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STATUTORY INSTRUMENTS

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**2006 No. 1252**

**The Planning Reform (Northern Ireland) Order 2006**

**PART I**  
**INTRODUCTORY**

**Title and commencement**

- 1.—(1) This Order may be cited as the Planning Reform (Northern Ireland) Order 2006.
- (2) This Part shall come into operation on the expiration of 7 days from the day on which this Order is made.
- (3) The following provisions shall come into operation on such day or days as the Department may by order appoint—
- (a) Articles 3 to 8;
  - (b) Article 15;
  - (c) Article 28(2) and Schedule 5 so far as relating to Article 26 of the principal Order, the [Further Education \(Northern Ireland\) Order 1997 \(NI 15\)](#) and Article 30 of the [Planning \(Amendment\) \(Northern Ireland\) Order 2003 \(NI 8\)](#);
  - (d) Parts III and V.
- (4) The remaining provisions of this Order shall come into operation on the expiration of one month from the day on which this Order is made.
- (5) An order under paragraph (3) may contain such transitional or saving provisions as appear to the Department to be necessary or expedient.

**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 \(NI 11\)](#);
  - “the Department” means the Department of the Environment;
  - “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.
- (3) Words and expressions used in this Order and in the principal Order have the same meaning in this Order as they have in that Order.

## PART II

### PLANNING REFORM

#### Statement of community involvement

3. After Article 3 of the principal Order insert—

##### “Statement of community involvement

3A.—(1) The Department shall prepare a statement of community involvement.

(2) The statement of community involvement is a statement of the Department’s policy as to the involvement in the exercise of the Department’s functions under Article 4 and Part IV of persons who appear to the Department to have an interest in matters relating to development in the area in which they live.”.

#### Status of development plans

4.—(1) In Article 4 of the principal Order (development plans), after paragraph (2) insert—

“(2A) Where, in making any determination under this Order, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.”.

(2) Article 30 of the [Planning \(Amendment\) \(Northern Ireland\) Order 2003 \(NI 8\)](#) (status of development plans) ceases to have effect.

#### Independent examination of development plans

5.—(1) For Article 7 of the principal Order (inquiries relating to development plans) substitute—

##### “Independent examination

7.—(1) The Department may cause an independent examination to be carried out by the planning appeals commission for the purpose of considering objections to a development plan or to the alteration, repeal or replacement of a development plan.

(2) Any person who makes objections to a development plan or to the alteration, repeal or replacement of a development plan shall, if he so requests, be given the opportunity to appear before and be heard by the planning appeals commission.”.

(2) In Article 8 of the principal Order (adoption of development plan by Department), in paragraph (1) for “a public local inquiry” substitute “an independent examination”.

(3) In Article 111 of the principal Order (procedure of planning appeals commission)—

(a) in paragraph (2), after “inquiry” wherever that word occurs, insert “, independent examination”;

(b) in paragraph (6)—

(i) for “an inquiry” substitute “an inquiry or independent examination”;

(ii) for “or inquiry” substitute “, inquiry or independent examination”.

#### Sustainable development

6. In Part III of the principal Order, after Article 10 insert—

### **“Sustainable development**

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

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

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

### **Development to include certain internal operations**

**7.**—(1) In Article 11 of the principal Order (meaning of “development”), after paragraph (2) insert—

“(2A) The Department may in a development order specify any circumstances or description of circumstances in which paragraph (2) does not apply to operations mentioned in sub-paragraph (a) of that paragraph which have the effect of increasing the gross floor space of the building by such amount or percentage amount as is so specified.”.

(2) This paragraph applies if—

- (a) Article 11(2) of the principal Order is disapplied in respect of any operations by virtue of a development order under Article 11(2A) of that Order,
- (b) at the date the development order comes into operation a certificate under Article 83B of the principal Order (certificate of lawfulness of proposed use or development) is in force in respect of the operations, and
- (c) before that date no such operations have begun.

(3) If paragraph (2) applies the certificate under Article 83B of the principal Order is of no effect.

(4) A development order made for the purposes of Article 11(2A) of the principal Order does not affect any operations begun before it is made.

