



www.planningni.gov.uk

The Planning Reform (Northern Ireland) Order And Explanatory Memorandum

Public Consultation Document

October 2005



An Agency within the Department of the

Environment

www.doeni.gov.uk



INVESTORS IN PEOPLE

Contents	Page
Introduction	4
Draft Planning Reform (Northern Ireland) Order	7
Explanatory Memorandum	67
Annex 1 List of consultees	75

Introduction

On 19 August 2004, the Department published a consultation paper "Reforming Planning, Proposals to Amend Primary Planning Legislation in Northern Ireland". The majority of the proposals were broadly accepted by those who responded to the consultation.

Following the consultation exercise a draft Order in Council entitled "The Planning Reform (Northern Ireland) Order 2005" and an Explanatory Memorandum have been prepared by the Department.

These documents along with a summary of the responses to the policy consultation can be found by following the *Public Consultation Documents* link on the Planning Service web site at www.planningni.gov.uk. Copies of all documents and copies in alternative formats, if desired, are available from the following address: -

Warren Buchanan
Planning Service Headquarters
Consultation on draft Planning Reform (NI) Order
Policy and Legislation
3rd Floor
Millennium House
Great Victoria Street
BELFAST
BT2 7BN

Copies may also be requested by Telephone (028) 90416966, Fax (028) 90416960 or Textphone (028) 9054 0642.

Draft Order in Council

This Order includes a number of measures relating to the Department's development control, enforcement, and development plan preparation functions, including commitments made in the Department's Modernising Planning Processes Implementation Plan published in February 2003. It also fulfils a long-standing commitment to end the Crown's immunity from the planning system.

The primary objectives are to better manage and improve existing planning processes, particularly in relation to planning applications and development plans; contribute to the improved design and accessibility of the built environment; enhance protection of the built and natural environment, including conservation areas; introduce stronger controls over mineral development; strengthen enforcement powers by introducing temporary stop notices and increased fines for unauthorised advertisements; enhance community involvement in the planning system by providing more flexible, efficient and less adversarial procedures for considering objections to development plans and promote the achievement of sustainable development.

Explanatory Memorandum

The Explanatory Memorandum which accompanies the draft Order is intended to explain and clarify what the Department's intentions are in relation to the draft Order.

Consultation

The purpose of this consultation is to seek the views of interested parties on the draft Order and Explanatory Memorandum.

Please note that the consultation period will close at 4:00pm on **23rd DECEMBER 2005**

There are a number of ways you can respond: -

1. by post to:

Irene Kennedy
Planning Service Headquarters
Consultation on draft Planning Reform (NI) Order
Policy and Legislation
3rd Floor
Millennium House
Great Victoria Street
BELFAST
BT2 7BN

2. by Fax to:

Fax number: (028) 90416960

3. by e-mail to:

Reformingplanning@doeni.gov.uk

The consultation document can also be found by following the *Public Consultation Documents* link on the Planning Service web site at www.planningni.gov.uk or on the Northern Ireland Departments Consultation register website at www.consultationni.gov.uk .

We look forward to receiving comments and views concerning the proposals in this consultation paper and if there are any other measures that you believe will help you participate in this consultation process please do not hesitate to contact us at the above address.

Freedom of Information Act 2000 – Confidentiality of Consultations

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.**

The Freedom of Information Act gives the public a right of access to any information held by a public authority, subject to specific exemptions. This right of access to information includes information provided to us in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except where one or more exemptions apply. The Lord Chancellor's Code of Practice on the Freedom of Information Act 2000 provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: www.informationcommissioner.gov.uk)

**PROPOSAL FOR A DRAFT ORDER IN COUNCIL UNDER PARAGRAPH
1(1) OF THE SCHEDULE TO THE NORTHERN IRELAND ACT 2000**

DRAFT STATUTORY INSTRUMENTS

2005 No. (N.I.)

NORTHERN IRELAND

The Planning Reform (Northern Ireland) Order 2005

Made - - - - - 2005

*Coming into operation in accordance with Article
1(2) to (5)*

ARRANGEMENT OF ORDER

PART I

INTRODUCTORY

1. Title and commencement
2. Interpretation

PART II

PLANNING REFORM

3. Statement of community involvement
4. Status of development plans
5. Independent examination of development plans
6. Sustainable development
7. Development to include certain internal operations
8. Statements of principles of design and accessibility
9. Power to decline to determine applications
10. Duration of planning permission and listed building consent
11. Removal of discretion to extend time for bringing appeal
12. Conservation areas
13. Temporary stop notice
14. Increase in fines for unlawful advertisements
15. Procedure of Planning Appeals Commission
16. Fees and charges

PART III

CORRECTION OF ERRORS

17. Correction of errors in decision documents
18. Correction notice
19. Effect of correction
20. Supplementary

PART IV

CROWN APPLICATION

21. Crown application
22. National security
23. Trees in conservation areas: acts of Crown
24. Subordinate legislation
25. Crown application: transitional

PART V

MINERAL PLANNING PERMISSIONS

26. Mineral planning permissions

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

27. Amendments and repeals

SCHEDULES:

Schedule 1	Crown application
Schedule 2	Crown application - transitional provisions
Part 1	Planning permission
Part 2	Listed buildings consent and conservation area consent
Part 3	Hazardous substances
Schedule 3	Provisions to be inserted as Schedules 1A and 1B to the principal Order
Schedule 4	Amendments
Schedule 5	Repeals

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) 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

Title and commencement

1.—(1) This Order may be cited as the Planning Reform (Northern Ireland) Order 2005.

(2) This Part shall come into operation on the expiration of 7 days from the day on which this Order is made.

(3) The following provisions shall come into operation on such day or days as the Department may by order appoint—

- (a) Articles 3 to 8;
- (b) Article 15;
- (c) Article 27(2) and Schedule 5 so far as relating to section 60 of the Mineral Development Act (Northern Ireland) 1969 (NI 35), the principal Order, the Further Education (Northern Ireland) Order 1997 (NI 15) and the Planning (Amendment) (Northern Ireland) Order 2003 (NI 8);
- (d) Parts III and IV.

(4) The remaining provisions of this Order shall come into operation on the expiration of one month from the day on which this Order is made.

(5) An order under paragraph (3) may contain such transitional or saving provisions as appear to the Department to be necessary or expedient.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the principal Order” means the Planning (Northern Ireland) Order 1991 (NI 11);

“the Department” means the Department of the Environment;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) Words and expressions used in this Order and in the principal Order have the same meaning in this Order as they have in that Order.

PART II

PLANNING REFORM

Statement of community involvement

3. After Article 3 of the principal Order insert—

“Statement of community involvement

3A.—(1) The Department shall prepare a statement of community involvement.

(2) The statement of community involvement is a statement of the Department’s policy as to the involvement in the exercise of the Department’s functions under Article 4 and Part IV of persons who appear to the Department to have an interest in matters relating to development in the area in which they live.”.

Status of development plans

4.—(1) In Article 4 of the principal Order (development plans), after paragraph (2) insert—

“(2A) Where, in making any determination under this Order, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.”.

(2) Article 30 of the Planning (Amendment) (Northern Ireland) Order 2003 (NI 8) (status of development plans) ceases to have effect.

Independent examination of development plans

5.—(1) For Article 7 of the principal Order (inquiries relating to development plans) substitute—

“Independent examination

7.—(1) The Department may cause an independent examination to be carried out by the planning appeals commission for the purpose of

considering objections to a development plan or to the alteration, repeal or replacement of a development plan.

(2) Any person who makes objections to a development plan or to the alteration, repeal or replacement of a development plan shall, if he so requests, be given the opportunity to appear before and be heard by the planning appeals commission.”.

(2) In Article 8 of the principal Order (adoption of development plan by Department), in paragraph (1) for “a public local inquiry” substitute “an independent examination”.

(3) In Article 111 of the principal Order (procedure of planning appeals commission)—

(a) in paragraph (2), after “inquiry” wherever that word occurs, insert “, independent examination”;

(b) in paragraph (6)—

(i) for “an inquiry” substitute “an inquiry or independent examination”;

(ii) for “or inquiry” substitute “, inquiry or independent examination”.

Sustainable development

6. In Part III of the principal Order, after Article 10 insert—

“Sustainable development

10A.—(1) Where the Department or the planning appeals commission exercises any function under this Part, the Department or, as the case may be, the commission shall exercise that function with the objective of contributing to the achievement of sustainable development.

(2) For the purposes of paragraph (1) the Department and the commission shall have regard to policies and advice contained in guidance issued by—

(a) the Department;

(b) the Department for Regional Development.”.

Development to include certain internal operations

7.—(1) In Article 11 of the principal Order (meaning of “development”), after paragraph (2) insert—

“(2A) The Department may in a development order specify any circumstances or description of circumstances in which paragraph (2) does not apply to operations mentioned in sub-paragraph (a) of that paragraph which have the effect of increasing the gross floor space of the building by such amount or percentage amount as is so specified.”.

(2) This paragraph applies if—

(a) Article 11(2) of the principal Order is disapplied in respect of any operations by virtue of a development order under Article 11(2A) of that Order,

PART II

- (b) at the date the development order comes into operation a certificate under Article 83B of the principal Order (certificate of lawfulness of proposed use or development) is in force in respect of the operations, and
 - (c) before that date no such operations have begun.
- (3) If paragraph (2) applies the certificate under Article 83B of the principal Order is of no effect.
- (4) A development order made for the purposes of Article 11(2A) of the principal Order does not affect any operations begun before it is made.

Statements of principles of design and accessibility

8.—(1) In Article 20 of the principal Order (form and content of planning applications), after paragraph (2) insert—

“(2A) A development order shall require an application for planning permission of such description as is specified in the order to be accompanied by such of the following as is so specified—

- (a) a statement about the design principles and concepts that have been applied to the development;
- (b) a statement about how issues relating to access to the development have been dealt with.

(2B) The form and content of a statement mentioned in paragraph (2A) is such as is required by the development order.”.

(2) In paragraph 1 of Schedule 1 to the principal Order (applications for listed buildings consent), after sub-paragraph (1) insert—

“(1A) Regulations shall require an application for listed building consent of such description as is prescribed to be accompanied by such of the following as is prescribed—

- (a) a statement about the design principles and concepts that have been applied to the works in relation to which the application is made;
- (b) a statement about how issues relating to access to the building have been dealt with.

(1B) The form and content of a statement mentioned in sub-paragraph (1A) is such as is prescribed.”.

(3) Article 26 of the principal Order ceases to have effect.

Power to decline to determine applications

9.—(1) For Article 25A of the principal Order (power of Department to decline to determine applications) substitute—

“Power to decline to determine subsequent application

25A.—(1) The Department may decline to determine a relevant application if—

- (a) any of the conditions in paragraphs (2) to (4) is satisfied, and

- (b) the Department thinks there has been no significant change in the relevant considerations since the relevant event.
- (2) The condition is that in the period of 2 years ending with the date on which the application mentioned in paragraph (1) is received the Department has refused a similar application under Article 31.
- (3) The condition is that in that period the planning appeals commission has dismissed an appeal—
 - (a) against the refusal of a similar application, or
 - (b) under Article 33 in respect of a similar application.
- (4) The condition is that—
 - (a) in that period the Department has refused more than one similar application, and
 - (b) there has been no appeal to the planning appeals commission against any such refusal.
- (5) A relevant application is an application for planning permission for the development of any land.
- (6) The relevant considerations are—
 - (a) the development plan so far as material to the application;
 - (b) any other material considerations.
- (7) The relevant event is—
 - (a) for the purposes of paragraphs (2) and (4) the refusal of the similar application;
 - (b) for the purposes of paragraph (3) the dismissal of the appeal.
- (8) An application for planning permission is similar to another application if (and only if) the Department thinks that the development and the land to which the applications relate are the same or substantially the same.

