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## STATUTORY INSTRUMENTS

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# 1991 No. 1220

## The Planning (Northern Ireland) Order 1991

### PART VI

### ENFORCEMENT

#### *f<sup>1</sup>*Introductory

**F1** [2003 NI 8](#)

#### **Expressions used in connection with enforcement**

**67A.**—(1) For the purposes of this Order—

- (a) carrying out development without the planning permission required; or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted,

constitutes a breach of planning control.

(2) For the purposes of this Order—

- (a) the issue of an enforcement notice; or
- (b) the service of a breach of condition notice,

constitutes taking enforcement action.

#### **Time limits**

**67B.**—(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling-house, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.

(4) The preceding paragraphs do not prevent—

- (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
- (b) taking further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the Department has taken or purported to take enforcement action in respect of that breach.]

*Status: Point in time view as at 17/10/2006.*

*Changes to legislation: The Planning (Northern Ireland) Order 1991, PART VI is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## *F<sup>2</sup>Planning contravention notices*

**F2** 2003 NI 8

### **Power to require information about activities on land**

**67C.**—(1) Where it appears to the Department that there may have been a breach of planning control in respect of any land, it may serve notice to that effect (referred to in this Order as a “planning contravention notice”) on any person who—

- (a) is the owner or occupier of the land or has any other estate in it; or
- (b) is carrying out operations on the land or is using it for any purpose.

(2) A planning contravention notice may require the person on whom it is served to give such information as to—

- (a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land; and
- (b) any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted,

as may be specified in the notice.

(3) Without prejudice to the generality of paragraph (2), the notice may require the person on whom it is served, so far as he is able—

- (a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;
- (b) to state when any use, operations or activities began;
- (c) to give the name and [F<sup>3</sup>postal] address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;
- (d) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operations;
- (e) to state the nature of his estate (if any) in the land and the name and [F<sup>4</sup>postal] address of any other person known to him to have an estate in the land.

(4) A planning contravention notice may give notice of a time and place at which—

- (a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to refrain from carrying out any operations or activities or to undertake remedial works; and
- (b) any representations which he may wish to make about the notice,

will be considered by the Department, and the Department shall give him an opportunity to make in person any such offer or representations at that time and place.

(5) A planning contravention notice must inform the person on whom it is served—

- (a) of the likely consequences of his failing to respond to the notice and, in particular, that enforcement action may be taken; and
- (b) of the effect of Article 67(5)(b) of the Planning (Northern Ireland) Order 1972 (NI 17).

(6) Any requirement of a planning contravention notice shall be complied with by giving information in writing to the Department.

(7) The service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control.

(8) In this Article references to operations or activities on land include operations or activities in, under or over the land.

- F3** Word in art. 67C(3)(c) inserted (1.8.2006) by [Planning \(Electronic Communications\) Order \(Northern Ireland\) 2006 \(S.R. 2006/276\)](#), [art. 5\(2\)](#)
- F4** Word in art. 67C(3)(e) inserted (1.8.2006) by [Planning \(Electronic Communications\) Order \(Northern Ireland\) 2006 \(S.R. 2006/276\)](#), [art. 5\(2\)](#)

### **Penalties for non-compliance with planning contravention notice**

**67D.**—(1) If, at any time after the end of the period of 21 days beginning with the day on which a planning contravention notice has been served on any person, he has not complied with any requirement of the notice, he shall be guilty of an offence.

(2) An offence under paragraph (1) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.

(3) It shall be a defence for a person charged with an offence under paragraph (1) to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If any person—

- (a) makes any statement purporting to comply with a requirement of a planning contravention notice which he knows to be false or misleading in a material particular; or
- (b) recklessly makes such a statement which is false or misleading in a material particular,

he shall be guilty of an offence.

(6) A person guilty of an offence under paragraph (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.]

### *[<sup>F5</sup>Temporary stop notices*

- F5** [Arts. 67E-67G](#) and preceding cross heading inserted (10.6.2006) by [Planning Reform \(Northern Ireland\) Order 2006 \(S.I. 2006/1252 \(N.I. 7\)\)](#), [arts. 1\(4\)](#), [13\(1\)](#)

### **Temporary stop notice**

**67E.**—(1) This Article applies if the Department thinks—

- (a) that there has been a breach of planning control in relation to any land; and
- (b) that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.

(2) The Department may issue a temporary stop notice.

(3) The notice shall be in writing and shall—

- (a) specify the activity which the Department thinks amounts to the breach;
- (b) prohibit the carrying on of the activity (or of so much of the activity as is specified in the notice);

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- (c) set out the Department's reasons for issuing the notice.
- (4) A temporary stop notice may be served on any of the following—
  - (a) the person who the Department thinks is carrying on the activity;
  - (b) a person who the Department thinks is an occupier of the land;
  - (c) a person who the Department thinks has an estate in the land.
- (5) The Department shall display on the land—
  - (a) a copy of the notice;
  - (b) a statement of the effect of the notice and of Article 67G.
- (6) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of paragraph (5).
- (7) A temporary stop notice ceases to have effect—
  - (a) at the end of the period of 28 days starting on the day the copy notice is so displayed;
  - (b) at the end of such shorter period starting on that day as is specified in the notice; or
  - (c) if it is withdrawn by the Department.

#### **Temporary stop notice: restrictions**

- 67F.**—(1) A temporary stop notice does not prohibit—
- (a) any person from continuing to use any building, caravan or other structure situated on land to which the temporary stop notice relates as his permanent residence whether as owner, occupier, tenant, patient, guest or otherwise;
  - (b) the carrying out of an activity of such description or in such circumstances as is prescribed.
- (2) A temporary stop notice does not prohibit the carrying out of any activity which has been carried out (whether continuously or not) for a period of 4 years ending with the day on which the copy of the notice is first displayed as mentioned in Article 67E(6).
- (3) Paragraph (2) does not prevent a temporary stop notice prohibiting—
- (a) activity consisting of or incidental to building, engineering, mining or other operations; or
  - (b) the deposit of refuse or waste materials.
- (4) For the purposes of paragraph (2) any period during which the activity is authorised by planning permission shall be ignored.
- (5) A second or subsequent temporary stop notice shall not be issued in respect of the same activity unless the Department has first taken some other enforcement action in relation to the breach of planning control which is constituted by the activity.
- (6) In paragraph (5) enforcement action includes obtaining the grant of an injunction under Article 76B.