### **Statements of principles of design and accessibility**

**8.**—(1) In Article 20 of the principal Order (form and content of planning applications), after paragraph (2) insert—

“(2A) A development order shall require an application for planning permission of such description as is specified in the order to be accompanied by such of the following as is so specified—

- (a) a statement about the design principles and concepts that have been applied to the development;
- (b) a statement about how issues relating to access to the development have been dealt with.

(2B) The form and content of a statement mentioned in paragraph (2A) is such as is required by the development order.”.

(2) In paragraph 1 of Schedule 1 to the principal Order (applications for listed buildings consent), after sub-paragraph (1) insert—

“(1A) Regulations shall require an application for listed building consent of such description as is prescribed to be accompanied by such of the following as is prescribed—

- (a) a statement about the design principles and concepts that have been applied to the works in relation to which the application is made;
- (b) a statement about how issues relating to access to the building have been dealt with.

(1B) The form and content of a statement mentioned in sub-paragraph (1A) is such as is prescribed.”

(3) Article 26 of the principal Order ceases to have effect.

### **Power to decline to determine applications**

**9.—(1)** For Article 25A of the principal Order (power of Department to decline to determine applications) substitute—

#### **“Power to decline to determine subsequent application**

**25A.—(1)** The Department may decline to determine a relevant application if—

- (a) any of the conditions in paragraphs (2) to (4) is satisfied; and
- (b) the Department thinks there has been no significant change in the relevant considerations since the relevant event.

(2) The condition is that in the period of 2 years ending with the date on which the application mentioned in paragraph (1) is received the Department has refused a similar application under Article 31.

(3) The condition is that in that period the planning appeals commission has dismissed an appeal—

- (a) against the refusal of a similar application; or
- (b) under Article 33 in respect of a similar application.

(4) The condition is that—

- (a) in that period the Department has refused more than one similar application; and
- (b) there has been no appeal to the planning appeals commission against any such refusal.

(5) A relevant application is an application for planning permission for the development of any land.

(6) The relevant considerations are—

- (a) the development plan so far as material to the application;
- (b) any other material considerations.

(7) The relevant event is—

- (a) for the purposes of paragraphs (2) and (4) the refusal of the similar application;
- (b) for the purposes of paragraph (3) the dismissal of the appeal.

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

### **Power to decline to determine overlapping application**

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

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

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

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

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

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

(4) The condition is that a similar application—

(a) has been granted by the Department;

(b) has been refused by the Department; or

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

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

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

(6) The determination period is—

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

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

(2) In Article 33(c) of the principal Order (appeal in default of planning decision), after “25A” insert “or 25AA”.

(3) After paragraph 4 of Schedule 1 to the principal Order (determination of applications for listed building consent) insert—

*“Power to decline to determine application*

**Power to decline to determine subsequent application**

**4A.**—(1) The Department may decline to determine an application for a relevant consent if—

(a) one or more of the conditions in sub-paragraphs (2) to (4) is satisfied; and

(b) the Department thinks there has been no significant change in any material considerations since the relevant event.

(2) The condition is that in the period of 2 years ending with the date on which the application mentioned in sub-paragraph (1) is received the Department has refused a similar application made under paragraph 1.

(3) The condition is that in that period the planning appeals commission has dismissed an appeal—

(a) against the refusal of a similar application; or

(b) under paragraph 8 in respect of a similar application.

(4) The condition is that—

(a) in that period the Department has refused more than one similar application; and

(b) there has been no appeal to the planning appeals commission against any such refusal.

(5) Relevant consent is—

- (a) listed building consent; or
- (b) consent under Article 51 (conservation area consent).

(6) The relevant event is—

- (a) for the purposes of sub-paragraphs (2) and (4) the refusal of the similar application;
- (b) for the purposes of sub-paragraph (3) the dismissal of the appeal.

(7) An application for relevant consent is similar to another application if (and only if) the Department thinks that the building and works to which the applications relate are the same or substantially the same.

(8) For the purposes of an application for consent under Article 51 (conservation area consent) a reference to a provision of this Order is a reference to that provision as excepted or modified by regulations under Article 51(5).

