchase notice has been served and either—

(a) a notice is served under Article 95(1)(a); or

(b) where a counter-notice has been served, the objection is withdrawn, or on a reference to the Lands Tribunal, is not upheld by the Tribunal,

the Department shall, on the date of acceptance, be deemed to have entered into a contract to purchase the estate of the person who served the purchase notice in respect of which the notice is effective and that person shall, on that date, be deemed to have entered into a contract to sell that estate to the Department.

(2) The amount to be paid for an estate by the Department under a contract deemed to have effect under paragraph (1) shall be the amount which the Department would have paid for the estate if it had compulsorily acquired the estate on the date of acceptance under Article 87.

(3) Any dispute as to the amount to be paid under paragraph (2) for an estate shall be determined by the Lands Tribunal.

(4) A person who has served a purchase notice in relation to an estate in land may withdraw that notice at any time before the amount to be paid for the estate has been agreed with the Department or determined by the Lands Tribunal or at any time before the end of six weeks beginning with the date on which that amount is so agreed or determined; and where a purchase notice is withdrawn by virtue of this paragraph any contract deemed to have been made under paragraph (1) in consequence thereof shall be deemed not to have been made.

(5) The date for the completion of the purchase of an estate in pursuance of a contract deemed to have effect under paragraph (1) shall, unless the owner of the estate and the Department otherwise agree, be three months from the date on which they agree upon the amount to be paid for that estate or, in default of agreement on that amount, from the date on which the Lands Tribunal determines that amount.

(6) If on the date for the completion of a contract deemed to have effect under paragraph (1), the Department fails to pay to the claimant the amount payable to him under this Article, the Department

shall, unless that failure arises from a cause other than the Department's act or default, pay to him, from that date until the date on which it pays that amount, interest on that amount at such rate as may for the time being be determined by the Department of Finance and Personnel under paragraph 18(2) of Schedule 6 to the Local Government Act (Northern Ireland) 1972.

(7) For the purposes of determining the amount to be paid for an estate under a contract deemed to have effect under paragraph (1), for any reference in Articles 12 and 13 of the Land Compensation (Northern Ireland) Order 1982 to the date of acquisition or the date on which the vesting order becomes effective there shall be substituted a reference to the date of acceptance.

(8) In this Article “the date of acceptance”

- (a) in a case where the Lands Tribunal, on a reference to it, does not uphold an objection, is the date of the Tribunal's determination;
- (b) in any other case, is the date on which a notice is served under Article 95(1)(a) or the date on which the period referred to in Article 95(2) expires, whichever is the earlier.

Special provision as to compensation under this Part

99. Where by virtue of section 26 of the Act of 1965 compensation is payable in respect of expenditure incurred in carrying out any work on land, then, if a purchase notice is served in respect of an estate in that land, any compensation payable in respect of the acquisition of that estate in pursuance of the purchase notice shall be reduced by an amount equal to the value of the works in respect of which compensation is payable under that section.

PART IX

ROADS

Orders extinguishing right to use vehicle on road

100 ^{F90}.—(1) The Department may, for the purpose of improving the amenity of any area, by order provide for the extinguishment of any right which persons may have to use vehicles on a road, being a road other than a trunk road or a special road.

(2) An order under paragraph (1) may include such provision as the Department thinks fit for permitting the use on the road of vehicles (whether mechanically propelled or not) in such cases as may be specified in the order, notwithstanding the extinguishment of any such right as is mentioned in that paragraph; and any such provision may be framed by reference to particular descriptions of vehicles, or to particular persons by whom, or on whose authority, vehicles may be used, or to the circumstances in which, or the times at which, vehicles may be used for particular purposes.

(3) No provision contained in, or having effect under, any transferred provision, being a provision prohibiting or restricting the use of footpaths, shall affect any use of a vehicle on a road in relation to which an order made under paragraph (1) has effect, where the use is permitted in accordance with provisions of the order included by virtue of paragraph (2).

(4) Where an order is made under paragraph (1) the Department shall place or cause to be placed on or near the road to which the order relates such traffic signs as are necessary—

- (a) to warn traffic that the road is subject to the restrictions or prohibitions specified in the order;
- (b) to indicate the nature and extent of those restrictions or prohibitions.

(5) Any person who uses a vehicle or causes or permits a vehicle to be used in contravention of an order made under paragraph (1) shall be guilty of an offence under the^{F91} Road Traffic Regulation

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(Northern Ireland) Order 1997] and be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Where the Department revokes an order under paragraph (1), the effect of the order shall be to reinstate any right to use vehicles on the road, being a right which was extinguished by virtue of the order under that paragraph.

(7) Any order made under this Article may contain provisions for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the road to which the order relates.

(8) This Article shall have effect without prejudice to—

- (a) any power conferred on the Department under any other enactment to authorise the stopping up or diversion of a road; or
- (b) Article 102.

(9) In this Article “traffic sign” and “vehicle” have the same meanings as in the^{F91} Road Traffic Regulation (Northern Ireland) Order 1997].

F90 functions transferred SR 1999/481

F91 1997 NI 2

Provision of amenity for road reserved to pedestrians

101^{F92}—(1) Where in relation to a road an order has been made under Article 100, the Department may carry out and maintain any such works on or in the road, or place on or in it any such objects or structures, as appear to it—

- (a) to be expedient for the purposes of—
 - (i) giving effect to the order;
 - (ii) enhancing the amenity of the road and its immediate surroundings; or
 - (iii) providing a service for the benefit of the public or a section of the public; or
 - (b) to be otherwise desirable for a purpose beneficial to the public.
- (2) The powers exercisable by the Department under this Article shall extend to—
- (a) laying out any part of the road with lawns, trees, shrubs and flower beds;
 - (b) providing toilet facilities and facilities for recreation or refreshment;
 - (c) providing trading kiosks and deriving income therefrom; and
 - (d) providing directional maps or plans.

^{F93}(2A) The Department may sell, let or otherwise dispose of any trading kiosk placed by it in a road under this Article to any other person.]

(3) The Department may so exercise its powers under this Article as to restrict the access of the public to any part of the road, but shall not so exercise them as—

- (a) to prevent persons from entering the road at any place where they could enter it before the order under Article 100 was made; or
- (b) to prevent the passage of the public along the road; or
- (c) to prevent normal access by pedestrians to premises adjoining the road; or
- (d) to prevent any use of vehicles which is permitted by an order made under that Article and applying to the road; or

- (e) to prevent statutory undertakers from having access to any works of theirs under, in, on, over, along or across the road.
- (4) An order under Article 100(6) may make provision requiring the removal of any obstruction of the road resulting from the exercise by the Department of its powers under this Article.
- (5) A district council may, with the consent of the Department, exercise any of the powers of the Department under this Article.

F92 functions transferred SR 1999/481

F93 [1993 NI 15](#)

Extinguishment of public rights of way

102^{F94}.—(1) Where any land has been acquired or appropriated for planning purposes and is for the time being held by the Department for the purposes for which it was acquired or appropriated, the Department may by order extinguish any public right of way over the land where it is satisfied that the extinguishment of the right of way is necessary for the proper development of the land.

(2) In this Article any reference to the acquisition or appropriation of land for planning purposes shall be construed in accordance with Article 87(9) as if this Article were in Part VII.

F94 functions transferred SR 1999/481

Procedure for making orders under Article 100 or 102

103^{F95}.—(1) Before making an order under Article 100 or 102 the Department shall publish in at least one newspaper circulating in the relevant area a notice—

- (a) stating the general effect of the order;
- (b) specifying a place in the relevant area where a copy of the draft order and of any relevant map or plan may be inspected by any person at all reasonable hours during a period of 28 days from the date of publication of the notice; and
- (c) stating that, within that period, any person may by notice to the Department object to the making of the order.

(2) Not later than the date on which that notice is so published, the Department shall serve a copy of the notice, together with a copy of the draft order and of any relevant map or plan, on—

- (a) every district council in whose area any land to which the order relates is situated;
- (b) any gas or electricity undertakers having any cables, mains, pipes, or wires laid along, across, under or over any land over which a right of way is to be extinguished, under the order; and
- (c) the operator of ^{F96}an electronic communications code network] for the purposes of which any ^{F96}electronic communications apparatus] is kept installed along, across, under or over any such land.

(3) The Department may cause a public local inquiry to be held by the planning appeals commission to hear objections to the proposed order.

(4) After considering any objections to the order which are not withdrawn and, where a public local inquiry is held, the report of the planning appeals commission, the Department may make the order either without modification or subject to such modifications as it thinks fit.

(5) Where the Department makes an order under Article 100 or 102 the Department shall publish, in the manner specified in paragraph (1), a notice stating that the order has been made, and naming

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a place where a copy of the order may be seen at all reasonable hours; and paragraph (2) shall have effect in relation to any such notice as it has effect in relation to a notice under paragraph (1).

