
STATUTORY INSTRUMENTS

1991 No. 1220

The Planning(Northern Ireland) Order 1991

PART VI

ENFORCEMENT

Enforcement notices

Enforcement notices

68.—(1) Where it appears to the Department that there has been a breach of planning control after 25th August 1974 then, subject to this Article, the Department, if it considers it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may issue a notice requiring the breach to be remedied and serve copies of the notice in accordance with paragraph (5).

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

(3) There is a breach of planning control—

- (a) if development has been carried out without the grant of the planning permission required in that behalf in accordance with Part IV; or
- (b) if any conditions or limitations subject to which planning permission was granted have not been complied with.

(4) 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; or
- (d) the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a single dwelling-house;

it may be issued—

- (i) in the case of a failure to comply with any condition or limitation which relates to the carrying out of mining operations, only within the period of four years from the date on which that failure came to the knowledge of the Department;
- (ii) in any other case, only within the period of four years from the date of the breach.

(5) A copy of an enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in the notice as the date on which it is to take effect—

- (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 that land, being an estate which in the opinion of the Department is materially affected by the notice.
- (6) An enforcement notice shall specify the matters alleged to constitute a breach of planning control.
- (7) An enforcement notice shall also specify—
- (a) any steps which are required by the Department to be taken in order to remedy the breach;
 - (b) any such steps as are referred to in paragraph (10) and are required by the Department to be taken.
- (8) An enforcement notice shall specify the period within which any such step as is mentioned in paragraph (7) is to be taken and may specify different periods for the taking of different steps.
- (9) In this Article “steps to be taken in order to remedy the breach” means (according to the particular circumstances of the breach) steps for the purpose—
- (a) of restoring the land to its condition before the development took place; or
 - (b) of securing compliance with the conditions or limitations subject to which planning permission was granted, including—
 - (i) the demolition or alteration of any building or works;
 - (ii) the discontinuance of any use of land; and
 - (iii) the carrying out on land of any building or other operations.
- (10) The steps mentioned in paragraph (7)(b) are steps for the purpose—
- (a) of making the development comply with the terms of any planning permission which has been granted in respect of the land; or
 - (b) of removing or alleviating any injury to amenity which has been caused by the development.
- (11) Where the matters which an enforcement notice alleges to constitute a breach of planning control include development which has involved the making of a deposit of refuse or waste materials on land, the notice may require that the contour of the deposit shall be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.
- (12) If on a complaint by the owner of any land, it appears to a court of summary jurisdiction that the occupier of that land prevents the owner from executing any work which he is required to execute under this Part, the court may order the occupier to permit the execution of the work.
- (13) Subject to Article 69, an enforcement notice shall take effect on a date specified in it.
- (14) The Department may withdraw an enforcement notice (without prejudice to its power to issue another) at any time before it takes effect.
- (15) If it does so the Department shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.
- (16) Where—
- (a) an enforcement notice has been issued in respect of development consisting of the erection of a building or the carrying out of works without the grant of planning permission; and
 - (b) the notice has required the taking of steps for a purpose mentioned in paragraph (10)(b); and
 - (c) the steps have been taken,

for the purposes of this Order planning permission for the retention of the building or works as they are as a result of compliance with the notice shall be deemed to have been granted on an application for such permission made to the Department.

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 in writing; and
- (b) continues to occupy the land as aforesaid when the appeal is brought.

(3) An appeal may be brought on any of the following grounds—

- (a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged;
- (b) that the matters alleged in the notice do not constitute a breach of planning control;
- (c) that the breach of planning control alleged in the notice has not taken place;
- (d) in the case of a notice which, by virtue of Article 68(4), may be issued only within the period of four years specified in that paragraph, that that period had elapsed at the date when the notice was issued;
- (e) in the case of a notice not falling within sub-paragraph (d), that the breach of planning control alleged by the notice occurred before 26th August 1974;
- (f) that copies of the enforcement notice were not served as required by Article 68(5);
- (g) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or to achieve a purpose specified in Article 68(10);
- (h) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed.

(4) An appeal under this Article shall be made by notice in writing to the planning appeals commission, and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(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 Article 72(5) 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.

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 informality, 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.

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 for the development to which the enforcement notice relates or for part of that development or for the development of part of the land to which the enforcement notice relates;
- (b) discharge any condition or limitation subject to which planning permission was granted.

(2) 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 any planning permission granted under paragraph (1) may—

- (a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;
- (b) be granted subject to such conditions as the planning appeals commission thinks fit;

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.

(3) 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 for the development to which the notice relates 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.