#### **Power to decline to determine overlapping application**

**4B.**—(1) The Department may decline to determine an application for a relevant consent which is made at a time when any of the conditions in sub-paragraphs (2) to (4) applies in relation to a similar application.

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

(3) The condition is that a similar application is under consideration by the planning appeals commission on an appeal under paragraph 7 or 8 and the commission has not issued its decision.

(4) The condition is that a similar application—

- (a) has been granted by the Department;
- (b) has been refused by the Department; or
- (c) has not been determined by the Department within the determination period,

and the time within which an appeal could be made to the planning appeals commission under paragraph 7 or 8 has not expired.

(5) Relevant consent is—

- (a) listed building consent; or
- (b) consent under Article 51 (conservation area consent).

(6) An application for relevant consent is similar to another application if (and only if) the Department thinks that the building and works to which the applications relate are the same or substantially the same.

(7) The determination period is—

- (a) the period prescribed for the determination of the application; or
- (b) such longer period as the applicant and the Department have agreed for the determination of the application.

(8) For the purposes of an application for consent under Article 51 (conservation area consent) a reference to a provision of this Order is a reference to that provision as excepted or modified by regulations under Article 51(5).”

(4) In paragraph 8 of Schedule 1 to the principal Order (appeal in default of planning decision) after “decision on the application” insert “or gives notice to the applicant that it has exercised its power under paragraph 4A or 4B to decline to determine the application”.

(5) This Article has effect only in relation to applications made under the principal Order which are received by the Department after the coming into operation of this Article.

### **Duration of planning permission and listed building consent**

**10.**—(1) In Article 28 of the principal Order (permission to develop land without compliance with conditions previously attached), after paragraph (4) add—

“(5) Planning permission shall not be granted under this Article to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which—

- (a) a development must be begun;
- (b) an application for approval of reserved matters (within the meaning of Article 35) must be made.”.

(2) In paragraph 5 of Schedule 1 to that Order (listed building consent to execute works without compliance with conditions previously attached), after sub-paragraph (4) add—

“(5) Listed building consent shall not be granted under this paragraph to the extent that it has effect to change a condition subject to which a previous listed building consent was granted by extending the time limit within which the works must be begun.”.

(3) This Article has effect only in relation to applications for planning permission, listed building consent or consent under Article 51 of the principal Order (conservation area consent) which are received by the Department after the coming into operation of this Article.

### **Removal of discretion to extend time for bringing appeal**

**11.** In Article 32 of the principal Order (appeals), in paragraph (3) the words “or such longer period as the commission may allow” shall cease to have effect.

### **Conservation areas**

**12.** In Article 50 of the principal Order (conservation areas), for paragraph (3) substitute—

“(3) Subject to paragraph (3A), before making, varying or cancelling a designation under this Article, the Department shall consult with—

- (a) the Historic Buildings Council;
- (b) any appropriate district council;
- (c) such other persons or bodies as may be prescribed.

(3A) A designation under this Article may be made without consulting the persons or bodies mentioned in paragraph (3)(c), but a designation made without such consultation shall only have effect for a period of 6 months beginning on the date on which the designation was made.”.

### **Temporary stop notice**

**13.**—(1) After Article 67D of the principal Order insert—

*“Temporary stop notices*

**Temporary stop notice**

- 67E.**—(1) This Article applies if the Department thinks—
- (a) that there has been a breach of planning control in relation to any land; and
  - (b) that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.
- (2) The Department may issue a temporary stop notice.
- (3) The notice shall be in writing and shall—
- (a) specify the activity which the Department thinks amounts to the breach;
  - (b) prohibit the carrying on of the activity (or of so much of the activity as is specified in the notice);
  - (c) set out the Department’s reasons for issuing the notice.
- (4) A temporary stop notice may be served on any of the following—
- (a) the person who the Department thinks is carrying on the activity;
  - (b) a person who the Department thinks is an occupier of the land;
  - (c) a person who the Department thinks has an estate in the land.
- (5) The Department shall display on the land—
- (a) a copy of the notice;
  - (b) a statement of the effect of the notice and of Article 67G.
- (6) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of paragraph (5).
- (7) A temporary stop notice ceases to have effect—
- (a) at the end of the period of 28 days starting on the day the copy notice is so displayed;
  - (b) at the end of such shorter period starting on that day as is specified in the notice; or
  - (c) if it is withdrawn by the Department.