(6) In this Article “the relevant area”, in relation to an order, means the area in which any land to which the order relates is situated.

F95 functions transferred SR 1999/481

F96 2003 c. 21

Modifications etc. (not altering text)

C3 Arts. 103, 104 applied by [Laganside Development \(Northern Ireland\) Order 1989 \(S.I. 1989/490 \(N.I. 2\)\)](#), art. 20(6) (as substituted (1.4.2007) by [Laganside Corporation Dissolution Order \(Northern Ireland\) 2006 \(S.R. 2006/527\)](#), arts. 1(2), 5(1), **Sch. 2 Pt. 1 para. 1(8)(b))**

[^{F97}Electronic communications apparatus]

^{F98}**104.**—(1) Where an order is made under Article 102 and immediately before the date on which the order became operative there was, under, in, on, over, along or across the right of way any [^{F97} electronic communications apparatus] kept installed for the purposes of [^{F97} an electronic communications code network], the operator of that [^{F97} network] shall have the same powers in respect of that apparatus as if the order had not become operative; but the Department shall be entitled to require the alteration of the apparatus.

(2) If the operator of [^{F97} an telecommunications code network] removes any [^{F97} electronic communications apparatus] in circumstances in which paragraph (1) applies and serves a notice on the Department notifying the Department of the removal, the operator shall be entitled to recover from the Department the expense of providing in substitution for the apparatus and any [^{F97} electronic communications apparatus] connected therewith which is rendered useless in consequence of the removal, any [^{F97} electronic communications apparatus] in such other place as the operator may require.

(3) Paragraph 1(2) of the [^{F97} electronic communications code] (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this Article as it applies for the purpose of that code.

(4) Paragraph 21 of the [^{F97} electronic communications code] (restriction on removal of apparatus) shall apply in relation to any entitlement conferred by this Article to require the alteration, moving or replacement of any [^{F97} electronic communications apparatus] as it applies in relation to an entitlement to require the removal of any such apparatus.

^{F99}[(5)] Paragraph 1 of Schedule 4 to the [1984 c. 12] Telecommunications Act 1984 shall apply for the interpretation of this Article and paragraph (2)(c) of Article 103 as it applies for the interpretation of that Schedule.

F97 2003 c. 21

F98 functions transferred SR 1999/481

F99 Art. 104(5) repealed (25.7.2003 for specified transitional purposes and 29.12.2003 for further specified purposes otherwise prosp.) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19** (with **Sch. 18**); [S.I. 2003/1900](#), **Sch. 1** (with arts. 3,4,5,6); [S.I. 2003/3142](#), **art. 3(2)**

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Modifications etc. (not altering text)

- C4** Arts. 103, 104 applied by [Laganside Development \(Northern Ireland\) Order 1989 \(S.I. 1989/490 \(N.I. 2\)\)](#), art. 20(6) (as substituted (1.4.2007) by [Laganside Corporation Dissolution Order \(Northern Ireland\) 2006 \(S.R. 2006/527\)](#), arts. 1(2), 5(1), **Sch. 2 Pt. 1 para. 1(8)(b))**

PART X

FURTHER PROVISIONS AS TO HISTORIC BUILDINGS

Historic Buildings Council

105.—(1) There shall continue to be a Council called “the Historic Buildings Council” (in this Order referred to as “the Council”).

(2) The functions of the Council shall be—

- (a) to keep under review, and from time to time report to the Department on, the general state of preservation of listed buildings;
- (b) to advise the Department on such matters relating to the preservation of buildings of special architectural or historic interest as the Department may refer to it;
- (c) such other functions as are conferred on it by any statutory provision.

(3) Schedule 3 shall have effect with respect to the Council.

Grants and loans for preservation or acquisition of listed buildings

106.—(1) The Department may make grants or loans towards the whole or part of any expenditure incurred or to be incurred in the repair or maintenance of a listed building or in the upkeep of any land comprising, or contiguous or adjacent to, any such building, or in the repair or maintenance of any objects ordinarily kept in the building.

(2) The Department may, on such terms and conditions as the Department, with the approval of the Department of Finance and Personnel, thinks fit, make grants or loans to the National Trust for Places of Historic Interest or Natural Beauty towards the cost of acquiring—

- (a) any listed building;
- (b) any land comprising, or contiguous or adjacent to, any such building;
- (c) any objects ordinarily kept in any such building.

(3) Grants under paragraph (1) to the National Trust for Places of Historic Interest or Natural Beauty may, if the Department thinks fit, be made by way of endowment.

(4) The Department may attach to any grant or loan under paragraph (1) such conditions as it thinks fit for securing public access to the whole or part of the property to which the grant or loan relates.

(5) Any loan under paragraph (1) shall be made on such terms as to repayment, payment of interest and otherwise as the Department may, with the approval of the Department of Finance and Personnel, determine.

Acquisition of listed buildings by agreement

107.—(1) The Department may acquire by agreement, whether by purchase, lease or otherwise, or may accept the gift of—

- (a) any listed building;

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(b) any land comprising, or contiguous or adjacent to, any such building.

(2) The Department may purchase by agreement, or accept a gift of, any objects which are or have been ordinarily kept in a listed building which, or any estate in which, is vested in the Department, or in a listed building which is under its control or management.

(3) The Department may make such arrangements as it thinks fit for the management, custody and use of any property acquired or accepted by it under this Article.

(4) Where the Department is of the opinion that any property acquired by it under this Article would be more expediently or efficiently managed or preserved by—

- (a) the National Trust for Places of Historic Interest or Natural Beauty; or
- (b) any government department; or
- (c) a district council; or
- (d) such other body as the Department thinks suitable;

the Department may, with the approval of the Department of Finance and Personnel, convey either for value or otherwise and upon such terms and conditions as the Department may think fit, that property to that Trust, government department, district council or other body, and may—

- (i) impose such restrictions as the Department may think necessary on the user of the land so conveyed; and
- (ii) grant or reserve such rights over such land as the Department thinks fit.

Acceptance by Department of endowments in respect of listed buildings

108.—(1) Where any instrument coming into operation after 1st November 1972 contains a provision purporting to be a gift of property to the Department upon trust to use the income thereof (either for a limited time or in perpetuity) for or towards the upkeep of a listed building or other property acquired or accepted by the Department under Article 107 or a building which the Department proposes so to acquire or accept, the Department may accept the gift, and if it does so, and the provision does not constitute a charitable trust, paragraphs (2) to (7) shall have effect.

(2) The validity of the gift and of the trust to use the income as aforesaid (in this Article referred to as “the endowment trust”) shall be deemed not to be, or ever to have been, affected by any rule of law or equity which would not have affected their validity if the trust had been charitable.

(3) In relation to the property (of whatsoever nature) comprised in the gift and any property for the time being representing that property (in this Article collectively referred to as “the trust fund”) the Department shall during the continuance of the endowment trust have the like powers of management, disposition and investment as in the case of settled land are conferred by law on the tenant for life and the trustees of the settlement in relation to the land and the proceeds of its sale, respectively.

(4) Paragraph (3) does not prejudice any additional or larger powers conferred on the Department by the trust instrument.

(5) If while the endowment trust continues an event happens such that immediately thereafter the Department is neither entitled to any estate in the building to which the trust relates nor has the building under its control or management, and apart from this paragraph the endowment trust would not then be determined or be deemed to have failed, then on the happening of that event the endowment trust shall cease by virtue of this paragraph and the trust fund shall devolve accordingly as on a failure of the trust.

(6) If the trust instrument contains a provision whereby, on the failure or determination of the endowment trust, the trust fund purports to be given, or to be directed to be held, on charitable trusts, the validity of that gift or direction shall be deemed not to be, or ever to have been, affected by any rule of law or equity relating to perpetuities.

(7) In this Article “gift” includes devise, bequest, appointment, conveyance, assignment, transfer and any other assurance of property, and “property” means real or personal property of any description.

Compulsory acquisition of listed buildings

109.—(1) If it appears to the Department that, in the case of a listed building to which this paragraph applies, reasonable steps are not being taken for properly preserving it, the Department may, if it considers it expedient in order to preserve the building, compulsorily acquire the building and any land comprising or contiguous or adjacent to it which appears to the Department to be required for preserving the building or its amenities, or for affording access to it, or for its proper control or management.

(2) Paragraph (1) applies to any listed building, except—

- (a) a building which is the subject of a guardianship or protection order under the Historic Monuments Act (Northern Ireland) 1971; or
- (b) a building for the time being included in a schedule of historic monuments published by the Department under that Act.