Penalties for non-compliance with enforcement notice

72.—(1) Subject to this Article, where a copy of an enforcement notice 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 notice relates, then, if any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken within the period allowed for compliance with the notice, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If a person against whom proceedings are brought under paragraph (1) has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of the land, he shall, upon 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 this Article referred to as the "subsequent owner") brought before the court in the proceedings.

(3) If after it has been proved that any steps required by the enforcement notice have not been taken within the period allowed for compliance with the notice, 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 enforcement notice, shall be acquitted of the offence.

(4) If, after a person has been convicted under paragraphs (1) to (3), he does not as soon as practicable do everything in his power to secure compliance with the enforcement notice, 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 of the requirements of the enforcement notice (other than the discontinuance of a use of land) remain unfulfilled.

(5) Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person uses the land or causes or permits it to be used or carries out those operations or causes or permits them to be carried out, in contravention of the notice—

- (a) he 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
- (b) if the use is continued after the conviction, 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.

(6) Any reference in this Article and Articles 73 and 74 to the period allowed for compliance with an enforcement notice is a reference to the period specified in the notice for compliance therewith or such extended period as may be allowed by the Department for compliance with the notice.

Power to stop further development pending proceedings on enforcement notice

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

- (a) has served a copy of 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 the provisions of this Article, it may at any time before the notice takes effect 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, 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 3 nor later than 28 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 (8), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; and if the offence is continued after conviction he shall be liable on summary conviction to a further fine not exceeding one-tenth of level 5 on the standard scale for each day on which it is continued.

(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 68(5) if it is shown that the Department took all such steps as were reasonably practicable to effect proper service.

Execution and cost of works required by enforcement notice

74.—(1) If, within the period allowed for compliance with an enforcement notice, any steps which by virtue of Article 68(7)(a) are required by the notice to be taken (other than the discontinuance of a use of land) have not been taken, a person authorised in writing by the Department may enter upon 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.

(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.

Effect of planning permission on enforcement notice

75.—(1) If, after the service of a copy of an enforcement notice, planning permission is granted for the retention on land of buildings or works, or for the continuance of the use of land, to which the enforcement notice relates, the enforcement notice shall cease to have effect in so far as it requires steps to be taken for the demolition or alteration of those buildings or works or the discontinuance of that use, as the case may be.

(2) If the planning permission granted as mentioned in paragraph

(1) is granted so as to permit the retention of buildings or works, or the continuance of a use of land, without complying with some condition subject to which a previous planning permission was granted, the enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.

(3) Paragraphs (1) and (2) shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the enforcement notice before the relevant provision of the enforcement notice ceased to have effect.

Enforcement notice to have effect against subsequent development

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

- (a) the completion, demolition 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 demolished 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 demolished 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 demolished or altered in compliance with the notice, and
- (b) the Department proposes, under Article 74(1), to take any steps required by the enforcement notice for the demolition 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 demolished 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 Article 72(1) to (4) for failure to take any steps required to be taken by an enforcement notice by way of demolition or alteration of what has been so reinstated or restored.

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
- (b) requiring such steps as may be specified in the notice to be taken within such period as may be so specified—
 - (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.

(4) Subject to Article 78, a listed building enforcement notice shall take effect on a date specified in it.

(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 68(5), (12), (14) and (15) and 72 and 74 shall, with any necessary modifications, apply to a listed building enforcement notice as they apply to an enforcement notice.

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—

- (a) that the matters alleged to constitute a contravention of Article 44 do not involve such a contravention;
- (b) that the contravention of that Article alleged in the notice has not taken place;
- (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 68(5) 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 in writing; 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.

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.

(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 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 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.

(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.

(11) If any person appeals against a hazardous substances contravention notice, the notice shall 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.

Trees

Enforcement of duties as to replacement of trees

82.—(1) If it appears to the Department that 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, at any time within four years from the date of the alleged failure to comply with the said conditions, issue a notice requiring a tree or trees of such size and species as may be specified in the notice to be planted within such period as may be so specified.

(2) Articles 68(5), (12), (14) and (15) and 72 and 74 shall with any necessary modifications apply to a notice under this Article as they apply to an enforcement notice.

(3) Subject to the following provisions of this Article, a notice under this Article shall take effect on a date specified in it.

(4) A person having an estate in the land to which a notice under this Article relates may, at any time before the date specified in the notice as the date on which it is to take effect, by notice in writing appeal to the planning appeals commission.

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

(6) Article 70 shall, with any necessary modifications, apply to an appeal against a notice under this Article as it applies to an appeal against an enforcement notice.

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.

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 level 3 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.