**Temporary stop notice: restrictions**

- 67F.**—(1) A temporary stop notice does not prohibit—
- (a) any person from continuing to use any building, caravan or other structure situated on land to which the temporary stop notice relates as his permanent residence whether as owner, occupier, tenant, patient, guest or otherwise;
  - (b) the carrying out of an activity of such description or in such circumstances as is prescribed.
- (2) A temporary stop notice does not prohibit the carrying out of any activity which has been carried out (whether continuously or not) for a period of 4 years ending with the day on which the copy of the notice is first displayed as mentioned in Article 67E(6).
- (3) Paragraph (2) does not prevent a temporary stop notice prohibiting—
- (a) activity consisting of or incidental to building, engineering, mining or other operations; or
  - (b) the deposit of refuse or waste materials.



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

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

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

#### **Temporary stop notice: offences**

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

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

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

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

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

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

- (a) that the temporary stop notice was not served on him; and
- (b) that he did not know, and could not reasonably have been expected to know, of its existence.

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

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

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

(2) After Article 67A of the [Planning \(Northern Ireland\) Order 1972 \(NI 17\)](#) insert—

#### **“Compensation for loss due to temporary stop notice**

**67B.**—(1) This Article applies if and only if a temporary stop notice is issued and at least one of the following sub-paragraphs applies—

- (a) the activity which is specified in the notice is authorised by planning permission or a development order;
- (b) a certificate in respect of the activity is issued under Article 83A of the Planning Order or granted under that Article by virtue of Article 83E of that Order;
- (c) the Department withdraws the notice.

(2) Paragraph (1)(a) does not apply if the planning permission is granted on or after the date on which a copy of the notice is first displayed as mentioned in Article 67E(6) of the Planning Order.

(3) Paragraph (1)(c) does not apply if the notice is withdrawn following the grant of planning permission as mentioned in paragraph (2).

(4) A person who at the time the notice is served has an estate in the land to which the notice relates is entitled to be compensated by the Department in respect of any loss or damage directly attributable to the prohibition effected by the notice.

(5) A claim for compensation under this Article shall be made to the Department within the time and in the manner specified by a development order.

(6) The loss or damage in respect of which compensation is payable under this Article in respect of a prohibition shall include a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.

(7) No compensation is payable under this Article—

(a) in respect of the prohibition in a temporary 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.

(8) Any question of disputed compensation under this Article shall be determined by the Lands Tribunal.”.

(3) In Article 124 of the principal Order (planning register), in paragraph (1) after sub-paragraph (m) add—

“(n) temporary stop notices issued under Article 67E;”.

#### **Increase in fines for unlawful advertisements**

14.—(1) In Article 84 of the principal Order (enforcement of advertisement control) in paragraph (2) for “level 3” substitute “level 4”.

(2) Nothing in this Article affects the punishment for an offence committed before the coming into operation of this Article.

#### **Procedure of Planning Appeals Commission**

15.—(1) Article 111 of the principal Order (procedure of appeals commission) shall be amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) after “member” insert “or members”;

(b) in sub-paragraph (b)—

(i) after “member” insert “or members”;

(ii) for “him” substitute “the member or members”.

(3) In paragraph (2)—

(a) in sub-paragraph (a) after “member” insert “or members”;

(b) in sub-paragraph (b)—

(i) after “member” insert “or members”;

(ii) for “him” substitute “the member or members”.

(4) For paragraph (5A) substitute—

“(5A) Rules under paragraph (5) which provide for the taking of any decision may, in particular, provide for that decision to be taken—

- (a) by a panel of not fewer than 4 commissioners; or
- (b) by a single commissioner.”.

