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STATUTORY INSTRUMENTS

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**2003 No. 430**

**The Planning (Amendment) (Northern Ireland) Order 2003**

*Introductory*

**Title and commencement**

- 1.—(1) This Order may be cited as the Planning (Amendment) (Northern Ireland) Order 2003.
- (2) In this Order—
- (a) this Article, Article 2, Articles 27 to 29 and Article 31 come into operation two weeks after the date on which this Order is made;
  - (b) the remaining provisions of this Order come into operation on such day or days as the Department of the Environment may by order appoint.
- (3) An order under paragraph (2) may contain such transitional provisions and savings as the Department of the Environment considers appropriate in connection with the order.
- (4) Nothing in any provision of this Order affects the punishment for an offence committed before the provision comes into operation.

**Interpretation**

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.
- (2) In this Order “the principal Order” means the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#).
- (3) This Order shall be construed as one with the principal Order.

*New enforcement powers*

**Planning contravention notices**

3. In Part VI of the principal Order (enforcement) before Article 68 there is inserted—

*“Planning contravention notices*

**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.”.

#### **Enforcement of conditions**

4. After Article 76 of the principal Order there is inserted—

#### *“Breach of condition*

#### **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.”.

## **Injunctions**

5. After Article 76A of the principal Order (as inserted by Article 4 of this Order) there is inserted

### *“Injunctions*

#### **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.”.

*Other changes relating to enforcement*

**Time limits on enforcement action**

6.—(1) At the beginning of Part VI of the principal Order (enforcement) there is inserted—

*“Introductory*

**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.”.

(2) If, in the case of any breach of planning control, the time for issuing an enforcement notice has expired before the coming into operation of this Article, by virtue of Article 68(4)(b) of the principal Order (as originally enacted), nothing in this Article enables any enforcement action to be taken in respect of the breach.

**Enforcement notices**

7. For Article 68 of the principal Order (enforcement notices) there is substituted—

**“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.

**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.
- (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—

- (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**

**8.—**(1) For Article 69(3) and (4) of the principal Order (grounds of appeal and notice) there is substituted—

“(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.”.

(2) For Article 71 of that Order (appeal against enforcement notice – supplementary provisions relating to planning permission) there is substituted—

### **“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.”.

### **Offence where enforcement notice not complied with**

9. For Article 72 of the principal Order (penalties for non-compliance with enforcement notice) there is substituted—

#### **“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.

(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.”

### **Execution of works required by enforcement notice**

**10.**—(1) For Article 74(1) of the principal Order (power to execute works required by enforcement notice) there is substituted—

“(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) After paragraph (8) of that Article there is added—

“(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.”.

### **Stop notices**

**11.**—(1) In Article 73 of the principal Order (stop notices)—

(a) for paragraphs (1) to (3) there is substituted—

“(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.”;

(b) in paragraph (4)(d) for the words “to be included” to the end there is substituted “relevant activities”;

(c) for paragraph (7) (offences and penalties) there is substituted—

“(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.”.

(2) For Article 67(5) of the [Planning \(Northern Ireland\) Order 1972 \(NI 17\)](#) there is substituted—

“(5) No compensation is payable under this Article—

- (a) in respect of the prohibition in a stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or
- (b) in the case of a claimant who was required to provide information under Article 67C or 125 of the Planning Order in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the Department when responding to the notice.”.

### **Certificate of lawful use or development**

12. After Article 83 of the principal Order there is inserted—

*“Certificate of lawful use or development*

#### **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
- (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—

- (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.”.

#### **Rights of entry for enforcement purposes**

**13.**—(1) At the end of Part VI of the principal Order there is inserted—

*“Rights of entry for enforcement purposes*

#### **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—
  - (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.”.

(2) In Article 121(1) of that Order (rights of entry)—

- (a) in sub-paragraph (a)(v) for “Part IV, V or VI” there is substituted “Part IV or V”;
- (b) in sub-paragraph (c), heads (i) and (iii) are omitted;
- (c) sub-paragraph (e) is omitted.

### **Listed buildings**

**14.—**(1) In Article 44 of the principal Order (control of works for demolition, alteration or extension of listed buildings) for paragraph (6) there is substituted—

“(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.”.

(2) In Article 77 of that Order for paragraph (4) there is substituted—

“(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.”.

(3) In Article 78 of that Order—

(a) for paragraph (1)(a) and (b) there is substituted—

- “(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;”;

(b) in paragraph (2)(a) the words “in writing” are omitted.