Power to decline to determine overlapping application

- 25AA.—(1) The Department may decline to determine an application for planning permission for the development of any land which is made at a time when any of the conditions in paragraphs (2) to (4) applies in relation to a similar application.
- (2) The condition is that a similar application is under consideration by the Department and the determination period for that application has not expired.
 - (3) The condition is that a similar application is under consideration by—
 - (a) the Department in pursuance of Article 31; or
 - (b) the planning appeals commission on an appeal under Article 32 or 33,

PART II

and the Department or, as the case may be, the planning appeals commission, has not issued its decision.

- (4) The condition is that a similar application—
 - (a) has been granted by the Department,
 - (b) has been refused by the Department, or
 - (c) has not been determined by the Department within the determination period,

and the time within which an appeal could be made to the planning appeals commission under Article 32 or 33 has not expired.

(5) An application for planning permission is similar to another application if (and only if) the Department thinks that the development and the land to which the applications relate are the same or substantially the same.

- (6) The determination period is—
 - (a) the period specified by the development order for the determination of the application, or
 - (b) such longer period as the applicant and the Department have agreed for the determination of the application.”.

(2) In Article 33(c) of the principal Order (appeal in default of planning decision), after “25A” insert “or 25AA”.

(3) After paragraph 4 of Schedule 1 to the principal Order (determination of applications for listed building consent) insert—

“Power to decline to determine application

Power to decline to determine subsequent application

4A.—(1) The Department may decline to determine an application for a relevant consent if—

- (a) one or more of the conditions in sub-paragraphs (2) to (4) is satisfied, and
- (b) the Department thinks there has been no significant change in any material considerations since the relevant event.

(2) The condition is that in the period of 2 years ending with the date on which the application mentioned in sub-paragraph (1) is received the Department has refused a similar application made under paragraph 1.

(3) The condition is that in that period the planning appeals commission has dismissed an appeal—

- (a) against the refusal of a similar application, or
- (b) under paragraph 8 in respect of a similar application.

(4) The condition is that—

- (a) in that period the Department has refused more than one similar application, and

(b) there has been no appeal to the planning appeals commission against any such refusal.

(5) Relevant consent is—

- (a) listed building consent, or
- (b) consent under Article 51 (conservation area consent).

(6) The relevant event is—

- (a) for the purposes of sub-paragraphs (2) and (4) the refusal of the similar application;
- (b) for the purposes of sub-paragraph (3) the dismissal of the appeal.

(7) An application for relevant consent is similar to another application if (and only if) the Department thinks that the building and works to which the applications relate are the same or substantially the same.

(8) For the purposes of an application for consent under Article 51 (conservation area consent) a reference to a provision of this Order is a reference to that provision as excepted or modified by regulations under Article 51(5).

Power to decline to determine overlapping application

4B.—(1) The Department may decline to determine an application for a relevant consent which is made at a time when any of the conditions in sub-paragraphs (2) to (4) applies in relation to a similar application.

(2) The condition is that a similar application is under consideration by the Department and the determination period for that application has not expired.

(3) The condition is that a similar application is under consideration by the planning appeals commission on an appeal under paragraph 7 or 8 and the commission has not issued its decision.

(4) The condition is that a similar application—

- (a) has been granted by the Department,
- (b) has been refused by the Department, or
- (c) has not been determined by the Department within the determination period,

and the time within which an appeal could be made to the planning appeals commission under paragraph 7 or 8 has not expired.

(5) Relevant consent is—

- (a) listed building consent, or
- (b) consent under Article 51 (conservation area consent).

(6) An application for relevant consent is similar to another application if (and only if) the Department thinks that the building and works to which the applications relate are the same or substantially the same.

(7) The determination period is—

- (a) the period prescribed for the determination of the application, or

PART II

(b) such longer period as the applicant and the Department have agreed for the determination of the application.

(8) For the purposes of an application for consent under Article 51 (conservation area consent) a reference to a provision of this Order is a reference to that provision as excepted or modified by regulations under Article 51(5).”.

(4) In paragraph 8 of Schedule 1 to the principal Order (appeal in default of planning decision) after “decision on the application” insert “or gives notice to the applicant that it has exercised its power under paragraph 4A or 4B to decline to determine the application”.

(5) This Article has effect only in relation to applications made under the principal Order which are received by the Department after the coming into operation of this Article.

Duration of planning permission and listed building consent

10.—(1) In Article 28 of the principal Order (permission to develop land without compliance with conditions previously attached), after paragraph (4) add—

“(5) Planning permission shall not be granted under this Article to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which—

(a) a development must be begun;

(b) an application for approval of reserved matters (within the meaning of Article 35) must be made.”.

(2) In paragraph 5 of Schedule 1 to that Order (listed building consent to execute works without compliance with conditions previously attached), after sub-paragraph (4) add—

“(5) Listed building consent shall not be granted under this paragraph to the extent that it has effect to change a condition subject to which a previous listed building consent was granted by extending the time limit within which the works must be begun.”.

(3) This Article has effect only in relation to applications for planning permission, listed building consent or consent under Article 51 of the principal Order (conservation area consent) which are received by the Department after the coming into operation of this Article.

Removal of discretion to extend time for bringing appeal

11. In Article 32 of the principal Order (appeals), in paragraph (3) the words “or such longer period as the commission may allow” shall cease to have effect.

Conservation areas

12. In Article 50 of the principal Order (conservation areas), for paragraph (3) substitute—

“(3) Subject to paragraph (3A), before making, varying or cancelling a designation under this Article, the Department shall consult with—

- (a) the Historic Buildings Council;
- (b) any appropriate district council;
- (c) such other persons or bodies as may be prescribed.

(3A) A designation under this Article may be made without consulting the persons or bodies mentioned in paragraph (3)(c), but a designation made without such consultation shall only have effect for a period of 6 months beginning on the date on which the designation was made.”.

Temporary stop notice

13.—(1) After Article 67D of the principal Order insert—

“Temporary stop notices

Temporary stop notice

67E.—(1) This Article applies if the Department thinks—

- (a) that there has been a breach of planning control in relation to any land, and
- (b) that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.

(2) The Department may issue a temporary stop notice.

(3) The notice shall be in writing and shall—

- (a) specify the activity which the Department thinks amounts to the breach;
- (b) prohibit the carrying on of the activity (or of so much of the activity as is specified in the notice);
- (c) set out the Department’s reasons for issuing the notice.

(4) A temporary stop notice may be served on any of the following—

- (a) the person who the Department thinks is carrying on the activity;
- (b) a person who the Department thinks is an occupier of the land;
- (c) a person who the Department thinks has an estate in the land.

(5) The Department shall display on the land—

- (a) a copy of the notice;
- (b) a statement of the effect of the notice and of Article 67G.

(6) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of paragraph (5).

(7) A temporary stop notice ceases to have effect—

- (a) at the end of the period of 28 days starting on the day the copy notice is so displayed,
- (b) at the end of such shorter period starting on that day as is specified in the notice, or
- (c) if it is withdrawn by the Department.

Temporary stop notice: restrictions

67F.—(1) A temporary stop notice does not prohibit—

- (a) any person from continuing to use any building, caravan or other structure situated on land to which the temporary stop notice relates as his permanent residence whether as owner, occupier, tenant, patient, guest or otherwise,
- (b) the carrying out of an activity of such description or in such circumstances as is prescribed.

(2) A temporary stop notice does not prohibit the carrying out of any activity which has been carried out (whether continuously or not) for a period of 4 years ending with the day on which the copy of the notice is first displayed as mentioned in Article 67E(6).

(3) Paragraph (2) does not prevent a temporary stop notice prohibiting—

- (a) activity consisting of or incidental to building, engineering, mining or other operations, or
- (b) the deposit of refuse or waste materials.

(4) For the purposes of paragraph (2) any period during which the activity is authorised by planning permission shall be ignored.

(5) A second or subsequent temporary stop notice shall not be issued in respect of the same activity unless the Department has first taken some other enforcement action in relation to the breach of planning control which is constituted by the activity.

(6) In paragraph (5) enforcement action includes obtaining the grant of an injunction under Article 76B.

Temporary stop notice: offences

67G.—(1) A person commits an offence if he contravenes a temporary stop notice—

- (a) which has been served on him, or
- (b) a copy of which has been displayed in accordance with Article 67E(5).

(2) Contravention of a temporary stop notice includes causing or permitting the contravention of the notice.

(3) An offence under this Article may be charged by reference to a day or a longer period of time.

(4) A person may be convicted of more than one such offence in relation to the same temporary stop notice by reference to different days or periods of time.

(5) A person does not commit an offence under this Article if he proves—

- (a) that the temporary stop notice was not served on him, and

(b) that he did not know, and could not reasonably have been expected to know, of its existence.

(6) A person convicted of an offence under this Article is liable—

(a) on summary conviction, to a fine not exceeding £30,000;

(b) on conviction on indictment, to a fine.

(7) In determining the amount of the fine the court shall have regard in particular to any financial benefit which has accrued or has appeared to accrue to the person convicted in consequence of the offence.”.

(2) After Article 67A of the Planning (Northern Ireland) Order 1972 (NI 17) insert—

“Compensation for loss due to temporary stop notice

67B.—(1) This Article applies if and only if a temporary stop notice is issued and at least one of the following sub-paragraphs applies—

(a) the activity which is specified in the notice is authorised by planning permission or a development order;

(b) a certificate in respect of the activity is issued under Article 83A of the Planning Order or granted under that Article by virtue of Article 83E of that Order;

(c) the Department withdraws the notice.

(2) Paragraph (1)(a) does not apply if the planning permission is granted on or after the date on which a copy of the notice is first displayed as mentioned in Article 67E(6) of the Planning Order.

(3) Paragraph (1)(c) does not apply if the notice is withdrawn following the grant of planning permission as mentioned in paragraph (2).

(4) A person who at the time the notice is served has an estate in the land to which the notice relates is entitled to be compensated by the Department in respect of any loss or damage directly attributable to the prohibition effected by the notice.

(5) A claim for compensation under this Article shall be made to the Department within the time and in the manner specified by a development order.

(6) The loss or damage in respect of which compensation is payable under this Article in respect of a prohibition shall include a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.

(7) No compensation is payable under this Article—

(a) in respect of the prohibition in a temporary stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or

(b) in the case of a claimant who was required to provide information under Article 67C or 125 of the Planning Order in respect of any loss or damage suffered by him which could have been avoided if

he had provided the information or had otherwise co-operated with the Department when responding to the notice.

(8) Any question of disputed compensation under this Article shall be determined by the Lands Tribunal.”.

(3) In Article 124 of the principal Order (planning register), in paragraph (1) after sub-paragraph (m) add—

“(n) temporary stop notices issued under Article 67E;”.

Increase in fines for unlawful advertisements

14.—(1) In Article 84 of the principal Order (enforcement of advertisement control) in paragraph (2) for “level 3” substitute “level 4”.

(2) Nothing in this Article affects the punishment for an offence committed before the coming into operation of this Article.

Procedure of Planning Appeals Commission

15.—(1) Article 111 of the principal Order (procedure of appeals commission) shall be amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) after “member” insert “or members”;

(b) in sub-paragraph (b)—

(i) after “member” insert “or members”;

(ii) for “him” substitute “the member or members”.

(3) In paragraph (2)—

(a) in sub-paragraph (a) after “member” insert “or members”;

(b) in sub-paragraph (b)—

(i) after “member” insert “or members”;

(ii) for “him” substitute “the member or members”.