### **Fees and charges**

16. For Article 127 of the principal Order (fees for planning applications) substitute—

#### **“Fees and charges**

127.—(1) The Department may by regulations make such provision as it thinks fit for the payment of a charge or fee of the prescribed amount in respect of—

- (a) the performance by the Department of any function it has;
- (b) anything done by the Department which is calculated to facilitate or is conducive or incidental to the performance of any such function.

(2) The Office of the First Minister and deputy First Minister may by regulations make such provision as it thinks fit for the payment of a charge or fee of the prescribed amount in respect of—

- (a) an application for planning permission which is deemed to be made to the planning appeals commission under this Order;
- (b) an appeal to the planning appeals commission under this Order.

(3) Regulations under this Article may prescribe—

- (a) the person by whom any charge or fee is payable;
- (b) provision as to the calculation of any charge or fee;
- (c) circumstances in which no charge or fee is to be paid;
- (d) circumstances in which any charge or fee paid is to be remitted or refunded (in whole or in part).”.

## **PART III**

### **CORRECTION OF ERRORS**

#### **Correction of errors in decision documents**

17.—(1) This Article applies if the Department issues a decision document which contains a correctable error.

(2) The Department may correct the error—

- (a) if it is requested to do so in writing by any person;
- (b) if it sends a statement in writing to the applicant which explains the error and states that it is considering making the correction.

(3) But the Department shall not correct the error unless—

- (a) not later than the end of the relevant period it receives a request mentioned in paragraph (2) (a) or sends a statement mentioned in paragraph (2)(b); and
- (b) it obtains the appropriate consent.

(4) The relevant period is the period specified for the purposes of paragraph (3)(a) in a development order.

(5) The appropriate consent is—

- (a) the consent in writing of the applicant;
  - (b) if the applicant is not the owner of the land in respect of which the decision was made, the consent in writing of both the applicant and the owner.
- (6) But consent is not appropriate consent if it is given subject to a condition.

### **Correction notice**

**18.**—(1) If sub-paragraph (a) or (b) of Article 17(2) applies the Department shall as soon as practicable after making any correction or deciding not to make any correction issue a notice in writing (a correction notice) which—

- (a) specifies the correction of the error; or
  - (b) gives notice of its decision not to correct such an error.
- (2) The Department shall give the correction notice to—
- (a) the applicant;
  - (b) if the applicant is not the owner of the land in respect of which the original decision was made, the owner;
  - (c) if the correction was requested by any other person, that person.

### **Effect of correction**

**19.**—(1) If a correction is made in pursuance of Article 17—

- (a) the original decision is taken not to have been made;
  - (b) the decision is taken for all purposes to have been made on the date the correction notice is issued.
- (2) If a correction is not made—
- (a) the original decision continues to have full force and effect;
  - (b) nothing in this Part affects anything done in pursuance of or in respect of the decision.

### **Supplementary**

**20.**—(1) This Article applies for the purposes of this Part.

(2) A decision document is a document which records any of the following decisions—

- (a) a decision to grant or refuse planning permission;
- (b) a decision to grant outline planning permission;
- (c) a decision to approve reserved matters (within the meaning of Article 35 of the principal Order);
- (d) any decision to grant planning permission under sub-paragraph (a) of paragraph (1) of Article 71 of the principal Order or to discharge a condition or limitation under sub-paragraph (b) of that paragraph;
- (e) a decision to grant or to refuse to grant a certificate under Article 83A or 83B of the principal Order;
- (f) any decision relating—
  - (i) to an application for consent under a tree preservation order,
  - (ii) to an application for consent under any regulations made under Article 67 of the principal Order, or
  - (iii) to any certificate or direction under any such order or regulations;

- (g) a decision on an application for listed building consent under Article 44(2) or (3) of the principal Order;
  - (h) a decision relating to any consent under Article 51 of the principal Order (conservation area consent);
  - (i) a decision under Article 55 of the principal Order (determination of applications for hazardous substances consent);
  - (j) any other decision under the principal Order which is of a description specified by the Department in a development order.
- (3) A correctable error is an error—
- (a) which is contained in any part of the decision document which records the decision; but
  - (b) which is not part of any reasons given for the decision.
- (4) The applicant is in the case of a decision made on an application under the principal Order, the person who made the application.
- (5) The owner in relation to land is a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let.
- (6) Error includes omission.

