

## SCHEDULES

### SCHEDULE 1

Article 6(8), 10(1) and 11(8).

#### AUTHORISATIONS FOR PROCESSES: SUPPLEMENTARY PROVISIONS

### PART I

#### GRANT OF AUTHORISATIONS

##### *Applications for authorisations*

1.—(1) An application to the enforcing authority for an authorisation must contain such information, and be made in such manner, as may be prescribed in regulations made by the Department.

(2) An application to the enforcing authority for an authorisation must also, unless regulations made by the Department exempt applications of that class, be advertised in such manner as may be prescribed in regulations so made.

(3) The enforcing authority may, by notice in writing to the applicant, require him to furnish such further information specified in the notice, within the period so specified, as the authority may require for the purpose of determining the application.

(4) If a person fails to furnish any information required under sub-paragraph (3) within the period specified thereunder the enforcing authority may refuse to proceed with the application.

##### *Determination of applications*

2.—(1) Subject to sub-paragraph (2), the enforcing authority shall give notice of any application for an authorisation, enclosing a copy of the application, to the persons who are prescribed or directed to be consulted under this paragraph and shall do so within the specified period for notification.

(2) The Department may, by regulations, exempt any class of application from the requirements of this paragraph or exclude any class of information contained in applications for authorisations from those requirements.

(3) Any representations made by the persons so consulted within the period allowed shall be considered by the enforcing authority in determining the application.

(4) For the purposes of sub-paragraph (1)—

(a) persons are prescribed to be consulted on any description of application for an authorisation if they are persons specified for the purposes of applications of that description in regulations made by the Department;

(b) and the persons are directed to be consulted on any particular application if the Department specifies them in a direction given to the enforcing authority;

and the “specified period for notification” is the period specified in the regulations or in the direction.

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(5) Any representations made by any other persons within the period allowed shall also be considered by the enforcing authority in determining the application.

(6) Subject to sub-paragraph (7), the period allowed for making representations is—

- (a) in the case of persons prescribed or directed to be consulted, the period of 42 days beginning with the date on which notice of the application was given under sub-paragraph (1); and
- (b) in the case of other persons, the period of 42 days beginning with the date on which the making of the application was advertised in pursuance of paragraph 1(2).

(7) The Department may, by order, substitute for the period for the time being specified in sub-paragraph (6)(a) or (b), such other period as it thinks fit.

**3.—**(1) The Department may give directions to the enforcing authority requiring that any particular application or any class of applications for an authorisation shall be transmitted to the Department for determination pending a further direction under sub-paragraph (4).

(2) The enforcing authority shall inform the applicant of the fact that his application is being transmitted to the Department.

(3) Where an application for an authorisation is referred to it under sub-paragraph (1) the Department may—

- (a) cause a public local inquiry to be held in relation to the application either by the Planning Appeals Commission or by a person appointed by the Department for the purpose; or
- (b) afford the applicant and the enforcing authority concerned an opportunity of appearing before and being heard by the Planning Appeals Commission;

and the Department shall exercise one of the powers under this sub-paragraph in any case where, in the manner prescribed by regulations made by the Department, a request is made to be heard with respect to the application by the applicant or the enforcing authority concerned.

(4) The Department shall—

- (a) in determining any application referred to it under this paragraph, take into account the report of any public local inquiry or hearing held under sub-paragraph (3); and
- (b) on determining any such application, give to the enforcing authority such a direction as the Department thinks fit as to whether the enforcing authority is to grant the application and, if so, as to the conditions that are to be attached to the authorisation.

**4.** The Department may give the enforcing authority a direction with respect to any particular application or any class of applications for an authorisation requiring the authority not to determine or not to proceed with the application or applications of that class until the expiry of any such period as may be specified in the direction, or until directed by the Department that the enforcing authority may do so, as the case may be.

**5.—**<sup>F1</sup>(1) Except in a case where an application has been referred to the Department under paragraph 3 and subject to sub-paragraph (3), the enforcing authority shall determine an application for an authorisation within the period of 6 months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant.