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

- 67G.**—(1) A person commits an offence if he contravenes a temporary stop notice—
- (a) which has been served on him; or
  - (b) a copy of which has been displayed in accordance with Article 67E(5).
- (2) Contravention of a temporary stop notice includes causing or permitting the contravention of the notice.
- (3) An offence under this Article may be charged by reference to a day or a longer period of time.

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

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

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

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

- (a) on summary conviction, to a fine not exceeding 163 30,000;
- (b) on conviction on indictment, to a fine.

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

#### Enforcement notices

#### [<sup>F6</sup>Issue of enforcement notice

**68.**—(1) The Department may issue a notice (in this Order referred to as an “enforcement notice”) where it appears to it—

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

(2) A copy of an enforcement notice shall be served—

- (a) on the owner and on the occupier of the land to which it relates; and
- (b) on any other person having an estate in the land, being an estate which, in the opinion of the Department, is materially affected by the notice.

(3) The service of the notice shall take place—

- (a) not more than 28 days after its date of issue; and
- (b) not less than 28 days before the date specified in it as the date on which it is to take effect.]

**F6** 2003 NI 8

#### Contents and effect of enforcement notice

**68A.**—(1) An enforcement notice shall state—

- (a) the matters which appear to the Department to constitute the breach of planning control; and
- (b) the sub-paragraph of Article 67A(1) within which, in the opinion of the Department, the breach falls.

(2) A notice complies with paragraph (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.

(3) An enforcement notice shall specify the steps which the Department requires to be taken, or the activities which the Department requires to cease, in order to achieve, wholly or partly, any of the following purposes.

(4) Those purposes are—

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- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
  - (b) remedying any injury to amenity which has been caused by the breach.
- (5) An enforcement notice may, for example, require—
- (a) the alteration or removal of any buildings or works;
  - (b) the carrying out of any building or other operations;
  - (c) any activity on the land not to be carried on except to the extent specified in the notice; or
  - (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.
- (6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this Article referred to as a “replacement building”) which, subject to paragraph (7), is as similar as possible to the demolished building.
- (7) A replacement building—
- (a) must comply with any requirement imposed by any statutory provision applicable to the construction of buildings;
  - (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;
  - (c) must comply with any regulations made for the purposes of this paragraph (including regulations modifying sub-paragraphs (a) and (b)).
- (8) An enforcement notice shall specify the date on which it is to take effect and, subject to Article 69(8), shall take effect on that date.
- (9) An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.
- (10) An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under Article 68 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under Article 69.
- (11) Where—
- (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and
  - (b) all the requirements of the notice have been complied with,
- then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of Article 28A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
- (12) Where—
- (a) an enforcement notice requires the construction of a replacement building; and
  - (b) all the requirements of the notice with respect to that construction have been complied with,

planning permission shall be treated as having been granted by virtue of Article 28A in respect of development consisting of that construction.

### **Variation and withdrawal of enforcement notices**

**68B.**—(1) The Department may—

- (a) withdraw an enforcement notice issued by it; or
- (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with Article 68A(9).

(2) The powers conferred by paragraph (1) may be exercised whether or not the notice has taken effect.

(3) The Department shall, immediately after exercising the powers conferred by paragraph (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the power of the Department to issue a further enforcement notice.

### **Appeal against enforcement notice**

**69.**—(1) A person having an estate in the land to which an enforcement notice relates or a person to whom paragraph (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice, whether or not a copy of it has been served on him.

(2) This paragraph applies to a person who—

- (a) on the date on which the enforcement notice is issued occupies the land to which it relates by virtue of a licence<sup>F7</sup> . . . ; and
- (b) continues to occupy the land as aforesaid when the appeal is brought.

[<sup>F7</sup>(3) An appeal may be brought on any of the following grounds—

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the enforcement notice were not served as required by Article 68;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with Article 68A(9) falls short of what should reasonably be allowed.

(4) An appeal under this Article shall be made by serving written notice of the appeal on the planning appeals commission before the date specified in the enforcement notice as the date on which it is to take effect and such notice shall indicate the grounds of the appeal and state the facts on which it is based.]

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(5) Where it receives a notice of appeal under this Article against an enforcement notice relating to any land, the planning appeals commission shall notify the district council for the district within which the land is situated and in exercising its powers under Article 71 the commission shall take into account any representations received by the commission from the district council.

(6) 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.

(7) Articles 21 and 25(2) 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 to the Department.

(8) Where an appeal is brought under this Article, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(9) Subject to paragraph (10), the validity of an enforcement notice 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.

(10) Paragraph (9) shall not apply to proceedings brought under<sup>[F7]</sup> Article 72] against a person who—

- (a) has held an estate in the land since before the enforcement notice was issued;
- (b) did not have a copy of the enforcement notice served on him; and
- (c) satisfies the court that—
  - (i) he did not know and could not reasonably have been expected to know that the enforcement notice had been issued; and
  - (ii) his interests have been substantially prejudiced by the failure to serve him with a copy of it.

**F7** 2003 NI 8

#### **Appeal against enforcement notice-general supplementary provisions**

**70.**—(1) On an appeal under Article 69 the planning appeals commission shall quash the enforcement notice, vary the terms of the notice or uphold the notice.

