
STATUTORY INSTRUMENTS

1978 No. 1048 (N.I. 18)

NORTHERN IRELAND

**The Planning (Amendment)
(Northern Ireland) Order 1978**

Laid before Parliament in draft

Made

25th July 1978

Coming into operation in accordance with Article 1 (2)

At the Court at Buckingham Palace, the 25th day of July 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Citation and commencement

1.—(1) This Order may be cited as the Planning (Amendment) (Northern Ireland) Order 1978 and Part II and the Planning Order may be cited together as the Planning (Northern Ireland) Orders 1972 and 1978.

(2) Article 4 shall come into operation on such day as the head of the Department of the Environment may by order appoint and the remaining provisions of this Order shall come into operation at the expiration of the period of one month from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (b) shall apply to the interpretation of Article 1 and the following provisions of this Order as it applies to the interpretation of a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of the Environment;

“the Planning Order” means the Planning (Northern Ireland) Order 1972 (c).

(a) 1974 c. 28.

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

(c) S.I. 1972/1634 (N.I. 17).

(3) Any expression used in Part II and in the Planning Order has the same meaning in that Part as in that Order.

PART II

PLANNING

Exclusion of compensation in certain cases where planning permission is revoked

3. Where—

- (a) planning permission granted under Part IV of the Planning Order is revoked with the consent of a person entitled to a compensatable estate in the land to which the permission related (in this Article referred to as “the original land”);
- (b) planning permission is granted under that Part on or after the date of the revocation referred to in paragraph (a) in relation to land other than the original land, for development similar to the development permitted by the revoked permission; and
- (c) the permission first referred to in paragraph (b) specifies that it is in substitution for the permission referred to in paragraph (a);

no compensation shall be payable under section 26 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 (a) in respect of the revocation referred to in paragraph (a) to a person who has consented under that paragraph to the revocation.

Control of demolition in conservation areas

4.—(1) This Article applies to all buildings in conservation areas other than—

- (a) listed buildings;
- (b) buildings of a class specified in Article 33 (1) of the Planning Order;
- (c) buildings in relation to which a direction under paragraph (4) is for the time being in force.

(2) A building to which this Article applies shall not be demolished without the consent of the Department.

(3) An application for consent to the demolition of such a building may be made as a separate application or as part of an application for planning permission to redevelop the site of the building, but consent to demolition shall not be taken to have been given as part of planning permission for redevelopment of the site unless the Department, on granting planning permission, states that it includes consent to demolish the building.

(4) The Department may—

- (a) direct that this Article shall not apply to a description of buildings specified in the direction or to an individual building so specified; and
- (b) vary or revoke that direction by a further direction.

(5) Where the Department gives a direction under paragraph (4), it shall—

- (a) if the direction relates to a specified description of buildings, publish a copy of the direction in the Belfast Gazette and in a newspaper circulating in the area in which the buildings are situated; and

(a) 1965 c. 23 (N.I.).

(b) if the direction relates to an individual building, serve a copy of the direction on the owner and the occupier of the building.

(6) The following provisions of the Planning Order shall have effect in relation to buildings to which this Article applies as they have effect in relation to listed buildings—

- Article 32;
- Article 33 (3) and (5);
- Articles 34 and 35;
- Articles 49 and 50;
- Article 65; and
- Article 76,

but regulations made by the Department subject to negative resolution may provide that those provisions shall have effect in relation to buildings to which this Article applies subject to such exceptions and modifications as may be specified in the regulations.

- (7) If this Article ceases to apply to a building—
- (a) any proceedings on or arising out of an application for listed building consent made while this Article applied to the building shall lapse;
 - (b) any listed building consent granted with respect to the building shall also lapse;
 - (c) the cesser shall not affect the liability of any person to be prosecuted and punished for an offence under Article 32 or 49 of the Planning Order committed by him with respect to the building while this Article applied to it.

Grants in relation to conservation areas

5.—(1) The Department may, in relation to any area designated as a conservation area under Article 37 of the Planning Order make grants or loans for the purpose of defraying in whole or in part any expenditure incurred or to be incurred in or in connection with, or with a view to the promotion of, the preservation or enhancement of the character or appearance of the area or any part thereof.

(2) A grant or loan under this Article may be made subject to such conditions as the Department thinks fit.