(4) For paragraph (5A) substitute—

“(5A) Rules under paragraph (5) which provide for the taking of any decision may, in particular, provide for that decision to be taken—

(a) by a panel of not fewer than 4 commissioners; or

(b) by a single commissioner.”.

Fees and charges

16. For Article 127 of the principal Order (fees for planning applications) substitute—

“Fees and charges

127.—(1) The Department may by regulations make such provision as it thinks fit for the payment of a charge or fee of the prescribed amount in respect of—

(a) the performance by the Department of any function it has;

(b) anything done by the Department which is calculated to facilitate or is conducive or incidental to the performance of any such function.

(2) The Office of the First Minister and deputy First Minister may by regulations make such provision as it thinks fit for the payment of a charge or fee of the prescribed amount in respect of—

- (a) an application for planning permission which is deemed to be made to the planning appeals commission under this Order;
- (b) an appeal to the planning appeals commission under this Order.

(3) Regulations under this Article may prescribe—

- (a) the person by whom any charge or fee is payable;
- (b) provision as to the calculation of any charge or fee;
- (c) circumstances in which no charge or fee is to be paid;
- (d) circumstances in which any charge or fee paid is to be remitted or refunded (in whole or in part).”.

PART III

CORRECTION OF ERRORS

Correction of errors in decision documents

17.—(1) This Article applies if the Department issues a decision document which contains a correctable error.

(2) The Department may correct the error—

- (a) if it is requested to do so in writing by any person;
- (b) if it sends a statement in writing to the applicant which explains the error and states that it is considering making the correction.

(3) But the Department shall not correct the error unless—

- (a) not later than the end of the relevant period it receives a request mentioned in paragraph (2)(a) or sends a statement mentioned in paragraph (2)(b), and
- (b) it obtains the appropriate consent.

(4) The relevant period is the period specified for the purposes of paragraph (3)(a) in a development order.

(5) The appropriate consent is—

- (a) the consent in writing of the applicant;
- (b) if the applicant is not the owner of the land in respect of which the decision was made, the consent in writing of both the applicant and the owner.

(6) But consent is not appropriate consent if it is given subject to a condition.

Correction notice

18.—(1) If sub-paragraph (a) or (b) of Article 17(2) applies the Department shall as soon as practicable after making any correction or deciding not to make any correction issue a notice in writing (a correction notice) which—

- (a) specifies the correction of the error, or
- (b) gives notice of its decision not to correct such an error.

(2) The Department shall give the correction notice to—

- (a) the applicant;
- (b) if the applicant is not the owner of the land in respect of which the original decision was made, the owner;
- (c) if the correction was requested by any other person, that person.

Effect of correction

19.—(1) If a correction is made in pursuance of Article 17—

- (a) the original decision is taken not to have been made;
- (b) the decision is taken for all purposes to have been made on the date the correction notice is issued.

(2) If a correction is not made—

- (a) the original decision continues to have full force and effect;
- (b) nothing in this Part affects anything done in pursuance of or in respect of the decision.

Supplementary

20.—(1) This Article applies for the purposes of this Part.

(2) A decision document is a document which records any of the following decisions—

- (a) a decision to grant or refuse planning permission;
- (b) a decision to grant outline planning permission;
- (c) a decision to approve reserved matters (within the meaning of Article 35 of the principal Order);
- (d) any decision to grant planning permission under sub-paragraph (a) of paragraph (1) of Article 71 of the principal Order or to discharge a condition or limitation under sub-paragraph (b) of that paragraph;
- (e) a decision to grant or to refuse to grant a certificate under Article 83A or 83B of the principal Order;
- (f) any decision relating—
 - (i) to an application for consent under a tree preservation order,
 - (ii) to an application for consent under any regulations made under Article 67 of the principal Order, or
 - (iii) to any certificate or direction under any such order or regulations;
- (g) a decision on an application for listed building consent under Article 44(2) or (3) of the principal Order;

- (h) a decision relating to any consent under Article 51 of the principal Order (conservation area consent);
 - (i) a decision under Article 55 of the principal Order (determination of applications for hazardous substances consent);
 - (j) any other decision under the principal Order which is of a description specified by the Department in a development order.
- (3) A correctable error is an error—
- (a) which is contained in any part of the decision document which records the decision, but
 - (b) which is not part of any reasons given for the decision.
- (4) The applicant is in the case of a decision made on an application under the principal Order, the person who made the application.
- (5) The owner in relation to land is a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let.
- (6) Error includes omission.

PART IV CROWN APPLICATION

Crown application

21.—(1) In Part XII of the principal Order before Article 113 (application to Crown land) insert—

“Application to the Crown

112A.—(1) This Order (except Articles 74, 76B, 80 and 82B) binds the Crown.

(2) But paragraph (1) is subject to express provision made by the following provisions of this Part.

Enforcement in relation to the Crown

112B.—(1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Order.

(2) But paragraph (1) does not have effect to prohibit the doing of anything by or on behalf of the Crown which falls within the circumstances described in Article 44(7)(a) to (d).

(3) The Department shall not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.

(4) The appropriate authority may give consent under paragraph (3) subject to such conditions as it thinks appropriate.

PART IV

(5) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Order.

(6) A step taken for the purposes of enforcement includes—

- (a) entering land;
- (b) bringing proceedings;
- (c) the making of an application.

(7) A step taken for the purposes of enforcement does not include—

- (a) service of a notice;
- (b) the making of an order (other than by a court).

References to an estate in land

112C.—(1) Paragraph (2) applies to the extent that an estate in land is a Crown estate.

(2) Anything which requires or is permitted to be done by or in relation to the owner of the estate in land shall be done by or in relation to the appropriate authority.

(3) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of this Article as having an estate in that land.

Applications for planning permission, etc. by Crown

112D.—(1) This Article applies to an application for—

- (a) planning permission, listed building consent, hazardous substances consent or conservation area consent; or
- (b) a determination under Article 48 or a certificate under Article 83B.

(2) The Department may by regulations modify or exclude any statutory provision relating to the making and determination of such applications.

Service of notices on the Crown

112E.—(1) Any notice or other document required under this Order to be served on the Crown shall be served on the appropriate authority.

(2) Section 24 of the Interpretation Act (Northern Ireland) 1954 (c. 33) does not apply for the purposes of the service of such a notice or document.

(3) “Appropriate authority” shall be construed in accordance with Article 118(1).”

(2) Section 60 of the Mineral Development Act (Northern Ireland) 1969 (c. 35) (application of Planning Orders to certain mining development on Crown property) ceases to have effect.

(3) Schedule 1 makes further amendments to the principal Order in relation to the application of that Order to the Crown.

National security

22.—(1) After Article 123 of the principal Order insert—

“Inquiries to be held in public subject to certain exceptions

123A.—(1) Subject to paragraph (2), at any inquiry or independent examination held under this Order oral evidence shall be heard in public and documentary evidence shall be open to public inspection.

(2) If the Secretary of State is satisfied in the case of any such inquiry or examination—

- (a) that giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in paragraph (3); and
- (b) that the public disclosure of that information would be contrary to the national interest,

he may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry or examination by such persons or persons of such descriptions as he may specify in the direction.

(3) The matters referred to in paragraph (2)(a) are—

- (a) national security; and
- (b) the measures taken or to be taken to ensure the security of any premises or property.

(4) If the Secretary of State is considering giving a direction under paragraph (2) the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at an inquiry or examination if the direction is given.

(5) If before the Secretary of State gives a direction under paragraph (2) no person is appointed under paragraph (4), the Advocate General for Northern Ireland may at any time appoint a person as mentioned in paragraph (4) for the purposes of the inquiry or examination.

(6) The Lord Chancellor may by rules make provision—

- (a) as to the procedure to be followed by the Secretary of State before he gives a direction under paragraph (2) in a case where a person has been appointed under paragraph (4);
- (b) as to the functions of a person appointed under paragraph (4) or (5).

(7) Rules made under paragraph (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(8) If a person is appointed under paragraph (4) or (5) (the appointed representative) the Secretary of State may direct any person who he thinks

is interested in the inquiry or examination in relation to a matter mentioned in paragraph (3) (the responsible person) to pay the fees and expenses of the appointed representative.

(9) If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount shall be determined by the Secretary of State.

(10) The Secretary of State shall cause the amount agreed between the appointed representative and the responsible person or determined by him to be certified.

(11) An amount so certified is recoverable from the responsible person as a civil debt.

(12) In relation to any time before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002, the reference in paragraphs (4) and (5) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General.

National security

123B.—(1) Where, in relation to an application for planning permission or an application for any consent, certificate, approval or determination under this Order or a development order, the Secretary of State is of the opinion—

- (a) that the consideration by the Department of the application or of any representations or objections made in respect of the application raises matters relating to—
 - (i) national security; or
 - (ii) the measures taken or to be taken to ensure the security of any premises or property; and
- (b) that the public disclosure of information as to any of those matters would be contrary to the national interest,

he may certify that the application is one to which this Article applies.

(2) The Department shall, subject to any provision contained in rules under paragraph (3), cause a public local inquiry to be held for the purpose of determining any application to which this Article applies.

(3) The Secretary of State may by rules make provision—

- (a) for the procedure to be followed in relation to the issue of a certificate under paragraph (1);
- (b) enabling the Department to dispense with an inquiry where any objections or representations made in respect of an application to which this Article applies are withdrawn.

(4) Articles 31, 32(1), 33, 56, 57(1), 83E, 123(1), paragraphs 7(1) and 8 of Schedule 1, paragraphs 6(11) and (12), 11 and 13 of Schedule 1A and paragraphs 9 and 10 of Schedule 1B do not apply in relation to an application to which this Article applies.

(5) Rules made under paragraph (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.”.

(2) In Article 123 of the principal Order (local inquiries), in paragraph (2) after “procedure” insert “(except the procedure in relation to any matter for which rules under paragraph (6) of Article 123A or paragraph (3) of Article 123B may make provision)”.

Trees in conservation areas: acts of Crown

23. In Article 66A of the principal Order (preservation of trees in conservation areas) after paragraph (4) add—

“(5) An emanation of the Crown shall not, in relation to a tree to which this Article applies, do an act mentioned in paragraph (1) unless—

- (a) the first condition is satisfied, and
- (b) either the second or third condition is satisfied.

(6) The first condition is that the emanation serves notice of an intention to do the act (with sufficient particulars to identify the tree) on the Department.

(7) The second condition is that the act is done with the consent of the Department.

(8) The third condition is that the act is done—

- (a) after the end of the period of 6 weeks starting with the date of the notice, and
- (b) before the end of the period of 2 years starting with that date.”.

Subordinate legislation

24.—(1) The Department may by order subject to negative resolution provide that relevant subordinate legislation applies to the Crown.

(2) An order under paragraph (1) may modify such subordinate legislation to the extent that the Department thinks appropriate for the purposes of its application to the Crown.

(3) Relevant subordinate legislation is an instrument which—

- (a) is made under or (wholly or in part) for the purposes of the principal Order,
- (b) is made before the coming into operation of Article 21 of this Order, and
- (c) is specified in the order.

Crown application: transitional

25. Schedule 2 (which makes transitional provision in consequence of the application to the Crown of the principal Order) has effect.

MINERAL PLANNING PERMISSIONS

Mineral planning permissions

26.—(1) After Article 27 of the principal Order (conditional grant of planning permission) insert—

“Power to impose aftercare conditions on grant of mineral planning permission

27A.—(1) Where—

- (a) planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste or waste materials is granted, and
- (b) the permission is subject to a condition requiring that after the winning and working is completed or the depositing has ceased, the site shall be restored by the use of any or all of the following, namely, subsoil, topsoil and soil-making material,

it may be granted subject also to any such condition as the Department thinks fit requiring that such steps shall be taken as may be necessary to bring land to the required standard for whichever of the following uses is specified in the condition, namely—

- (i) use for agriculture;
- (ii) use for forestry; or
- (iii) use for amenity.