(3) Where the Department desires to acquire, otherwise than by agreement, any land under paragraph (1), the Department may make an order vesting that land in the Department; and Articles 87 to 93 shall, with any necessary modifications, apply in relation to such acquisitions accordingly.

(4) The Department shall not commence proceedings for the compulsory acquisition of a building under this Article unless at least two months previously it has served on the owner of the building, and not withdrawn, a notice (in this Article referred to as a “repairs notice”)—

- (a) specifying the works which the Department considers reasonably necessary for the proper preservation of the building; and
- (b) explaining the effect of this Article.

(5) Where the Department has served a repairs notice, the demolition of the building thereafter shall not prevent the Department from being authorised under this Article to acquire compulsorily the site of the building, if the Department is satisfied that it would have made a vesting order in respect of the building had it not been demolished.

(6) The Department may at any time withdraw a repairs notice served by it; and if it does so, it shall forthwith give notice of the withdrawal to the person who was served with the repairs notice.

PART XI

THE PLANNING APPEALS COMMISSION

The Planning Appeals Commission

110^{F100}.—(1) There shall continue to be a Planning Appeals Commission (in this Part referred to as the “appeals commission”).

(2) The appeals commission shall consist of the following persons appointed by the^{F101} First Minister and deputy First Minister acting jointly]

- (a) a chief commissioner^{F102} and deputy chief commissioner]; and
- (b) such number, if any, of other commissioners as the Department may, with the consent of the Department of Finance and Personnel, determine.

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(3) A commissioner shall not engage, whether directly or indirectly, or be a partner of any person who engages, in a gainful profession, occupation or business if to do so would in any way be incompatible with his functions under this Order.

(4) There shall be paid to a commissioner such remuneration and allowances and to him, or in respect of his services, such pensions, allowances or benefits as the Department may determine with the approval of the Department of Finance and Personnel.

(5) The Department may appoint persons to assist the appeals commission in the performance of its functions, and there shall be paid to persons so appointed such remuneration and allowances and to, or in respect of the service of, those persons such pensions, allowances or benefits as the Department may determine with the approval of the Department of Finance and Personnel.

F100 functions transf. by SR 2001/229

F101 SI 1999/663

F102 2003 NI 8

Procedure of appeals commission

111.—(1 ^{F103} Where, under this Order or any other transferred provision, the appeals commission may determine an appeal—

- (a) the appeal shall be heard by such member [^{F104}or members] of the appeals commission as the chief commissioner may appoint in that behalf;
- (b) except where an appeal is to be decided solely by reference to written representations, the chief commissioner may, after consultation with the appeals commission and the Department, appoint an assessor to sit with the member [^{F105}or members] appointed under sub-paragraph (a) at the appeal to advise [^{F106}the member or members] on any matters arising;
- (c) notwithstanding sub-paragraphs (a) and (b), any decision on the appeal shall be made by the appeals commission.

(2 ^{F103} Where, under this Order or any other transferred provision, the appeals commission may hold an inquiry or hearing—

- (a) the inquiry or hearing shall be held by such member [^{F107}or members] of the appeals commission as the chief commissioner may appoint in that behalf;
- (b) the chief commissioner may, after consultation with the appeals commission and the Department, appoint an assessor to sit with the member [^{F108}or members] appointed under sub-paragraph (a) at the inquiry or hearing to advise [^{F109}the member or members] on any matters arising;
- (c) notwithstanding sub-paragraphs (a) and (b), any report on the inquiry or hearing shall be made by the appeals commission.

(3 ^{F103} The appeals commission may pay to any assessor appointed under paragraph (1)(b) or (2) (b) such fees and allowances as the commission, with the approval of the Department, may approve.

(4) Where, under this Order or any other transferred provision, the appeals commission may determine an appeal in relation to a decision of the Department, the commission may confirm, reverse or vary the decision and any determination of the commission on the appeal shall have the like effect as a decision of the Department for the purpose of this Order or any such provision, except a provision relating to appeals.

(5) ^{F103} The Department, after consultation with the appeals commission, may make rules for regulating the procedure for proceedings before the appeals commission and, subject to this Order and any such rules, that procedure shall be such as the appeals commission may determine.

[^{F110}(5A) Rules under paragraph (5) which provide for the taking of any decision may, in particular, provide for that decision to be taken—

- (a) by a panel of not fewer than 4 commissioners; or
- (b) by a single commissioner.]

(5B) Rules under paragraph (5) which provide for the making of any report may, in particular, provide for that report to be made—

- (a) by a panel of commissioners;
- (b) by a single commissioner.

(6) Where, under this Order or any other transferred provision, a person has been afforded an opportunity of appearing before and being heard by the appeals commission or the appeals commission holds an inquiry, the appeals commission shall make a report on the hearing or inquiry to the Department and the Department shall consider that report.

F103 functions transf. by SR 2001/229

F104 Words in art. 111(1)(a) inserted (18.5.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(3)(b), **15(2)(a)**; S.R. 2006/222, **art. 2**

F105 Words in art. 111(1)(b) inserted (18.5.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(3)(b), **15(2)(b)(i)**; S.R. 2006/222, **art. 2**

F106 Words in art. 111(1)(b) substituted (18.5.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(3)(b), **15(2)(b)(ii)**; S.R. 2006/222, **art. 2**

F107 Words in art. 111(2)(a) inserted (18.5.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(3)(b), **15(3)(a)**; S.R. 2006/222, **art. 2**

F108 Words in art. 111(2)(b) inserted (18.5.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(3)(b), **15(3)(b)(i)**; S.R. 2006/222, **art. 2**

F109 Words in art. 111(2)(b) substituted (18.5.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(3)(b), **15(3)(b)(ii)**; S.R. 2006/222, **art. 2**

F110 Art. 111(5A) substituted (18.5.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(3)(b), **15(4)**; S.R. 2006/222, **art. 2**

PART XII

APPLICATION OF ORDER TO SPECIAL CASES

Minerals

Minerals

112.—(1) This Order shall apply to development consisting of the winning and working of minerals subject to the adaptations and modifications specified in paragraph (2).

(2) For the purposes of this Order “use” in relation to the development of land does not include the use of land by the carrying out of mining operations, so, however, that—

- (a) Article 11(3) shall apply in relation to the deposit of refuse or waste materials in the course of mining operations; and
- (b) in the following provisions—
 - (i) Article 27(1)(b);

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- (ii) Article^{F111} 12];
- (iii) Article 38(4);
- (iv) Article 39^{F111} or 40];
- (v) Articles^{F111} 67C, 68A(4), 71, 76A] and 76;
- (vi) Article 83,^{F111} 83A or 83B,]

references to the use of land or the purpose for which land may be used shall include the carrying out of mining operations and references to the continuance or discontinuance of a use of land shall include the continuance or discontinuance of mining operations.

F111 2003 NI 8

Crown land

VALID FROM 10/06/2006

^{F112}Application to the Crown

112A.—(1) This Order (except Articles 74, 76B, 80 and 82B) binds the Crown.

(2) But paragraph (1) is subject to express provision made by the following provisions of this Part.

F112 Arts. 112A-112E inserted (10.6.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(4), **21(1)**

VALID FROM 10/06/2006

Enforcement in relation to the Crown

112B.—(1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Order.

(2) But paragraph (1) does not have effect to prohibit the doing of anything by or on behalf of the Crown which falls within the circumstances described in Article 44(7)(a) to (d).

(3) The Department shall not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.

(4) The appropriate authority may give consent under paragraph (3) subject to such conditions as it thinks appropriate.

(5) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Order.

(6) A step taken for the purposes of enforcement includes—

- (a) entering land;
- (b) bringing proceedings;
- (c) the making of an application.

(7) A step taken for the purposes of enforcement does not include—

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- (a) service of a notice;
- (b) the making of an order (other than by a court).

F112 Arts. 112A-112E inserted (10.6.2006) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), **21(1)**

VALID FROM 10/06/2006

References to an estate in land

112C.—(1) Paragraph (2) applies to the extent that an estate in land is a Crown estate.

(2) Anything which requires or is permitted to be done by or in relation to the owner of the estate in land shall be done by or in relation to the appropriate authority.

(3) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of this Article as having an estate in that land.

F112 Arts. 112A-112E inserted (10.6.2006) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), **21(1)**

VALID FROM 10/06/2006

Applications for planning permission, etc. by Crown

112D.—(1) This Article applies to an application for—

- (a) planning permission, listed building consent, hazardous substances consent or conservation area consent; or
- (b) a determination under Article 48 or a certificate under Article 83B.

(2) The Department may by regulations modify or exclude any statutory provision relating to the making and determination of such applications.

