

2015 No. 49 (C. 5)

PLANNING

**The Planning (2011 Act) (Commencement No.3) and
(Transitional Provisions) Order (Northern Ireland) 2015**

Made - - - -

12th February 2015

The Department of the Environment makes the following Order in exercise of the powers conferred by sections 247(6) and 254(1) of the Planning Act (Northern Ireland) 2011(a):

Citation and interpretation

1.—(1) This Order may be cited as the Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) Order (Northern Ireland) 2015.

(2) In this Order

“2011 Act” means the Planning Act (Northern Ireland) 2011;

“1991 Order” means the Planning (Northern Ireland) Order 1991(b);

“council” means a district council;

“PAC” means the Planning Appeals Commission;

“transfer date” means 1st April 2015.

(3) In this Order references to a section are to a section of the 2011 Act and references to an Article are to an Article of the 1991 Order unless otherwise stated.

Provision conferring power to make secondary legislation

2. To the extent that the provisions of the 2011 Act listed in Schedule 1, confer or relate to the power to make orders, rules and regulations, those provisions come into operation on 13th February 2015 for the purposes of enabling orders, rules and regulations to be made.

Appointed day

3. The provisions of the 2011 Act listed in Schedule 1, insofar as they are not already commenced, shall come into operation for all other purposes on the transfer date.

Transitional provisions

4. The transitional provisions set out in Schedule 2 shall have effect from the transfer date.

(a) 2011 c.25 (N.I.)

(b) S.I. 1991/1220 (N.I. 11) as amended by S.I. 2003/430 (N.I. 7), S.I. 2006/1252 (N.I. 7) and 2011 c.25 (N.I.)

Revocation

5. On the transfer date the following statutory rules are revoked—

- (a) the Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000(a) except regulation 5,
- (b) the Planning (Application of Subordinate Legislation to the Crown) Order (Northern Ireland) 2006(b), and
- (c) the Planning (Electronic Communications) Order (Northern Ireland) 2006(c) except Article 7 and Schedule 2; and
- (d) the Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2009(d) except regulation 2.

Sealed with the Official Seal of the Department of the Environment on 12th February 2015



Angus Kerr

A senior officer of the
Department of the Environment

(a) S.R. 2000 No. 101
(b) S.R. 2006 No. 218
(c) S.R. 2006 No. 276
(d) S.R. 2009 No. 399

SCHEDULE 1

Articles 2 and 3

Provisions of the Act coming into operation

Part 1 (functions of the Department of the Environment with respect to the development of land)

Part 2 (local development plans)

Part 4 (additional planning control) except Chapter 4

Part 5 (enforcement)

Part 6 (compensation)

Part 7 (purchase of estates in certain land affected by planning decisions)

Part 8 (further provisions as to historic buildings)

Part 9 (the planning appeals commission)

Part 10 (assessment of council's performance or decision making)

Part 11 (application of Act to crown land)

Part 13 (financial provisions)

Part 14 (miscellaneous and general provisions) insofar as they are not already commenced

Section 252

Section 253 except insofar as it relates to the following repeals mentioned in Schedule 7 —

- (i) the repeal of Part 3 of the Planning (Northern Ireland) Order 1991;
- (ii) in relation to regulations made under Part 3 of the Planning (Northern Ireland) Order 1991, the repeal of Article 129(1);
- (iii) the repeal of paragraph 4 of the Schedule to the Strategic Planning (Northern Ireland) Order 1999(a);
- (iv) the repeal of Article 27(b) and Article 28 of the Planning (Amendment) (Northern Ireland) Order 2003(b); and
- (v) the repeal of Article 5 of the Planning Reform (Northern Ireland) Order 2006(c)

Schedule 1 (simplified planning zones)

Schedule 4 (amendments to the Land Development Values (Compensation) Act (Northern Ireland) 1965 (c.23))

Schedule 5 (The historic buildings council)

Schedule 6 (minor and consequential amendments)

Schedule 7 (repeals)

(a) S.I. 1999/660 (N.I. 4)
(b) S.I. 2003/430 (N.I. 7)
(c) S.I. 2006/1252 (N.I. 7)

SCHEDULE 2

Article 4

Transitional provisions

Transitional provisions: preliminary

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

Transitional provisions: applications

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

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

- (a) in respect of an application for planning permission—
 - (i) any provision of a development order requiring an application to be accompanied by a statement relating to the matters specified in section 40(3) shall not apply,
 - (ii) any provision of a development order requiring service of a notice of the application on occupiers of neighbouring land shall not apply where before the transfer date, the information required to be provided by the development order was provided by the Department for the purposes of section 41(1),
 - (iii) any consultation carried out by the Department for the purposes of Article 15 of the Planning (General Development) Order (Northern Ireland) 1993 shall not be treated as a prescribed requirement for the purposes of section 229; and
- (b) in respect of an application for listed building consent any provision in regulations for the purposes of section 86(2) requiring such an application to be accompanied by a statement relating to the matters specified in section 86(2) shall not apply.