(3) Any loan under this Article shall be made on such terms as to repayment, payment of interest and otherwise as the Department may with the approval of the Department of Finance determine; and all sums received by the Department by way of interest on, or repayment of, such a loan shall be paid into the Consolidated Fund.

(4) Before making any grant or loan under this Article, the Department shall, unless making it appears to the Department to be a matter of urgency, consult the Historic Buildings Council.

Traffic signs and offences following order under Article 77 of Planning Order

6.—(1) Where an order is made under Article 77 of the Planning Order (extinguishment of right to use vehicle on roads) the Department shall place or cause to be placed on or near the road to which the order relates such traffic signs as are necessary—

- (a) to warn traffic that the road is subject to the restrictions or prohibitions specified in the order;

(b) to indicate the nature and extent of those restrictions or prohibitions.

(2) Any person who uses a vehicle or causes or permits a vehicle to be used in contravention of an order made under Article 77 of that Order shall be guilty of an offence under the Road Traffic Act (Northern Ireland) 1970 (a).

(3) A person guilty of an offence under that Act by virtue of paragraph (2) shall be liable on summary conviction to a fine not exceeding £50.

(4) In this Article “traffic sign” and “vehicle” have the same meanings as in that Act.

Period for service of enforcement notices

7.—(1) For Article 42 (3) of the Planning Order substitute—

“(3) Where an enforcement notice relates to a breach of planning control consisting in—

- (a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over, or under land; or
- (b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or
- (c) the making without planning permission of a change of use of any building to use as a single dwelling-house,

it may be served only within the period of four years from the date of the breach.”.

(2) An enforcement notice shall not be served under the said Article 42 in relation to a breach of planning control which occurred more than four years before the commencement of this Article.

(3) For Article 43 (1) (b) of the Planning Order substitute—

“(b) where, by virtue of Article 42 (3), a notice may be served only within the period of four years from the day of the breach of planning control to which the notice relates, that that period has elapsed at the date of service;

(ba) where a notice does not fall within sub-paragraph (b), that the breach of planning control occurred before the beginning of the period of four years before the commencement of Article 7 of the Planning (Amendment) (Northern Ireland) Order 1978;”

Amendment of Planning Order as to powers of planning appeals commission on appeals

8. At the end of Article 23 (4) of the Planning Order (appeals to planning appeals commission) insert “and may deal with the application as if it had been made to it in the first instance”.

Definition of “road” in Planning Order

9. At the end of the definition of “road” in Article 2 (2) of the Planning Order insert “but includes land in respect of which street planning functions, as defined in the Private Streets Act (Northern Ireland) 1964 (b), have been exercised under section 1 (1) of that Act”.

Construction of references in Planning Order to development plans

10.—(1) Where a development plan has not been adopted for an area, the provisions of the Planning Order specified in paragraph (2) shall have effect in relation to that area as if any reference to the development plan were omitted.

(a) 1970 c. 2 (N.I.).

(b) 1964 c. 27 (N.I.).

(2) Those provisions are the following—

Article 17 (1) (including that Article as applied by Article 23 (6));

Article 29 (1);

Article 42 (1).

Stop notices

11.—(1) For Article 45 (1) to (7) of the Planning Order substitute:—

“(1) Where in respect of any land the Department—

(a) has served an enforcement notice requiring a breach of planning control to be remedied; but

(b) considers it expedient to prevent, before the expiry of the period allowed for compliance with the notice, the carrying out of any activity which is, or is included in, a matter alleged by the notice to constitute the breach,

then, subject to paragraphs (2) to (7B), it may at any time before the notice takes effect serve a further notice (in this Order referred to as a “stop notice”) referring to, and having annexed to it a copy of, the enforcement notice prohibiting the carrying out of that activity on the land, or on any part of it specified in the stop notice.

(2) A stop notice shall not prohibit—

(a) 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;

(b) any person from taking any steps necessary to comply or secure compliance with an enforcement notice.

(3) A stop notice shall not take effect (and so cannot be contravened) until such date as it may specify, being a date not earlier than three nor later than twenty-eight days from the day on which it is first served on any person.

(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 period allowed for compliance with that 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, to be included in the matters alleged by the enforcement notice to constitute a breach of planning control.

(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.