F112 Arts. 112A-112E inserted (10.6.2006) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), **21(1)**

VALID FROM 10/06/2006

Service of notices on the Crown

112E.—(1) Any notice or other document required under this Order to be served on the Crown shall be served on the appropriate authority.

(2) Section 24 of the Interpretation Act (Northern Ireland) 1954 (c. 33) does not apply for the purposes of the service of such a notice or document.

(3) “Appropriate authority” shall be construed in accordance with Article 118(1).]

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F112 Arts. 112A-112E inserted (10.6.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(4), **21(1)**

Application to Crown land

113.—(1) Notwithstanding any interest of the Crown in Crown land, but subject to the following provisions of this Article—

- (a) a development plan adopted under Part II may include proposals relating to the use of Crown land, and any power to acquire land compulsorily under Article 87 or 109 may be exercised in relation to any estate therein which is for the time being held otherwise than by or on behalf of the Crown;
- (b) any restrictions or powers imposed or conferred by Part IV, Part V, Part VI^{F113} except Articles 84A and 84B] or Part VIII shall apply and be exercisable in relation to Crown land, to the extent of any estate therein for the time being held otherwise than by or on behalf of the Crown;
- (c) a building which for the time being is Crown land may be included in a list compiled by the Department under Article 42.

(2) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of paragraph (1)(b) so far as applicable to Parts IV to VI as having an estate in land.

(3) [^{F113}no notice shall be issued or served or any application made under any of the provisions of Articles 67C, 68, 68B, 73, 76A, 76B] in respect of development carried out by or on behalf of the Crown on land which was Crown land at the time when the development was carried out.

(4) No listed building enforcement notice shall be issued in respect of works executed by or on behalf of the Crown in respect of a building which was Crown land at the time when the works were executed.

F113 2003 NI 8

Application for planning permission, etc. in anticipation of disposal of Crown land

114.—(1) This Article has effect for the purpose of enabling Crown land, or an estate in Crown land, to be disposed of with the benefit of—

- (a) planning permission, listed building consent, hazardous substances consent or conservation area consent; or
- (b) a^{F114} a determination under Article 48 or a certificate under Article 83B].

(2) Notwithstanding the estate of the Crown in the land in question, an application for any such permission, consent^{F114}, certificate] or determination as is mentioned in paragraph (1) may be made—

- (a) in the case of land—
 - (i) belonging to Her Majesty in right of the Crown and under the management of a Northern Ireland department; or
 - (ii) belonging to a Northern Ireland department or held in trust for Her Majesty for the purposes of a Northern Ireland department,
 by the Commissioner of Valuation for Northern Ireland or by a person authorised by that department in writing;

- (b) in any other case, by the appropriate authority or a person authorised by that authority in writing;

and, subject to paragraphs (3) to (6), all the statutory provisions relating to the making and determination of any such application shall accordingly apply as if the land were not Crown land.

- (3) Any planning permission granted by virtue of this Article shall apply only—

- (a) to development carried out after the land in question has ceased to be Crown land; and
- (b) so long as that land continues to be Crown land, to development carried out by virtue of a private estate in the land;

and any listed building consent or conservation area consent granted by virtue of this Article shall apply only to works carried out as aforesaid.

- (4) Any hazardous substances consent granted by virtue of this Article shall apply only—

- (a) to the presence of the substance to which the consent relates after the land in question has ceased to be Crown land; and
- (b) so long as that land continues to be Crown land, to the presence of the substance by virtue of a private estate in the land.

[^{F114}(5) Any application made by virtue of this Article for a certificate under Article 83B shall be determined as if the land were not Crown land.]

- (6) The Department may by regulations—

- (a) modify or exclude any of the statutory provisions referred to in paragraph (2) in their application by virtue of that paragraph and any other statutory provisions in their application to permissions, consents or determinations granted or made by virtue of this Article;
- (b) make such other provision in relation to the making and determination of applications by virtue of this Article as it thinks necessary or expedient.

(7) This Article shall not be construed as affecting any right to apply for any such permission, consent[^{F114}, certificate] or determination as is mentioned in paragraph (1) in respect of Crown land in a case in which such an application can be made by virtue of a private estate in the land.

F114 2003 NI 8

Tree preservation orders in anticipation of disposal of Crown land

115.—(1) The Department may make a tree preservation order in respect of Crown land in which no estate is for the time being held otherwise than by or on behalf of the Crown if the Department considers it expedient to do so for the purpose of preserving trees or woodlands on the land in the event of its ceasing to be Crown land or becoming subject to a private estate.

[^{F115}(2) A tree preservation order made by virtue of this Article shall not take effect until the first occurrence of a relevant event.

(2A) For the purposes of paragraph (2), a relevant event occurs in relation to any land if it ceases to be Crown land or becomes subject to a private estate.

- (2B) A tree preservation order made by virtue of this Article—

- (a) shall not require confirmation under Article 65 until after the occurrence of the event by virtue of which it takes effect; and
- (b) shall by virtue of this paragraph continue in force until—

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(i) the expiration of the period of 6 months beginning with the occurrence of that event;
or

(ii) the date on which the order is confirmed,

whichever first occurs.]

(3) [^{F115}Where] a tree preservation order takes effect in accordance with paragraph (2) the appropriate authority shall as soon as practicable give to the Department a notice in writing of the name and address of the person who has become entitled to the land in question or to a private estate in it.

(4) The procedure prescribed under Article 65(2) in connection with the making and confirmation of a tree preservation order shall apply as if the order had been made on the date on which notice is received by the Department under paragraph (3).

F115 2003 NI 8

Control of development on Crown land

116.—(1) This Article applies to development of Crown land carried out otherwise than by or on behalf of the Crown at a time when no person is entitled to occupy it by virtue of a private estate.

(2) Where it appears to the Department that development to which this Article applies has taken place it may, if it considers it expedient to do so having regard to the provisions of the development plan and to any other material considerations, issue a notice under this Article (a “special enforcement notice”) and serve copies of it in accordance with paragraph (5).

(3) A special enforcement notice shall specify—

- (a) the matters alleged to constitute development to which this Article applies; and
- (b) the steps which the Department requires to be taken for restoring the land to its condition before the development took place or for discontinuing any use of the land which has been instituted by the development.

(4) A special enforcement notice shall also specify the date on which it is to take effect and the period within which any such steps as are mentioned in paragraph (3)(b) are to be taken and may specify different periods for the taking of different steps.

(5) A copy of a special enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in the notice as the date on which it is to take effect—

- (a) on the person who carried out the development alleged in the notice;
- (b) on any person who is occupying the land on the date on which the notice is issued; and
- (c) on the appropriate authority;

but sub-paragraph (a) shall not apply if the Department is unable after reasonable enquiry to identify or trace the person mentioned in that sub-paragraph.

(6) Any such person as is mentioned in paragraph (5)(a) or (b) (whether or not served with a copy of the special enforcement notice) may, at any time before the date specified in the notice as the date on which it is to take effect, appeal against the notice to the planning appeals commission on the ground that the matters alleged in the notice have not taken place or do not constitute development to which this Article applies.

(7) The provisions contained in or having effect under Articles 69(4) to (8) and 70(1) and (2) shall apply to special enforcement notices and to appeals against such notices under paragraph (6) as they apply to enforcement notices and to appeals under Article 69 and the Department may by regulations

apply to special enforcement notices and appeals under that paragraph such other provisions of this Order (with such modifications as it thinks fit) as it thinks necessary or expedient.

Requirement of planning permission for continuance of use instituted by Crown

117.—(1) The Department may in writing direct that paragraph (2) shall apply to such use of land by the Crown as is specified in the direction, being a use resulting from a material change made or proposed to be made by the Crown in the use of the land.

(2) Where a direction is given under paragraph (1) in respect of any Crown land, then, if at any time the land ceases to be used by the Crown for the purpose specified in the direction, this Order shall have effect in relation to any subsequent private use of the land as if the specified use by the Crown had required planning permission and been authorised by planning permission granted subject to a condition requiring its discontinuance at that time.

(3) The condition referred to in paragraph (2) shall not be enforceable against any person who had a private estate in the land at the time when the direction was given unless the Department has notified him of the direction and of the effect of that paragraph.

(4) References in this Article to the use of land by the Crown include references to its use on behalf of the Crown, and “private use” means use otherwise than by or on behalf of the Crown.

Interpretation of Part XII

118.—(1) In this Part—

“the appropriate authority”, in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

“conservation area consent” means consent under Article 51;

“Crown estate” means an estate 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;

“Crown land” means land in which there is a Crown estate;

“government department” means a department of the Government of the United Kingdom or a Northern Ireland department;

“private estate” means an estate which is not a Crown estate.

(2) In this Part references to the disposal of an estate in Crown land include references to the grant of an estate in such land.