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

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

Transitional provisions: appeals

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

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

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

under the 1991 Order) for making such an appeal has not expired before the transfer date then for the purposes of making such an appeal the relevant decision shall be treated as if it had been made by the appropriate council.

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

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

(6) Nothing in this paragraph shall affect the generality of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954(a).

Transitional provisions: enforcement

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

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

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

Transitional provisions: compensation

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

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

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

Transitional provisions: planning permissions and consents under the 1991 Order

6.—(1) Subject to sub-paragraph (2), where any planning permission or other consent granted under the 1991 Order (or any order or regulation made under the 1991 Order) is subject to a condition requiring the consent, agreement or approval of the Department for any matter then

(a) 1954 c.33 (N.I.)

(b) S.I. 1972/1634 (N.I. 17) as amended by S.I. 1991/1220 (N.I. 11), S.I. 2003/430 (N.I. 7), and 2011 c.25 (N.I.)

(c) 1965 c.23 (N.I.) as amended by S.I. 1991/1220 (N.I.), 2001 c.2 (N.I.) and 2011 c.25 (N.I.)

where an application for any such consent, agreement or approval is not made before the transfer date such an application may be made to the appropriate council (provided that any time limit set out in the 1991 Order (or any order or regulation made under the 1991 Order) or in the planning permission or other consent for making the application has not expired) in accordance with the provisions of a development order or regulations, as the case may be.

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

Transitional provisions: planning permission and consent subject to conditions

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

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

Transitional provisions: notice requiring planning application

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

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

Transitional provisions: completion notice

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

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

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

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

Transitional provisions: revocation or modification of planning permission

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

(2) A notice to which this paragraph applies shall be treated as if it had been served by the appropriate council in connection with its functions under section 68 (Revocation or modification of planning permission) (or any order or regulation made under the 2011 Act) and unless the person on whom the notice was served requests in writing within the period specified in the notice

an opportunity of appearing before and being heard by the PAC the notice shall take effect in accordance with section 71(2) without requiring to be confirmed by the Department.

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

Transitional provisions: orders requiring discontinuance of use or alteration or removal of buildings or works

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

(2) A notice to which this paragraph applies shall be treated as a notice served by the appropriate council in connection with its functions under section 73 (Orders requiring discontinuance of use or alteration or removal of building or works) (or any order or regulation made under the 2011 Act).

(3) Subject to sub-paragraph (4) a notice to which this paragraph applies shall be treated as if it had been confirmed by the Department under section 74 (Confirmation by Department of section 73 orders)(or any order or regulation made under the 2011 Act).

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is the third commencement order made under the Planning Act (Northern Ireland) 2011 (c.25) (2011 Act).

Article 2 brings into operation on 13th February 2015 various provisions of the 2011 Act, listed in Schedule 1, for the purposes of making orders, rules and regulations and Article 3 brings into operation those provisions on 1st April 2015 for all other purposes.

Article 4 provides for the transitional provisions, in Schedule 2, to cover the handling of undetermined applications made to the Department, enforcement action instigated by the Department prior to the transfer of planning powers, as well as transitional provisions for undecided appeals against a decision taken by the Department under the provisions of the Planning (Northern Ireland) Order 1991 and transitional arrangements for certain notices and orders made by the Department before the transfer of planning functions.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Planning Act (Northern Ireland) 2011 have been brought into operation by a Commencement Order made before the date of this Order.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.R. No.</i>
Sections 247 and 248	1st December 2011	2011 No. 386 (c.28)
Part 3 (for the purpose of conferring power to make regulations and orders)	1st February 2015	2015 No.25 (c.2)
Part 3 (for all other purposes) (Partially)	1st April 2015	2015 No.25 (c.2)

© Crown copyright 2015

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

£6.00

N6442 02/2015 456442T 19585

ISBN 978-0-337-99612-2



9 780337 996122