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## STATUTORY INSTRUMENTS

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# 1991 No. 1220

## The Planning (Northern Ireland) Order 1991

### PART IV

#### PLANNING CONTROL

##### “Development” and requirement of planning permission

##### Meaning of “development”

**11.**—(1) In this Order, subject to paragraphs (2) to (4), “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

[<sup>F1</sup>(1A) For the purposes of this Order “building operations” includes—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alteration of or addition to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.]

(2) The following operations or uses of land shall not be taken for the purposes of this Order to involve development of the land—

- (a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building;
- (b) the carrying out by a district council or statutory undertaker of any works for the purpose of inspecting, repairing or renewing any [<sup>F2</sup>sewers,] mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
- (c) the use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such;
- (d) the use of any land for the purposes of agriculture or forestry and the use for any of those purposes of any building occupied together with land so used;
- (e) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Department for the purpose of this Article, the use of the buildings or other land or, subject to the provisions of the order, of any part thereof for any other purpose of the same class.

[<sup>F1</sup>(f) the demolition of any description of building specified in a direction given by the Department.]

(3) For the purposes of this Article—

- (a) the use as two or more separate dwelling-houses of any building previously used as a single dwelling-house involves a material change in the use of the building and of each part thereof which is so used;

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- (b) the deposit of refuse or waste material on land involves a material change in the use thereof, notwithstanding that the land is comprised in a site already used for that purpose, if either the superficial area of the deposit is thereby extended, or the height of the deposit is thereby extended and exceeds the level of the land adjoining the site.

(4) Without prejudice to any regulations made under this Order relating to the control of advertisements, a use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this Article as involving a material change in the use of that part of the building.

**F1** 2003 NI 8

**F2** Word in art. 11(2)(b) inserted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 29(2)** (with arts. 8(8), 121(3), 307); [S.R. 2007/194](#), **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

### Development requiring planning permission

**12.**—<sup>[F3]</sup>(1) Subject to this Order, planning permission is required for the carrying out of any development of land.

<sup>[F3]</sup>(2) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted.

(3) Where by a development order planning permission to develop land has been granted subject to limitations, planning permission is not required for the use of that land which (apart from its use in accordance with that permission) is its normal use.

(4) Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part) it could lawfully have been used if that development had not been carried out.

(5) In determining for the purposes of paragraphs (2) and (3) what is or was the normal use of land, no account shall be taken of any use begun in contravention of this Part.]

**F3** 2003 NI 8

### Development orders

#### Development orders

**13.**—(1) The Department shall by order (in this Order referred to as a “development order”) provide for the granting of planning permission.

(2) A development order may either—

- (a) itself grant planning permission for development specified in the order or for development of any class so specified; or
- (b) in respect of development for which planning permission is not granted by the order itself, provide for the grant of planning permission by the Department on an application in that behalf made to the Department in accordance with the order.

(3) A development order may be made either—

- (a) as a general order applicable, except so far as the order otherwise provides, to all land, but which may make different provision with respect to different descriptions of land; or

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- (b) as a special order applicable only to such land or descriptions of land as may be specified in the order.
- (4) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.
- (5) Without prejudice to the generality of paragraph (4), where planning permission is granted by a development order for development of a specified class, the order may enable the Department to direct that the permission shall not apply either in relation to development in a particular area or in relation to any particular development.
- (6) Any provision of a development order whereby permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of other references in this Order to limitations) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that provision on more than that number of days in that period.
- (7) For the purpose of enabling development to be carried out in accordance with planning permission, or otherwise for the purpose of promoting proper development in accordance with a development plan, a development order may authorise the Department to suspend the operation of any enactment contained in a local Act or of any regulations, orders, or bye-laws made at any time under any statutory provision in relation to any development specified under the order.

### Simplified planning zone schemes

#### Simplified planning zones

- 14.—**(1) A simplified planning zone is an area in respect of which a simplified planning zone scheme is in force.
- (2) The adoption of a simplified planning zone scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission for development specified in the scheme or for development of any class so specified.
  - (3) Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme.
  - (4) A simplified planning zone scheme shall consist of a map and a written statement, and such diagrams, illustrations and descriptive matter as the Department thinks appropriate for explaining or illustrating the provisions of the scheme, and shall specify—
    - (a) the development or classes of development permitted by the scheme;
    - (b) the land in relation to which permission is granted; and
    - (c) any conditions, limitations or exceptions subject to which it is granted;and shall contain such other matters as may be prescribed.
  - (5) The Department may at any time make a simplified planning zone scheme in respect of any area or alter a scheme adopted by it in respect of any area.
  - (6) Articles 5, 6, 7 and 8(1) shall, with any necessary modifications, apply to the making or alteration of a simplified planning zone scheme as they apply to the making or alteration of a development plan.
  - (7) Without prejudice to paragraph (6), the Department may make regulations with respect to—
    - (a) the form and content of simplified planning zone schemes; and
    - (b) the procedure to be followed in connection with the making or alteration of such schemes.

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### **Simplified planning zone schemes: conditions and limitations on planning permission**

**15.—**(1) The conditions and limitations on planning permission which may be specified in a simplified planning zone scheme may include—

- (a) conditions or limitations in respect of all development permitted by the scheme or in respect of particular descriptions of development so permitted; and
- (b) conditions or limitations requiring the consent, agreement or approval of the Department in relation to particular descriptions of permitted development;

and different conditions or limitations may be specified for different cases or classes of case.

(2) Nothing in a simplified planning zone scheme shall affect the right of any person—

- (a) to do anything not amounting to development; or
- (b) to carry out development for which planning permission is not required or for which permission has been granted otherwise than by the scheme;

and no limitation or restriction subject to which permission has been granted otherwise than under the scheme shall affect the right of any person to carry out development for which permission has been granted under the scheme.