(3) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of Articles 114 to 116 as having an estate in land, and references in Article 114 to the disposal of an interest in Crown land, and in that Article and Articles 115 and 116 to a private estate in such land, shall be construed accordingly.

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PART XIII

MISCELLANEOUS AND SUPPLEMENTARY

Grants for research and bursaries

119.—(1) The Department may, with the consent of the Department of Finance and Personnel, make grants for assisting establishments engaged in promoting or assisting research relating to, and education with respect to, the planning and design of the physical^{F116} or built] environment.

(2) For the purpose of enabling persons to undertake a course in town planning, the Department may, with the consent of the Department of Finance and Personnel, make provision for the payment by the Department of sums by way of bursaries in respect of those persons.

F116 2003 NI 8

Grants to bodies providing assistance in relation to certain development proposals

120.—(1) The Department may make grants to any body of persons (not being a body carried on for profit) which appears to the Department to have among its principal objectives—

- (a) furthering an understanding of the planning and other technical aspects of proposals made by any body or person for the development, redevelopment or improvement of land; and
- (b) providing assistance to the community, or to a section of the community, in relation to such proposals.

^{F117}(1A) The Department may make grants to any body of persons (not being a body carried on for profit) which appears to the Department to have among its principal objectives furthering the preservation, conservation and regeneration of historic buildings.]

(2) Grants under paragraph (1)^{F117} or (1A)] shall be of such amounts and subject to such terms and conditions as the Department, with the approval of the Department of Finance and Personnel, thinks fit.

F117 2003 NI 8

Rights of entry

121 ^{F118}.—(1) Any person duly authorised in writing by the Department may at any reasonable time enter any land for the purpose—

- (a) of surveying it in connection with—
 - (i) the making, altering, repealing or replacing of a development plan relating to the land under Part III;
 - (ii) the making or altering of a simplified planning zone scheme relating to the land;
 - (iii) the preparation, adoption or amendment of a development scheme relating to the land under Part VII;
 - (iv) any application under Part IV or V, or under any order or regulations made thereunder, for any permission, consent, agreement, approval or determination to be given or made in connection with that land or any other land under Part IV or V or under any such order or regulations;

- (v) any proposal by the Department to make, issue or serve any order or notice under^{F119} Part IV or V], or under any order or regulations made thereunder, or any notice under Article 109(4);
- (b) of surveying any building on the land in connection with a proposal to include the building in, or exclude it from, a list compiled under Article 42;
- (c) of ascertaining—
 - Head (i) rep. by 2003 NI 8*
 - (ii) whether any listed building on the land is being maintained in a proper state of repair; *Head (iii) rep. by 2003 NI 8*
 - (iv) whether any order or notice made, issued or served as mentioned in^{F120} sub-paragraph (a)(v)] in respect of the land has been complied with;
- (d) of^{F119} affixing a notice in accordance with Article 42B(1) or] displaying a notice in accordance with Article 73(5) or (6);

Sub-para. (e) rep. by 2003 NI 8

(2) Any member of the planning appeals commission may at any reasonable time enter any land for the purpose of surveying it in connection with the exercise of the functions of the commission under this Order.

(3) Any person, being an officer of the Valuation Office of the Department of Finance and Personnel or a person duly authorised in writing by the Department, may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with—

- (a) any proposal to acquire that land or any other land under this Order or any claim for compensation in respect of any such acquisition;
- (b) any claim for compensation in respect of that land under Article 65A or 66A of the Planning (Northern Ireland) Order 1972.

(4) Any power conferred by this Article to survey land shall be construed as conferring power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein, but a person shall not carry out any works authorised by virtue of this paragraph unless notice of his intention to do so was included in the notice required by Article 122(1)(b).

^{F121}(5) Where it is proposed to search or bore in pursuance of paragraph (4) in a street within the meaning of the Street Works (Northern Ireland) Order 1995—

- (a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works;
- (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person's apparatus in the street); and
- (c) Article 42 of that Order (liability for damage or loss caused),

have effect in relation to the searching or boring as if they were street works within the meaning of that Order.]

F118 functions transferred SR 1999/481

F119 2003 NI 8

F120 2001 c. 2 (NI)

F121 1995 NI 19

Supplementary provisions as to powers of entry

122 ^{F122}—(1) A person authorised or permitted under Article 121 to enter upon any land—

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- (a) shall, if so required, produce evidence of his authority or of his appointment as a member of the planning appeals commission^[F123] and state the purpose of his entry] before so entering;
 - (b) shall not demand admission as of right to any land which is occupied unless three days' notice of the intended entry has been given to the occupier.
- (2) Any person who wilfully obstructs a person acting in the exercise of his powers under Article 121 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) If any person who, in compliance with Article 121, is admitted into a factory, workshop or work place discloses to any person any information obtained by him therein as to any manufacturing process or trade secret, he shall, unless the disclosure is made in the course of performing his duty in connection with the survey or estimate for which he was authorised to enter the^[F123] land], be guilty of an offence and liable —
- ^[F123](a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.]
- (4) Where any property is damaged in the exercise of a right of entry conferred under Article 121, or in the making of a survey for the purpose of which any such right of entry has been so conferred, compensation in respect of that damage may be recovered by any person interested in the property from the Department.
- (5) Any question of disputed compensation recoverable under paragraph (4) shall be determined by the Lands Tribunal.

F122 functions transferred SR 1999/481

F123 2003 NI 8

VALID FROM 10/06/2006

^[F124]**Supplementary provisions as to powers of entry: Crown land**

- 122A.**—(1) Article 121 applies to Crown land subject to the following modifications.
- (2) A person shall not enter Crown land unless he has the relevant permission.
 - (3) Relevant permission is the permission of—
 - (a) a person appearing to the person seeking entry to the land to be entitled to give it; or
 - (b) the appropriate authority.
 - (4) In paragraph (4) the words from “, but a person” to the end of that paragraph shall be omitted.
 - (5) Article 122 does not apply to anything done by virtue of this Article.
 - (6) “Appropriate authority” and “Crown land” shall be construed in accordance with Article 118(1).]

F124 Art. 122A inserted (10.6.2006) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), 21(3), [Sch. 1 para. 4](#)

Local inquiries

123.—(1) The Department may cause a public local inquiry to be held for the purpose of the exercise of any of its functions under this Order.

(2) Without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954, the Department may make rules regulating the procedure to be followed in connection with inquiries held by or on behalf of the Department under this Order.

VALID FROM 10/06/2006

[^{F125}**Inquiries to be held in public subject to certain exceptions**

123A.—(1) Subject to paragraph (2), at any public local inquiry or independent examination held under this Order oral evidence shall be heard in public and documentary evidence shall be open to public inspection.

(2) If the Secretary of State is satisfied in the case of any such inquiry or examination—

(a) that giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in paragraph (3); and

(b) that the public disclosure of that information would be contrary to the national interest, he may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry or examination by such persons or persons of such descriptions as he may specify in the direction.

(3) The matters referred to in paragraph (2)(a) are—

(a) national security; and

(b) the measures taken or to be taken to ensure the security of any premises or property.

(4) If the Secretary of State is considering giving a direction under paragraph (2) the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at an inquiry or examination if the direction is given.

(5) If before the Secretary of State gives a direction under paragraph (2) no person is appointed under paragraph (4), the Advocate General for Northern Ireland may at any time appoint a person as mentioned in paragraph (4) for the purposes of the inquiry or examination.

(6) The Lord Chancellor may by rules make provision—

(a) as to the procedure to be followed by the Secretary of State before he gives a direction under paragraph (2) in a case where a person has been appointed under paragraph (4);

(b) as to the functions of a person appointed under paragraph (4) or (5).

(7) Rules made under paragraph (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(8) If a person is appointed under paragraph (4) or (5) (the appointed representative) the Secretary of State may direct any person who he thinks is interested in the inquiry or examination in relation to a matter mentioned in paragraph (3) (the responsible person) to pay the fees and expenses of the appointed representative.

(9) If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount shall be determined by the Secretary of State.

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(10) The Secretary of State shall cause the amount agreed between the appointed representative and the responsible person or determined by him to be certified.

(11) An amount so certified is recoverable from the responsible person as a civil debt.

(12) In relation to any time before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002, the reference in paragraphs (4) and (5) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General.

F125 Arts. 123A, 123B inserted (10.6.2006) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), **22(1)**

VALID FROM 10/06/2006

National security

123B.—(1) Where, in relation to an application for planning permission or an application for any consent, certificate, approval or determination under this Order or a development order, the Secretary of State is of the opinion—

- (a) that the consideration by the Department of the application or of any representations or objections made in respect of the application raises matters relating to—
 - (i) national security; or
 - (ii) the measures taken or to be taken to ensure the security of any premises or property; and
- (b) that the public disclosure of information as to any of those matters would be contrary to the national interest,

he may certify that the application is one to which this Article applies.

