
STATUTORY INSTRUMENTS

1991 No. 1220

The Planning(Northern Ireland) Order 1991

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);
 - (ii) Article 29;
 - (iii) Article 38(4);
 - (iv) Article 39;
 - (v) Articles 68(9), 72(5), 75 and 76;
 - (vi) Article 83,

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.

Crown land

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 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) No enforcement notice shall be issued under Article 68 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.

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 determination under Article 41 or 48.

(2) Notwithstanding the estate of the Crown in the land in question, an application for any such permission, consent 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.

(5) In relation to any application made by virtue of this Article for a determination under Article 41, that Article shall have effect as if for any reference to an application for planning permission being, or not being, required there were substituted a reference to such an application being, or not

being, required in the event of the proposed operations or change of use being carried out or made otherwise than by or on behalf of the Crown.

(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 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.

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.

(2) A tree preservation order made by virtue of this Article shall not take effect until the land in question ceases to be Crown land or becomes subject to a private estate, whichever first occurs.

(3) On the occurrence of any event by virtue of which 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).

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.