(2) On such an appeal the planning appeals commission may correct any<sup>[F8]</sup> misdescription], defect or error in the enforcement 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.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the planning appeals commission may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

**F8** 2003 NI 8

#### **[F9] Appeal against enforcement notice – supplementary provisions relating to planning permission**

**71.**—(1) On the determination of an appeal under Article 69, the planning appeals commission may—



- (a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;
  - (b) discharge any condition or limitation subject to which planning permission was granted;
  - (c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under Article 83A.
- (2) The provisions of Articles 83A to 83D mentioned in paragraph (3) shall apply for the purposes of paragraph (1)(c) as they apply for the purposes of Article 83A, but as if—
- (a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
  - (b) references to the Department were references to the planning appeals commission.
- (3) Those provisions are Articles 83A(5) to (7), 83C(4) (so far as it relates to the form of the certificate), (6) and (7) and 83D.
- (4) In considering whether to grant planning permission under paragraph (1), the planning appeals commission shall have regard to the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations; and planning permission that may be granted under paragraph (1) is any planning permission that might be granted on an application under Part IV; and where under that paragraph the planning appeals commission discharges a condition or limitation, it may substitute another condition or limitation for it, whether more or less onerous.
- (5) Where an appeal against an enforcement notice is brought under Article 69, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control and, in relation to any exercise by the planning appeals commission of its powers under paragraph (1)—
- (a) any planning permission granted under that paragraph shall be treated as granted on that application;
  - (b) in relation to a grant of planning permission or a determination under that paragraph, the decision of the planning appeals commission shall be final; and
  - (c) subject to sub-paragraph (b), any planning permission granted under that paragraph shall have the like effect as a permission granted under Part IV.
- (6) Where—
- (a) the notice under paragraph (4) of Article 69 indicates the ground mentioned in paragraph (3)(a) of that Article;
  - (b) any fee is payable under regulations made by virtue of Article 127 in respect of the application deemed to be made by virtue of the appeal; and
  - (c) the planning appeals commission gives notice in writing to the appellant specifying the period within which the fee must be paid,
- then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.]

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## **[<sup>F10</sup>Offence where enforcement notice not complied with**

**72.**—(1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

(2) Where the owner of the land is in breach of an enforcement notice he shall be guilty of an offence.

(3) In proceedings against any person for an offence under paragraph (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.

(4) A person who has control of or an estate in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.

(5) A person who, at any time after the end of the period for compliance with the notice, contravenes paragraph (4) shall be guilty of an offence.

(6) An offence under paragraph (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the paragraph in question by reference to any period of time following the preceding conviction for such an offence.

(7) Where—

(a) a person charged with an offence under this Article has not been served with a copy of the enforcement notice; and

(b) the notice is not contained in the appropriate register kept under Article 124,

it shall be a defence for him to show that he was not aware of the existence of the notice.

(8) A person guilty of an offence under this Article shall be liable—

(a) on summary conviction, to a fine not exceeding £30,000;

(b) on conviction on indictment, to a fine.

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.]

**F10** 2003 NI 8

## **Power to stop further development pending proceedings on enforcement notice**

**73.**—[<sup>F11</sup>(1) Where the Department considers it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, it may, when it serves the copy of the enforcement notice or afterwards, serve a notice (in this Order referred to as a “stop notice”) referring to, and having annexed to it a copy of, the enforcement notice and prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.

(2) In this Article and Article 67 of the Planning (Northern Ireland) Order 1972 (NI 17) “relevant activity” means any activity specified in the enforcement notice as an activity which the Department requires to cease and any activity carried out as part of that activity or associated with that activity.

(3) A stop notice may not be served where the enforcement notice has taken effect.

(3A) A stop notice shall not prohibit any person from continuing to use any building, caravan or other structure situated upon the land as his permanent residence whether as owner, occupier, tenant, patient, guest or otherwise.

(3B) A stop notice shall not take effect until such date as it may specify (and it cannot be contravened until that date).

(3C) The date specified in a stop notice shall be the date when the notice is served, unless the Department considers that there are special reasons for specifying a later date, but the date specified in the notice shall, in any case, be a date not later than 28 days from the date when the notice is first served on any person.

(3D) A stop notice shall not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than 4 years ending with the service of the notice; and for the purposes of this paragraph no account is to be taken of any period during which the activity was authorised by planning permission.

(3E) Paragraph (3D) does not prevent a stop notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.]

(4) A stop notice shall cease to have effect when—

- (a) the enforcement notice referred to in it is withdrawn or quashed; or
- (b) the<sup>F11</sup> period for compliance with the] enforcement notice expires; or
- (c) notice of withdrawal of the stop notice is first served under paragraph (6); or
- (d) if or to the extent that the activities prohibited by it cease, on a variation of the enforcement notice referred to in it,<sup>F11</sup> relevant activities].

(5) A stop notice may be served by the Department on any person who appears to it to have an estate in the land or to be engaged in any activity prohibited by the notice; and where a stop notice has been served in respect of any land, the Department may display there a notice (in this Article referred to as a “site notice”) stating—

- (a) that a stop notice has been served; and
- (b) that any person contravening the stop notice may be prosecuted for an offence under this Article, giving the date when the stop notice takes effect and indicating its requirements.

(6) The Department may at any time withdraw a stop notice (without prejudice to its power to serve another)—

- (a) by serving notice to that effect on persons served with the stop notice; and
- (b) if a site notice was displayed in respect of the stop notice, displaying a notice of the withdrawal in place of the site notice.

<sup>F11</sup>(7) If any person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on him he shall be guilty of an offence.

(7A) An offence under this Article may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this Article by reference to any period of time following the preceding conviction for such an offence.

(7B) References in this Article to contravening a stop notice include causing or permitting its contravention.

(7C) A person guilty of an offence under this Article shall be liable—

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

(7D) In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.]

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(8) In proceedings for an offence under this Article it shall be a defence for the accused to prove that the stop notice was not served on him and that he did not know, and could not reasonably have been expected to know, of its existence.