### **Duration of simplified planning zone scheme**

**16.—**(1) A simplified planning zone scheme shall take effect on the date of its adoption and shall cease to have effect at the end of the period of ten years beginning with that date.

(2) Upon the scheme's ceasing to have effect planning permission under the scheme shall also cease to have effect except in a case where the development authorised by it has been begun.

(3) The provisions of Article 37(2) to (6) apply to planning permission under a simplified planning zone scheme where development has been begun but not completed by the time the area ceases to be a simplified planning zone.

(4) The provisions of Article 36(1) apply in determining for the purposes of this Article when development shall be taken to be begun.

### **Alteration of simplified planning zone scheme**

**17.—**(1) The adoption of alterations to a simplified planning zone scheme has effect as follows.

(2) The adoption of alterations providing for the inclusion of land in the simplified planning zone has effect to grant in relation to that land or such part of it as is specified in the scheme planning permission for development so specified or of any class so specified.

(3) The adoption of alterations providing for the grant of planning permission has effect to grant such permission in relation to the simplified planning zone, or such part of it as is specified in the scheme, for development so specified or development of any class so specified.

(4) The adoption of alterations providing for the withdrawal or relaxation of conditions, limitations or restrictions to which planning permission under the scheme is subject has effect to withdraw or relax the conditions, limitations or restrictions forthwith.

(5) The adoption of alterations providing for—

- (a) the exclusion of land from the simplified planning zone;
- (b) the withdrawal of planning permission; or
- (c) the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject,

has effect to withdraw permission, or to impose the conditions, limitations or restrictions, with effect from the end of the period of twelve months beginning with the date of the adoption.

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(6) The adoption of alterations to a scheme does not affect planning permission under the scheme in any case where the development authorised by it has been begun before the adoption of alterations has effect; and the provisions of Article 36(1) apply in determining for the purposes of this paragraph when development shall be taken to be begun.

### **Exclusion of certain descriptions of land**

**18.**—(1) The following descriptions of land may not be included in a simplified planning zone—

- (a) land in a conservation area;
- (b) land in an area which is—
  - (i) designated as a National Park under Article 12 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
  - (ii) designated as an area of outstanding natural beauty under Article 14 of that Order;
  - (iii) declared to be an area of special scientific interest under<sup>F4</sup> Article 28 of the Environment (Northern Ireland) Order 2002];
- (c) land declared to be a national nature reserve under Article 18 of that Order;
- (d) land identified in the development plan for the area as a green belt or part of a green belt;
- (e) land of such other description as may be prescribed.

(2) Where land included in a simplified planning zone becomes land of such a description, paragraph (1) does not have effect to exclude it from the zone.

(3) The Department may by order provide that no simplified planning zone scheme shall have effect to grant planning permission—

- (a) in relation to an area of land specified in the order or to areas of land of a description so specified; or
- (b) for development of a description specified in the order.

(4) An order under paragraph (3) has effect to withdraw such planning permission under a simplified planning zone scheme already in force with effect from the date on which the order comes into force, except in a case where the development authorised by the permission has been begun before that date; and the provisions of Article 36(1) apply in determining for the purposes of this paragraph when development shall be taken to be begun.

**F4** 2002 NI 7

### **Grant of planning permission in enterprise zones**

#### **Grant of planning permission in enterprise zones**

**19.**—(1) An order designating an enterprise zone under the 1981 Order shall (without more) have effect on the effective date to grant planning permission for development specified in the scheme or for development of any class so specified.

(2) The adoption of a modified scheme under Article 4 of the 1981 Order (as applied by Article 10(2) of that Order) shall (without more) have effect on the effective date of modification to grant planning permission for development specified in the modified scheme or for development of any class so specified.

(3) Planning permission granted by virtue of this Article shall be subject to such conditions or limitations as may be specified in the scheme or modified scheme or (if none are specified) unconditional.

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(4) Where planning permission is so granted for any development or class of development, the Department may direct that the permission shall not apply in relation to—

- (a) a specified development; or
- (b) a specified class of development; or
- (c) a specified class of development in a specified area within the enterprise zone.

(5) If the scheme or the modified scheme specifies matters, in relation to any development it permits, which will require approval by the Department, the permission shall have effect accordingly.

(6) The Department may by regulations make provision—

- (a) as to the procedure for giving a direction under paragraph (4);
- (b) as to the method and procedure relating to the approval of matters specified in a scheme or modified scheme as mentioned in paragraph (5),

and such regulations may modify any provision of this Order other than this Article.

(7) Notwithstanding paragraphs (1) to (6), planning permission may be granted under any other provision of this Part in relation to land in an enterprise zone (whether the permission is granted in pursuance of an application made under this Part or by a development order).

(8) Modifications to a scheme do not affect planning permission under the scheme in any case where the development authorised by it has been begun before the effective date of modification.

(9) Upon an area ceasing to be an enterprise zone planning permission under the scheme shall cease to have effect except in a case where the development authorised by it has been begun.

(10) Paragraphs (2) to (6) of Article 37 shall apply to planning permission under the scheme where development has been begun but not completed by the time the area ceases to be an enterprise zone.

(11) Article 36(1) shall apply in determining for the purposes of this Article when development shall be taken to be begun.

(12) Nothing in this Article prejudices the right of any person to carry out development apart from this Article.

(13) In this Article “the 1981 Order” means the Enterprise Zones (Northern Ireland) Order 1981 and other expressions used in this 1981 NI 15 Article and in that Order have the same meaning in this Article as in that Order.

