

## SCHEDULE 2

Article 4

### Transitional provisions

#### **Transitional provisions: preliminary**

1. In relation to any application, appeal, enforcement action or other matter dealt with in this Schedule, “appropriate council” means the council for the district in which is situated the land to which any application, appeal, enforcement action or other matter dealt with in this Schedule relates.

#### **Transitional provisions: applications**

2.—(1) This paragraph applies as respects any application for planning permission, or for any consent, approval, certificate or other determination made to the Department under the 1991 Order (or any order or regulation made under the 1991 Order) before the transfer date which has not been determined by that date.

(2) Subject to sub-paragraphs (3) and (4) such an application shall be treated as if it had been made to the appropriate council under the 2011 Act except that—

(a) in respect of an application for planning permission—

(i) any provision of a development order requiring an application to be accompanied by a statement relating to the matters specified in section 40(3) shall not apply,

(ii) any provision of a development order requiring service of a notice of the application on occupiers of neighbouring land shall not apply where before the transfer date, the information required to be provided by the development order was provided by the Department for the purposes of section 41(1),

(iii) any consultation carried out by the Department for the purposes of Article 15 of the Planning (General Development) Order (Northern Ireland) 1993 shall not be treated as a prescribed requirement for the purposes of section 229; and

(b) in respect of an application for listed building consent any provision in regulations for the purposes of section 86(2) requiring such an application to be accompanied by a statement relating to the matters specified in section 86(2) shall not apply.

(3) Where an application to which this paragraph applies is one to which the Department applied Article 31 that application shall be treated as an application to which section 26 applies.

(4) Where an application to which this paragraph applies is included in a list entitled “Retained Planning Applications” published on the Department's website on the transfer date that application shall be treated as if the Department had given a direction under section 29 that the application was to be referred to it and section 29 shall apply to that application accordingly.

#### **Transitional provisions: appeals**

3.—(1) This paragraph applies to appeals against relevant decisions; and in this paragraph a “relevant decision” is a decision or determination of the Department under the 1991 Order (or any order or regulations made under the 1991 Order) which was made before the transfer date.

(2) Where an appeal to which this paragraph applies was made to the PAC before the transfer date but has not been, before that date, decided by the PAC then for the purposes of that appeal the relevant decision shall be treated as if it had been made by the appropriate council and anything done by, to or in relation to the Department in connection with that appeal shall be treated as if it had been done by, to or in relation to that council.

(3) Where an appeal to which this paragraph applies was not made to the PAC before the transfer date but the time limit prescribed in the 1991 Order (or any order or regulation made under the 1991

**Changes to legislation:** There are currently no known outstanding effects for the *The Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) Order (Northern Ireland) 2015, SCHEDULE 2. (See end of Document for details)*

Order) for making such an appeal has not expired before the transfer date then for the purposes of making such an appeal the relevant decision shall be treated as if it had been made by the appropriate council.

(4) Notwithstanding the repeal of the 1991 Order an appeal as is mentioned in sub-paragraph (3) must be made to the PAC before the expiry of the period prescribed by the 1991 Order (or any order or regulation made under the 1991 Order) for making such an appeal.

(5) An appeal to which this paragraph applies shall be determined in accordance with the 2011 Act except that sections 59, 205 and 206 do not apply to such an appeal.

(6) Nothing in this paragraph shall affect the generality of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 <sup>M1</sup>.

**Marginal Citations**

**M1** 1954 c.33 (N.I.)

**Transitional provisions: enforcement**

4.—(1) This paragraph applies to anything done by, to or in relation to the Department (including legal proceedings) in connection with its functions under Part VI (Enforcement) of the 1991 Order (or any order or regulation made under the 1991 Order).

(2) Subject to sub-paragraph (3), anything to which this paragraph applies shall be treated as if it had been done by, to or in relation to the appropriate council in connection with its functions under Part 5 (Enforcement) of the 2011 Act (or any order or regulation made under the 2011 Act).