(7) If any person contravenes, or causes or permits the contravention of, a stop notice—

(a) after a site notice has been displayed, or

(b) after a stop notice has been served on him,

then, subject to paragraph (7A), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400; and if the offence is continued after conviction he shall be liable on summary conviction to a further fine not exceeding £50 for each day on which it is continued.

(7A) 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.

(7B) A stop notice shall not be invalid by reason that the enforcement notice to which it relates was not served as required by Article 42 (4) if it is shown that the Department took all such steps as were reasonably practicable to effect proper service.

(7C) Any reference in this Article to the period allowed for compliance with an enforcement notice shall be construed in accordance with Article 44 (6).”.

(2) This Article shall not apply in relation to a stop notice first served before the commencement of this Article.

Compensation for loss arising from stop notices

12.—(1) Article 67 of the Planning Order (compensation for loss due to stop notice) shall, in relation to stop notices first served after the commencement of this Article, have effect subject to the amendments specified in paragraphs (2) to (5).

(2) In paragraph (1) after “estate in” insert “or occupied”.

(3) For paragraph (2) (a) and (b) substitute—

“(a) the enforcement notice is quashed;

(b) the enforcement notice is varied so that the matters alleged to constitute a breach of planning control cease to include one or more of the activities prohibited by the stop notice.”.

(4) Paragraph (3) shall cease to have effect.

(5) After paragraph (5) insert—

“(5A) In the assessment of compensation under this Article, account shall be taken of the extent (if any) to which the claimant’s entitlement is attributable—

(a) to his failure to comply with a notice under Article 104; or

(b) to any mis-statement made by him in response to such a notice.”.

Rights of entry

13.—(1) The following shall be inserted after Article 101 (1) of the Planning Order (rights of entry)—

“(1A) Any member of the planning appeals commission may at any reasonable time enter any land for the purpose of surveying it in connection with the exercise of the functions of the commission under this Order.”.

(2) The following shall be inserted after Article 101 (3) of that Order—

“(3A) Any person duly authorised in writing by the Department may at any reasonable time enter any land for the purpose of displaying a notice in accordance with Article 45 (5) or (6).”.

(3) In Article 102 (1) of that Order—

(a) after “authorised” insert “or permitted”; and

(b) in sub-paragraph (a), after “authority” insert “or of his appointment as a member of the planning appeals commission”.

Extension of power to require information

14.—(1) Article 104 of the Planning Order (information as to estates in land) shall have effect subject to the amendments specified in paragraphs (2) to (5).

(2) In paragraph (1)—

(a) after “may” insert “by notice in writing”;

(b) from “state in writing” onwards substitute “give in writing within twenty-one days after the date on which the notice is served, or such longer time as may be specified in the notice or as the Department may allow, such information as to the matters mentioned in paragraph (1A) as may be specified.”.

(3) After paragraph (1) insert—

“(1A) The matters referred to in paragraph (1) are—

(a) the nature of the estate in the premises of the person on whom the notice is served;

(b) the name and address of any other person known to that person as having an estate in the premises;

(c) the purpose for which the premises are being used;

(d) the time when that use began;

(e) the name and address of any person known to the person on whom the notice is served as having used the premises for that purpose; and

(f) the time when any activities being carried out on the premises began.”.

(4) In paragraph (2) for the words from “having been” to “that information” substitute the words “without reasonable excuse, fails to comply with a notice served on him under paragraph (1)”.

(5) In paragraph (3) for the words “so required” substitute the words “required by a notice under paragraph (1)”.

PART III

PLANNING BLIGHT

Extension of blight provisions to land affected by development schemes

15.—(1) After section 1 (1) (m) of the Planning and Land Compensation Act (Northern Ireland) 1971 (a) (categories of land to which blight provisions apply) insert—

“(n) is land indicated in a development scheme adopted under Article 53 of the Planning (Northern Ireland) Order 1972 as land which may be required for the purposes of any function of a government department, district council or authority possessing compulsory purchase powers.”.

(a) 1971 c. 23 (N.I.).

(2) In section 1 (1) (n) of that Act the reference to a development scheme adopted under Article 53 of the Planning Order includes a reference to—

- (a) a development scheme copies of which have been made available for inspection under Article 53 (1) of that Order;
- (b) proposals under Article 53 (4) of that Order for amending a development scheme.

(3) No blight notice shall be served by virtue of paragraph (2) after the relevant development scheme or proposals have been adopted by the Department (whether in their original form or with amendments).