(9) A stop notice shall not be invalid by reason that a copy of the enforcement notice to which it relates was not served as required by Article<sup>[F11]</sup> 68] if it is shown that the Department took all such steps as were reasonably practicable to effect proper service.

**F11** 2003 NI 8

### **Execution and cost of works required by enforcement notice**

74.—<sup>[F12]</sup>(1) Where any steps required by an enforcement notice to be taken are not taken within the period allowed for compliance with the notice, a person authorised in writing by the Department may—

- (a) enter the land and take the steps; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.]

(2) Any expenses incurred by the owner or occupier of any land for the purposes of complying with an enforcement notice in respect of any breach of planning control, and any sums paid by the owner of any land under paragraph (1), in respect of expenses incurred by the Department in taking steps required to be taken by such a notice, shall be deemed to be incurred for the use and at the request of the person by whom the breach of planning control was committed.

(3) The Department may sell any materials which have been removed by it from any land when carrying into effect this Part if, before the expiration of three days from their removal, they are not claimed by their owner and taken away by him.

(4) Where the Department sells any materials under paragraph (3), it shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by it from him.

(5) Paragraphs (3) and (4) do not apply to refuse removed by the Department.

(6) Where the Department claims to recover any expenses under this Article from a person as being the owner of the land in respect of which the expenses were incurred and that person proves that he—

- (a) is receiving the rent of that land merely as agent or trustee for some other person; and
- (b) has not, and since the date of the service on him of a demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the Department,

his liability shall be limited to the total amount of the money which he has or has had in his hands as mentioned in sub-paragraph (b), but the Department where it is, or would be, debarred by this paragraph from recovering the whole of any such expenses from an agent or trustee may recover the whole of any unpaid balance thereof from the person on whose behalf the agent or trustee receives the rent.

(7) Any expenses recoverable by the Department under this Article 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 owner of the land and of any person deriving title from him.

(8) The charge created by paragraph (7) 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 on mortgagees by deed accordingly.

[<sup>F12</sup>(9) Any person who wilfully obstructs a person acting in the exercise of powers under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

F12 2003 NI 8

### [<sup>F13</sup>Effect of planning permission, etc., on enforcement or breach of condition notice

75.—(1) Where, after the service of—

- (a) a copy of an enforcement notice; or
- (b) a breach of condition notice,

planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

(2) Where after a breach of condition notice has been served any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.

(3) The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this Article shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.]

F13 2003 NI 8

### Enforcement notice to have effect against subsequent development

76.—(1) Compliance with an enforcement notice whether in respect of—

- (a) the completion,[<sup>F14</sup> removal] or alteration of any buildings or works, or
- (b) the discontinuance of any use of land,

or in respect of any other requirement contained in the enforcement notice, shall not discharge the enforcement notice.

(2) Without prejudice to paragraph (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part IV; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.

(3) Without prejudice to paragraph (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been[<sup>F14</sup> removed] or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were[<sup>F14</sup> removed] or altered; and, subject to paragraph (4), Article 74 shall apply accordingly.

(4) Where, at any time after an enforcement notice takes effect—

- (a) any development is carried out on land by way of reinstating or restoring buildings or works which have been[<sup>F14</sup> removed] or altered in compliance with the notice, and

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- (b) the Department proposes, under Article 74(1), to take any steps required by the enforcement notice for the<sup>F14</sup> removal] or alteration of the buildings or works in consequence of the reinstatement or restoration,

the Department shall, not less than 28 days before taking any such steps, serve on the owner and occupier of the land a notice of its intention to do so.

(5) A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been<sup>F14</sup> removed] or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and no person shall be liable under<sup>F14</sup> Article 72(2)] for failure to take any steps required to be taken by an enforcement notice by way of<sup>F14</sup> removal] or alteration of what has been so reinstated or restored.

F14 2003 NI 8

*<sup>F15</sup>Breach of condition*

F15 2003 NI 8

### **Enforcement of conditions**

**76A.**—(1) This Article applies where planning permission for carrying out any development of land has been granted subject to conditions.

(2) The Department may, if any of the conditions is not complied with, serve a notice (in this Order referred to as a “breach of condition notice”) on—

- (a) any person who is carrying out or has carried out the development; or
- (b) any person having control of the land,

requiring him to secure compliance with such of the conditions as are specified in the notice.

(3) References in this Article to the person responsible are to the person on whom the breach of condition notice has been served.

(4) The conditions which may be specified in a notice served by virtue of paragraph (2)(b) are any of the conditions regulating the use of the land.

(5) A breach of condition notice shall specify the steps which the Department considers ought to be taken, or the activities which the Department considers ought to cease, to secure compliance with the conditions specified in the notice.

(6) The Department may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve on him a further breach of condition notice in respect of the conditions specified in the earlier notice or any other conditions.

(7) The period allowed for compliance with the notice is—

- (a) such period of not less than 28 days beginning with the date of service of the notice as may be specified in the notice; or
- (b) that period as extended by a further notice served by the Department on the person responsible.

(8) If, at any time after the end of the period allowed for compliance with the notice—

- (a) any of the conditions specified in the notice is not complied with; and

(b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,

the person responsible is in breach of the notice.

(9) If the person responsible is in breach of the notice he shall be guilty of an offence.

(10) An offence under paragraph (9) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.

(11) It shall be a defence for a person charged with an offence under paragraph (9) to prove—

(a) that he took all reasonable measures to secure compliance with the conditions specified in the notice; or

(b) where the notice was served on him by virtue of paragraph (2)(b), that he no longer had control of the land.

(12) A person who is guilty of an offence under paragraph (9) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) In this Article—

(a) “conditions” includes limitations; and

(b) references to carrying out any development include causing or permitting another to do so.]

### *F16* Injunctions

F16 2003 NI 8

## **Injunctions**

**76B.**—(1) Where the Department considers it necessary or expedient for—

(a) any actual or apprehended breach of planning control;

(b) any actual or apprehended contravention of Articles 44(1) or (5), 66 or 66A; or

(c) any actual or apprehended contravention of hazardous substances control,

to be restrained by injunction, it may apply to the court for an injunction, whether or not it has exercised or is proposing to exercise any of its other powers under this Part.