(2) In this Order—

- (a) a condition such as is mentioned in sub-paragraph (b) of paragraph (1) is referred to as “a restoration condition”; and
- (b) a condition requiring such steps to be taken as are mentioned in that paragraph is referred to as “an aftercare condition”.

(3) An aftercare condition may either—

- (a) specify the steps to be taken; or
- (b) require that the steps be taken in accordance with a scheme (in this Order referred to as an “aftercare scheme”) approved by the Department.

(4) The Department may approve an aftercare scheme in the form in which it is submitted to it or may modify it and approve it as modified.

(5) The steps that may be specified in an aftercare condition or an aftercare scheme may consist of planting, cultivating, fertilising, watering, draining or otherwise treating the land.

(6) Where a step is specified in a condition or a scheme, the period during which it is to be taken may also be specified, but no step may be required to be taken after the expiry of the aftercare period.

(7) In paragraph (6) “the aftercare period” means a period of 5 years from compliance with the restoration condition or such other maximum

period after compliance with that condition as may be prescribed; and in respect of any part of a site, the aftercare period shall commence on compliance with the restoration condition in respect of that part.

(8) In a case where—

- (a) the use specified in an aftercare condition is a use for agriculture; and
- (b) the land was in use for agriculture at the time of the grant of the planning permission or had previously been used for that purpose and had not at the time of the grant been used for any authorised purpose since its use for agriculture ceased,

the land is brought to the required standard when its physical characteristics are restored, so far as it is practicable to do so, to what they were when it was last used for agriculture.

(9) In any other case where the use specified in an aftercare condition is a use for agriculture, the land is brought to the required standard when it is reasonably fit for that use.

(10) Where the use specified in an aftercare condition is a use for forestry, the land is brought to the required standard when it is reasonably fit for that use.

(11) Where the use specified in an aftercare condition is a use for amenity, the land is brought to the required standard when it is suitable for sustaining trees, shrubs or other plants.

(12) In this Article—

“authorised” means authorised by planning permission;

“forestry” means the growing of a utilisable crop of timber.”.

(2) After Article 63 of the principal Order insert—

“Review of mineral planning permissions

63A.—(1) Schedules 1A and 1B shall have effect.

(2) Without prejudice to the generality of Article 13, a development order may make, in relation to any planning permission which is granted by a development order for minerals development, provision similar to any provision made by Schedule 1A or 1B.

(3) In this Article and in Schedules 1A and 1B “minerals development” means development consisting of mining operations or involving the deposit of mineral waste.”.

(3) The provisions set out in Schedule 3 to this Order shall be inserted after Schedule 1 to the principal Order as Schedules 1A and 1B to that Order.

(4) In Article 124 of the principal Order (planning register), in paragraph (1) after sub-paragraph (n) (as inserted by Article 13(3) of this Order) add—

“(o) applications for a determination under paragraph 9 of Schedule 1A or paragraph 7 of Schedule 1B.”.

PART V

(5) In Article 2(2) of the principal Order (interpretation) there shall be inserted, in the appropriate places in alphabetical order, the following definitions—

““aftercare condition” has the meaning given in Article 27A(2);

“aftercare scheme” has the meaning given in Article 27A(3);

“depositing of mineral waste” means any process whereby a mineral working deposit is created or enlarged and “depositing of refuse or waste materials” includes the depositing of mineral waste;

“mineral working deposit” means any deposit of material remaining after materials have been extracted from land or otherwise deriving from the carrying out of operations for the winning and working of minerals in, on or under land;

“restoration condition” has the meaning given in Article 27A(2);

“the winning and working of minerals” includes the extraction of minerals from a mineral working deposit;”.

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

Amendments and repeals

27.—(1) The statutory provisions set out in Schedule 4 have effect subject to the amendments set out in that Schedule.

(2) The statutory provisions specified in Schedule 5 are repealed to the extent specified there.

Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 21(3).

CROWN APPLICATION

Service of notices

1. In paragraph (1) of Article 2 of the principal Order (interpretation), at the beginning insert “Subject to Article 112E(2),”.

Hazardous substances consent

2. In Article 60 of the principal Order (effect of hazardous substances consent and change of control of land), after paragraph (3) insert—

“(3A) Paragraphs (2) and (3) do not apply if the control of land changes from one emanation of the Crown to another.”.

Rights of entry

3. After Article 84C of the principal Order (rights of entry for enforcement purposes: supplementary provisions) insert—

“Rights of entry for enforcement purposes: Crown land

84D.—(1) Article 84A applies to Crown land subject to the following modifications.

(2) In paragraph (1) of Article 84A, sub-paragraphs (b) and (c) are omitted.

(3) A person shall not enter Crown land unless he has the relevant permission.

(4) Relevant permission is the permission of—

(a) a person appearing to the person seeking entry to the land to be entitled to give it; or

(b) the appropriate authority.

(5) Articles 84B and 84C do not apply to anything done by virtue of this Article.

(6) “Appropriate authority” and “Crown land” shall be construed in accordance with Article 118(1).”.

4. After Article 122 of the principal Order (supplementary provisions as to rights of entry) insert—

“Supplementary provisions as to powers of entry: Crown land

122A.—(1) Article 121 applies to Crown land subject to the following modifications.

(2) A person shall not enter Crown land unless he has the relevant permission.

(3) Relevant permission is the permission of—

- (a) a person appearing to the person seeking entry to the land to be entitled to give it; or
- (b) the appropriate authority.

(4) In paragraph (4) the words from “, but a person” to the end of that paragraph shall be omitted.

(5) Article 122 does not apply to anything done by virtue of this Article.

(6) “Appropriate authority” and “Crown land” shall be construed in accordance with Article 118(1).”.

Compulsory acquisition

5.—(1) Article 87 of the principal Order (acquisition of land for planning purposes) is amended as follows.

(2) At the beginning of paragraph (1), insert “Subject to paragraph (1A),”.

(3) After paragraph (1) insert—

“(1A) The Department shall not acquire any estate in Crown land unless—

- (a) it is an estate which is for the time being held otherwise than by or on behalf of the Crown; and
- (b) the appropriate authority consents to the acquisition.”.

(4) After paragraph (9) insert—

“(10) “Appropriate authority” and “Crown land” shall be construed in accordance with Article 118(1).”.

6. In Article 109 of the principal Order (compulsory acquisition of listed buildings) after paragraph (6) add—

“(7) This Article does not permit the acquisition of any estate in Crown land unless—

- (a) it is an estate which is for the time being held otherwise than by or on behalf of the Crown; and
- (b) the appropriate authority consents to the acquisition.

(8) “Appropriate authority” and “Crown land” shall be construed in accordance with Article 118(1).”.

Purchase notices

7. After Article 94 of the principal Order (service of purchase notice) insert—

“Purchase notices: Crown land

94A.—(1) A purchase notice may be served in respect of Crown land only as mentioned in this Article.

(2) The owner of a private estate in Crown land shall not serve a purchase notice unless—

- (a) he first offers to dispose of his estate to the appropriate authority on equivalent terms; and
- (b) the offer is refused by the appropriate authority.

(3) An offer is made on equivalent terms if the price payable for the estate is equal to (and, in default of agreement, determined in the same manner as) the compensation which would be payable if it were acquired in pursuance of a purchase notice.

(4) Expressions used in this Article and in Part XII shall be construed in accordance with that Part.”.

Application to Crown land and planning permission in anticipation of disposal of Crown land

8. Articles 113 and 114 of the principal Order are omitted.

Tree preservation orders

9.—(1) Article 115 of the principal Order (tree preservation orders in anticipation of disposal of Crown land) is omitted.

(2) But the repeal of Article 115 does not affect its operation in relation to a tree preservation order made by virtue of that Article before the coming into operation of this paragraph.

Special enforcement notices

10.—(1) Article 116 of the principal Order (control of development on Crown land) is omitted.

(2) But the repeal of Article 116 does not affect its operation in relation to development carried out before the coming into operation of this paragraph.

Requirement of planning permission for continuance of use instituted by Crown

11.—(1) Article 117 of the principal Order (requirement of planning permission for continuance of use instituted by Crown) is omitted.

(2) But the repeal of Article 117 does not affect its operation in relation to a direction made as mentioned in paragraph (1) of that Article before the coming into operation of this paragraph.

Definitions

12.—(1) Article 118 of the principal Order is amended as follows.

(2) In paragraph (1) for the definition of “Crown estate” substitute—

““Crown estate” means any of the following—

- (a) an estate belonging to Her Majesty in right of the Crown;
- (b) an estate belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
- (c) such other estate as the Department may specify by order subject to negative resolution;”.

(3) After paragraph (1) insert—

“(1A) For the purposes of an application for planning permission made by or on behalf of the Crown in respect of land which does not belong to the Crown or in respect of which it has no estate a reference to the appropriate authority must be construed as a reference to the person who makes the application.”.

(4) Paragraph (3) is omitted.

Information as to estates in land

13. After Article 125 of the principal Order (information as to estates in land) insert—

“Information as to estates in Crown land

125A.—(1) This Article applies to an estate in Crown land which is not a private estate.

(2) Article 125 does not apply to an estate to which this Article applies.

(3) For a purpose mentioned in Article 125(1) the Department may request the appropriate authority to give it such information as to the matters mentioned in Article 125(2) as the Department specifies in the request.

(4) The appropriate authority shall comply with a request under paragraph (3) except to the extent—

- (a) that the matter is not within the knowledge of the authority, or
- (b) that to do so will disclose information as to any of the matters mentioned in Article 123A(3).

(5) Expressions used in this Article and in Part XII shall be construed in accordance with that Part.”.

SCHEDULE 2

CROWN APPLICATION - TRANSITIONAL PROVISIONS

PART 1

PLANNING PERMISSION

Introduction

1. This Part applies to a development if—

- (a) it is a development for which before the relevant date no planning permission is required,
- (b) it is not a development or of a description of development for which planning permission is granted by virtue of a development order, and
- (c) before the relevant date proposed development notice had been given to the Department.

2. In this Part—

- (a) the relevant date is the date of the coming into operation of Article 21(1);
- (b) proposed development notice is notice of a proposal for development given by the developer in pursuance of arrangements made by the Department in relation to development by or on behalf of the Crown;
- (c) the developer is the Crown or a person acting on behalf of the Crown.

Acceptable development

3.—(1) This paragraph applies if before the relevant date in pursuance of the arrangements the Department has given notice to the developer that it finds the proposed development acceptable.

(2) The notice shall be treated as if it is planning permission granted under Part IV of the principal Order.

(3) If the notice is subject to conditions the conditions have effect as if they are conditions attached to the planning permission.

4.—(1) This paragraph applies if before the relevant date the Department has in pursuance of the arrangements kept a register of proposed development notices.

(2) The register shall be treated as if it is part of the register kept by the Department in pursuance of Article 124 of the principal Order.

Pending proposals

5.—(1) This paragraph applies if before the relevant date—

- (a) proposed development notice has been given, but
- (b) the Department has not given notice to the developer as mentioned in paragraph 3.

(2) The principal Order applies as if the proposal is an application for planning permission duly made under that Order.

PART 2

LISTED BUILDINGS CONSENT AND CONSERVATION AREA CONSENT

Introduction

6. This Part applies to works if—

- (a) they are works for which before the relevant date no listed building consent is required, and
- (b) before the relevant date proposed works notice had been given to the Department.