## Planning applications

### **Form and content of applications**

**20.**—(1) Any application to the Department for planning permission—

- (a) shall be made in such manner as may be specified by a development order;
- (b) shall include such particulars, and be verified by such evidence, as may be required by a development order or by any directions given by the Department thereunder.

(2) Provision shall be made by a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by the Department and in particular—

- (a) for requiring the Department before granting or refusing planning permission for any development to consult with the district council for the area in which the land is situated and with such authorities or persons as may be specified by the order;
- (b) for requiring the Department to give to any applicant for planning permission, 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.

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(3) Paragraphs (1) and (2)(b) shall apply to applications to the Department for any consent, agreement or approval of the Department required by a condition imposed on a grant of planning permission as they apply to applications for planning permission.

### Publication of notices of applications

**21**<sup>F5</sup>.—[<sup>F6</sup>(1) Subject to paragraph (2), where an application for planning permission is made to the Department, the Department—

- (a) shall publish notice of the application in at least one newspaper circulating in the locality in which the land to which the application relates is situated; and
- (b) shall, where it maintains a website for the purpose of advertisement of applications, publish the notice on that website; and
- (c) shall not determine the application before the expiration of 14 days from the date on which the notice is first published in a newspaper in pursuance of sub-paragraph (a) or is first published on the website, whichever is the later.]

(2) A development order may provide that paragraph (1) shall not apply to an application for planning permission for development of any class specified by the order.

(3) Where an application for planning permission for development of a class specified under paragraph (2) is made to the Department, the Department shall not determine the application before the expiration of 21 days from the date on which it is received by the Department.

**F5** mod. SR 1999/338

**F6** [Art. 21\(1\)](#) substituted (1.8.2006) by [Planning \(Electronic Communications\) Order \(Northern Ireland\) 2006 \(S.R. 2006/276\)](#), [art. 4\(1\)](#)

### Notification of applications to certain persons

**22.**—(1) Subject to paragraph (2), the Department shall not entertain an application for planning permission in relation to any land (in this Article and in Article 23 referred to as “the designated land”) unless it is accompanied by one or other of the following certificates, that is to say,—

- (a) a certificate stating that the application is made by or on behalf of a person who at the date of the application is in the actual possession of all the designated land, being a person entitled to one of the following estates in that land, namely—
  - (i) a legal or equitable fee simple absolute, a legal or equitable fee tail or a legal or equitable life estate;
  - (ii) a tenancy of which not less than 40 years of the term thereof remain unexpired;
- (b) a certificate stating that the application is made by or on behalf of the trustees of a trust or settlement which affects all the designated land and that, at the date of the application—
  - (i) a beneficiary under the trust or settlement is in the actual possession of the designated land; and
  - (ii) no person other than a beneficiary under the trust or settlement is entitled to enter into the actual possession of the designated land within a period of 40 years;
- (c) a certificate stating that the requisite notice of the application has been given by or on behalf of the applicant to each person who at the beginning of the period of 21 days ending with the date of the application, in relation to the designated land or any part thereof fell into any of the following classes, namely—
  - (i) that he was such a person as is described in sub-paragraph (a) or (b);

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- (ii) that (not being such a person as is described in sub-paragraph (a) or (b)) he was in the actual possession of the designated land;
- (iii) that (not being a person falling under head (i) or (ii)) he was entitled to enter into the actual possession of the designated land within a period of 40 years;
- (d) a certificate stating—
  - (i) that the applicant is unable to issue a certificate in accordance with sub-paragraph (a) or (b); and
  - (ii) that he has made due inquiries and is of the opinion, for the reasons specified in the certificate, that he is unable to issue a certificate which would satisfy the requirements of sub-paragraph (c); and
  - (iii) that he has given the requisite notice of the application to any person who, at the beginning of the period of 21 days ending with the date of the application, was in the actual possession of any part of the designated land.
- (2) Paragraph (1) shall not apply to an application for planning permission made—
  - (a) by the Northern Ireland Housing Executive in pursuance of a redevelopment scheme approved by the Department or proposed by the Executive;
  - (b) by<sup>F7</sup> an electricity undertaker] to place an electricity line above or below ground across any land.
  - <sup>F8</sup>(c) by a gas undertaker to lay pipes for the conveyance or supply of gas;
  - <sup>F9</sup>(d) by a water or sewerage undertaker to lay a main, sewer or pipe for the purposes of its functions under the Water and Sewerage Services (Northern Ireland) Order 2006.]
- (3) A certificate for the purposes of sub-paragraph (c) or (d) of paragraph (1) shall set out the names and <sup>F10</sup>postal] addresses of the persons to whom the requisite notice was given in accordance with that sub-paragraph and the date of service of the notice.
- (4) Where an application for planning permission is accompanied by such a certificate as is mentioned in paragraph (1)(c) or (d), the Department shall not determine the application before the end of the period of 14 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate.
- (5) Where a tenancy subsists in any land, and—
  - (a) it is necessary, for the purposes of this Article, to determine whether a person is entitled to enter into the actual possession of that land; and
  - (b) by reason of any option or other contractual right with respect to the determination, renewal or continuance of the tenancy the date of expiry of the tenancy is not ascertainable with certainty;
 that date shall be taken to be such as appears reasonable and probable having regard to the interests of the party by whom the option is exercisable, or in whose favour the right operates, and to any other material consideration.
- (6) If any person—
  - (a) issues a certificate which purports to comply with the requirements of this Article and which contains a statement which he knows to be false or misleading in a material particular; or
  - (b) recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular;
 he shall be guilty of an offence and liable on summary conviction to a fine not exceeding<sup>F11</sup> level 5] on the standard scale.