(2) On an application under paragraph (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court and county court rules may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this Article “the court” means the High Court or the county court.]

### Listed buildings

## **Listed building enforcement notices**

**77.**—(1) Where it appears to the Department that any works have been or are being executed to a listed building and are such as to involve a contravention of Article 44(1) or (5), then, subject to paragraph (3), the Department may, if it considers it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice—

(a) specifying the alleged contravention; and



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- (b) requiring such steps as may be specified in the notice to be taken<sup>F17</sup> . . .
- (i) for restoring the building to its former state; or
  - (ii) where the Department considers that such restoration would not be reasonably practicable, or would be undesirable, for executing such further works specified in the notice as it considers necessary to alleviate the effect of the works which were carried out without listed building consent; or
  - (iii) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.

(2) A notice under this Article is referred to in this Order as a “listed building enforcement notice”.

(3) A listed building enforcement notice shall not be served in relation to a contravention of Article 44(1) or (5) which occurred before 9th December 1978.

[<sup>F17</sup>(4) A listed building enforcement notice—

- (a) shall specify the date on which it is to take effect and, subject to Article 78, shall take effect on that date; and
- (b) shall specify the period within which any steps are required to be taken and may specify different periods for different steps,

and where different periods apply to different steps, references in this Part to the period for compliance with a listed building enforcement notice, in relation to any steps, are to the period within which the step is required to be taken.]

(5) Where a listed building enforcement notice imposes any such requirement as is mentioned in paragraph (1)(b)(ii), listed building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

(6) Articles<sup>F17</sup> 68(2) and (3), 68B,] and 72 and 74 shall, with any necessary modifications, apply to a listed building enforcement notice as they apply to an enforcement notice.

**F17** 2003 NI 8

### **Appeal against listed building enforcement notice**

**78.**—(1) A person having an estate in the building to which a listed building enforcement notice relates or a person to whom paragraph (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice on any of the following grounds—

- [<sup>F18</sup>(a) that the matters alleged to constitute a contravention of Article 44 have not occurred;
- (b) that those matters (if they occurred) do not constitute such a contravention;]
- (c) that the contravention of that Article alleged in the notice occurred before 9th December 1978;
- (d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged or different conditions substituted;



- (f) that copies of the notice were not served as required by Article<sup>F18</sup> 68(2) and (3)] as applied by Article 77(6);
  - (g) that the period specified in the notice as the period within which any step required thereby is to be taken falls short of what should reasonably be allowed;
  - (h) except in relation to such a requirement as is mentioned in Article 77(1)(b)(ii) or (iii), the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
  - (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
  - (j) that steps required to be taken by virtue of Article 77(1)(b)(ii) exceed what is necessary to alleviate the effect of the works executed to the building;
  - (k) that steps required to be taken by virtue of Article 77(1)(b)(iii) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.
- (2) This paragraph applies to a person who—
- (a) on the date on which the listed building enforcement notice is issued occupies the building to which it relates by virtue of a licence<sup>F18</sup>. . . ; and
  - (b) continues to occupy the building as aforesaid when the appeal is brought.
- (3) Paragraphs (4) to (8) of Article 69 and Article 70 shall, with any necessary modifications, apply to an appeal under this Article against a listed building enforcement notice as they apply to an appeal under Article 69 against an enforcement notice.
- (4) On the determination of an appeal under this Article, the planning appeals commission may—
- (a) grant listed building consent for the works to which the listed building enforcement notice relates or for part only of those works;
  - (b) discharge any condition or limitation subject to which listed building consent was granted and substitute any other condition, whether more or less onerous.
- (5) Any listed building consent granted by the planning appeals commission under paragraph (4) shall, subject to paragraph (6), have the like effect as a listed building consent granted under Part V.
- (6) The decision of the commission in relation to the grant of listed building consent under paragraph (4) shall be final.
- (7) The validity of a listed building enforcement notice 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.

**F18** 2003 NI 8

### **Effect of listed building consent on listed building enforcement notice**

**79.**—(1) If, after the issue of a listed building enforcement notice, consent is granted under Article 44(3) for the retention of any work to which the listed building enforcement notice relates, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken which would involve the works not being retained in accordance with the consent.

(2) If the consent is granted so as to permit the retention of works without complying with some condition subject to which a previous listed building consent was granted, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.

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(3) The preceding provisions of this Article shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the listed building enforcement notice before the relevant provisions of that notice ceased to have effect.

### **Urgent works to preserve building**

**80.**—(1) Where it appears to the Department that works are urgently necessary for the preservation of—

- (a) a listed building, or
- (b) a building in respect of which a direction has been given by the Department that this Article shall apply,

the Department may, subject to the following provisions of this Article, execute the works, which may consist of or include works for affording temporary support or shelter for the building.

(2) The ground on which the Department may give a direction that this Article shall apply to a building is that the building is in a conservation area and it appears to the Department that its preservation is important for maintaining the character or appearance of the conservation area.

(3) If the building is occupied works may be carried out only to those parts which are not in use.

(4) The owner of the building shall be given not less than seven days' notice in writing of the intention to carry out the works and the notice shall describe the works proposed to be carried out.

(5) Paragraphs (6) to (10) have effect for enabling the expenses of works executed under this Article to be recovered by the Department.

(6) The Department may give notice to the owner of the building requiring him to pay the expenses of the works.

(7) Where the works consist of or include works for affording temporary support or shelter for the building—

- (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used; and
- (b) notices under paragraph (6) in respect of any such continuing expenses may be given from time to time.

(8) The owner may within 28 days of the service of the notice appeal to the planning appeals commission against the notice on any of the following grounds—

- (a) that some or all of the works were unnecessary for the preservation of the building;
- (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time;
- (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause him hardship.