### **Hazardous substances**

**15.—**(1) In Article 61 of the principal Order (offences) for paragraph (4) there is substituted—

“(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.”.

(2) In Article 81 of that Order (hazardous substances contravention notices)—

- (a) in paragraph (3)(b) after “remedy” there is inserted “wholly or partly”;
- (b) in paragraph (8) after “before” there is inserted “or after”;
- (c) at the end of paragraph (9) there is inserted “or would, if the notice were re-issued, be served with a copy of it”;
- (d) in paragraph (11) after “shall” there is inserted “, subject to regulations made under this Article,”.

(3) After that Article there is inserted—

**“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.”.

**Replacement of trees**

**16.** For Article 82 of the principal Order (enforcement of duties as to replacement of trees) there is substituted—

**“Enforcement of duties as to replacement of trees**

**82.**—(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.

### **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;
- (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.

### **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.

#### **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.”.

#### **Alteration in penalties**

**17.**—(1) In paragraph (6) of Article 22 of the principal Order (notification of applications for planning permission) for the words “level 3” there is substituted “level 5”.

(2) In paragraph (3) of Article 122 of the principal Order (powers of entry) for the words from “on summary conviction” to the end there is substituted “—

(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) In paragraph (4) of Article 125 of the principal Order (information as to estates in land) for the words from “on summary conviction” to the end there is substituted “—

(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.”.

### *Control over development*

#### **Demolition**

**18.**—(1) In Article 11 of the principal Order (meaning of “development”) after paragraph (1) there is inserted—

“(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) In paragraph (2) of that Article, after sub-paragraph (e) there is inserted—

“(f) the demolition of any description of building specified in a direction given by the Department.”.

#### **Reversion to previous lawful use**

**19.** Article 12 of the principal Order (development requiring planning permission) shall be renumbered as paragraph (1) of that Article and after that paragraph there is inserted—

“(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.”.

#### **Power of Department to decline to determine applications**

**20.**—(1) After Article 25 of the principal Order there is inserted—

##### **“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.”

(2) In Article 33 of that Order (right to appeal where Department has failed to take a decision on an application) after “applies,” there is inserted—

“or

(c) gives notice to him that it has exercised its power under Article 25A to decline to determine the application,”.

#### **Assessment of environmental effects**

**21.** After Article 25A of the principal Order (as inserted by Article 20 of this Order) there is inserted—

##### **“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.”.

#### **Dismissal of appeals in cases of undue delay**

**22.** In Article 32 of the principal Order (appeals) after paragraph (5) there is inserted—

“(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.”.

#### **Planning agreements**

**23.**—(1) For Article 40 of the principal Order (agreements facilitating, regulating or restricting development or use of land) there is substituted—

### **“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.

(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 mortgagees by deed accordingly.

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

#### **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.”.

(2) In Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (c. 18) (matters requiring to be registered in the Statutory Charges Register) in entry 27 after sub-paragraph (g) there is inserted

—  
“(gg) planning agreements under Article 40;”.

## *Control over particular matters*

## **Advertisements**

**24.** In Article 2(2) of the principal Order (interpretation) in the definition of “advertisement”—

- (a) after “notice,” there is inserted “awning, blind;”;

- (b) after “used,” there is inserted “or designed”; and
- (c) after “use” there is inserted “and anything else principally used, or designed or adapted principally for use”.

### **Building preservation notices**

**25.**—(1) After Article 42 of the principal Order (list of buildings of special architectural or historic interest) there is inserted—

#### **“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.

#### **Temporary listing in urgent cases**

**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.

### **Lapse of building preservation notices**

**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.”.

(2) In paragraph (1)(d) of Article 121 of that Order (rights of entry) after “of” there is inserted “affixing a notice in accordance with Article 42B(1) or”.

(3) After Article 67 of the Planning (Northern Ireland) Order 1972 (compensation for loss due to stop notice) there is inserted—

### **“Compensation for loss or damage caused by service of building preservation notice**

**67A.**—(1) This Article applies where a building preservation notice ceases to have effect without the building having been included in a list compiled by the Department under Article 42 of the Planning Order.

(2) Any person who at the time when the notice was served had an estate in the building shall, on making a claim to the Department within the prescribed time and in the prescribed manner, be entitled to be paid compensation by the Department in respect of any loss or damage directly attributable to the effect of the notice.

(3) The loss or damage in respect of which compensation is payable under paragraph (2) shall include a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.”.