7. In this Part—

- (a) the relevant date is the date of the coming into operation of Article 21(1);
- (b) proposed works notice is notice of a proposal for works given by the person proposing to carry out the works (the developer) in pursuance of arrangements made by the Department in relation to development by or on behalf of the Crown;
- (c) the developer is the Crown or a person acting on behalf of the Crown.

Acceptable works

8.—(1) This paragraph applies if before the relevant date in pursuance of the arrangements the Department has given notice to the developer that it finds the proposed works acceptable.

(2) The notice shall be treated as if it is listed building consent granted under paragraph (2) or, as the case may be, (3) of Article 44 of the principal Order.

(3) If the notice is subject to conditions the conditions have effect as if they are conditions attached to the consent.

9.—(1) This paragraph applies if before the relevant date the Department has in pursuance of the arrangements kept a register of proposed works notices.

(2) The register shall be treated as if it is part of the register kept by the Department in pursuance of Article 124 of the principal Order.

Pending proposals

10.—(1) This paragraph applies if before the relevant date—

(a) proposed works notice has been given, but

(b) the Department has not given notice to the developer as mentioned in paragraph 8.

(2) The principal Order applies as if the proposal is an application for listed building consent duly made under that Order.

11. This Part shall have effect in relation to the demolition of buildings to which Article 51 of the principal Order applies as if the demolition of such buildings were works to which this Part applies.

PART 3

HAZARDOUS SUBSTANCES

12.—(1) This paragraph applies if at any time during the establishment period a hazardous substance was present on, over or under Crown land.

(2) The appropriate authority shall make a claim in the prescribed form before the end of the transitional period.

(3) The claim shall contain the prescribed information as to—

(a) the presence of the substance during the establishment period;

(b) how and where the substance was kept and used.

(4) Unless sub-paragraph (5) or (7) applies, the Department is deemed to have granted the hazardous substances consent claimed in pursuance of sub-paragraph (2).

(5) This sub-paragraph applies if the Department thinks that a claim does not comply with sub-paragraph (3).

(6) If sub-paragraph (5) applies, the Department shall, before the end of the period of two weeks from its receipt of the claim—

(a) notify the claimant that in the Department's opinion the claim is invalid;

(b) give the claimant the Department's reasons for that opinion.

(7) This sub-paragraph applies if at no time during the establishment period was the aggregate quantity of the substance equal to or greater than the controlled quantity.

(8) Hazardous substances consent which is deemed to be granted under this paragraph is subject—

- (a) to the condition that the maximum aggregate quantity of the substance that may be present for the purposes of this sub-paragraph at any one time shall not exceed the established quantity;
- (b) to such other conditions (if any) as are prescribed for the purposes of this paragraph and are applicable in the case of the consent.

(9) A substance is present for the purposes of sub-paragraph (8)(a) if—

- (a) it is on, over or under land to which the claim for consent relates,
- (b) it is on, over or under other land which is within 500 metres of it and is controlled by the Crown, or
- (c) it is in or on a structure controlled by the Crown any part of which is within 500 metres of it,

and in calculating whether the established quantity is exceeded a quantity of a substance which falls within more than one of heads (a) to (c) shall be counted only once.

(10) The establishment period is the period of 12 months ending on the day before the date of the coming into operation of Article 21(1) of the Planning Reform (Northern Ireland) Order 2005.

(11) The transitional period is the period of 6 months starting on the day before the date of the coming into operation of that Article.

(12) The established quantity in relation to any land is the maximum quantity which was present on, over or under the land at any one time within the establishment period.

(13) In this paragraph, “appropriate authority” has the same meaning as in Part XII of the principal Order.

SCHEDULE 3

Article 26(3).

PROVISIONS TO BE INSERTED AS SCHEDULES 1A AND 1B TO THE PRINCIPAL ORDER

“SCHEDULE 1A

REVIEW OF OLD MINERAL PLANNING PERMISSIONS

Interpretation

1.—(1) In this Schedule—

“dormant site” means a Phase I or Phase II site in, on or under which no minerals development has been carried out to any substantial extent at any time in the period beginning on 31st December 1993 and ending with 1st June 2007;

“first list” means the list prepared by the Department under paragraph 3;

“mineral site” has the meaning given by sub-paragraph (2);

“Phase I site” and “Phase II site” have the meanings given by paragraph 2;

“relevant planning permission” means any planning permission for minerals development; and

“second list” means the list prepared by the Department under paragraph 4.

(2) For the purposes of this Schedule “mineral site” means—

(a) in a case where it appears to the Department to be expedient to treat as a single site the aggregate of the land to which any two or more relevant planning permissions relate, the aggregate of the land to which those permissions relate; and

(b) in any other case, the land to which a relevant planning permission relates.

(3) Any reference (however expressed) in this Schedule to a relevant planning permission relating to a mineral site is a reference to the mineral site, or some part of it, being the land to which the permission relates; and where any such permission authorises the carrying out of development consisting of the winning and working of minerals but only in respect of any particular mineral or minerals, that permission shall not be taken, for the purposes of this Schedule, as relating to any other mineral in, on or under the land to which the permission relates.

(4) For the purposes of this Schedule, a mineral site which is a Phase I site or a Phase II site is active if it is not a dormant site.

(5) For the purposes of this Schedule, working rights are restricted in respect of a mineral site if any of—

(a) the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste;

(b) the depth to which operations for the winning and working of minerals may extend;

(c) the height of any deposit of mineral waste;

(d) the rate at which any particular mineral may be extracted;

(e) the rate at which any particular mineral waste may be deposited;

(f) the period at the expiry of which any winning or working of minerals or depositing of mineral waste is to cease; or

(g) the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the site,

is restricted or reduced in respect of the mineral site in question.

(6) For the purposes of this Schedule, where an application is made under paragraph 9 for the determination of the conditions to which the relevant planning permissions relating to the mineral site to which the

application relates are to be subject, those conditions are finally determined when—

- (a) the proceedings on the application have been determined, and
- (b) any time for appealing under paragraph 11(1), or applying or further applying under paragraph 9, (where there is a right to do so) has expired.

Phase I and II sites

2.—(1) This paragraph has effect for the purposes of determining which mineral sites are Phase I sites, which are Phase II sites, and which are neither Phase I nor Phase II sites.

(2) A mineral site is neither a Phase I site nor a Phase II site where—

- (a) all the relevant planning permissions which relate to the site have been granted after 31st December 1993; or
- (b) some only of the relevant planning permissions which relate to the site have been granted after 31st December 1993, and the parts of the site to which those permissions relate constitute the greater part of that site.

(3) With the exception of those mineral sites which, by virtue of sub-paragraph (2), are neither Phase I nor Phase II sites, every mineral site is either a Phase I site or a Phase II site.

(4) Subject to sub-paragraph (2), where—

- (a) all the relevant planning permissions which relate to a mineral site were granted before 31st December 1980; or
- (b) some only of the relevant planning permissions which relate to the site were granted before 31st December 1980 and the parts of the site to which those permissions relate constitute the greater part of that site,

that mineral site is a Phase I site.

(5) Subject to sub-paragraphs (2) and (4), where—

- (a) all the relevant planning permissions which relate to a mineral site were granted after 31st December 1980 but before 31st December 1993; or
- (b) some only of the relevant planning permissions which relate to the site were granted after 31st December 1980 but before 31st December 1993, and the parts of the site to which those permissions relate constitute the greater part of the site,

the mineral site is a Phase II site.

(6) In ascertaining, for the purposes of sub-paragraph (2) or (5), whether any parts of a mineral site constitute the greater part of that site, or whether a part of a mineral site is greater than any other part, that mineral site shall be treated as not including any part of the site which is a part where minerals development has been (but is no longer being) carried out and which has, in the opinion of the Department, been satisfactorily restored; but no part of a site shall be treated as being not so included in

the site unless the Department is satisfied that any after care conditions which relate to that part have, so far as relating to that part, been complied with.

The “first list”

3.—(1) the Department shall, in accordance with the following provisions of this paragraph, prepare a list of mineral sites (“the first list”).

(2) A site shall, but shall only, be included in the first list if it is either—

- (a) an active Phase I site;
- (b) an active Phase II site; or
- (c) a dormant site.

(3) In respect of each site included in the first list, the list shall indicate whether the site is an active Phase I site, an active Phase II site or a dormant site.

(4) In respect of each active Phase I site included in the first list, that list shall specify the date by which an application is to be made to the Department under paragraph 9.

(5) Any date specified pursuant to sub-paragraph (4) shall be a date not earlier than the date upon which expires the period of 12 months from the date on which the first list is first advertised in accordance with paragraph 5.

The “second list”

4.—(1) The Department shall, in accordance with the following provisions of this paragraph, prepare a list of active Phase II sites (“the second list”).

(2) The second list shall include each mineral site which is an active Phase II site.

(3) In respect of each site included in the second list, that list shall specify the date by which an application is to be made to the Department under paragraph 9.

(4) Any date specified pursuant to sub-paragraph (3) shall be a date not earlier than the date upon which expires the period of 12 months from the date on which the second list is first advertised in accordance with paragraph 5.

Advertisement of the first and second lists

5.—(1) This paragraph makes provision for the advertisement of the first and second lists.

(2) The Department shall advertise each of the first and second lists by causing to be published, in each of two successive weeks, in one or more newspapers circulating throughout Northern Ireland, notice of the list having been prepared.

- (3) In respect of each of those lists, such notice shall—
- (a) state that the list has been prepared by the Department; and
 - (b) specify one or more places at which the list may be inspected, and in respect of each such place specify the times (which shall be reasonable times) during which facilities for inspection of the list will be afforded.
- (4) In respect of the first list, such notice shall—
- (a) explain the general effect of a mineral site being classified as a dormant site or, as the case may be, as an active Phase I site or an active Phase II site;
 - (b) explain the consequences which will occur if no application is made under paragraph 9 in respect of an active Phase I site included in the list by the date specified in the list for that site;
 - (c) explain the effects for any dormant or active Phase I or II site not included in the list of its not being included in the list and—
 - (i) set out the right to make an application to the Department for that site to be included in the list;
 - (ii) set out the date by which such an application must be made; and
 - (iii) state that the owner of such a site has a right of appeal against any decision of the Department upon such an application; and
 - (d) explain that the owner of an active Phase I site has a right to apply for postponement of the date specified in the list for the making of an application under paragraph 9, and set out the date by which an application for such postponement must be made.
- (5) In respect of the second list, such notice shall explain the consequences which will occur if no application is made under paragraph 9 in respect of an active Phase II site included in the list by the date specified in the list for that site.

Applications for inclusion in the first list of sites not included in that list as originally prepared and appeals from decisions upon such applications

6.—(1) Any person who is the owner of any land, or is entitled to an interest in a mineral, may, if that land or interest is not a mineral site included in the first list and does not form part of any mineral site included in that list, apply to the Department for that land or interest to be included in that list.

(2) An application under sub-paragraph (1) shall be made no later than the day upon which expires the period of 3 months from the day when the first list was first advertised in accordance with paragraph 5.

- (3) Where the Department considers that—
- (a) the land or interest is, or forms part of, any dormant site or active Phase I or II site, it shall accede to the application; or

(b) part only of the land or interest is, or forms part of, any dormant or active Phase I or II site, it shall accede to the application so far as it relates to that part of the land or interest, but shall otherwise refuse the application.

(4) On acceding, whether in whole or in part, to an application made under sub-paragraph (1), the Department shall amend the first list as follows—

- (a) where it considers that the land or interest, or any part of the land or interest, is a dormant site or an active Phase I or II site, it shall add the mineral site consisting of the land or interest or, as the case may be, that part, to the first list and shall cause the list to indicate whether the site is an active Phase I site, an active Phase II site or a dormant site;
- (b) where it considers that the land or interest, or any part of the land or interest, forms part of any mineral site included in the first list, it shall amend the entry in the first list for that site accordingly.