(2) If the enforcing authority fails to determine an application for an authorisation within the period allowed by or under this paragraph the application shall, if the applicant notifies the authority in writing that he treats the failure as such, be deemed to have been refused at the end of that period.

(3) The Department may, by order, substitute for the period for the time being specified in sub-paragraph (1) such other period as it thinks fit.

F1 mod. by SR 1998/30

## PART II

### VARIATION OF AUTHORISATIONS

#### *Variations by the enforcing authority*

6.—(1) The requirements of this paragraph apply where an enforcing authority has decided to vary an authorisation under Article 10 and is of the opinion that any action to be taken by the holder of the authorisation in consequence of the variation will involve a substantial change in the manner in which the process is being carried on.

(2) Subject to sub-paragraph (3), the enforcing authority shall give notice of the action to be taken by the holder of the authorisation to the persons who are prescribed or directed to be consulted under this paragraph and shall do so within the specified period for notification; and the holder shall advertise the action in the manner prescribed in regulations made by the Department.

(3) The Department may, by regulations, exempt any class of variation from all or any of the requirements of this paragraph or exclude any class of information relating to action to be taken by holders of authorisations from all or any of those requirements.

(4) Any representations made by the persons so consulted within the period allowed shall be considered by the enforcing authority in taking its decision.

(5) For the purposes of sub-paragraph (2)—

- (a) persons are prescribed to be consulted on any description of variation if they are persons specified for the purposes of variations of that description in regulations made by the Department;
- (b) persons are directed to be consulted on any particular variation if the Department specifies them in a direction given to the enforcing authority;

and the “specified period for notification” is the period specified in the regulations or in the direction.

(6) Any representations made by any other persons within the period allowed shall also be considered by the enforcing authority in taking its decision.

(7) Subject to sub-paragraph (8), the period allowed for making representations is—

- (a) in the case of persons prescribed or directed to be consulted, the period of 42 days beginning with the date on which notice was given under sub-paragraph (2); and
- (b) in the case of other persons, the period of 42 days beginning with the date of the advertisement under sub-paragraph (2).

(8) The Department may, by order, substitute for the period for the time being specified in sub-paragraph (7)(a) or (b), such other period as it thinks fit.

#### *Applications for variation*

7.—(1) The requirements of this paragraph apply where an application is made to an enforcing authority under Article 11(4) for the variation of an authorisation.

(2) Subject to sub-paragraph (3), the enforcing authority shall give notice of any such application for a variation of an authorisation, enclosing a copy of the application, to the persons who are prescribed or directed to be consulted under this paragraph and shall do so within the specified period

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for notification; and the holder of the authorisation shall advertise the application in the manner prescribed in regulations made by the Department.

(3) The Department may, by regulations, exempt any class of application from all or any of the requirements of this paragraph or exclude any class of information furnished with applications for variations of authorisations from all or any of those requirements.

(4) Any representations made by the persons so consulted within the period allowed shall be considered by the enforcing authority in determining the application.

(5) For the purposes of sub-paragraph (2)—

(a) persons are prescribed to be consulted on any description of application for a variation if they are persons specified for the purposes of applications of that description in regulations made by the Department;

(b) persons are directed to be consulted on any particular application if the Department specifies them in a direction given to the enforcing authority;

and the “specified period for notification” is the period specified in the regulations or in the direction.

(6) Any representations made by any other persons within the period allowed shall also be considered by the enforcing authority in determining the application.

(7) Subject to sub-paragraph (8), the period allowed for making representations is—

(a) in the case of persons prescribed or directed to be consulted, the period of 42 days beginning with the date on which notice of the application was given under sub-paragraph (2); and

(b) in the case of other persons, the period of 42 days beginning with the date on which the making of the application was advertised in pursuance of sub-paragraph (2).

(8) The Department may, by order, substitute for the period for the time being specified in sub-paragraph (7)(a) or (b), such other period as it thinks fit.

## SCHEDULE 2

Articles 15(4) and 22(7).