(3) Anything to which this paragraph applies which is identified in a list entitled “Retained Enforcement Cases” published on the Department's website on the transfer date shall be treated as if it had been done by, to or in relation to the Department in connection with its functions under Part 5 (Enforcement) of the 2011 Act (or any order or regulations made under the 2011 Act).

**Transitional provisions: compensation**

5.—(1) This paragraph applies to anything done by, to or in relation to the Department before the transfer date in connection with any of its functions under the 1991 Order (or any order or regulation made under the 1991 Order) which gives rise to a right to compensation under the provisions of the 1991 Order (or any order or regulation made under the 1991 Order), the Planning (Northern Ireland) Order 1972 <sup>M2</sup> or the Land Development Values (Compensation) Act (Northern Ireland) 1965 <sup>M3</sup>.

(2) Where this paragraph applies any person who is entitled to claim compensation from the Department but who has not made that claim before the transfer date may, on or after the transfer date, make that claim to the appropriate council in accordance with the time limits prescribed by the 1991 Order (or any order or regulation made under the 1991 Order), the Planning (Northern Ireland) Order 1972 (or any order or regulations made under that Order) or the Land Development Values (Compensation) Act (Northern Ireland) 1965 (or any order or regulations made under that Act) as if the action giving rise to the right to claim compensation had been done by, to or in relation to that council in connection with its functions under the 2011 Act (or any order or regulation made under the 2011 Act).

(3) Where the PAC makes a determination on an appeal against action taken by the Department under the provisions of the 1991 Order (or any order or regulation made or having effect under the 1991 Order) and that determination gives rise to a right to compensation the appropriate council shall be liable to pay the compensation.

#### **Marginal Citations**

- M2** S.I. 1972/1634 (N.I. 17) as amended by S.I. 1991/1220 (N.I. 11), S.I. 2003/430 (N.I. 7), and 2011 c.25 (N.I.)
- M3** 1965 c.23 (N.I.) as amended by S.I. 1991/1220 (N.I.), 2001 c.2 (N.I.) and 2011 c.25 (N.I.)

#### **Transitional provisions: planning permissions and consents under the 1991 Order**

6.—(1) Subject to sub-paragraph (2), where any planning permission or other consent granted under the 1991 Order (or any order or regulation made under the 1991 Order) is subject to a condition requiring the consent, agreement or approval of the Department for any matter then where an application for any such consent, agreement or approval is not made before the transfer date such an application may be made to the appropriate council (provided that any time limit set out in the 1991 Order (or any order or regulation made under the 1991 Order) or in the planning permission or other consent for making the application has not expired) in accordance with the provisions of a development order or regulations, as the case may be.

(2) Where the application for any planning permission as is mentioned in sub-paragraph (1) was one to which the Department applied Article 31 then any application for consent, agreement or approval as mentioned in that sub-paragraph shall be made to the Department in accordance with the provisions of a development order.

#### **Transitional provisions: planning permission and consent subject to conditions**

7.—(1) Subject to sub-paragraph (2) where planning permission or other consent under the 1991 Order was granted subject to conditions then, any applications under sections 54, 95 (and that section as applied by section 105(6)) and 111 shall be made to the appropriate council in accordance with the provisions of a development order or regulations as the case may be, provided that the planning permission or other consent has not become time-expired within the meaning of those sections.

(2) Where the application for planning permission was one to which the Department applied Article 31 then any application under section 54 shall be made to the Department in accordance with the provisions of a development order provided that the planning permission has not become time-expired within the meaning of that section.

#### **Transitional provisions: notice requiring planning application**

8.—(1) This paragraph applies to anything done by, to or in relation to the Department (including legal proceedings) in connection with its functions under Article 23 (Notice requiring planning application) (or any order or regulation made under the 1991 Order).

(2) Anything to which this paragraph applies shall be treated as if it had been done by, to or in relation to the appropriate council in connection with its functions under section 43 (Notice requiring planning application to be made) (or any order or regulation made under the 2011 Act).