(5) Where the Department amends the first list in accordance with sub-paragraph (4), it shall also—

- (a) in a case where an active Phase I site is added to the first list pursuant to paragraph (a) of that sub-paragraph, cause that list to specify, in respect of that site, the date by which an application is to be made to the Department under paragraph 9;
- (b) in a case where—
 - (i) the entry for an active Phase I site included in the first list is amended pursuant to paragraph (b) of that sub-paragraph; and
 - (ii) the date specified in that list in respect of that site as the date by which an application is to be made to the Department under paragraph 9 is a date falling less than 12 months after the date upon which the Department makes its decision upon the application in question,

cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the Department's decision upon his application.

(6) Any date specified pursuant to sub-paragraph (5)(a) shall be a date not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the Department's decision upon his application.

(7) On acceding, whether in whole or in part, to an application made under sub-paragraph (1), the Department shall, if the second list has been first advertised in accordance with paragraph 5 prior to the time at which it makes its decision on the application, amend the second list as follows—

- (a) where it considers that the land or interest, or any part of the land or interest, is an active Phase II site, it shall add the mineral site

consisting of the land or interest or, as the case may be, that part, to the second list;

- (b) where it considers that the land or interest, or any part of the land or interest, forms part of any active Phase II site included in the second list, it shall amend the entry in that list for that site accordingly.

(8) Where the Department amends the second list in accordance with sub-paragraph (7), it shall also—

- (a) in a case where an active Phase II site is added to the second list pursuant to paragraph (a) of that sub-paragraph, cause that list to specify, in respect of that site, the date by which an application is to be made to the Department under paragraph 9;
- (b) in a case where—
 - (i) the entry for an active Phase II site included in the second list is amended pursuant to paragraph (b) of that sub-paragraph; and
 - (ii) the date specified in that list in respect of that site as the date by which an application is to be made to the Department under paragraph 9 is a date falling less than 12 months after the date upon which the Department makes its decision upon the application in question,

cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the Department's decision upon his application.

(9) Any date specified pursuant to sub-paragraph (8)(a) shall be a date not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the Department's decision upon his application.

(10) When the Department determines an application made under sub-paragraph (1) it shall notify the applicant in writing of its decision and, in a case where it has acceded to the application, whether in whole or in part, shall supply the applicant with details of any amendment to be made to the first or second list in accordance with sub-paragraph (4) or (8).

(11) Where the Department—

- (a) refuses an application made under sub-paragraph (1); or
- (b) accedes to such an application only so far as it relates to part of the land or interest in respect of which it was made,

the applicant may by notice appeal to the planning appeals commission.

(12) A person who has made such an application may also appeal to the planning appeals commission if the Department has not given notice to the applicant of its decision on the application within such period as may be prescribed or within such extended period as may at any time be agreed upon in writing between the applicant and the Department.

(13) An appeal under sub-paragraph (11) or (12) must be made by giving notice of appeal in writing to the planning appeals commission before the end of the period of 6 months beginning with—

- (a) in the case of an appeal under sub-paragraph (11), the determination; or
- (b) in the case of an appeal under sub-paragraph (12), the end of the first period mentioned in that sub-paragraph or, as the case may be, the end of the extended period mentioned in that sub-paragraph.

Postponement of the date specified in the first or second list for review of the permissions relating to a Phase I or II site in cases where the existing conditions are satisfactory

7.—(1) Any person who is the owner of any land, or of any interest in any mineral, comprised in—

- (a) an active Phase I site included in the first list; or
- (b) an active Phase II site included in the second list,

may apply to the Department for the postponement of the date specified in that list in respect of that site as the date by which an application is to be made to the Department under paragraph 9 (in this paragraph referred to as “the specified date”).

(2) Subject to sub-paragraph (3), an application under sub-paragraph (1) shall be made no later than the day upon which expires the period of 3 months from the day when—

- (a) in the case of an active Phase I site, the first list; or
- (b) in the case of an active Phase II site, the second list,

was first advertised in accordance with paragraph 5.

(3) In the case of—

- (a) an active Phase I site—
 - (i) added to the first list in accordance with paragraph 6(4)(a); or
 - (ii) in respect of which the entry in the first list was amended in accordance with paragraph 6(4)(b);

or

- (b) an active Phase II site—
 - (i) added to the second list in accordance with paragraph 6(7)(a);
 - or
 - (ii) in respect of which the entry in the second list was amended in accordance with paragraph 6(7)(b),

an application under sub-paragraph (1) shall be made no later than the day upon which expires the period of 3 months from the day on which notice was given under paragraph 6(10) of the Department’s decision to add the site to or, as the case may be, so to amend the list in question.

(4) An application under sub-paragraph (1) shall be in writing and shall—

- (a) set out the conditions to which each relevant planning permission relating to the site is subject;
- (b) set out the applicant's reasons for considering those conditions to be satisfactory;
- (c) set out the date which the applicant wishes to be substituted for the specified date; and
- (d) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (5)).

(5) For the purposes of sub-paragraph (4), the appropriate certificate is such a certificate—

- (a) as would be required, under Article 22 (notification of applications to certain persons), to accompany the application if it were an application for planning permission for minerals development, but
- (b) with such modifications as are required for the purposes of this paragraph,

and Article 22(6) (offences) shall also have effect in relation to any certificate purporting to be the appropriate certificate.

(6) Where the Department receives an application made under sub-paragraph (1)—

- (a) if it considers the conditions referred to in sub-paragraph (4)(a) to be satisfactory it shall agree to the specified date being postponed in which event the Department shall determine the date to be substituted for that date;
- (b) in any other case it shall refuse the application.

(7) Where the Department agrees to the specified date being postponed it shall cause the first or, as the case may be, the second list to be amended accordingly.

(8) When the Department determines an application made under sub-paragraph (1) it shall notify the applicant in writing of its decision and, in a case where it has agreed to the postponement of the specified date, shall notify the applicant of the date which it has determined should be substituted for the specified date.

(9) Where, within 3 months of the Department having received an application under sub-paragraph (1), or within such extended period as may at any time be agreed upon in writing between the applicant and the Department, the Department has not given notice, under sub-paragraph (8), to the applicant of its decision upon the application, the Department shall be treated as—

- (a) having agreed to the specified date being postponed; and
- (b) having determined that the date referred to in sub-paragraph (4)(c) be substituted for the specified date,

and sub-paragraph (7) shall apply accordingly.

Service on owners etc. of notice of preparation of the first and second lists

8.—(1) The Department shall, no later than the date upon which the first list is first advertised in accordance with paragraph 5, serve notice in writing of the first list having been prepared on each person appearing to it to be the owner of any land, or entitled to an interest in any mineral, included within a mineral site included in the first list, but this sub-paragraph is subject to sub-paragraph (7).

(2) A notice required to be served by sub-paragraph (1) shall—

- (a) indicate whether the mineral site in question is a dormant site or an active Phase I or II site; and
- (b) where that site is an active Phase I site—
 - (i) indicate the date specified in the first list in relation to that site as the date by which an application is to be made to the Department under paragraph 9;
 - (ii) explain the consequences which will occur if such an application is not made by the date so specified; and
 - (iii) explain the right to apply to have that date postponed, and indicate the date by which such an application must be made.

(3) Where, in relation to any land or mineral included in an active Phase I site, the Department—

- (a) has served notice on any person under sub-paragraph (1); and
- (b) has received no application under paragraph 9 from that person by the date falling 8 weeks before the date specified in the first list as the date by which such applications should be made in respect of the site in question,

the Department shall serve a written reminder on that person, and such a reminder shall—

- (i) indicate that the land or mineral in question is included in an active Phase I site;
- (ii) comply with the requirements of sub-paragraph (2)(b)(i) and (ii); and
- (iii) be served on that person on or before the date falling 4 weeks before the date specified in the first list in respect of that site as the date by which an application is to be made to the Department under paragraph 9.

(4) The Department shall, no later than the date upon which the second list is first advertised in accordance with paragraph 5, serve notice in writing of the second list having been prepared on each person appearing to it to be the owner of any land, or entitled to an interest in any mineral, included within an active Phase II site included in the second list, but this sub-paragraph is subject to sub-paragraph (7).

(5) A notice required to be served by sub-paragraph (4) shall—

- (a) indicate that the mineral site in question is an active Phase II site; and
 - (b) indicate the date specified in the second list in relation to that site as the date by which an application is to be made to the Department under paragraph 9;
 - (c) explain the consequences which will occur if such an application is not made by the date so specified; and
 - (d) explain the right to apply to have that date postponed, and indicate the date by which such an application must be made.
- (6) Where, in relation to any land or mineral included in an active Phase II site, the Department—
- (a) has served notice on any person under sub-paragraph (4), and
 - (b) has received no application under paragraph 9 from that person by the date falling 8 weeks before the date specified in the second list as the date by which such applications should be made in respect of the site in question,
- the Department shall serve a written reminder on that person, and such a reminder shall—
- (i) comply with the requirements of sub-paragraph (5)(a) to (c); and
 - (ii) be served on that person on or before the date falling 4 weeks before the date specified in the second list in respect of that site as the date by which an application is to be made to the Department under paragraph 9.
- (7) Sub-paragraph (1) or (4) shall not require the Department to serve notice under that sub-paragraph upon any person whose identity or address for service is not known to and cannot practicably, after reasonable inquiry, be ascertained by it, but in any such case the Department shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the notice which it would (apart from the provisions of this sub-paragraph) have had to serve under that sub-paragraph on the owner of that land or interest.
- (8) If, in a case where sub-paragraph (7) applies, no person makes an application to the Department under paragraph 9 in respect of the active Phase I or II site which includes the land or interest in question by the date falling 8 weeks before the date specified in the first or, as the case may be, the second list as the date by which such applications should be made in respect of that site, the Department shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the written reminder that would, in a case not falling within sub-paragraph (7), have been served under sub-paragraph (3) or (6).
- (9) Where by sub-paragraph (7) or (8) a copy of any notice is required to be affixed to an object on any land that copy shall—
- (a) be displayed in such a way as to be easily visible and legible;

- (b) be first displayed—
 - (i) in a case where the requirement arises under sub-paragraph (7), no later than the date upon which the first or, as the case may be, the second list is first advertised in accordance with paragraph 5; or
 - (ii) in a case where the requirement arises under sub-paragraph (8), no later than the date falling 4 weeks before the date specified in the first or, as the case may be, the second list in respect of the site in question as the date by which an application is to be made to the Department under paragraph 9; and
- (c) be left in position for at least the period of 21 days from the date when it is first displayed, but where the notice is, without fault or intention of the Department, removed, obscured or defaced before that period has elapsed, that requirement shall be treated as having been complied with if the Department has taken reasonable steps for protection of the notice and, if need be, its replacement.

(10) In sub-paragraphs (7) and (8), any reference to a conspicuous object on any land includes, in a case where the person serving a notice considers that there are no or insufficient such objects on the land, a reference to a post driven into or erected upon the land by the person serving the notice for the purpose of having affixed to it the notice in question.

- (11) Where the Department, being required—
 - (a) by sub-paragraph (3) or (6) to serve a written reminder on any person; or
 - (b) by sub-paragraph (8) to cause a copy of such a reminder to be displayed in the manner set out in that sub-paragraph,

fails to comply with that requirement by the date specified for the purpose, it may at any later time serve or, as the case may be, cause to be displayed, such a written reminder and, in any such case, the date by which an application in relation to the mineral site in question is to be made under paragraph 9 is the date upon which expires the period of 3 months from the date when the reminder was served or posted in accordance with the provisions of this sub-paragraph.