### **Trees**

**26.**—(1) In Article 65 of the principal Order (tree preservation orders)—

- (a) in paragraph (1)(a) after “lopping” there is inserted “, uprooting, wilful damage”;
- (b) after paragraph (1) there is inserted—

“(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.”;

(c) for paragraph (2) there is substituted—

“(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.”;

(d) in paragraph (3), after the words “cutting down,” where they twice appear, there is inserted “uprooting.”.

(2) After that Article there is inserted—

**“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.

**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.”.

(3) In Article 66 of the principal Order (penalties for contravention of tree preservation orders)—

(a) in paragraph (1)—

- (i) after the words “cuts down” there is inserted “, uproots”;
- (ii) after the words “a tree, or” there is inserted “wilfully damages,”;
- (iii) for the words “and liable” to the end of that paragraph there is substituted—

“and liable—

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

(b) after paragraph (1) there is inserted—

“(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.”;

(c) in paragraph (2) for the words “level 3” there is substituted “level 4”;

(d) paragraph (3) is omitted.

(4) After that Article there is inserted—

#### **“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
  - (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.

**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.”.

(5) In Article 115 of the principal Order (tree preservation orders in anticipation of disposal of Crown land)—

(a) for paragraph (2) there is substituted—

“(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—
  - (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.”;

(b) in paragraph (3) for the words “On the occurrence of any event by virtue of which” there is substituted “Where”.

(6) In Article 66 of the [Planning \(Northern Ireland\) Order 1972 \(NI 17\)](#) (compensation in respect of tree preservation orders)—

(a) for paragraph (1) there is substituted—

“(1) A tree preservation order may make provision for the payment by the Department, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of loss or damage caused or incurred in consequence—

- (a) of the refusal of any consent required under the order; or
- (b) of the grant of any such consent subject to conditions.”;

(b) for paragraph (3) there is substituted—

“(3) Except in so far as may be otherwise provided by any tree preservation order, any question of disputed compensation under paragraph (1) shall be referred to and determined by the Lands Tribunal.”.

*Regional development strategy*

**Certain policies, plans and schemes under the principal Order to be in general conformity with the regional development strategy**

27. In each of the following provisions of the principal Order —
- (a) Article 3(1A) (policy under that Article to be consistent with the regional development strategy);
  - (b) Article 4(1A) (development plan for an area to be consistent with the regional development strategy); and
  - (c) Article 86(6) (development scheme to be consistent with the regional development strategy),

for the words “consistent with” there is substituted “in general conformity with”.

**Development plans: statement as to general conformity with the regional development strategy**

28.—(1) The following provisions of this Article apply where the Department of the Environment proposes to make, alter or replace a development plan for an area under Part III of the principal Order; and references in those provisions to Articles are to Articles in that Part.

(2) Not later than the beginning of the period of 28 days immediately before it proposes to make copies of the relevant documents available for inspection in accordance with Article 5(4) or (as the case may be) Article 6(3), the Department of the Environment shall send a copy of those documents to the Department for Regional Development.

(3) The Department for Regional Development shall consider the documents received by it under paragraph (2) and within the period of 28 days beginning with the day on which it received those documents shall—

- (a) determine whether in its opinion the relevant plan is in general conformity with the regional development strategy; and
- (b) give the Department of the Environment a statement in writing which—
  - (i) sets out that opinion; and
  - (ii) if that opinion is to the effect that the relevant plan is not in general conformity with the regional development strategy, gives the reasons for that opinion.

(4) The Department of the Environment shall make copies of any statement received under paragraph (3) available for inspection under Article 5(4) or (as the case may be) Article 6(3) together with copies of the relevant documents.

(5) A statement to which paragraph (3)(b)(ii) applies shall be treated for all purposes as an objection duly made by the Department for Regional Development within the prescribed period referred to in Article 5(5) or (as the case may be) Article 6(4).

(6) Not later than the beginning of the period of 28 days immediately before it proposes to make an order under Article 8(1) adopting a plan, alteration or replacement plan, the Department of the Environment shall send to the Department for Regional Development a copy of—

- (a) the draft order; and
- (b) the plan, alteration or replacement plan to which the order relates.