(2) The Department shall, subject to any provision contained in rules under paragraph (3), cause a public local inquiry to be held for the purpose of determining any application to which this Article applies.

(3) The Secretary of State may by rules make provision—

- (a) for the procedure to be followed in relation to the issue of a certificate under paragraph (1);
- (b) enabling the Department to dispense with an inquiry where the Department has not received any objections or representations in respect of an application to which this Article applies or where every objection or representation made in respect of such an application is withdrawn.

(4) Articles 31, 32(1), 33, 56, 57(1), 83E, 123(1), paragraphs 7(1) and 8 of Schedule 1, paragraphs 6(11) and (12), 11 and 13 of Schedule 1A and paragraphs 9 and 10 of Schedule 1B do not apply in relation to an application to which this Article applies.

(5) Rules made under paragraph (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(6) Section 23 of the Interpretation Act (Northern Ireland) 1954 shall apply to an inquiry under paragraph (2) as if that inquiry were an inquiry referred to in that section.]

F125 Arts. 123A, 123B inserted (10.6.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(4), **22(1)**

Planning register

124.—(1) The Department shall keep, in such manner as may be specified by a development order, one or more registers containing such information as may be so specified with respect to—

- (a) applications made, or deemed to be made, under this Order to the Department or to the planning appeals commission for any permission, consent, approval or determination;
- (b) the manner in which such applications have been dealt with;
- (c) the revocation or modification of any permission or consent granted under this Order;
- (d) enforcement notices, listed building enforcement notices or hazardous substances contravention notices;
- (e) stop notices;
- (f) orders under Article 39;
- (g) hazardous substances consent deemed to be granted under paragraph 4 of Schedule 4;
- (h) simplified planning zones and enterprise zones;
- (i) directions given by the Department under—
 - (i) Article 51(3);
 - (ii) Article 62; and
 - (iii) any provision included in a development order by virtue of Article 13(4).

[^{F126}(j) notices under Article 66A;

- (k) breach of condition notices;
- (l) certificates under Article 83A or 83B;
- (m) building preservation notices.]

(2) Every register kept under paragraph (1) shall be available for inspection by the public at all reasonable hours.

(3) The Department may provide a copy of, or of an extract from, any register kept under this Article to any person on payment of such reasonable charge as the Department may specify.

F126 2003 NI 8

Modifications etc. (not altering text)

C5 Art. 124 applied (with modifications) by Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)), Sch. 8 para. 3(5)(6) (as added (prosp.) by Electricity Consents (Planning) (Northern Ireland) Order 2006 (S.I. 2006/2955 (N.I. 19)), arts. 1(2), **2(4)**)

Information as to estates in land

125 ^{F127}.—(1) For the purpose of enabling the Department to make an order or issue or serve a notice or other document which by any of the provisions of this Order it is authorised or required to make, issue or serve, the Department may by notice in writing require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises to give in writing within 21 days after the date on which the notice is served, or such longer time as may be

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specified in the notice or as the Department may allow, such information as to the matters mentioned in paragraph (2) as may be specified.

(2) The matters referred to in paragraph (1) are—

- (a) the nature of the estate in the premises of the person on whom the notice is served;
- (b) the name and address of any other person known to that person as having an estate in the premises;
- (c) the purpose for which the premises are being used;
- (d) the time when that use began;
- (e) the name and address of any person known to the person on whom the notice is served as having used the premises for that purpose; and
- (f) the time when any activities being carried out on the premises began.

(3) Any person who, without reasonable excuse, fails to comply with a notice served on him under paragraph (1), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Any person who having been required by a notice under paragraph (1) to give any information knowingly makes any misstatement in respect thereof shall be guilty of an offence and liable

- [^{F128}(a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.]

F127 functions transferred SR 1999/481

F128 2003 NI 8

VALID FROM 10/06/2006

[^{F129}**Information as to estates in Crown land**

125A.—(1) This Article applies to an estate in Crown land which is not a private estate.

(2) Article 125 does not apply to an estate to which this Article applies.

(3) For a purpose mentioned in Article 125(1) the Department may request the appropriate authority to give it such information as to the matters mentioned in Article 125(2) as the Department specifies in the request.

(4) The appropriate authority shall comply with a request under paragraph (3) except to the extent—

- (a) that the matter is not within the knowledge of the authority, or
- (b) that to do so will disclose information as to any of the matters mentioned in Article 123A(3).

(5) Expressions used in this Article and in Part XII shall be construed in accordance with that Part.]

F129 Art. 125A inserted (10.6.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(4), 21(3), Sch. 1 para. 13

Power to appoint advisory bodies or committees

126. The Head of the Department may appoint such advisory bodies or committees as he considers necessary to assist the Department in the exercise and performance of the functions conferred on the Department by this Order.

Fees for planning applications

127.—(1) The Department may by regulations make such provision as it thinks fit for the payment of a fee of the prescribed amount in respect of—

- (a) an application made to the Department under this Order for any permission, consent, approval, determination or certificate;
- (b) an application for planning permission which is deemed to be made to the planning appeals commission under this Order;
- (c) ^{F130} an appeal to the planning appeals commission under this Order;

and every such application to the Department and every notice of appeal to the planning appeals commission shall be accompanied by the prescribed fee (if any).

(2) The regulations may provide for the remission or refunding of a prescribed fee (in whole or in part) in prescribed circumstances.

F130 functions transf. by SR 2001/229

Time limit for certain summary offences under this Order

128.—(1) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981, a magistrates' court shall have jurisdiction to hear and determine a complaint charging the commission of an offence under a provision of this Order specified in paragraph (2) if the complaint is made within 3 years from the time when the offence was committed or ceased to continue.

(2) The provisions of this Order referred to in paragraph (1) are—

- (a) Article 66(1);
- (b) Article^{F131} 72(2);
- (c) Article^{F131} 72(5);
- (d) Article 73(7).

F131 2003 NI 8

Regulations and orders

129.—(1) The Department may make regulations for prescribing anything which under this Order is authorised or required to be prescribed.

(2) Any regulations made under this Order and orders made under Articles 11(2)(e), 13 and 18(3) shall be subject to negative resolution.

Financial provision

130 ^{F132}.—(1) Any expenses incurred by the Department under this Order shall be defrayed either out of moneys hereafter appropriated for the purposes of defraying such expenses or, if the

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Department of Finance and Personnel so directs, by means of sums charged on and issued out of the Consolidated Fund.

(2) The Department of Finance and Personnel may borrow moneys for the purpose of providing money for issues out of the Consolidated Fund under paragraph (1).

(3) Any money borrowed under paragraph (2) shall be repaid within any period or periods not exceeding 25 years from the date of borrowing, and provision for such repayment may be made out of moneys thereafter appropriated for that purpose.

F132 functions transferred SR 1999/481

Registration of matters in Statutory Charges Register

131. In Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (matters requiring to be registered in the Statutory Charges Register) for entries 27 to 30D there shall be substituted the following entry—

“**27.** Any of the following matters under the Planning (Northern Ireland) Order 1991—

- (a) an entry in a list compiled under Article 42;
- (b) tree preservation orders;
- (c) enforcement notices which take effect in relation to any land;
- (d) listed building enforcement notices which take effect in relation to any land;
- (e) any conditions imposed on the grant of planning permission—
 - (i) relating to the occupancy of a dwelling house; or
 - (ii) requiring that a dwelling house on any land which is under the control of the applicant be demolished or cease to be used as a dwelling house;
- (f) notices under Article 82 which take effect in relation to any land;
- (g) orders under Article 39;
- (h) any designation under Article 50(1),

and any matter under the Planning (Northern Ireland) Order 1972 corresponding to any matter mentioned above.”.

Transitional provisions

132. The transitional provisions set out in Schedule 4 shall have effect.

Article 133—Amendments and repeals

SCHEDULES

SCHEDULE 1

Article 45(6).

LISTED BUILDING CONSENT-APPLICATIONS AND APPEALS

Form and content of applications

- 1.—(1) Any application to the Department for listed building consent—
- (a) shall be made in such manner as may be prescribed; and
 - (b) shall include such particulars, and be verified by such evidence, as may be required by the regulations or by any directions given by the Department thereunder.
- (2) Provision shall be made by regulations for regulating the manner in which applications for listed building consent are to be dealt with by the Department and in particular—
- (a) for requiring the Department before granting or refusing listed building consent to consult with the district council for the area in which the building is situated and with such authorities or persons as may be prescribed;
 - (b) for requiring the Department to give to any applicant for listed building consent within such time as may be prescribed such notice as may be prescribed as to the manner in which his application has been dealt with.
- (3) Sub-paragraphs (1) and (2)(b) shall apply to applications to the Department for any approval of the Department required by a condition imposed on a grant of listed building consent as they apply to applications for listed building consent.