(4) Where an appropriate authority has served a counter-notice objecting to a blight notice served by virtue of paragraph (2), then, if the relevant development scheme or proposals for amending it are adopted (whether in their original form or with amendments) the appropriate authority may serve on the claimant, in substitution for the counter-notice already served, a further counter-notice specifying different grounds of objection, and section 6 of the said Act of 1971 (reference of objection to the Lands Tribunal) shall, subject to paragraph (5), have effect in relation to the further counter-notice as it has effect in relation to the counter-notice already served.

(5) A further counter-notice under paragraph (4) shall not be served—

- (a) at any time after the end of the period of two months beginning with the date on which the relevant plan or alterations are adopted; or
- (b) if the objection in the counter-notice already served has been withdrawn or the Lands Tribunal has already determined whether or not to uphold that objection.

(6) The Planning and Land Compensation Act (Northern Ireland) 1971 shall have effect as if paragraphs (2) to (5) were included in Part I of that Act.

Minor and consequential amendments of blight provisions

16.—(1) In section 1 (1) (i) and (j) of the Planning and Land Compensation Act (Northern Ireland) 1971 for “statutory undertaker” substitute “authority possessing compulsory purchase powers” and in that section 1 (1) (i) after “plan” insert “adopted under Part III of the Order of 1972”.

(2) In section 5 (2) (g) of that Act for “or (k)” substitute “(k), (m) or (n)”.

(3) In section 10 (1) of that Act, in the definition of “specified descriptions” for “(h)” substitute “(n)”.

Acquisition of other estates in land, etc., following purchase under certain notices

17.—(1) Where (whether before or after the commencement of this Article) a relevant authority acquires a lesser estate than a fee simple in any land under—

(a) section 7 of the Planning and Land Compensation Act (Northern Ireland) 1971; or

(b) Article 74 of the Planning Order,

that authority may purchase (by agreement or otherwise) such estates in the land as it considers appropriate or may make, or apply for, a vesting order in respect of the land under the appropriate statutory provision.

(2) Where, under paragraph (1), an appropriate authority may purchase, otherwise than by agreement, an estate in land, it shall do so under the relevant statutory provision.

(3) In this Article—

“appropriate authority” has the same meaning as in section 10 of the Planning and Land Compensation Act (Northern Ireland) 1971;

“appropriate statutory provision” means Article 54 of the Planning Order or a relevant statutory provision;

“relevant authority” means an appropriate authority or the Department of the Environment or any predecessor in title of that authority or Department;

“relevant statutory provision” has the meaning assigned by section 10 of the Planning and Land Compensation Act (Northern Ireland) 1971.

PART IV

MISCELLANEOUS

“Local authority” in Land Development Values (Compensation) Act (Northern Ireland) 1965

18. In section 43 (1) of the Land Development Values (Compensation) Act (Northern Ireland) 1965 for the definition of “local authority” substitute—

“ ‘local authority’ means a district council;”.

Consequential amendment of s. 60 of Mineral Development Act (Northern Ireland) 1969

19. In section 60 of the Mineral Development Act (Northern Ireland) 1969 (a) (application of Planning Acts to certain mining development on Crown property) for the words “Acts (Northern Ireland) 1931 and 1944” substitute “(Northern Ireland) Orders 1972 and 1978”.

Repeal of Advertising Stations (Rating) Act 1889

20. The Advertising Stations (Rating) Act 1889 (b) (which, so far as unrepealed, has been superseded) is hereby repealed.

N. E. Leigh,
Clerk of the Privy Council.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the planning law in Northern Ireland. Article 3 excludes compensation in certain cases where planning permission is revoked. Article 4 prohibits the demolition of buildings (except listed or, ecclesiastical buildings and certain historic monuments) in conservation areas without consent. Article 5 authorises grants or loans for specified expenditure in those areas. Article 6 relates to traffic signs and offences in connection with orders under Article 77 of the Planning (Northern Ireland) Order 1972. Article 7 allows enforcement notices, subject to exceptions, to be served at any time after a breach of planning control.

Articles 11 and 12 amend the law about stop notices. Article 13 confers rights of entry on members of the planning appeals commission. Article 15 extends “blight” provisions to include land affected by development schemes. Article 17 allows other estates in land to be acquired following the purchase of an estate in the land under a blight or purchase notice.

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