(9) The planning appeals commission shall give notice of its determination, the reasons for it and the amount recoverable to the owner of the building and to the Department and the determination of the appeals commission shall be final.

(10) Any expenses recoverable by the Department under this Article shall be a civil debt recoverable summarily.

## Hazardous substances

### Hazardous substances contravention notice

**81.**—(1) Subject to paragraph (2), where it appears to the Department that there is or has been a contravention of hazardous substances control, it may issue a hazardous substances contravention notice if it considers it expedient to do so having regard to any material consideration.

(2) The Department shall not issue a hazardous substances contravention notice where it appears to the Department that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.

(3) In this Order “hazardous substances contravention notice” means a notice—

- (a) specifying an alleged contravention of hazardous substances control; and
- (b) requiring such steps as may be specified in the notice to be taken to remedy<sup>[F19]</sup> wholly or partly] the contravention.

(4) A copy of a hazardous substances contravention notice shall be served—

- (a) on the owner and on the occupier of the land to which it relates;
- (b) on any person other than the owner or occupier who appears to the Department to be in control of that land; and
- (c) on such other persons as may be prescribed.

(5) A hazardous substances contravention notice shall also specify—

- (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect;
- (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.

(6) Where the Department issues a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of paragraph (3)(b), if the Department thinks it expedient, include a requirement that the hazardous substance be removed from the land.

(7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substance which is required to be removed.

(8) The Department may withdraw a hazardous substances contravention notice (without prejudice to its power to issue another) at any time before<sup>[F19]</sup> or after] it takes effect.

(9) If the Department does so, it shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice<sup>[F19]</sup> or would, if the notice were re-issued, be served with a copy of it].

(10) The Department shall by regulations provide for—

- (a) appeals to the planning appeals commission against hazardous substances contravention notices;
- (b) the persons by whom, grounds upon which and time within which such an appeal may be brought;
- (c) the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of Articles 69 to 71.

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(11) If any person appeals against a hazardous substances contravention notice, the notice shall<sup>[F19]</sup>, subject to regulations made under this Article,] be of no effect pending the final determination or the withdrawal of the appeal.

(12) The Department may by regulations—

- (a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by this Article;
- (b) direct that any of the provisions of Articles 72 to 76 and Article 67 of the Planning (Northern Ireland) Order 1972 shall have effect in relation to hazardous substances contravention notices subject to such modifications as it may specify in the regulations;
- (c) make such other provision as it considers necessary or expedient in relation to hazardous substances contravention notices.

F19 2003 NI 8

#### <sup>[F20]</sup>Variation of hazardous substances contravention notices

**81A.**—(1) The Department may waive or relax any requirement of a hazardous substances contravention notice issued by it and, in particular, may extend any period specified in accordance with Article 81(5)(b) in the notice.

(2) The powers conferred by paragraph (1) may be exercised before or after the notice takes effect.

(3) The Department shall, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice or would, if the notice were re-issued, be served with a copy of it.]

F20 2003 NI 8

#### Trees

#### Enforcement of duties as to replacement of trees

**82.**—<sup>[F21]</sup>(1) If it appears to the Department that—

- (a) the provisions of Article 65B, or
- (b) any conditions of a consent given under a tree preservation order which require the replacement of trees,

are not complied with in the case of any tree or trees, the Department may serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified.

(2) A notice under paragraph (1) may only be served within 4 years from the date of the alleged failure to comply with those provisions or conditions.

(3) A notice under paragraph (1) shall specify a period at the end of which it is to take effect.

(4) The specified period shall be a period of not less than 28 days beginning with the date of service of the notice.

(5) The duty imposed by Article 65B(1) may only be enforced as provided by this Article and not otherwise.]

F21 2003 NI 8

## [<sup>F22</sup> Appeals against Article 82 notices

**82A.**—(1) A person on whom a notice under Article 82(1) is served may appeal to the planning appeals commission against the notice on any of the following grounds—

- (a) that the provisions of Article 65B or, as the case may be, the conditions mentioned in Article 82(1)(b) are not applicable or have been complied with;
- (b) that in all the circumstances of the case the duty imposed by Article 65B(1) should be dispensed with in relation to any tree;
- (c) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;
- (d) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;
- (e) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.

(2) An appeal under paragraph (1) shall be made by serving written notice of the appeal on the planning appeals commission before the end of the period specified in accordance with Article 82(3) and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(3) On any such appeal the planning appeals commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(4) Where an appeal is brought under this Article, the notice under Article 82(1) shall be of no effect pending the final determination or the withdrawal of the appeal.

- (5) On an appeal under this Article the planning appeals commission may—
- (a) correct any defect, error or misdescription in the notice; or
  - (b) vary any of its requirements,

if it is satisfied that the correction or variation will not cause injustice to the appellant or the Department.

(6) Where the planning appeals commission determines to allow the appeal, it may quash the notice.

(7) The planning appeals commission shall give any directions necessary to give effect to its determination on the appeal.

(8) Where any person has appealed to the planning appeals commission under this Article against a notice, neither that person nor any other shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

**F22** 2003 NI 8

## Execution and cost of works required by Article 82 notice

**82B.**—(1) If, within the period specified in a notice under Article 82(1) for compliance with it, or within such extended period as the Department may allow, any trees which are required to be planted by a notice under that Article have not been planted, the Department may—

- (a) enter the land and plant those trees; and
  - (b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.
- (2) Where such a notice has been served—

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- (a) any expenses incurred by the owner of any land for the purpose of complying with the notice; and
- (b) any sums paid by the owner of any land under paragraph (1) in respect of expenses incurred by the Department in planting trees required by such a notice to be planted,

shall be deemed to be incurred or paid for the use and at the request of any person, other than the owner, responsible for the cutting down, destruction or removal of the original tree or trees.