#### **Transitional provisions: completion notice**

9.—(1) This paragraph applies where before the transfer date the Department served a notice under Article 37 (Termination of planning permission by reference to time limit) (or any order or regulation made under the 1991 Order).

(2) A notice to which this paragraph applies shall be treated as if it had been served by the appropriate council in connection with its functions under section 64 (Termination of planning permission by reference to time limit) (or any order or regulation made under the 2011 Act).

(3) Subject to sub-paragraph (4) a notice to which this paragraph applies shall be treated as if it had been confirmed by the Department under section 65 (Effect of completion notice) (or any order or regulation made under the 2011 Act).

(4) Section 65(3) shall apply to the notice as it applies to a notice served by the council under section 64.

**[<sup>F1</sup>Transitional provisions: revocation or modification of planning permission**

10.—(1) Subject to sub-paragraph (5) this paragraph applies where before the transfer date the Department served a notice under Article 38 (Revocation or modification of planning permission) (or any order or regulation made under the 1991 Order).

(2) Where this paragraph applies the appropriate council shall be deemed to have made and submitted to the Department for confirmation an order for the purposes of section 68 (Revocation or modification of planning permission by council).

(3) The notice mentioned in sub-paragraph (1) shall be treated as if it had been served by the appropriate council for the purposes of section 68(4) (or any order or regulation made under the 2011 Act) and unless the person on whom the notice was served requests in writing within the period specified in the notice an opportunity of appearing before and being heard by the PAC the order mentioned in sub-paragraph (2) shall take effect in accordance with section 71(2) without requiring to be confirmed by the Department.

(4) Where a person on whom a notice mentioned in sub-paragraph (1) is served requests in writing within the period specified in that notice an opportunity of appearing before and being heard by the PAC then section 70 (procedure for section 68 orders: opposed cases) shall apply to that order.

(5) Where in respect of any notice to which this paragraph applies the Department has before the transfer date already afforded to any person mentioned in Article 38(2) an opportunity of appearing before and being heard by the PAC, the Department or the appropriate council shall be deemed to have complied with all the procedural requirements under sections 68 and 70 in connection with the making of an order under section 68 and may make such an order accordingly.]

**F1** Sch. 2 paras. 1011 substituted (16.3.2016) by [The Planning \(2011 Act\) \(Commencement No.3\) and \(Transitional Provisions\) \(Amendment\) Order \(Northern Ireland\) 2016 \(S.R. 2016/159\)](#), arts. 1, 2

**[<sup>F1</sup>Transitional provisions: orders requiring discontinuance of use or alteration or removal of buildings or works**

11.—(1) This paragraph applies where before the transfer date the Department served a notice under Article 39 (Orders requiring discontinuance of use or alteration or removal of buildings or works) (or any order or regulation made under the 1991 Order).

(2) Where this paragraph applies the appropriate council shall be deemed to have made and submitted to the Department for confirmation an order for the purposes of section 73 (Orders requiring discontinuance of use or alteration or removal of building or works) (or any order or regulation made under the 2011 Act).

(3) The notice mentioned in sub-paragraph (1) shall be treated as if it had been served by the appropriate council for the purposes of section 74(3) and subject to sub-paragraph (4) the order mentioned in sub-paragraph (2) shall be treated as if it had been confirmed by the Department under section 74 (Confirmation by Department of section 73 orders) (or any order or regulation made under the 2011 Act).

(4) Section 74(5) shall apply to the order mentioned in sub-paragraph (2) if any person on whom the notice mentioned in sub-paragraph (1) was served, within the period specified in the notice, in writing to the Department requests the opportunity of appearing before and being heard by the PAC.]

**F1** Sch. 2 paras. 1011 substituted (16.3.2016) by [The Planning \(2011 Act\) \(Commencement No.3\) and \(Transitional Provisions\) \(Amendment\) Order \(Northern Ireland\) 2016 \(S.R. 2016/159\)](#), arts. 1, 2

**Changes to legislation:**

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