### APPEALS AND MATTERS REFERRED TO THE PLANNING APPEALS COMMISSION

## PART I

### APPEALS AND MATTERS REFERRED UNDER ARTICLE 15

#### *Reference of appeals in accordance with Article 15(3)(b)*

1.—(1) This paragraph applies where, in accordance with paragraph (3)(b) of Article 15, the Department refers an appeal under that Article for determination to the Planning Appeals Commission (“the Commission”).

(2) The Commission shall determine the appeal and [F2subsections (1), (3) and (5) of section 204 of the Planning Act (Northern Ireland) 2011] shall apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

(3) If either party to the appeal so requests, the Commission shall afford to each of them an opportunity of appearing before and being heard by the Commission.

(4) Paragraphs (6) and (7) of Article 15 shall have effect in relation to the appeal as if for references to the Department there were substituted references to the Commission.

**F2** Words in Sch. 2 para. 1(2) substituted (13.2.2015 for specified purposes) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), Sch. 6 para. 85(a) (with s. 211); S.R. 2015/49, art. 2, Sch. 1

*Reference of appeals or matters involved in appeals in accordance with Article 15(3)(c)*

2.—(1) This paragraph applies where, in accordance with paragraph (3)(c) of Article 15, the Department refers an appeal or any matter involved in an appeal under that Article to the Commission.

(2) The Commission shall consider the appeal or matter and report to the Department thereon.

(3) For the purpose of considering an appeal or matter under sub-paragraph (2), the Commission shall hold a hearing—

- (a) if the Department, in referring the appeal or matter to the Commission, so requests;
- (b) if either party to the appeal so requests; or
- (c) if the Commission otherwise thinks fit;

and in any other case the Commission shall consider the appeal or matter solely by reference to written representations.

(4) Where the Commission holds such a hearing, it shall afford to each party to the appeal an opportunity of appearing before and being heard by the Commission.

(5) [<sup>F3</sup>Subsections (2), (3) and (5) of section 204 of the Planning Act (Northern Ireland) 2011] shall apply in relation to the consideration of an appeal or matter under sub-paragraph (2) as they apply in relation to an inquiry or hearing under [<sup>F4</sup>that Act] .

**F3** Words in Sch. 2 para. 2(5) substituted (13.2.2015 for specified purposes) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), Sch. 6 para. 85(b)(i) (with s. 211); S.R. 2015/49, art. 2, Sch. 1

**F4** Words in Sch. 2 para. 2(5) substituted (13.2.2015 for specified purposes) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), Sch. 6 para. 85(b)(ii) (with s. 211); S.R. 2015/49, art. 2, Sch. 1

## PART II

### APPEALS AND MATTERS REFERRED UNDER ARTICLE 22

*Reference of appeals in accordance with Article 22(6)(b)*

3.—(1) This paragraph applies where, in accordance with paragraph (6)(b) of Article 22, the Department refers an appeal under that Article for determination to the Planning Appeals Commission.

(2) The Commission shall determine the appeal and [<sup>F5</sup>subsections (1), (3) and (5) of section 204 of the Planning Act (Northern Ireland) 2011] shall apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

(3) If either party to the appeal so requests, the Commission shall afford to each of them an opportunity of appearing before and being heard by the Commission.

(4) Any hearing in connection with the appeal must be held in private.

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(5) Paragraph (1) of Article 22 shall have effect in relation to the appeal as if for the reference to the Department there were substituted a reference to the Commission.

**F5** Words in Sch. 2 para. 3(2) substituted (13.2.2015 for specified purposes) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), **Sch. 6 para. 85(c)** (with s. 211); S.R. 2015/49, art. 2, Sch. 1

*Reference of appeals or matters involved in appeals in accordance with Article 22(6)(c)*

4.—(1) This paragraph applies where, in accordance with paragraph (6)(c) of Article 22, the Department refers an appeal or any matter involved in an appeal under that Article to the Commission.

(2) The Commission shall consider the appeal or matter and report to the Department thereon.