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(7) Any certificate issued for the purposes of this Article shall be in such form as may be specified in a development order; and any reference in this Article to the requisite notice is a reference to a notice in the form so specified.

<b>F7</b>	1992 NI 1
<b>F8</b>	1996 NI 2
<b>F9</b>	Art. 22(2)(d) added (1.4.2007) by <a href="#">Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))</a> , arts. 1(2), 308(1), <b>Sch. 12 para. 29(3)</b> (with arts. 8(8), 121(3), 307); S.R. 2007/194, <b>art. 2(2)</b> , Sch. 1 Pt. II (subject to art. 3, Sch. 2)
<b>F10</b>	Word in art. 22(3) inserted (1.8.2006) by <a href="#">Planning (Electronic Communications) Order (Northern Ireland) 2006 (S.R. 2006/276)</a> , <b>art. 5(1)</b>
<b>F11</b>	2003 NI 8

### Notice requiring planning application

**23.—**(1) Where it appears to the Department that development has been carried out—

- (a) without the grant of the planning permission required in that behalf in accordance with this Part; or
- (b) without the grant of any approval of the Department required in that behalf under a development order;

the Department may issue a notice under this Article requiring the making of an application for such planning permission or approval to the Department within 28 days from the service of the notice.

(2) A notice under this Article may be issued only within the period of [<sup>F12</sup>5] years from the date on which the development to which it relates was begun; and the provisions of Article 36(1) apply in determining for the purpose of this Article when development shall be taken to be begun.

(3) A notice under this Article shall specify the matters alleged to constitute the development to which the notice relates.

(4) A copy of a notice under this Article shall be served on the owner and on the occupier of the land to which it relates.

(5) Where a copy of a notice under this Article has been served on any person referred to in paragraph (4), then if the application referred to in the notice is not made to the Department within the period allowed for compliance with the notice, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) If a person against whom proceedings are brought under paragraph (5)—

- (a) was, at the time when the copy of the notice under this Article was served on him, the owner of the land to which the notice relates; but
- (b) has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of that land,

he shall, upon a complaint duly made by him and on giving to the prosecution not less than three days' notice of his intention, be entitled to have the person who then became the owner of the land (in paragraph (7) referred to as the “subsequent owner”) brought before the court in the proceedings.

(7) If after it has been proved, in a case to which paragraph (6) applies, that the application referred to in the notice under this Article has not been made within the period allowed for compliance with the notice, the original defendant proves that the failure to make that application was attributable, in whole or in part, to the default of the subsequent owner—

- (a) the subsequent owner may be convicted of the offence; and

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- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the notice, shall be acquitted of the offence.
- (8) If, after a person has been convicted under paragraphs (5) to (7), the application referred to in the notice under this Article is not made to the Department, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day following his first conviction on which the offence continues.
- (9) The Department may, at any time before the end of the period allowed for compliance with a notice under this Article, withdraw the notice.
- (10) If it does so the Department shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.
- (11) Any reference in this Article and Article 24 to the period allowed for compliance with a notice under this Article is a reference to the period mentioned in paragraph (1) or such extended period as may be allowed by the Department for compliance with the notice.
- (12) For the purposes of this Article an application to the Department for any planning permission or approval shall not be taken to be made unless it is accompanied by the fee prescribed under Article 127 in relation to that application.

<p><b>F12</b> Word in <a href="#">art. 23(2)</a> substituted (1.12.2011) by <a href="#">Planning Act (Northern Ireland) 2011 (c. 25), ss. 248(1), 254(1)</a> (with <a href="#">s. 211</a> and <a href="#">S.R. 2011/387, art. 2(1)</a>); <a href="#">S.R. 2011/386, art. 2</a></p>
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### **Appeal against notice under Article 23**

- 24.**—(1) A person on whom a copy of a notice has been served under Article 23 may, at any time before the end of the period allowed for compliance with that notice, appeal to the planning appeals commission against the notice.
- (2) An appeal may be brought on any of the following grounds—
- that the matters alleged in the notice do not constitute development;
  - that the development alleged in the notice has not taken place;
  - that the period of [<sup>F13</sup>5] years referred to in Article 23(2) had elapsed at the date when the notice was issued.
- (3) An appeal under this Article shall be made by notice in writing to the planning appeals commission and such notice shall indicate the grounds of the appeal and state the facts on which it is based.
- (4) Before determining an appeal under this Article, 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.
- (5) Where an appeal is brought under this Article the notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (6) On an appeal under this Article the planning appeals commission—
- shall quash the notice, vary the terms of the notice or uphold the notice;
  - may correct any informality, defect or error in the notice, or vary its terms, if it is satisfied that the correction or variation can be made without injustice to the appellant or to the Department.
- (7) The validity of a notice under Article 23 shall not, except by way of an appeal under this Article, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

**F13** Word in art. 24(2)(c) substituted (1.12.2011) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), ss. [248\(2\)](#), [254\(1\)](#) (with s. 211 and S.R. 2011/387, art. 2(1)); S.R. 2011/386, art. 2

## Determination of planning applications

### Determination of planning applications

**25.**—(1) Subject to this Part, where an application is made to the Department for planning permission, the Department, in dealing with the application, shall have regard to the development plan, so far as material to the application, and to any other material considerations, and—

- (a) subject to Articles 34 and 35, may grant planning permission, either unconditionally or subject to such conditions as it thinks fit; or
- (b) may refuse planning permission.

(2) In determining any application for planning permission for development of any class to which Article 21(1) applies, the Department shall take into account any representations relating to that application which are received by it before the expiration of the period of 14 days from the date on which notice of the application is first published in a newspaper.