(3) Paragraphs (3) to (9) of Article 74 shall with any necessary modifications apply to a notice under this Article as those paragraphs apply to an enforcement notice.

F22 2003 NI 8

### **Enforcement of controls as respects trees in conservation areas**

**82C.**—(1) If any tree to which Article 66A applies—

- (a) is removed, uprooted or destroyed in contravention of that Article; or
- (b) is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of the provisions of such regulations under paragraph (1) of Article 66B as are mentioned in paragraph (3) of that Article,

it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.

(2) The duty imposed by paragraph (1) does not apply to an owner if on application by him the Department dispenses with it.

(3) The duty imposed by paragraph (1) on the owner of any land attaches to the person who is from time to time the owner of the land and may be enforced as provided by Article 82 and not otherwise.]

F22 2003 NI 8

### **Discontinuance orders**

#### **Enforcement of orders under Article 39**

**83.**—(1) Any person who, without the grant of planning permission in that behalf, uses land, or causes or permits land to be used—

- (a) after the expiry of the period allowed for compliance with an order under Article 39, for any purpose for which an order under that Article has required that its use shall be discontinued; or
- (b) in contravention of any condition imposed by such an order by virtue of paragraphs (1) (a) of that Article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If the use is continued after the conviction of a person of an offence under paragraph (1), he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the use is so continued.

(3) It shall be a defence for a person charged with an offence under paragraph (1) or (2) to prove that he took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.

(4) If in any case the defence provided by paragraph (3) involves an allegation that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending seven days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

(5) If any steps required by an order under Article 39 to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, a person authorised in writing by the Department may enter the land and take those steps, and the Department may recover from the person who is then the owner of the land any expenses reasonably incurred by it in that behalf; and those expenses shall be a civil debt recoverable summarily.

(6) Where a copy of an order under Article 39 has been served on the person who, at the time when the copy was served on him, was the owner of the land to which the order relates, then, if any steps required by the order to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) If a person against whom proceedings are brought under paragraph (6) has, at some time before the end of the period allowed for compliance with the order, ceased to be the owner of the 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 (8) referred to as "the subsequent owner") brought before the court in the proceedings.

(8) If after it has been proved, in a case to which paragraph (7) applies, that any steps required by the order under Article 39 have not been taken within the period allowed for compliance with the order, the original defendant proves that the failure to take those steps 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
- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the order, shall be acquitted of the offence.

(9) If after a person has been convicted of an offence under paragraphs (6) to (8) he does not as soon as practicable do everything in his power to secure compliance with the order under Article 39 in so far as it requires steps to be taken for the alteration or removal of any buildings or works, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day following his first conviction on which any requirements of the order remain unfulfilled.

(10) Any reference in this Article to the period allowed for compliance with an order under Article 39 is a reference to the period specified in the order for compliance therewith or such extended period as may be allowed by the Department for compliance with the notice.

*f<sup>F23</sup> Certificate of lawful use or development*

F23 2003 NI 8

**Certificate of lawfulness of existing use or development**

**83A.**—(1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or

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- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the Department specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Order uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Order any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this Article, the Department is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the Department or a description substituted by it, the Department shall issue a certificate to that effect; and in any other case it shall refuse the application.

(5) A certificate under this Article shall—

- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under Article 11(2)(e), identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other matter to be lawful; and
- (d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this Article shall be conclusively presumed.

(7) A certificate under this Article in respect of any use shall also have effect, for the purposes of the following statutory provisions, as if it were a grant of planning permission—

- (a) section 3(3) of the Caravans Act (Northern Ireland) 1963 (c. 17);
- (b) Article 7(2) of the Pollution Control and Local Government (Northern Ireland) Order 1978 (NI 19); and
- (c) Article 8(3) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19).

### **Certificate of lawfulness of proposed use or development**

**83B.**—(1) If any person wishes to ascertain whether—

- (a) any proposed use of buildings or other land; or
- (b) any operations proposed to be carried out in, on, over or under land,

would be lawful, he may make an application for the purpose to the Department specifying the land and describing the use or operations in question.

(2) If, on an application under this Article, the Department is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it shall issue a certificate to that effect; and in any other case it shall refuse the application.



- (3) A certificate under this Article shall—
  - (a) specify the land to which it relates;
  - (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under Article 11(2)(e), identifying it by reference to that class);
  - (c) give the reasons for determining the use or operations to be lawful; and
  - (d) specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this Article shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

### **Certificates under Articles 83A and 83B: supplementary provisions**

**83C.**—(1) An application for a certificate under Article 83A or 83B shall be made in such manner as may be specified by a development order and shall include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the Department.

(2) Provision may be made by a development order for regulating the manner in which applications for certificates under those Articles are to be dealt with by the Department.

- (3) In particular, such an order may provide for requiring the Department—
  - (a) to give to any applicant within such time as may be specified by the order such notice as may be so specified as to the manner in which his application has been dealt with; and
  - (b) to give to such persons as may be specified by or under the order, such information as may be so specified with respect to such applications, including information as to the manner in which any application has been dealt with.
- (4) A certificate under either of those Articles may be issued—
  - (a) for the whole or part of the land specified in the application; and
  - (b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and shall be in such form as may be specified by a development order.

(5) A certificate under Article 83A or 83B shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.

(6) In Article 124 references to applications for planning permission shall include references to applications for certificates under Article 83A or 83B.

(7) The Department may revoke a certificate under either of those Articles if, on the application for the certificate—

- (a) a statement was made or document used which was false in a material particular; or
- (b) any material information was withheld.

(8) Provision may be made by a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

### **Offences**

**83D.**—(1) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under Article 83A or 83B—

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- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
- (c) with intent to deceive, withholds any material information,

he shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

(3) Notwithstanding Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26), a magistrates' court may hear and determine a complaint in respect of an offence under paragraph (1) whenever made.