Applications for approval of conditions and appeals in cases where the conditions approved are not those proposed

9.—(1) Any person who is the owner of any land, or who is entitled to an interest in a mineral, may, if that land or mineral is or forms part of a dormant site or an active Phase I or II site, apply to the Department to determine the conditions to which the relevant planning permissions relating to that site are to be subject.

- (2) An application under this paragraph shall be in writing and shall—
 - (a) identify the mineral site to which the application relates;

- (b) specify the land or minerals comprised in the site of which the applicant is the owner or, as the case may be, in which the applicant is entitled to an interest;
- (c) identify any relevant planning permissions relating to the site;
- (d) identify, and give an address for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site;
- (e) set out the conditions to which the applicant proposes the permissions referred to in paragraph (c) should be subject; and
- (f) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (3)).

(3) For the purposes of sub-paragraph (2), the appropriate certificate is such a certificate—

- (a) as would be required, under Article 22 (notification of applications for planning provisions to certain persons) to accompany the application if it were an application for planning permission for minerals development, but
- (b) with such modifications as are required for the purposes of this paragraph,

and Article 22(6) (offences) shall also have effect in relation to any certificate purporting to be the appropriate certificate.

(4) Before determining an application under this paragraph, the Department shall consult with the district council for the area in which the site to which the application relates is situated.

(5) Article 21 shall have effect, with any necessary modifications, in relation to an application under this paragraph as it has effect in relation to an application for planning permission.

(6) Where the Department receives an application under this paragraph in relation to a dormant site or an active Phase I or II site it shall determine the conditions to which each relevant planning permission relating to the site is to be subject; and any such permission shall, from the date when the conditions to which it is to be subject are finally determined, have effect subject to the conditions which are determined under this Schedule as being the conditions to which it is to be subject.

(7) The conditions imposed by virtue of a determination under sub-paragraph (6)—

- (a) may include any conditions which may be imposed on a grant of planning permission for minerals development;
- (b) may be in addition to, or in substitution for, any existing conditions to which the permission in question is subject.

(8) Subject to sub-paragraph (10), where, within the period of 6 months from the Department having received an application under this paragraph, or within such extended period as may at any time be agreed upon in writing between the applicant and the Department, the Department has not

given notice to the applicant of its decision upon the application, the Department shall be treated as having at the end of that period or, as the case may be, that extended period, determined that the conditions to which any relevant planning permission to which the application relates is to be subject are those specified in the application as being proposed in relation to that permission; and any such permission shall, from that time, have effect subject to those conditions.

(9) Where the Department, having received an application under this paragraph, is of the opinion that it is unable to determine the application unless further details are supplied to it, it shall within the period of one month from having received the application give notice to the applicant—

- (a) stating that it is of such opinion; and
- (b) specifying the further details which it requires,

and where the Department so serves such a notice the period of 6 months referred to in sub-paragraph (8) shall run not from the Department having received the application but from the time when the Department has received all the further details specified in the notice.

(10) Without prejudice to the generality of sub-paragraph (9), the further details which may be specified in a notice under that sub-paragraph include any—

- (a) information, plans or drawings; or
- (b) evidence verifying any particulars of details supplied to the Department in respect of the application in question,

which it is reasonable for the Department to request for the purpose of enabling it to determine the application.

Notice of determination of conditions to be accompanied by additional information in certain cases

10.—(1) This paragraph applies in a case where—

- (a) on an application made to the Department under paragraph 9 in respect of an active Phase I or II site the Department determines under that paragraph the conditions to which the relevant planning permissions relating to the site are to be subject;
- (b) those conditions differ in any respect from the proposed conditions set out in the application; and
- (c) the effect of the conditions, other than any restoration or aftercare conditions, so determined by the Department, as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permissions in question were subject immediately prior to the Department making the determination, is to restrict working rights in respect of the site.

(2) In a case where this paragraph applies, the Department shall, upon giving to the applicant notice of the conditions determined by the Department under paragraph 9, also give to the applicant notice—

- (a) stating that the conditions determined by the Department differ in some respect from the proposed conditions set out in the application;
 - (b) stating that the effect of the conditions, other than any restoration or aftercare conditions, determined by the Department, as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permissions relating to the site in question were subject immediately prior to the making of the Department's determination, is to restrict working rights in respect of the site;
 - (c) identifying the working rights so restricted; and
 - (d) stating whether, in the opinion of the Department, the effect of that restriction of working rights would be such as to prejudice adversely to an unreasonable degree—
 - (i) the economic viability of operating the site; or
 - (ii) the asset value of the site.
- (3) In this paragraph, “the applicant” means the person who made the application in question under paragraph 9.

Right to appeal against Department's determination of conditions etc.

11.—(1) Where the Department—

- (a) on an application under paragraph 9 determines under that paragraph conditions that differ in any respect from the proposed conditions set out in the application; or
- (b) gives notice, under paragraph (d) of paragraph 10(2), stating that, in its opinion, the restriction of working rights in question would not be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d),

the person who made the application may appeal to the planning appeals commission.

(2) An appeal under sub-paragraph (1) shall be made by giving notice of appeal in writing to the planning appeals commission before the end of the period of 6 months beginning with the date on which the Department gives notice to the applicant of its determination or, as the case may be, stating its opinion.

Permissions ceasing to have effect

12.—(1) Subject to paragraph 8(11), where no application under paragraph 9 in respect of an active Phase I or II site has been served on the Department by the date specified in the first or, as the case may be, the second list as the date by which applications under that paragraph in respect of that site are to be made, or by such later date as may at any time be agreed upon in writing between the applicant and the Department, each relevant planning permission relating to the site shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the last date on which such an application may be made.

(2) The reference in sub-paragraph (1) to the date specified in the first or, as the case may be, the second list as the date by which applications under paragraph 9 are to be made in respect of any Phase I or II site is a reference to the date specified for that purpose in respect of that site in that list as prepared by the Department or, where that date has been varied by virtue of any provision of this Schedule, to that date as so varied.

(3) Subject to sub-paragraph (4), no relevant planning permission which relates to a dormant site shall have effect to authorise the carrying out of minerals development unless—

- (a) an application has been made under paragraph 9 in respect of that site; and
- (b) that permission has effect in accordance with sub-paragraph (6) of that paragraph.

(4) A relevant planning permission which relates to a Phase I or II site not included in the first list shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the last date on which an application under sub-paragraph (1) of paragraph 6 may be made in respect of that site unless an application has been made under that sub-paragraph by that date in which event, unless the site is added to that list, such a permission shall cease to have effect when the following conditions are met—

- (a) the proceedings on that application have been determined, and
- (b) any time for appealing under paragraph 6(11) or (12), or applying or further applying under paragraph 6(1), (where there is a right to do so) has expired.

Special procedure for major applications under paragraph 9

13.—(1) Where, in relation to an application under paragraph 9, the Department considers that the conditions to which the applicant proposes any permission to which the application relates should be subject would, if determined under this Schedule as being the conditions to which a relevant planning permission is to be subject—

- (a) involve a substantial departure from the development plan for the area to which it relates; or
- (b) be of significance to the whole or a substantial part of Northern Ireland; or
- (c) affect the whole of a neighbourhood,

the Department may within 2 months from the date of the application serve on the applicant a notice in such form as may be specified by a development order applying this paragraph to the application.

(2) For the purpose of considering representations made in respect of an application to which this paragraph applies, the Department may cause a public local inquiry to be held by the planning appeals commission.

(3) Where a public local inquiry is not held under sub-paragraph (2), the Department shall, before determining the application, serve a notice on the applicant indicating the determination which it proposes to make;

and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) the applicant so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(4) In determining an application to which this paragraph applies, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.

(5) The following provisions of this Schedule—

- (a) paragraph 9(6) and (7);
- (b) paragraph 10; and
- (c) paragraph 14, so far as relating to applications under paragraph 9, shall apply, with any necessary modifications, to any application to which this paragraph applies.

(6) Paragraph 11(1) shall not apply to any application to which this paragraph applies.

(7) The decision of the Department on an application to which this paragraph applies shall be final.

Two or more applicants

14.—(1) Where the Department has received from any person a duly made application under paragraph 7(1) or 9—

- (a) that person may not make any further application under the paragraph in question in respect of the same site; and
- (b) if the application has been determined, whether or not in the case of an application under paragraph 9 it has been finally determined, no other person may make an application under the paragraph in question in respect of the same site.

(2) Where—

- (a) the Department has received from any person in respect of a mineral site a duly made application under paragraph 7(1) or 9; and
- (b) the Department receives from another person a duly made application under the paragraph in question in respect of the same site,

then for the purpose of the determination of the applications and any appeal against such a determination, this Schedule shall have effect as if the applications were a single application received by the Department on the date on which the later application was received by the Department and references to the applicant shall be read as references to either or any of the applicants.

Compensation

15.—(1) This paragraph applies in a case where—

- (a) an application made under paragraph 9 in respect of an active Phase I or II site is finally determined; and

- (b) the requirements of either sub-paragraph (2) or (3) are satisfied.
- (2) The requirements, referred to in sub-paragraph (1)(b), of this sub-paragraph are—
- (a) that the conditions to which the relevant planning permissions relating to the site are to be subject were determined by the Department;
 - (b) no appeal was made under paragraph 11(1)(a) in respect of that determination or any such appeal was withdrawn or dismissed; and
 - (c) the Department gave notice under paragraph (d) of paragraph 10(2) and either—
 - (i) that notice stated that, in the Department’s opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d); or
 - (ii) that notice stated that, in the Department’s opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal under paragraph 11(1) in respect of the giving of the notice has been allowed.
- (3) The requirements, referred to in sub-paragraph (1)(b), of this sub-paragraph are that the conditions to which the relevant planning permissions are to be subject were determined by the planning appeals commission upon an appeal under paragraph 11(1)(a) and either—
- (a) the Department gave notice under paragraph (d) of paragraph 10(2) stating that, in its opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d); or
 - (b) the Department gave a notice under the said paragraph (d) stating that, in its opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal under paragraph 11(1)(b) in respect of the giving of that notice has been allowed.
- (4) In a case to which this paragraph applies section 26 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 shall have effect as if an order made under Article 38 had effect to modify those permissions to the extent specified in sub-paragraph (5) below.
- (5) For the purposes of sub-paragraph (4), the order which is treated by virtue of that sub-paragraph as having been made under Article 38 is one whose only effect adverse to the interests of any person having an estate or interest in the land or minerals comprised in the mineral site is to restrict working rights in respect of the site to the same extent as the relevant restriction.

Appeals: general procedural provisions

16.—(1) This paragraph applies to appeals under any of the following provisions of this Schedule—

- (a) paragraph 6(11) or (12); or
- (b) paragraph 11(1).

(2) Paragraphs (4) and (5) of Article 32 (determination of appeals) shall apply to an appeal to which this paragraph applies as those paragraphs apply to an appeal under that Article.

SCHEDULE 1B

PERIODIC REVIEW OF MINERAL PLANNING PERMISSIONS

Duty to carry out periodic reviews

1. The Department shall, in accordance with the provisions of this Schedule, cause periodic reviews to be carried out of the mineral permissions relating to a mining site.

Interpretation

2.—(1) For the purposes of this Schedule—

“first review date”, in relation to a mining site, shall, subject to paragraphs 4 and 6, be ascertained in accordance with paragraph 3;

“mineral permission” means any planning permission for minerals development;

“mining site” means—

- (a) in a case where it appears to the Department to be expedient to treat as a single site the aggregate of the land to which any two or more mineral permissions relate, the aggregate of the land to which those permissions relate; and
- (b) in any other case, the land to which a mineral permission relates.