(3) Where an application for planning permission is accompanied by such a certificate as is mentioned in Article 22(1)(c) or (d), the Department—

- (a) in determining the application, shall take into account any representations relating thereto which are made to it by any person who satisfies it that, in relation to any of the designated land, he is such a person as is described in Article 22(1)(c); and
- (b) shall give notice of its decision on the application to every person who made representations which it was required to take into account under sub-paragraph (a).

### <sup>F14</sup>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;

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- (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.]

**F14** Arts. 25A, 25AA substituted (10.6.2006) for art. 25A by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), **9(1)** (with (5))

#### [<sup>F15</sup>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.]

**F15** Arts. 25A, 25AA substituted (10.6.2006) for art. 25A by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), **9(1)** (with art. 9(5))

#### [<sup>F16</sup>Assessment of environmental effects

**25B.**—(1) The Department may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.

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(2) The regulations may make the same provision as, or provision similar or corresponding to, any provision made, for the purposes of any Community obligation of the United Kingdom about the assessment of the likely effects of the development on the environment, under section 2(2) of the European Communities Act 1972.]

F16 2003 NI 8

### Duty to draw attention to certain provisions for benefit of disabled

26.—(1) When granting planning permission for any development which will result in the provision—

- (a) of a building or premises to which section 4 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 applies (buildings or premises to which the public are to be admitted whether on payment or otherwise);
- (b) of a building intended for the purposes of an educational institution;
- (c) of any of the following, being in each case, premises in which persons are employed to work,—
  - (i) office premises and shop premises to which the Office and Shop Premises Act (Northern Ireland) 1966 applies;
  - (ii) premises which are deemed to be such premises for the purposes of that Act; or
  - (iii) factories as defined by section 175 of the Factories Act (Northern Ireland) 1965,

the Department shall draw the attention of the person to whom the permission is granted—

- (i) to the relevant provisions of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978; and
- (ii) to the Code of Practice for Access for the Disabled to Buildings.

(2) In paragraph (1)—

“the Code of Practice for Access for the Disabled to Buildings” has the same meaning as in section 4(1A) of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978;

“educational institution” means any of the following—

- (a) a university;
- (b) a school within the meaning of the Education and Libraries (Northern Ireland) Order 1986;
- (c) a college of education or other establishment for the training of teachers maintained in pursuance of Article 66 of that Order or in respect of which grants are paid under that Article; or
- (d) <sup>F17</sup>an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997 or an institution providing further education in respect of which grants are paid under Article 5(1)(b) of that Order; and]

“the relevant provisions of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978” means—

- (a) for the purposes of sub-paragraph (a), sections 4 and 7;
- (b) for the purposes of sub-paragraph (b), sections 7 and 8(1) and (2); and
- (c) for the purposes of sub-paragraph (c), sections 7 and 8(1) and (3).

F17 1997 NI 15

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**Conditional grant of planning permission**

27.—(1) Without prejudice to the generality of Article 25(1), conditions may be imposed on the grant of planning permission—

- (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the Department to be expedient for the purposes of or in connection with the development authorised by the permission;
- (b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.

(2) Any planning permission granted subject to such a condition as is mentioned in paragraph (1) (b) is in this Order referred to as “planning permission granted for a limited period”.

PROSPECTIVE

**[<sup>F18</sup>Power to impose aftercare conditions on grant of mineral planning permission**

<sup>F19</sup>27A]. . . . .

**F18** Art. 27A inserted (prosp.) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(3)(d), **26**

**F19** [Pts. II-VI](#) repealed (1.4.2015 except for the repeal of Pt. III) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 7](#) (with s. 211); [S.R. 2015/49](#), art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2)

**Permission to develop land without compliance with conditions previously attached**

28.—(1) This Article applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

- (2) A development order may make special provision with respect to—
- (a) the form and content of such applications; and
  - (b) the procedure to be followed in connection with such applications.

(3) On such an application the Department shall consider only the question of the conditions subject to which planning permission should be granted, and—

- (a) if it decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, the Department shall grant planning permission accordingly; and
- (b) if it decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, the Department shall refuse the application.

(4) This Article does not apply where the application is made after the previous planning permission has become time-expired, that is to say, the previous permission having been granted subject to a condition as to the time within which the development to which it related was to be begun, that time has expired without the development having been begun.

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[<sup>F20</sup>(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.]

**F20** Art. 28(5) added (10.6.2006) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), **10(1)** (with (3))

### [<sup>F21</sup>Planning permission for development already carried out

**28A.**—(1) On an application made to the Department, the planning permission which may be granted includes planning permission for development carried out before the date of the application.

- (2) Paragraph (1) applies to development carried out—
  - (a) without planning permission;
  - (b) in accordance with planning permission granted for a limited period; or
  - (c) without complying with some condition subject to which planning permission was granted.
- (3) Planning permission for such development may be granted as to have effect from—
  - (a) the date on which the development was carried out; or
  - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.]

**F21** [2003 NI 8](#)

*Art. 29 rep. by 2003 NI 8*

### Effect of planning permission

**30.**—(1) Without prejudice to Articles 34 to 38, any grant of planning permission to develop land shall (except insofar as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being having an estate therein.

(2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used; and if no purpose is so specified the permission shall be construed as including permission to use the building for the purpose for which it is designed.

### Special procedure for major planning applications

[<sup>F22</sup>**31** .—(1) Where, in relation to an application for planning permission, or an application for any approval required under a development order, the Department considers that the development for which the permission or approval is sought would, if permitted—

- (a) involve a substantial departure from the development plan for the area to which it relates; or
- (b) be of significance to the whole or a substantial part of Northern Ireland; or
- (c) affect the whole of a neighbourhood; or

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- (d) consist of or include the construction, formation, laying out or alteration of a means of access to a trunk road or of any other development of land within 67 metres of the middle of such a road, or of the nearest part of a special road;

the Department may within two months from the date of the application serve on the applicant a notice in such form as may be specified by a development order applying this Article to the application.