(3) For the purpose of considering an appeal or matter under sub-paragraph (2), the Commission shall hold a hearing if either party to the appeal so requests; and in any other case the Commission shall consider the appeal or matter solely by reference to written representations.

(4) Any such hearing must be held in private.

(5) Where the Commission holds such a hearing, it shall afford to each party to the appeal an opportunity of appearing before and being heard by the Commission.

(6) [<sup>F6</sup>Subsections (2), (3) and (5) of section 204 of the Planning Act (Northern Ireland) 2011] shall apply in relation to the consideration of an appeal or matter under sub-paragraph (2) as they apply in relation to an inquiry or hearing under [<sup>F7</sup>that Act] .

**F6** Words in Sch. 2 para. 4(6) substituted (13.2.2015 for specified purposes) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), **Sch. 6 para. 85(d)(i)** (with s. 211); S.R. 2015/49, art. 2, Sch. 1

**F7** Words in Sch. 2 para. 4(6) substituted (13.2.2015 for specified purposes) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), **Sch. 6 para. 85(d)(ii)** (with s. 211); S.R. 2015/49, art. 2, Sch. 1

### SCHEDULE 3

Article 17(13).

#### SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY

##### *Interpretation*

1. In this Schedule—

“relevant power” means a power conferred by Article 17, including a power exercisable by virtue of a warrant under this Schedule;

“responsible authority”

- (a) in relation to an inspector appointed under Article 16(1), means the Department; and
- (b) in relation to an inspector appointed under Article 16(5), means the district council by which he is appointed.

##### *Issue of warrants*

2.—(1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—

- (a) that there are reasonable grounds for the exercise in relation to any premises of a relevant power; and
- (b) that one or more of the conditions specified in sub-paragraph (2) is fulfilled in relation to those premises,

the justice may by warrant authorise an inspector to exercise the power in relation to those premises, in accordance with the warrant and, if need be, by force.

- (2) The conditions mentioned in sub-paragraph (1)(b) are—
  - (a) that the exercise of the power in relation to the premises has been refused;
  - (b) that such a refusal is reasonably apprehended;
  - (c) that the premises are unoccupied;
  - (d) that the occupier is temporarily absent from the premises and the case is one of urgency; or
  - (e) that an application for admission to the premises would defeat the object of the proposed entry.

(3) In a case where paragraph (5) of Article 17 applies, a justice of the peace shall not issue a warrant under this Schedule by virtue only of being satisfied that the exercise of a power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless he is also satisfied that the notice required by that paragraph has been given and that the period of that notice has expired.

(4) Every warrant under this Schedule shall continue in force until the purposes for which the warrant was issued have been fulfilled.

#### *Information obtained to be admissible in evidence*

**3.—(1)** Subject to Article 17(10), information obtained in consequence of the exercise of a relevant power, with or without the consent of any person, shall be admissible in evidence against that or any other person.

(2) Without prejudice to the generality of sub-paragraph (1), information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a relevant power, with or without the consent of any person in occupation of the premises, shall be admissible in evidence in any proceedings against that or any other person.

#### *Duty to secure premises*

**4.** An inspector who, in the exercise of a relevant power, enters on any premises which are unoccupied or whose occupier is temporarily absent shall leave the premises as effectually secured against trespassers as he found them.

#### *Compensation*

**5.—(1)** Where an inspector exercises any power conferred by Article 17(3)(a) or (b) or (4), it shall be the duty of the responsible authority to make full compensation to any person who has sustained loss or damage by reason of—

- (a) the exercise by the inspector of that power; or
- (b) the performance of, or failure of the inspector to perform, the duty imposed by paragraph 4.

(2) Compensation shall not be payable by virtue of sub-paragraph (1) in respect of any loss or damage if the loss or damage—

- (a) is attributable to the default of the person who sustained it; or

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(b) is loss or damage in respect of which compensation is payable under any other provision of the pollution control statutory provisions.

(3) Any dispute as to a person's entitlement to compensation under this paragraph, or as to the amount of any such compensation, shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 shall apply to any such determination.

#### *Schedule 4—Amendments*

#### *Schedule 5—Repeals*



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