## PART IV

### CROWN APPLICATION

#### **Crown application**

**21.**—(1) In Part XII of the principal Order before Article 113 (application to Crown land) insert—

#### **“Application to the Crown**

**112A.**—(1) This Order (except Articles 74, 76B, 80 and 82B) binds the Crown.

(2) But paragraph (1) is subject to express provision made by the following provisions of this Part.

#### **Enforcement in relation to the Crown**

**112B.**—(1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Order.

(2) But paragraph (1) does not have effect to prohibit the doing of anything by or on behalf of the Crown which falls within the circumstances described in Article 44(7)(a) to (d).

(3) The Department shall not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.

(4) The appropriate authority may give consent under paragraph (3) subject to such conditions as it thinks appropriate.

(5) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Order.

(6) A step taken for the purposes of enforcement includes—

- (a) entering land;
- (b) bringing proceedings;

- (c) the making of an application.
- (7) A step taken for the purposes of enforcement does not include—
  - (a) service of a notice;
  - (b) the making of an order (other than by a court).

### **References to an estate in land**

- 112C.**—(1) Paragraph (2) applies to the extent that an estate in land is a Crown estate.
- (2) Anything which requires or is permitted to be done by or in relation to the owner of the estate in land shall be done by or in relation to the appropriate authority.
- (3) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of this Article as having an estate in that land.

### **Applications for planning permission, etc. by Crown**

- 112D.**—(1) This Article applies to an application for—
- (a) planning permission, listed building consent, hazardous substances consent or conservation area consent; or
  - (b) a determination under Article 48 or a certificate under Article 83B.
- (2) The Department may by regulations modify or exclude any statutory provision relating to the making and determination of such applications.

### **Service of notices on the Crown**

- 112E.**—(1) Any notice or other document required under this Order to be served on the Crown shall be served on the appropriate authority.
- (2) Section 24 of the Interpretation Act (Northern Ireland) 1954 (c. 33) does not apply for the purposes of the service of such a notice or document.
- (3) “Appropriate authority” shall be construed in accordance with Article 118(1).”
- (2) Section 60 of the Mineral Development Act (Northern Ireland) 1969 (c. 35) (application of Planning Orders to certain mining development on Crown property) ceases to have effect.
- (3) Schedule 1 makes further amendments to the principal Order in relation to the application of that Order to the Crown.

### **National security**

- 22.**—(1) After Article 123 of the principal Order insert—

#### **“Inquiries to be held in public subject to certain exceptions**

- 123A.**—(1) Subject to paragraph (2), at any public local inquiry or independent examination held under this Order oral evidence shall be heard in public and documentary evidence shall be open to public inspection.
- (2) If the Secretary of State is satisfied in the case of any such inquiry or examination—
- (a) that giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in paragraph (3); and
  - (b) that the public disclosure of that information would be contrary to the national interest,

he may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry or examination by such persons or persons of such descriptions as he may specify in the direction.

(3) The matters referred to in paragraph (2)(a) are—

(a) national security; and

(b) the measures taken or to be taken to ensure the security of any premises or property.

(4) If the Secretary of State is considering giving a direction under paragraph (2) the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at an inquiry or examination if the direction is given.

(5) If before the Secretary of State gives a direction under paragraph (2) no person is appointed under paragraph (4), the Advocate General for Northern Ireland may at any time appoint a person as mentioned in paragraph (4) for the purposes of the inquiry or examination.

(6) The Lord Chancellor may by rules make provision—

(a) as to the procedure to be followed by the Secretary of State before he gives a direction under paragraph (2) in a case where a person has been appointed under paragraph (4);

(b) as to the functions of a person appointed under paragraph (4) or (5).

(7) Rules made under paragraph (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(8) If a person is appointed under paragraph (4) or (5) (the appointed representative) the Secretary of State may direct any person who he thinks is interested in the inquiry or examination in relation to a matter mentioned in paragraph (3) (the responsible person) to pay the fees and expenses of the appointed representative.