(2) For the purpose of considering representations made in respect of an application to which this Article applies, the Department may cause a public local inquiry to be held by the planning appeals commission.

(3) Where a public local inquiry is not held under paragraph (2), the Department shall, before determining the application, serve a notice on the applicant indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) the applicant so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(4) In determining an application to which this Article applies, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.

(5) The decision of the Department on an application to which this Article applies shall be final.

(6) In this Article “road” includes a proposed road and “special road”, “trunk road” and “proposed road” have the same meaning as in the Roads (Northern Ireland) Order 1980.

**F22** mod. SR 1999/73

**Modifications etc. (not altering text)**

**C1** Art. 31 modified (13.3.2012) by [The Planning \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/59\)](#), regs. 1, 15 (with reg. 39)

## Appeals

### Appeals

**32.**—(1) Where an application is made to the Department—

- (a) for planning permission to develop land; or  
 (b) for any consent, agreement or approval of the Department required by a condition imposed on a grant of planning permission; or  
 (c) for any approval of the Department required under a development order;

then if that permission, consent, agreement or approval is refused or is granted subject to conditions, the applicant may by notice in writing under this Article appeal to the planning appeals commission.

(2) Paragraph (1) shall not apply to any application in relation to which the Department has served a notice under Article 31(1).

(3) Any notice under this Article shall be served on the planning appeals commission within six months from the date of notification of the decision to which it relates <sup>F23</sup> . . . .

(4) Where an appeal is brought under this Article from a decision of the Department, the planning appeals commission, subject to paragraphs (5) and (6), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part thereof or not and may deal with the application as if it had been made to it in the first instance.



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(5) Before determining an appeal under this Article, the planning appeals commission shall, if either the applicant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

[<sup>F24</sup>(5A) If at any time before or during the determination of an appeal under this Article it appears to the planning appeals commission that the appellant is responsible for undue delay in the progress of the appeal, it may—

- (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
- (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.]

(6) Subject to paragraph (5), Articles [<sup>F24</sup> 21, 22 and 25 to 28A] shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this Article as they apply to an application for planning permission.

**F23** Words in art. 32(3) repealed (10.6.2006) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), 11, 28(2), [Sch. 5](#)  
**F24** 2003 NI 8

**Modifications etc. (not altering text)**

- C2** Art. 32 applied (with modifications) by [S.R. 1995/380, reg. 56](#) (as substituted (21.8.2007) by [Conservation \(Natural Habitats, etc.\) \(Amendment\) Regulations \(Northern Ireland\) 2007 \(S.R. 2007/345\)](#), [reg. 24](#))
- C3** Art. 32 restricted (13.3.2012) by [The Planning \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/59\)](#), regs. 1, [19\(3\)](#) (with reg. 39)
- C4** Art. 32 restricted (13.3.2012) by [The Planning \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/59\)](#), regs. 1, [13](#) (with reg. 39)

**Appeal in default of planning decision**

**33.** Where any such application as is mentioned in Article 32(1) is made to the Department, then unless within such period as may be specified by a development order, or within such extended period as may be agreed upon in writing between the applicant and the Department, the Department either—

- (a) gives notice to the applicant of its decision on the application; or
- (b) gives notice to him that the application is one to which Article 31 applies, [<sup>F25</sup> or
- (c) gives notice to him that it has exercised its power under Article 25A [<sup>F26</sup> or 25AA] to decline to determine the application,]

Article 32 shall apply in relation to the application—

- (i) as if the permission, consent, agreement or approval to which it relates had been refused by the Department; and
- (ii) as if notification of the Department's decision had been received by the applicant at the end of the period so specified, or at the end of the said extended period, as the case may be.

**F25** 2003 NI 8  
**F26** Words in art. 33(c) inserted (10.6.2006) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), arts. 1(4), [9\(2\)](#) (with (5))

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#### **Modifications etc. (not altering text)**

- C5** Art. 33 applied (with modifications) by S.R. 1995/380, reg. 56 (as substituted (21.8.2007) by Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/345), reg. 24)
- C6** Art. 33 restricted (13.3.2012) by The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 (S.R. 2012/59), regs. 1, 19(3) (with reg. 39)
- C7** Art. 33 restricted (13.3.2012) by The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 (S.R. 2012/59), regs. 1, 13 (with reg. 39)

### Duration of planning permission

#### **Duration of planning permission**

**34.**—(1) Subject to this Article, every planning permission granted<sup>[F27]</sup> or deemed to be granted] shall be granted<sup>[F27]</sup> or, as the case may be, deemed to be granted,] subject to the condition that the development to which it relates must be begun within—

- (a) five years of the date on which the permission is granted; or
- (b) such other period (whether longer or shorter) as the Department considers appropriate.

(2) If planning permission is granted without the condition required by paragraph (1), it shall be deemed to have been granted subject to the condition that the development to which it relates must be begun within five years of the date of the grant.

(3) Nothing in paragraphs (1) and (2) applies—

- (a) to any outline planning permission;
- (b) to any planning permission granted by a development order;
- (c) to any planning permission granted for a limited period;
- (d) to any planning permission<sup>[F27]</sup> granted for development carried out before the grant of that permission];
- (e) to any planning permission granted by an enterprise zone scheme; or
- (f) to any planning permission granted by a simplified planning zone scheme.

**F27** 2003 NI 8

#### **Duration of outline planning permission**

**35.**—(1) In this Article and in Article 34 “outline planning permission” means planning permission granted in accordance with the provisions of a development order, conditional on the subsequent approval by the Department of the particulars of the proposed development (in this Article referred to as “reserved matters”).

