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STATUTORY INSTRUMENTS

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**2003 No. 430**

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

*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principal Order (as originally enacted), nothing in this Article enables any enforcement action to be taken in respect of the breach.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.”.