Publication of notices of applications

2. Where an application for listed building consent is made to the Department, it—
- (a) shall publish notice of the application in at least one newspaper circulating in the locality in which the building to which the application relates is situated; and
 - (b) shall not determine the application before the expiration of 14 days from the date on which notice of the application is first published in a newspaper in pursuance of sub-paragraph (a).

Notification of applications to certain persons

- 3.—(1) Article 22 shall, with appropriate modifications, apply to applications for listed building consent in relation to any building as it applies to applications for planning permission in relation to any land.
- (2) In the application of Article 22(7) by virtue of sub-paragraph (1) for the words “specified in a development order” and “form so specified” there shall be substituted the words “prescribed” and “prescribed form”.
- (3) References in the following provisions of this Schedule to Article 22 are to that Article as it applies by virtue of this paragraph.

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Determination of application

4.—(1) In determining any application for listed building consent, the Department shall take into account any representations relating to that application which are received by it before the expiration of the period of 14 days from the date on which notice of the application is first published in a newspaper.

(2) Where an application for listed building consent is accompanied by such a certificate as is mentioned in Article 22(1)(c) or (d), the Department—

- (a) in determining the application, shall take into account any representations relating thereto which are made to it by any person who satisfies it that, in relation to the building to which the application relates, he is such a person as is described in Article 22(1)(c); and
- (b) shall give notice of its decision on the application to every person who made representations which it was required to take into account under head (a).

VALID FROM 10/06/2006

^{F133}Power to decline to determine application

F133 Sch. 1 paras. 4A, 4B and preceding cross heading inserted (10.6.2006) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), **9(3)** (with art. 9(5))

Power to decline to determine subsequent application

4A.—(1) The Department may decline to determine an application for a relevant consent if—

- (a) one or more of the conditions in sub-paragraphs (2) to (4) is satisfied; and
- (b) the Department thinks there has been no significant change in any material considerations since the relevant event.

(2) The condition is that in the period of 2 years ending with the date on which the application mentioned in sub-paragraph (1) is received the Department has refused a similar application made under paragraph 1.

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

- (a) against the refusal of a similar application; or
- (b) under paragraph 8 in respect of a similar application.

(4) The condition is that—

- (a) in that period the Department has refused more than one similar application; and
- (b) there has been no appeal to the planning appeals commission against any such refusal.

(5) Relevant consent is—

- (a) listed building consent; or
- (b) consent under Article 51 (conservation area consent).

(6) The relevant event is—

- (a) for the purposes of sub-paragraphs (2) and (4) the refusal of the similar application;
- (b) for the purposes of sub-paragraph (3) the dismissal of the appeal.

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(7) An application for relevant consent is similar to another application if (and only if) the Department thinks that the building and works to which the applications relate are the same or substantially the same.

(8) For the purposes of an application for consent under Article 51 (conservation area consent) a reference to a provision of this Order is a reference to that provision as excepted or modified by regulations under Article 51(5).

Power to decline to determine overlapping application

4B.—(1) The Department may decline to determine an application for a relevant consent which is made at a time when any of the conditions in sub-paragraphs (2) to (4) applies in relation to a similar application.

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

(3) The condition is that a similar application is under consideration by the planning appeals commission on an appeal under paragraph 7 or 8 and the commission has not issued its decision.

(4) The condition is that a similar application—

- (a) has been granted by the Department;
- (b) has been refused by the Department; or
- (c) has not been determined by the Department within the determination period,

and the time within which an appeal could be made to the planning appeals commission under paragraph 7 or 8 has not expired.

(5) Relevant consent is—

- (a) listed building consent; or
- (b) consent under Article 51 (conservation area consent).

(6) An application for relevant consent is similar to another application if (and only if) the Department thinks that the building and works to which the applications relate are the same or substantially the same.

(7) The determination period is—

- (a) the period prescribed for the determination of the application; or
- (b) such longer period as the applicant and the Department have agreed for the determination of the application.

(8) For the purposes of an application for consent under Article 51 (conservation area consent) a reference to a provision of this Order is a reference to that provision as excepted or modified by regulations under Article 51(5).]

Consent to execute works without compliance with conditions previously attached

5.—(1) This paragraph applies to applications for listed building consent for the execution of works to a building without complying with conditions subject to which a previous listed building consent was granted.

(2) Regulations may make special provision with respect to—

- (a) the form and content of such applications; and
- (b) the procedure to be followed in connection with such applications.

(3) On such an application the Department shall consider only the question of the conditions subject to which listed building consent should be granted, and—

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- (a) if it decides that listed building consent should be granted subject to conditions differing from those subject to which the previous consent was granted, or that it should be granted unconditionally, the Department shall grant listed building consent accordingly; and
- (b) if it decides that listed building consent should be granted subject to the same conditions as those subject to which the previous consent was granted, the Department shall refuse the application.

(4) This paragraph does not apply where the application is made after the previous listed building consent has become time-expired, that is to say, the previous consent having been granted subject to a condition as to the time within which the works to which it related were to be begun, that time has expired without the works having been begun.

Effect of listed building consent

6. Without prejudice to Articles 46 and 47, any grant of listed building consent shall (except in so far as the consent otherwise provides) enure for the benefit of the building and of all persons for the time being having an estate therein.

Appeals

7.—(1) Where an application is made to the Department—

- (a) for listed building consent; or
- (b) for any approval of the Department required by a condition imposed on a grant of listed building consent,

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

(2) Any notice under this paragraph shall be served on the planning appeals commission within six months from the date of notification of the decision to which it relates or such longer period as the commission may allow.

(3) Where an appeal is brought under this paragraph from a decision of the Department, the planning appeals commission, subject to sub-paragraphs (4) and (5), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part thereof or not and may deal with the application as if it had been made to it in the first instance.

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

(5) Subject to sub-paragraph (4), paragraphs 2 to 5 shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this paragraph as they apply to an application for listed building consent.

Appeal in default of planning decision

8. Where any such application as is mentioned in paragraph 7(1) is made to the Department, then unless within such period as may be prescribed, or within such extended period as may be agreed upon in writing between the applicant and the Department, the Department gives notice to the applicant of its decision on the application, paragraph 7 shall apply in relation to the application—

- (a) as if the consent or approval to which it relates had been refused by the Department; and
- (b) as if notification of the Department's decision had been received by the applicant at the end of the said prescribed period, or at the end of the said extended period, as the case may be.

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PROSPECTIVE

^{F134}SCHEDULE 1A

REVIEW OF OLD MINERAL PLANNING PERMISSIONS

F134 Sch. 1A repealed (1.4.2015) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 7](#) (with s. 211); [S.R. 2015/49](#), art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2) (Sch. 1A was inserted (prosp.) by The Planning Reform (Northern Ireland) Order (S.I. 2006/1252 (N.I. 7)), arts. 1(3)(d), 27(2), Sch. 3 and was never in operation.)

^{F134}*Interpretation*

^{F134}**1.**

^{F134}*Phase I and II sites*

^{F134}**2.**

^{F134}*The “first list”*

^{F134}**3.**

^{F134}*The “second list”*

^{F134}**4.**

^{F134}*Advertisement of the first and second lists*

^{F134}**5.**

^{F134}*Applications for inclusion in the first list of sites not included in that list as originally prepared and appeals from decisions upon such applications*

^{F134}**6.**

^{F134}*Postponement of the date specified in the first or second list for review of the permissions relating to a Phase I or II site in cases where the existing conditions are satisfactory*

^{F134}**7.**

^{F134}*Service on owners etc. of notice of preparation of the first and second lists*

^{F134}**8.**

^{F134}*Applications for approval of conditions and appeals in cases where the conditions approved are not those proposed*

^{F134}**9.**

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F134 *Notice of determination of conditions to be accompanied by additional information in certain cases*

F134 10.

F134 *Right to appeal against Department's determination of conditions etc.*

F134 11.

F134 *Permissions ceasing to have effect*

F134 12.

F134 *Special procedure for major applications under paragraph 9*

F134 13.

F134 *Two or more applicants*

F134 14.

F134 *Compensation*

F134 15.

F134 *Appeals: general procedural provisions*

F134 16.

PROSPECTIVE

F135 SCHEDULE 1B

PERIODIC REVIEW OF MINERAL PLANNING PERMISSIONS

F135 Sch. 1B repealed (1.4.2015) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\), s. 254\(1\)\(2\), Sch. 7](#) (with [s. 211](#)); [S.R. 2015/49, art. 3, Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159, art. 2](#)) (Sch. 1B was inserted (prosp.) by The Planning Reform (Northern Ireland) Order (S.I. 2006/1252 (N.I. 7)), arts. 1(3)(d), 27(2), Sch. 3 and was never in operation.)