(2) Subject to this Article, where outline planning permission is granted for development consisting of or including the carrying out of building or other operations it shall be granted subject to conditions to the following effect—

- (a) that in the case of any reserved matter application for approval must be made within three years of the date of the grant of outline planning permission; and
- (b) that the development to which the permission relates must be begun by whichever is the later of the following dates—

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- (i) the expiration of five years from the date of the grant of outline planning permission;  
or
- (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

(3) If outline planning permission is granted without the conditions required by paragraph (2), it shall be deemed to have been granted subject to those conditions.

(4) The Department may, in applying paragraph (2), substitute for the periods of three years, five years or two years referred to in that paragraph, such other periods respectively (whether longer or shorter) as it considers appropriate.

(5) The Department may, in applying paragraph (2), specify separate periods under paragraph (2) (a) in relation to separate parts of the development to which the planning permission relates; and if it does so, the condition required by paragraph (2)(b) shall then be framed correspondingly by reference to those parts, instead of by reference to the development as a whole.

### **Provisions supplementary to Articles 34 and 35**

**36.**—(1) For the purposes of Articles 34 and 35, development shall be taken to be begun on the earliest date on which any of the following operations comprised in the development begins to be carried out—

- (a) where the development consists of or includes the erection of a building, any work of construction in the course of the erection of the building;
- (b) where the development consists of or includes alterations to a building, any work involved in the alterations;
- (c) where the development consists of or includes a change of use of any building or other land, that change of use;
- (d) where the development consists of or includes mining operations, any of those operations.

(2) For the purposes of Article 35(2), a reserved matter shall be treated as finally approved when an application for approval is granted, or, where there is an appeal under Article 32, on the date of the determination of the appeal.

(3) Where the Department grants planning permission on an application to which Article 31 does not apply the fact that any of the conditions of the permission are required by this Order to be imposed or are deemed by this Order to be imposed, shall not prevent the conditions being the subject of an appeal under Article 32 against the decision of the Department.

(4) Where a planning permission (whether outline or other) has conditions attached to it by or under Article 34 or 35—

- (a) development commenced and carried out after the date by which the conditions of the permission require it to be commenced shall be treated as not authorised by the permission; and
- (b) an application for approval of a reserved matter, if it is made after the date by which the conditions require it to be made, shall be treated as not made in accordance with the terms of the permission.

### **Termination of planning permission by reference to time limit**

**37.**—(1) Paragraphs (2) to (6) shall have effect where by virtue of Article 34 or 35, a planning permission is subject to a condition that the development to which the permission relates must be

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begun before the expiration of a particular period and that development has been begun within that period but the period has elapsed without the development having been completed.

(2) If the Department is of the opinion that the development will not be completed within a reasonable period, it may make an order (in this Article referred to as a “completion order”) whereby the planning permission will cease to have effect at the expiration of a further period specified in the order, being a period of not less than 12 months after the order takes effect.

(3) Before making a completion order, the Department shall serve notice of its intention to make the order on the owner and occupier of the land affected and on any other person who in its opinion would be affected by the order; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) any person on whom the notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(4) Where a completion order is made, the planning permission therein referred to shall at the expiration of the period specified in the order be invalid except so far as it authorises any development carried out thereunder up to the end of that period.

(5) Where the Department makes an order under this Article it shall serve a notice on any person mentioned in paragraph (3) stating the general effect of the order.

(6) The Department may withdraw a completion order at any time before the expiration of the period specified therein as the period at the expiration of which the planning permission is to cease to have effect; and if it does so it shall forthwith give notice of the withdrawal to every person who was served with notice of the making of the order.

#### Revocation or modification of planning permission

#### **Revocation or modification of planning permission**

**38.**—(1) If it appears to the Department, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the Department may, subject to paragraphs (2) to (4), by order revoke or modify the permission to such extent as (having regard to those matters) it considers expedient.

(2) Before making an order under this Article, the Department shall serve notice on the owner and occupier of the land affected and on any other person who in its opinion would be affected by the order; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) any person on whom notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(3) The power conferred by this Article to revoke or modify permission to develop land may be exercised—

- (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) where the permission relates to a change of use of any land, at any time before the change has taken place;

except that the revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(4) An order made under this Article in respect of mining operations by surface working shall not prevent the continuation of those operations on any land in use for the purpose of those operations at the date on which the order comes into operation.

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(5) Where the Department makes an order under this Article it shall serve a notice on any person mentioned in paragraph (2) stating the general effect of the order.

#### Additional powers of control

#### Orders requiring discontinuance of use or alteration or removal of buildings or works

**39.**—(1) If it appears to the Department that it is expedient in the interests of the proper planning of an area (including the interests of amenity), regard being had to the development plan and to any other material considerations—

- (a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance of a use of land; or
- (b) that any buildings or works should be altered or removed;

the Department may by order require the discontinuance of that use within such time as may be specified in the order, or impose such conditions as may be so specified on the continuance thereof, or require such steps as may be so specified to be taken within such time as may be so specified for the alteration or removal of the buildings or works, as the case may be.

(2) An order under this Article may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order; and the provisions of Article 38 shall apply in relation to any planning permission granted by an order under this Article as they apply in relation to planning permission granted by the Department on an application made under this Part.

[<sup>F28</sup>(3) The planning permission which may be granted by an order under this Article includes planning permission, subject to such conditions as may be specified in the order, for development carried out before the date on which the order was made; and planning permission for such development may be granted so as to have effect from—

- (a) the date on which the development was carried out; or
- (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.]