#### **Appeals against refusal or failure to give decision on application**

**83E.**—(1) Where an application is made to the Department for a certificate under Article 83A or 83B and—

- (a) the application is refused or is refused in part; or
- (b) the Department does not give notice to the applicant of its decision on the application within such period as may be specified by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the Department,

the applicant may by notice appeal to the planning appeals commission.

(2) On any such appeal, if and so far as the planning appeals commission is satisfied—

- (a) in the case of an appeal under paragraph (1)(a), that the Department's refusal is not well-founded; or
- (b) in the case of an appeal under paragraph (1)(b), that if the Department had refused the application its refusal would not have been well-founded,

the planning appeals commission shall grant the appellant a certificate under Article 83A or, as the case may be, 83B accordingly or, in the case of a refusal in part, modify the certificate granted by the Department on the application.

(3) If and so far as the planning appeals commission is satisfied that the Department's refusal is or, as the case may be, would have been well-founded, the commission shall dismiss the appeal.

(4) References in this Article to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.

#### **Further provisions as to appeals under Article 83E**

**83F.**—(1) Before determining an appeal to it under Article 83E(1), the planning appeals commission shall, if either the appellant or the Department so wish, afford to each of them an opportunity of appearing before, and being heard by, the planning appeals commission .

(2) Where the planning appeals commission grants a certificate under Article 83A or 83B on such an appeal, it shall give notice to the Department of that fact.

(3) The decision of the planning appeals commission on such an appeal shall be final.]

## Advertisements

### Enforcement of advertisement control

**84.**—(1) The matters for which provision may be made by regulations under Article 67 shall include provision for enabling the Department to require the removal of any advertisement which is being displayed in contravention of the regulations, or the discontinuance of the use for the display of advertisements of any site which is being so used in contravention of the regulations, and for that purpose for applying any of the provisions of this Order with respect to enforcement notices, subject to such adaptations and modifications as may be specified in the regulations.

(2) Without prejudice to any provision included in regulations made under Article 67 by virtue of paragraph (1), if any person displays an advertisement in contravention of the regulations he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F24</sup>level 4] on the standard scale and, in the case of a continuing offence, to a fine not exceeding one-tenth of level 3 on the standard scale for each day during which the offence continues after conviction.

(3) For the purposes of paragraph (2) and without prejudice to the generality thereof, a person shall be deemed to display an advertisement if—

- (a) the advertisement is displayed on land of which he is the owner or occupier; or
- (b) the advertisement gives publicity to his goods, trade, business or other concerns,

but a person shall not be guilty of an offence under paragraph (2) by reason only that an advertisement is displayed on land of which he is the owner or occupier, or that his goods, trade, business or other concerns are given publicity by the advertisement, if he proves that it was displayed without his knowledge or consent.

**F24** Words in art. 84(2) substituted (10.6.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(4), **14(1)** (with (2))

*[<sup>F25</sup>Rights of entry for enforcement purposes*

**F25** 2003 NI 8

### Rights to enter without warrant

**84A.**—(1) Any person duly authorised in writing by the Department may at any reasonable time enter any land—

- (a) to ascertain whether there is or has been any breach of planning control on the land or any other land;
- (b) to ascertain whether an offence has been, or is being, committed with respect to any building on the land or any other land, under Article 44, 49 or 72 (as applied by Article 77(6));
- (c) to ascertain whether an offence has been committed under Article 61, 66 or 66A;
- (d) for the purpose of exercising any of the functions conferred by Article 80;
- (e) to determine whether any of the powers conferred on the Department by this Part should be exercised in relation to the land or any other land;
- (f) to determine how any such power should be exercised in relation to the land or any other land;

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(g) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land, if there are reasonable grounds for entering for the purpose in question.

(2) Admission to any building used as a dwelling-house shall not be demanded as of right by virtue of paragraph (1) unless 24 hours' notice of the intended entry has been given to the occupier of the building.

### **Right to enter under warrant**

**84B.**—(1) If it is shown to the satisfaction of a justice of the peace on a complaint on oath—

(a) that there are reasonable grounds for entering any land for any of the purposes mentioned in Article 84A(1); and

(b) that—

(i) admission to the land has been refused, or a refusal is reasonably apprehended; or

(ii) the case is one of urgency,

the justice may issue a warrant authorising any person duly authorised in writing by the Department to enter the land.

(2) For the purposes of paragraph (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.

(3) A warrant authorises entry on one occasion only and that entry must be—

(a) within one month from the date of the issue of the warrant; and

(b) at a reasonable time, unless the case is one of urgency.

### **Rights of entry: supplementary provisions**

**84C.**—(1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of Article 84A or 84B (referred to in this Article as “a right of entry”)—

(a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;

(b) may take with him such other persons as may be necessary; and

(c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.

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

(3) If any damage is caused to property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the Department.

(4) Any question of disputed compensation recoverable under paragraph (3) shall be determined by the Lands Tribunal.

(5) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.

(6) Paragraph (5) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.

(7) A person who is guilty of an offence under paragraph (5) shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum;

- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine, or both.

[<sup>F26</sup>**Rights of entry for enforcement purposes: Crown land**

**84D.**—(1) Article 84A applies to Crown land subject to the following modifications.

(2) In paragraph (1) of Article 84A, sub-paragraphs (b) and (c) are omitted.

(3) A person shall not enter Crown land unless he has the relevant permission.

(4) Relevant permission is the permission of—

- (a) a person appearing to the person seeking entry to the land to be entitled to give it; or
- (b) the appropriate authority.

(5) Articles 84B and 84C do not apply to anything done by virtue of this Article.

(6) “Appropriate authority” and “Crown land” shall be construed in accordance with Article 118(1).]]

**F26** Art. 84D inserted (10.6.2006) by Planning Reform (Northern Ireland) Order 2006 (S.I. 2006/1252 (N.I. 7)), arts. 1(4), 21(3), **Sch. 1 para. 3**

**Status:**

Point in time view as at 17/10/2006.

**Changes to legislation:**

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