F135 *Duty to carry out periodic reviews*

F135 1.

F135 *Interpretation*

F135 2.

F135 *The first review date*

F135 3.

F135 4.

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F135 *Service of notice of first periodic review*

F135 5.

F135 *Application for postponement of the first review date*

F135 6.

F135 *Application to determine the conditions to which the mineral permissions relating to a mining site are to be subject*

F135 7.

F135 *Permissions ceasing to have effect*

F135 8.

F135 *Appeals*

F135 9.

F135 *Special procedure for major applications under paragraph 7*

F135 10.

F135 *Time from which conditions determined under this Schedule are to take effect*

F135 11.

F135 *Two or more applicants*

F135 12.

F135 *Second and subsequent periodic reviews*

F135 13.

F135 *Compensation*

F135 14.

SCHEDULE 2

Article 87(3).

MODIFICATIONS OF SCHEDULE 6 TO THE LOCAL GOVERNMENT ACT
(NORTHERN IRELAND) 1972 FOR THE PURPOSES OF ARTICLE 87(3)

1. References to the Ministry or to the council shall be construed as references to the Department within the meaning of this Order.
2. References to Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall be construed as references to that Schedule as modified by this Schedule.
3. Omit paragraph 1 of that Schedule.
4. In paragraph 2 of that Schedule—

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- (a) for the words “Notice of the application” substitute the words “ Notice of the Department's intention to acquire the land compulsorily ”;
 - (b) omit the words “in such form and manner as the Ministry directs”;
 - (c) in sub-paragraph (c) for the words “as may be prescribed” substitute the words “ as the Department considers fit ”.
5. In paragraph 3(1)(b) after the word “held” insert the words “ by the planning appeals commission or by any other person ”.
6. In paragraph 4 omit the words from “and may provide” onwards.
7. In paragraph 5—
- (a) in sub-paragraph (1)(a) omit the words “in the prescribed form and manner”;
 - (b) in sub-paragraph (1)(b) the two references to the said Act of 1972 shall be construed as references to this Order;
 - (c) in sub-paragraph (1)(d) omit the words “in the prescribed form”;
 - (d) in sub-paragraph (2) for the words “as may be prescribed” substitute the words “ as the Department considers fit ”.
8. in paragraph 6(2) for the words “fund out of which the expenses of the council in acquiring the land are to be defrayed” substitute the words “ Consolidated Fund ” and for the words “out of the compensation fund” substitute the words “ ;made by the Department ”.
9. In paragraph 11(3) omit the words “in the prescribed form”.
10. In paragraph 12—
- (a) in sub-paragraph (1) omit the words “such” and “as may be prescribed”;
 - (b) in sub-paragraph (2) for the words from “clerk” to “directs” substitute the words “ Department as correct, and publish ”.
11. In paragraph 14(1) omit the words “in the prescribed form”.
12. In paragraph 15(1) for the words “in the prescribed form” substitute the words “ in such form as may be approved by the Department ”.
13. Omit paragraph 19.
14. Omit paragraph 20(2).

SCHEDULE 3

Article 105(3).

THE HISTORIC BUILDINGS COUNCIL

1. The Council shall consist of a Chairman appointed by the Head of the Department and such number of other members so appointed as the Head of the Department may determine.
2. A member of the Council shall hold office for a maximum period of three years but shall be eligible for re-appointment.
3. The Department may pay to the Chairman and members of the Council allowances for travelling and other out-of-pocket expenses incurred in connection with the business of the Council at such rates as the Department, with the approval of the Department of Finance and Personnel, may determine.

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4.—(1) The Council shall, subject to sub-paragraph (4), appoint such committees as the Department may determine.

(2) A committee appointed under this paragraph may include persons who are not members of the Council.

(3) Every member of a committee appointed under this paragraph, who, at the time of his appointment, was a member of the Council shall, if he ceases to be a member of the Council, also cease to be a member of the committee.

(4) The Department may, by regulations or direction, make provision with respect to the appointment, constitution or functions of committees appointed under this paragraph.

5. The Council may regulate its own quorum and procedure and that of its committees which shall be subject to the approval of the Department.

6. The Council shall, at such times and in respect of such periods as the Department may direct, prepare and submit to the Department a report on its activities and the Department shall lay a copy of every such report before the Assembly.

7. The secretary to the Council shall be such person as the Department may appoint.

SCHEDULE 4

Article 132.

TRANSITIONAL PROVISIONS

1. Where by virtue of paragraph (1) of Article 12 of the Amendment Order an object or structure ceased to be treated as part of a listed building the transitional provisions in paragraph 1 of Schedule 2 to that Order shall, notwithstanding the repeal of that Schedule, continue to apply for the purposes of provisions of this Order as they applied for the purposes of the corresponding provisions of the Planning (Northern Ireland) Order 1972.

2. Any daily fine mentioned in this Order shall apply to every day after the coming into operation of Article 13 of the Amendment Order, notwithstanding that the offence began before.

3. Article 23 shall not apply in relation to any development which was begun before the coming into operation of Article 7 of the Amendment Order; and the provisions of Article 36(1) apply in determining for the purposes of this paragraph when development shall be taken to be begun.

4. —(1) Until the end of the transitional period—

(a) no offence is committed under Article 61; and

(b) no hazardous substances contravention notice may be issued, in relation to a hazardous substance which is on, over or under any land,

if the substance was present on, over or under the land at any time within the establishment period and—

(i) in a case in which at the commencement date notification in respect of the substance was required by any of the Notification Regulations, both the conditions specified in sub-paragraph (2) were satisfied; and

(ii) in a case in which at that date such notification was not so required, the condition specified in head (b) of that sub-paragraph is satisfied.

(2) The conditions mentioned in sub-paragraph (1) are—

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- (a) that notification required by the Notification Regulations was given before the commencement date; and
 - (b) that the substance has not been present during the transitional period in a quantity greater in aggregate than the established quantity.
- (3) Where a hazardous substance was present on, over or under any land at any time within the establishment period, hazardous substances consent may be claimed in respect of its presence.
- (4) A claim shall be made in the prescribed form before the end of the transitional period and shall contain the prescribed information as to the presence of the substance during the establishment period and as to how and where it was kept and used during that period.
- (5) Subject to sub-paragraphs (6) to (8), the Department shall be deemed to have granted any hazardous substances consent which is claimed under sub-paragraph (3).
- (6) If at the commencement date notification in respect of the substance was required by regulation 3 or 5 of the Notification Regulations, hazardous substances consent is only to be deemed to be granted under this paragraph if notification in respect of the substance was given before that date in accordance with those regulations.
- (7) If at the commencement date such a notification was not so required, hazardous substances consent is only to be deemed to be granted under this paragraph if an aggregate quantity of the substance not less than the controlled quantity was present at any one time within the establishment period.
- (8) If it appears to the Department that a claim for hazardous substances consent does not comply with sub-paragraph (4), it shall be the Department's duty, before the end of the period of two weeks from its receipt of the claim,—
- (a) to notify the claimant that in the Department's opinion the claim is invalid; and
 - (b) to give him the Department's reasons for that opinion.
- (9) Hazardous substances consent which is deemed to be granted under this paragraph is subject to such conditions as may be prescribed.
- (10) In this paragraph—
- “commencement date” means the date on which Article 53 comes into operation;
 - “the establishment period” means the period of 12 months immediately preceding the commencement date;
 - “established quantity” means, in relation to any land—
- (a) where before the commencement date there has been a notification in respect of a substance in accordance with any of the Notification Regulations—
 - (i) the quantity notified or last notified before the commencement date; or
 - (ii) a quantity equal to twice the quantity which was so notified or last notified before the start of the establishment period,whichever is the greater;
 - (b) where a notification was not required before that date by any of those regulations, a quantity exceeding by 50 per cent, the maximum quantity which was present on, over or under the land at any one time within the establishment period;
- “Notification Regulations” means the Notification of Installations Handling Hazardous Substances Regulations (Northern Ireland) 1984;
- “the transitional period” means the period of 6 months beginning with the commencement date.

5. The right of appeal under Articles 69 and 78 conferred on a person mentioned in paragraph (2) of each of those Articles shall apply only in relation to any notice (whenever issued) which is

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expressed to take effect after the coming into operation of Articles 15 and 16 of the Amendment Order.

6. Article 116 shall apply to any development carried out after the day on which the Amendment Order was made.

7. In this Schedule “the Amendment Order” means the Planning and Building Regulations (Amendment) (Northern Ireland) Order 1990.

Schedule 5—Amendments;

Schedule 6—Repeals

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