(4) Before making an order under this Article, the Department shall serve notice on the owner and occupier of the land affected and on any other person who in its opinion would be affected by the order; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) any person on whom notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(5) Where the Department makes an order under this Article it shall serve a copy of the order on the owner and occupier of the land to which the order relates and on any other person who in its opinion would be affected by the order.

(6) Where the requirements of an order under this Article will involve the displacement of persons residing in any premises, it shall be the duty of the Northern Ireland Housing Executive, in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement.

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## [F29] Planning agreements

**40.**—(1) Any person who has an estate in land may enter into an agreement with the Department (referred to in this Article and Articles 40A and 40B as "a planning agreement"), enforceable to the extent mentioned in paragraph (4)—

- (a) facilitating or restricting the development or use of the land in any specified way;
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;
- (c) requiring the land to be used in any specified way; or
- (d) requiring a sum or sums to be paid to the Department on a specified date or dates or periodically.

(2) A planning agreement may—

- (a) be unconditional or subject to conditions;
- (b) impose any restriction or requirement mentioned in paragraph(1)(a) to (c) either indefinitely or for such period or periods as may be specified; and
- (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the agreement is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.

(3) Before entering into a planning agreement, the Department shall consult with the district council for the area in which the land which is the subject of the proposed agreement is situated.

(4) Subject to paragraph (5) a planning agreement is enforceable by the Department—

- (a) against the person entering into the agreement; and
- (b) against any person deriving title from that person.

(5) The instrument by which a planning agreement is entered into may provide that a person shall not be bound by the agreement in respect of any period during which he no longer has an estate in the land.

(6) A restriction or requirement imposed under a planning agreement is enforceable by injunction.

(7) Without prejudice to paragraph (6), if there is a breach of a requirement in a planning agreement to carry out any operations in, on, under or over the land to which the agreement relates, the Department may—

- (a) enter the land and carry out the operations; and
- (b) recover from the person or persons against whom the agreement is enforceable any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(8) Before the Department exercises its power under paragraph (7)(a) it shall give not less than 21 days' notice of its intention to do so to any person against whom the planning agreement is enforceable.

(9) Any person who wilfully obstructs a person acting in the exercise of a power under paragraph (7)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) A planning agreement may not be entered into except by an instrument under seal which—

- (a) states that the agreement is a planning agreement for the purposes of this Article;
- (b) identifies the land in which the person entering into the agreement has an estate; and
- (c) identifies the person entering into the agreement and states what his estate in the land is.

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(11) If a person against whom an agreement is enforceable requests the Department to supply him with a copy of the agreement, it shall be the duty of the Department to do so free of charge.

(12) Any sum or sums required to be paid under a planning agreement and any expenses recoverable by the Department under paragraph (7)(b) shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the person against whom the planning agreement is enforceable.

(13) The charge created by paragraph (12) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Department by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the Department may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 (c. 41) on mortgages by deed accordingly.

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

F29 2003 NI 8

### **Modification and discharge of planning agreements**

**40A.**—(1) A planning agreement may not be modified or discharged except—

- (a) by agreement between the Department and the person or persons against whom the agreement is enforceable; or
- (b) in accordance with this Article and Article 40B.

(2) Before entering into an agreement falling within paragraph (1)(a), the Department shall consult with the district council for the area in which the land which is the subject of the proposed agreement is situated.

(3) An agreement falling within paragraph (1)(a) shall be contained in an instrument under seal.

(4) A person against whom a planning agreement is enforceable may, at any time after the expiry of the relevant period, apply to the Department for the agreement—

- (a) to have effect subject to such modifications as may be specified in the application; or
- (b) to be discharged.

(5) In paragraph (4) "the relevant period" means—

- (a) such period as may be prescribed; or
- (b) if no period is prescribed, the period of 5 years beginning with the date on which the agreement is entered into.

(6) An application under paragraph (4) for the modification of a planning agreement may not specify a modification imposing an obligation on any other person against whom the agreement is enforceable.

(7) Where an application is made to the Department under paragraph (4), the Department may determine—

- (a) that the planning agreement shall continue to have effect without modification;
- (b) if the agreement no longer serves a useful purpose, that it shall be discharged; or
- (c) if the agreement continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

(8) The Department shall give notice of its determination to the applicant within such period as may be prescribed.

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(9) Where the Department determines that a planning agreement shall have effect subject to modifications specified in the application, the agreement as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.

(10) Regulations may make provision with respect to—

- (a) the form and content of applications under paragraph (4);
- (b) the publication of notices of such applications;
- (c) the procedures for considering any representations made with respect to such applications; and
- (d) the notices to be given to applicants of determinations under paragraph (7).

(11) Article 5 of the Property (Northern Ireland) Order 1978 (NI 4) (power of Lands Tribunal to modify or extinguish impediments) shall not apply to a planning agreement.

## Appeals

**40B.**—(1) Where the Department—

- (a) fails to give notice as mentioned in Article 40A(8); or
- (b) determines that a planning agreement shall continue to have effect without modifications; the applicant may appeal to the planning appeals commission.

(2) For the purposes of an appeal under paragraph (1)(a), it shall be assumed that the Department has determined that the planning agreement shall continue to have effect without modification.

(3) An appeal under this Article shall be made by notice served within such period and in such manner as may be prescribed.

(4) Paragraphs (7) to (10) of Article 40A apply in relation to appeals to the planning appeals commission under this Article as they apply in relation to applications to the Department under that Article.

(5) Before determining the appeal the planning appeals commission shall, if either the applicant or the Department so wishes, afford to each of them an opportunity of appearing before and being heard by the planning appeals commission.

(6) The determination of an appeal by the planning appeals commission under this Article shall be final.

*Art. 41 rep. by 2003 NI 8*



**Status:**

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