(9) If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount shall be determined by the Secretary of State.

(10) The Secretary of State shall cause the amount agreed between the appointed representative and the responsible person or determined by him to be certified.

(11) An amount so certified is recoverable from the responsible person as a civil debt.

(12) In relation to any time before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002, the reference in paragraphs (4) and (5) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General.

### **National security**

**123B.**—(1) Where, in relation to an application for planning permission or an application for any consent, certificate, approval or determination under this Order or a development order, the Secretary of State is of the opinion—

(a) that the consideration by the Department of the application or of any representations or objections made in respect of the application raises matters relating to—

(i) national security; or

(ii) the measures taken or to be taken to ensure the security of any premises or property; and

(b) that the public disclosure of information as to any of those matters would be contrary to the national interest,

he may certify that the application is one to which this Article applies.

(2) The Department shall, subject to any provision contained in rules under paragraph (3), cause a public local inquiry to be held for the purpose of determining any application to which this Article applies.

(3) The Secretary of State may by rules make provision—

- (a) for the procedure to be followed in relation to the issue of a certificate under paragraph (1);
- (b) enabling the Department to dispense with an inquiry where the Department has not received any objections or representations in respect of an application to which this Article applies or where every objection or representation made in respect of such an application is withdrawn.

(4) Articles 31, 32(1), 33, 56, 57(1), 83E, 123(1), paragraphs 7(1) and 8 of Schedule 1, paragraphs 6(11) and (12), 11 and 13 of Schedule 1A and paragraphs 9 and 10 of Schedule 1B do not apply in relation to an application to which this Article applies.

(5) Rules made under paragraph (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(6) Section 23 of the Interpretation Act (Northern Ireland) 1954 shall apply to an inquiry under paragraph (2) as if that inquiry were an inquiry referred to in that section.”.

(2) In Article 123 of the principal Order (local inquiries), in paragraph (2) after “procedure” insert “(except the procedure in relation to any matter for which rules under paragraph (6) of Article 123A or paragraph (3) of Article 123B may make provision)”.

### **Trees in conservation areas: acts of Crown**

**23.** In Article 66A of the principal Order (preservation of trees in conservation areas) after paragraph (4) add—

“(5) An emanation of the Crown shall not, in relation to a tree to which this Article applies, do an act mentioned in paragraph (1) unless—

- (a) the first condition is satisfied; and
- (b) either the second or third condition is satisfied.

(6) The first condition is that the emanation serves notice of an intention to do the act (with sufficient particulars to identify the tree) on the Department.

(7) The second condition is that the act is done with the consent of the Department.

(8) The third condition is that the act is done—

- (a) after the end of the period of 6 weeks starting with the date of the notice; and
- (b) before the end of the period of 2 years starting with that date.”.

### **Subordinate legislation**

**24.—**(1) The Department may by order subject to negative resolution provide that relevant subordinate legislation applies to the Crown.

(2) An order under paragraph (1) may modify such subordinate legislation to the extent that the Department thinks appropriate for the purposes of its application to the Crown.

(3) Relevant subordinate legislation is an instrument which—

- (a) is made under or (wholly or in part) for the purposes of the principal Order;
- (b) is made before the coming into operation of Article 21 of this Order; and



(c) is specified in the order.

**Crown application: transitional**

25. Schedule 2 (which makes transitional provision in consequence of the application to the Crown of the principal Order) has effect.

## PART V

### MINERAL PLANNING PERMISSIONS

**Aftercare conditions**

26. After Article 27 of the principal Order (conditional grant of planning permission) insert—

**“Power to impose aftercare conditions on grant of mineral planning permission**

27A.—(1) Where—

- (a) planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste or waste materials is granted, and
- (b) the permission is subject to a condition requiring that after the winning and working is completed or the depositing has ceased, the site shall be restored by the use of any or all of the following, namely, subsoil, topsoil and soil-making material,

it may be granted subject also to any such condition as the Department thinks fit requiring that such steps shall be taken as may be necessary to bring land to the required standard for whichever of the following uses is specified in the condition, namely—

- (i) use for agriculture;
- (ii) use for forestry; or
- (iii) use for amenity.

