

**PLANNING AMENDMENT
(NORTHERN IRELAND) ORDER 2003**

S.I. 2003 No. 430 (N.I. 8)

EXPLANATORY MEMORANDUM

COMMENTARY ON ARTICLES

Other changes relating to enforcement

Article 6 - Time limits on enforcement action

This Article simplifies the rules regarding the time period within which action may be taken in respect of breaches of planning control, by establishing two different limitation periods for enforcement action: -

- *The four year rule:* four years is the time allowed to the Department to take enforcement action where the breach comprises *either* operational development (the carrying out of unauthorised building, engineering, mining or other operations), or the *change of use to use as a single dwelling house*.
- *The ten-year rule:* this is the time allowed for all other breaches of planning control, and represents a significant change from the current position. Under the Planning (NI) Order 1991, an unauthorised change of use (other than to use as a single dwelling house) was immune from enforcement action only if it had been undertaken before 26 August 1974. Once this new provision comes into operation, immunity from enforcement action will automatically be conferred on all breaches of planning control that occurred between 26 August 1974 and the date ten years prior to the Order becoming law. Thereafter, immunity will accrue on a rolling basis.

Article 7 - Enforcement notices

This Article reduces the legal complexity of the provisions that apply to the drafting, issue and service of enforcement notices, by minimising the possibility of some minor drafting error, legal or technical deficiency resulting in a notice being quashed. The notice still has to be sufficiently clear to enable any recipient to understand exactly what unauthorised use/work is alleged and what he/she is required to do to remedy this. The Article provides that an enforcement notice may be served on the current owner or occupier of the land to which the notice relates and on any other person with an estate in the land. The provisions provide the Department with flexibility to require only partial remedy of a breach of planning control where, at the time of enforcement, a total remedy is not considered necessary. This provision also allows for the withdrawal or variation of an enforcement notice, without prejudice to the Department's power to issue a further notice.

Article 8 - Appeal against enforcement notice

This Article specifies revised grounds on which an appeal against an enforcement notice can be made and the procedures for making a valid appeal. It also provides that if an appeal against an enforcement notice includes a ground of appeal 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, it shall constitute a deemed planning application. The Article also requires the planning appeals commission to notify the appellant of the amount of the appropriate planning application fee and

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to specify the period within which it must be paid. If the fee is not paid within that period then the appeal on the planning merits will lapse and the commission will be barred from considering or determining the deemed planning application.

Article 9 - Offence where enforcement notice not complied with

This Article strengthens and clarifies existing provisions concerning offences for not complying with an enforcement notice. The Article provides for an increase in the maximum level of fine, on summary conviction, from £5,000 to £30,000. It also allows, for the first time, for a person to be convicted on indictment for this type of offence. The courts when determining the level of fine shall, in particular, have regard to any financial benefit, which has accrued or appears likely to have accrued, in consequence of the offence. The Article also makes it clear that a person found guilty of an offence, and who continues not to comply with a notice, may be guilty of a further offence, and subsequently, of still further offences until there is compliance with a notice.

Article 10 - Execution of works required by enforcement notice

This Article strengthens the power of the Department to enter land and carry out works to ensure compliance with an enforcement notice. It also makes it an offence, punishable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000), to wilfully obstruct anyone authorised to carry out those works.

Article 11 - Stop notices

This Article strengthens and clarifies the current stop notice provisions by providing that a stop notice has immediate effect unless the Department states otherwise. To ensure parity with the increased penalties for contravention of an enforcement notice, this Article provides that:

- until the notice is complied with, further offences may be committed;
- the maximum level of fine for contravention of a stop notice is increased from £5,000 to £30,000 on summary conviction;
- statute allows, for the first time, for a person to be convicted on indictment for this type of offence; and,
- the courts are required to take account of any benefits accrued or which appear likely to accrue as a result of the offence.

In certain circumstances compensation may be payable when a stop notice is quashed or withdrawn. Paragraph (2) of the Article provides that no compensation is payable in respect of a stop notice for any activity which, at the time when the notice is in force, constitutes or contributes to a breach of planning control or, in respect of any loss or damage if such loss or damage could have been avoided had information required under a contravention notice (see Article 3), or Article 125 of the 1991 Order, been provided.

Article 12 - Certificate of lawful use or development

Under this Article, a person is able to apply to the Department for a certificate to ascertain whether an existing use of buildings or other land, or operational development, or some activity in breach of a planning condition, is lawful. In the case of a proposed use or operational development, the grant of a certificate establishes the lawfulness of the proposed use or operational development. The onus for producing sufficient evidence to warrant the granting of a certificate rests firmly on the applicant. There is a right of appeal against a refusal or failure to give a decision. Any person who makes a false or misleading statement in respect of procuring a certificate will, on summary conviction, be liable to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

Article 13 - Rights of entry for enforcement purposes

This Article allows officers of the Department to enter any land at all reasonable hours, on production of appropriate authority, for the purposes of investigating any alleged breach of planning control on that land or on immediately adjoining land. The provisions of this Article are more closely tailored to the Department's needs in obtaining information, preparatory to taking formal enforcement action. When taken together with the new "planning contravention

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notice" (for which Article 3 provides) the Department has comprehensive powers under Part VI of the 1991 Order to obtain essential information about any suspected or actual breach of control.

Article 14 - Listed buildings

This Article provides for the following possible penalties for a person found guilty of an offence involving demolition, or alteration or extension of a listed building affecting its character:

- to be given a term of imprisonment not exceeding 6 months or a fine not exceeding £30,000 or both; or
- imprisonment for not more than 2 years, or a fine. The courts when determining either level of fine shall, in particular, have regard to any financial benefit, which has accrued or appears likely to be accrued, in consequence of the offence.

Article 15 - Hazardous substances

This Article provides that a person found guilty of an offence relating to hazardous substances shall be liable on summary conviction to a fine not exceeding £30,000 or, on conviction on indictment, to a fine. The courts when determining either level of fine shall, in particular, have regard to any financial benefit, which has accrued or appears likely to be accrued, in consequence of the offence. It also allows for hazardous substances contravention notices to require only a partial remedy, if this is considered appropriate.

Article 16 - Replacement of trees

This Article replaces Article 82 of the 1991 Order and provides for revised enforcement measures in respect of the protection of trees that are subject to a Tree Preservation Orders (TPO) as follows:

- a new power for the Department to enforce the duty to replace trees subject to a TPO;
- sets out specific grounds of appeal against enforcement notices in relation to trees;
- a power for the Department to enter onto land to replant trees subject to a TPO, and to recover any costs incurred as a civil debt;
- a new duty on an owner to replace trees that are removed in a Conservation Area.

Article 17 – Alteration in penalties

This Article brings the level of three fines in the Planning (Northern Ireland) Order 1991 into line with the level of fines elsewhere in Great Britain for similar offences.