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STATUTORY INSTRUMENTS

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**1991 No. 1220**

**The Planning(Northern Ireland) Order 1991**

**PART IV**

**PLANNING CONTROL**

*Additional powers of control*

**Agreements facilitating, regulating or restricting development or use of land**

**40.**—(1) The Department may enter into an agreement with any person who has an estate in land for the purpose of facilitating, regulating or restricting the development or use of the land, either permanently or during such period as may be prescribed by the agreement.

(2) An agreement under this Article—

- (a) shall be contained in an instrument under seal;
- (b) may include provisions for securing the carrying out of works for the purpose mentioned in paragraph (1); and
- (c) may include such incidental and consequential provisions (including provisions of a financial character) as appear to the Department to be necessary or expedient for the purposes of the agreement.

(3) Where—

- (a) an agreement under this Article contains a covenant on the part of any person who has an estate in land;
- (b) the agreement defines the land to which the covenant relates, being land in which that person has an estate at the time the instrument containing the agreement is executed; and
- (c) the covenant is expressed to be one to which this Article applies, the covenant shall be enforceable (without any limit of time) against any person deriving title from the original covenantor in respect of his estate in any of the land defined as mentioned in subparagraph (b) and any person deriving title under him in respect of any lesser estate in that land as if that person had also been an original covenanting party in respect of the estate for the time being held by him.

(4) Without prejudice to any other method of enforcement of a covenant falling within paragraph (3), if there is a breach of the covenant in relation to any of the land to which the covenant relates a person authorised in writing by the Department may, subject to paragraph (5), enter on the land concerned and do anything which the covenant requires to be done or remedy anything which has been done and which the covenant required not to be done.

(5) Before the Department exercises its powers under paragraph (4) in relation to any land it shall give not less than 21 days notice in writing of its intention to do so to any person—

- (a) who has for the time being an estate in the land; and

- (b) against whom the covenant is enforceable (whether by virtue of paragraph (3) or otherwise).
- (6) Where the Department exercises its powers under paragraph (4) in relation to the breach of a covenant, it may recover from any person against whom the covenant is enforceable (whether by virtue of paragraph (3) or otherwise) any expenses incurred by it in exercise of those powers and those expenses shall be a civil debt recoverable summarily.
- (7) If a person against whom an agreement is enforceable by virtue of paragraph (3) requests the Department to supply him with a copy of the agreement, it shall be the duty of the Department to do so free of charge.
- (8) Nothing in this Article or in any agreement made thereunder shall be construed—
  - (a) as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by the Department under this Order so long as those powers are exercised in accordance with the provisions of the development plan; or
  - (b) as requiring the exercise of any such powers otherwise than as mentioned in sub-paragraph (a)