(2) In this Order—

- (a) a condition such as is mentioned in sub-paragraph (b) of paragraph (1) is referred to as “a restoration condition”; and
- (b) a condition requiring such steps to be taken as are mentioned in that paragraph is referred to as “an aftercare condition”.

(3) An aftercare condition may either—

- (a) specify the steps to be taken; or
- (b) require that the steps be taken in accordance with a scheme (in this Order referred to as an “aftercare scheme”) approved by the Department.

(4) The Department may approve an aftercare scheme in the form in which it is submitted to it or may modify it and approve it as modified.

(5) The steps that may be specified in an aftercare condition or an aftercare scheme may consist of planting, cultivating, fertilising, watering, draining or otherwise treating the land.

(6) Where a step is specified in a condition or a scheme, the period during which it is to be taken may also be specified, but no step may be required to be taken after the expiry of the aftercare period.

(7) In paragraph (6) “the aftercare period” means a period of 5 years from compliance with the restoration condition or such other maximum period after compliance with that condition as may be prescribed; and in respect of any part of a site, the aftercare period shall commence on compliance with the restoration condition in respect of that part.

(8) In a case where—

(a) the use specified in an aftercare condition is a use for agriculture; and

(b) the land was in use for agriculture at the time of the grant of the planning permission or had previously been used for that purpose and had not at the time of the grant been used for any authorised purpose since its use for agriculture ceased,

the land is brought to the required standard when its physical characteristics are restored, so far as it is practicable to do so, to what they were when it was last used for agriculture.

(9) In any other case where the use specified in an aftercare condition is a use for agriculture, the land is brought to the required standard when it is reasonably fit for that use.

(10) Where the use specified in an aftercare condition is a use for forestry, the land is brought to the required standard when it is reasonably fit for that use.

(11) Where the use specified in an aftercare condition is a use for amenity, the land is brought to the required standard when it is suitable for sustaining trees, shrubs or other plants.

(12) In this Article—

“authorised” means authorised by planning permission;

“forestry” means the growing of a utilisable crop of timber.”

## **Review of mineral planning permissions**

**27.**—(1) After Article 63 of the principal Order insert—

### **“Review of mineral planning permissions**

**63A.**—(1) Schedules 1A and 1B shall have effect.

(2) Without prejudice to the generality of Article 13, a development order may make, in relation to any planning permission which is granted by a development order for minerals development, provision similar to any provision made by Schedule 1A or 1B.

(3) In this Article and in Schedules 1A and 1B “minerals development” means development consisting of mining operations or involving the deposit of mineral waste.”

(2) The provisions set out in Schedule 3 to this Order shall be inserted after Schedule 1 to the principal Order as Schedules 1A and 1B to that Order.

(3) In Article 124 of the principal Order (planning register), in paragraph (1) after subparagraph (n) (as inserted by Article 13(3) of this Order) add—

“(o) applications for a determination under paragraph 9 of Schedule 1A or paragraph 7 of Schedule 1B.”

(4) In Article 2(2) of the principal Order (interpretation) there shall be inserted, in the appropriate places in alphabetical order, the following definitions—

““aftercare condition” has the meaning given in Article 27A(2);

“aftercare scheme” has the meaning given in Article 27A(3);

“depositing of mineral waste” means any process whereby a mineral working deposit is created or enlarged and “depositing of refuse or waste materials” includes the depositing of mineral waste;

“mineral working deposit” means any deposit of material remaining after materials have been extracted from land or otherwise deriving from the carrying out of operations for the winning and working of minerals in, on or under land;

“restoration condition” has the meaning given in Article 27A(2);

“the winning and working of minerals” includes the extraction of minerals from a mineral working deposit;”.

## PART VI

### AMENDMENTS AND REPEALS

#### **Amendments and repeals**

**28.**—(1) The statutory provisions set out in Schedule 4 have effect subject to the amendments set out in that Schedule.

(2) The statutory provisions specified in Schedule 5 are repealed to the extent specified there.

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