(7) The Department for Regional Development shall consider the documents received by it under paragraph (6) and within the period of 28 days beginning with the day on which it received those documents shall—

- (a) determine whether in its opinion the relevant plan is in general conformity with the regional development strategy; and
- (b) give the Department of the Environment a statement in writing which—
  - (i) sets out that opinion; and
  - (ii) if that opinion is to the effect that the relevant plan is not in general conformity with the regional development strategy, gives the reasons for that opinion.
- (8) The Department of the Environment shall consider any statement received under paragraph (7) before making an order under Article 8(1).
- (9) In this Article “the relevant plan” means—
  - (a) where the Department proposes to make a development plan, the plan proposed to be made;
  - (b) where the Department proposes to alter a current development plan, the current plan as proposed to be altered;
  - (c) where the Department proposes to replace a current development plan, the plan proposed to replace the current plan.

### **Regional development strategy: transitional arrangements for certain development plans**

- 29.**—(1) This Article applies to the following development plans (“excepted plans”) —
- (a) the Cookstown Area Plan 2010;
  - (b) the Craigavon Area Plan 2010;
  - (c) the Dungannon and South Tyrone Area Plan 2010.
- (2) Article 28 does not apply in relation to the making of an excepted plan.
- (3) The following provisions—
- (a) Article 3(1A) of the principal Order (policy of Department of the Environment under that Article to be in general conformity with regional development strategy); and
  - (b) Article 5 of the [Strategic Planning \(Northern Ireland\) Order 1999 \(NI 4\)](#) (departments exercising functions in relation to development to have regard to the regional development strategy),

do not apply to the Department of the Environment exercising functions under Part III of the principal Order in relation to the making of an excepted plan.

(4) Article 4(1A) of the principal Order (development plan for an area must be in general conformity with the regional development strategy) does not apply in relation to an excepted plan.

(5) The reference in paragraph (4) to an excepted plan is to the plan as adopted under Article 8 of the principal Order; and accordingly that paragraph ceases to apply in relation to an excepted plan if it is altered or replaced.

### *Miscellaneous*

#### **Status of development plans**

- 30.** In Article 4 of the principal Order (development plans) after paragraph (2) there is inserted—
- “(2A) Where, in making any determination under this Order, regard is to be had to the development plan, the determination shall be made in general conformity with the plan unless material considerations indicate otherwise.”.

### **Powers of Department before the acquisition of land for planning purposes**

31. After Article 91 of the principal Order (development of land held for planning purposes) there is inserted—

#### **“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.”.

### **Planning Appeals Commission**

32.—(1) In paragraph (2)(a) of Article 110 of the principal Order (Planning Appeals Commission) after “chief commissioner” there is inserted “and deputy chief commissioner”.

(2) After paragraph (5) of Article 111 of that Order (procedure of appeals commission) there is inserted—

“(5A) Rules under paragraph (5) which provide for the taking of any decision may, in particular, provide for that decision to be taken by a panel of not fewer than 4 commissioners.

(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.”.

### **Grants for research and bursaries**

33. In paragraph (1) of Article 119 of the principal Order (grants for research and bursaries) after “physical” there is inserted “or built”.

### **Grants to bodies providing assistance in relation to certain development proposals**

34. In Article 120 of the principal Order (grants to bodies providing assistance in relation to certain development proposals)—

(a) after paragraph (1) there is inserted—

“(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.”;

(b) in paragraph (2), after “(1)” there is inserted “or (1A)”.

### **Planning register**

35. In paragraph (1) of Article 124 of the principal Order (planning register) after sub-paragraph (i) there is added—

- “(j) notices under Article 66A;
- (k) breach of condition notices;
- (l) certificates under Article 83A or 83B;
- (m) building preservation notices.”.

#### **Home loss payments following planning blight**

**36.** In Article 30 of the [Land Acquisition and Compensation \(Northern Ireland\) Order 1973 \(NI 21\)](#) (right to home loss payment)—

- (a) after paragraph (3) there is inserted—

“(3AA) For the purposes of this Article a person shall be deemed to have been displaced from a dwelling in consequence of the compulsory acquisition of an interest therein if the acquisition is in pursuance of the service by him of a blight notice, within the meaning of Article 2(2) of the Planning Blight (Compensation) (Northern Ireland) Order 1981, served on or after the date of the coming into operation of Article 36 of the Planning (Amendment) (Northern Ireland) Order 2003.”;

- (b) in paragraph (10), after the word “Article” there is inserted “except paragraph (3AA)”.

#### **Minor and consequential amendments and repeals**

**37.**—(1) The statutory provisions set out in Schedule 1 shall have effect subject to the minor and consequential amendments specified in that Schedule.

(2) The statutory provisions set out in the first column of Schedule 2 are repealed to the extent set out in the second column of that Schedule.

*A. K. Galloway*  
Clerk of the Privy Council