(2) Any reference (however expressed) in this Schedule to a mining site being a site to which relates a mineral permission, is a reference to the mining site, or some part of it, being the land to which the permission relates.

(3) For the purposes of this Schedule, an application made under paragraph 7 is finally determined when—

- (a) the proceedings on the application have been determined, and
- (b) any time for appealing under paragraph 9(1), or applying or further applying under paragraph 7, (where there is a right to do so) has expired.

The first review date

3.—(1) Subject to sub-paragraph (5), in the case of a mining site which is a Phase I or II site within the meaning of Schedule 1A, the first review date means the date falling 15 years after the date upon which, pursuant to an application made under paragraph 9 of that Schedule, there is determined under that paragraph the conditions to which the relevant planning permissions (within the meaning of that Schedule) relating to the site are to be subject.

(2) Subject to sub-paragraphs (3) and (5), in the case of a mining site which is not a Phase I or II site within the meaning of Schedule 1A, the first review date is the date falling 15 years after the date upon which was granted the most recent mineral permission which relates to the site.

(3) Where, in the case of a mining site falling within sub-paragraph (2), the most recent mineral permission relating to that site relates, or the most recent such permissions (whether or not granted on the same date) between them relate, to part only of the site, and in the opinion of the Department it is expedient, for the purpose of ascertaining, under that sub-paragraph, the first review date in respect of that site, to treat that permission or those permissions as having been granted at the same time as the last of the other mineral permissions relating to the site, the first review date for that site shall be ascertained under that sub-paragraph accordingly.

(4) Subject to sub-paragraph (5), in the case of a mining site—

- (a) to which relates a mineral permission in respect of which an order has been made under Article 38, or
- (b) in respect of which, or any part of which, an order has been made under Article 39,

the first review date shall be the date falling 15 years after the date upon which the order took effect or, in a case where there is more than one such order, upon which the last of those orders to take effect took effect.

(5) In the case of a mining site for which the preceding provisions of this paragraph have effect to specify two or more different dates as the first review date, the first review date shall be the latest of those dates.

4.—(1) The Department may by order subject to negative resolution specify a first review date different from the first review date found in pursuance of paragraph 3(1).

(2) Sub-paragraph (3) applies if no first review date is found in pursuance of paragraph 3(1).

(3) The Department may by order subject to negative resolution specify a first review date.

Service of notice of first periodic review

5.—(1) The Department shall, in connection with the first periodic review of the mineral permissions relating to a mining site, no later than 12 months before the first review date, serve notice upon each person

appearing to it to be the owner of any land, or entitled to an interest in any mineral, included in that site.

(2) A notice required to be served under sub-paragraph (1) shall—

- (a) specify the mining site to which it relates;
- (b) identify the mineral permissions relating to that site;
- (c) state the first review date;
- (d) state that the first review date is the date by which an application must be made for approval of the conditions to which the mineral permissions relating to the site are to be subject and explain the consequences which will occur if no such application is made by that date; and
- (e) explain the right to apply for postponement of the first review date and give the date by which such an application has to be made.

(3) Where, in relation to any land or mineral included in a mining site, the Department—

- (a) has served notice on any person under sub-paragraph (1); and
- (b) has received no application under paragraph 7 from that person by the date falling 8 weeks before the first review date,

the Department shall serve a written reminder on that person.

(4) A reminder required to be served under sub-paragraph (3) shall—

- (a) indicate that the land or mineral in question is included in a mining site;
- (b) comply with the requirements of sub-paragraph (2)(a) to (d); and
- (c) be served on the person in question on or before the date falling 4 weeks before the first review date.

(5) Sub-paragraph (1) shall not require the Department to serve notice under that sub-paragraph upon any person whose identity or address for service is not known to and cannot practicably, after reasonable inquiry, be ascertained by it, but in any such case the Department shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the notice which it would (apart from the provisions of this sub-paragraph) have had to serve under that sub-paragraph on the owner of that land or interest.

(6) If, in a case where sub-paragraph (5) applies, no person makes an application to the Department under paragraph 7 in respect of the mining site which includes the land or interest in question by the date falling 8 weeks before the first review date, the Department shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the written reminder that would, in a case not falling within sub-paragraph (5), have been served under sub-paragraph (3).

(7) Where by sub-paragraph (5) or (6) a copy of any notice is required to be affixed to an object on any land that copy shall—

- (a) be displayed in such a way as to be easily visible and legible;
 - (b) be first displayed—
 - (i) in a case where the requirement arises under sub-paragraph (5), no later than 12 months before the first review date; or
 - (ii) in a case where the requirement arises under sub-paragraph (6), no later than the date falling 4 weeks before the first review date;
- and
- (b) be left in position for at least the period of 21 days from the date when it is first displayed, but where the notice is, without fault or intention of the Department, removed, obscured or defaced before that period has elapsed, that requirement shall be treated as having been complied with if the Department has taken reasonable steps for protection of the notice and, if need be, its replacement.

(8) In sub-paragraphs (5) and (6), any reference to a conspicuous object on any land includes, in a case where the person serving a notice considers that there are no or insufficient such objects on the land, a reference to a post driven into or erected upon the land by the person serving the notice for the purpose of having affixed to it a copy of the notice in question.

Application for postponement of the first review date

6.—(1) Any person who is the owner of any land, or of any interest in any mineral, comprised in a mining site may, no later than the day upon which expires the period of 3 months from the day upon which notice was served upon him under paragraph 5, apply under this paragraph to the Department for the postponement of the first review date.

(2) An application under this paragraph shall be in writing and shall set out—

- (a) the conditions to which each mineral permission relating to the site is subject;
- (b) the applicant's reasons for considering those conditions to be satisfactory; and
- (c) the date which the applicant wishes to have substituted for the first review date.

(3) Where the Department receives an application made under this paragraph—

- (a) if it considers the conditions referred to in sub-paragraph (2)(a) to be satisfactory it shall agree to the first review date being postponed in which event it shall determine the date to be substituted for that date;
- (b) in any other case it shall refuse the application.

(4) When the Department determines an application made under this paragraph, it shall notify the applicant in writing of its decision and, in a case where the Department has agreed to the postponement of the first

review date, it shall notify the applicant of the date which it has determined should be substituted for the first review date.

(5) Where, within the period of 3 months of the Department having received an application under this paragraph, or within such extended period as may at any time be agreed upon in writing between the applicant and the Department, the Department has not given notice, under sub-paragraph (4), to the applicant of its decision upon the application, the Department shall be treated as having, at the end of that period or, as the case may be, that extended period—

- (a) agreed to the first review date being postponed; and
- (b) determined that the date referred to in sub-paragraph (2)(c) be substituted for the first review date.

Application to determine the conditions to which the mineral permissions relating to a mining site are to be subject

7.—(1) Any person who is the owner of any land, or who is entitled to an interest in a mineral, may, if that land or mineral is or forms part of a mining site, apply to the Department to determine the conditions to which the mineral permissions relating to that site are to be subject.

(2) An application under this paragraph shall be in writing and shall—

- (a) identify the mining site in respect of which the application is made and state that the application is made in connection with the first periodic review of the mineral permissions relating to that site;
- (b) specify the land or minerals comprised in the site of which the applicant is the owner or, as the case may be, in which the applicant is entitled to an interest;
- (c) identify the mineral permissions relating to the site;
- (d) identify, and give an address for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site;
- (e) set out the conditions to which the applicant proposes the permissions referred to in paragraph (c) should be subject; and
- (f) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (3)).

(3) For the purposes of sub-paragraph (2)(f), the appropriate certificate is such a certificate—

- (a) as would be required, under Article 22, to accompany the application if it were an application for planning permission for minerals development, but
- (b) with such modifications as are required for the purposes of this paragraph,

and Article 22(6) shall also have effect in relation to any certificate purporting to be the appropriate certificate.

(4) Where the Department receives an application under this paragraph in relation to a mining site it shall determine the conditions to which each mineral permission relating to the site is to be subject.

(5) The conditions imposed by virtue of a determination under sub-paragraph (4)—

(a) may include any conditions which may be imposed on a grant of planning permission for minerals development;

(b) may be in addition to, or in substitution for, any existing conditions to which the permission in question is subject.

(6) Subject to sub-paragraph (7), where, within the period of 6 months of the Department having received an application under this paragraph, or within such extended period as may at any time be agreed upon in writing between the applicant and the Department, the Department has not given notice to the applicant of its decision upon the application, the Department shall be treated as having at the end of that period or, as the case may be, that extended period, determined that the conditions to which any mineral permission to which the application relates is to be subject are those specified in the application as being proposed in relation to that permission; and any such permission shall, from that time, have effect subject to those conditions.

(7) Where the Department, having received an application under this paragraph, is of the opinion that it is unable to determine the application unless further details are supplied to it, the Department shall within the period of one month from having received the application give notice to the applicant—

(a) stating that it is of such opinion; and

(b) specifying the further details which it requires,

and where the Department so serves such a notice the period of 6 months referred to in sub-paragraph (6) shall run not from the Department having received the application but from the time when the Department has received all the further details specified in the notice.

(8) Without prejudice to the generality of sub-paragraph (7), the further details which may be specified in a notice under that sub-paragraph include any—

(a) information, plans or drawings; or

(b) evidence verifying any particulars of details supplied to the Department in respect of the application in question,

which it is reasonable for the Department to request for the purpose of enabling it to determine the application.

Permissions ceasing to have effect

8. Where no application under paragraph 7 in respect of a mining site has been served on the Department by the first review date, or by such

later date as may at any time be agreed upon in writing between the applicant and the Department, each mineral permission—

- (a) relating to the site; and
- (b) identified in the notice served in relation to the site under paragraph 5,

shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the first review date or, as the case may be, such later agreed date.

Appeals

9.—(1) Where on an application under paragraph 7 the Department determines conditions that differ in any respect from the proposed conditions set out in the application, the applicant may appeal to the planning appeals commission.

(2) An appeal under sub-paragraph (1) shall be made by giving notice of appeal in writing to the planning appeals commission before the end of the period of 6 months beginning with the date on which the Department gives notice to the applicant of its determination.

(3) Paragraphs (4) and (5) of Article 32 (determination of appeals) shall apply to appeals under sub-paragraph (1) as those paragraphs apply to appeals under that Article.

Special procedure for major applications under paragraph 7

10.—(1) Where, in relation to an application under paragraph 7, the Department considers that the conditions to which the applicant proposes any mineral permission to which the application relates should be subject would, if determined under this Schedule as being the conditions to which the permission is to be subject—

- (a) involve a substantial departure from the development plan for the area to which it relates; or
- (b) be of significance to the whole or a substantial part of Northern Ireland; or
- (c) affect the whole of a neighbourhood,

the Department may within 2 months from the date of the application serve on the applicant a notice in such form as may be specified by a development order applying this paragraph to the application.

(2) For the purpose of considering representations made in respect of an application to which this paragraph applies, the Department may cause a public local inquiry to be held by the planning appeals commission.

(3) Where a public local inquiry is not held under sub-paragraph (2), the Department shall, before determining the application, serve a notice on the applicant indicating the determination which it proposes to make; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) the applicant so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(4) In determining an application to which this paragraph applies, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.

(5) Paragraph 12, so far as relating to applications under paragraph 7, shall apply, with any necessary modifications, to any application to which this paragraph applies.

(6) Paragraph 9(1) shall not apply to any application to which this paragraph applies.

(7) The decision of the Department on an application to which this paragraph applies shall be final.

Time from which conditions determined under this Schedule are to take effect

11.—(1) Where an application has been made under paragraph 7 in respect of a mining site, each of the mineral permissions relating to the site shall, from the time when the application is finally determined, have effect subject to the conditions to which it is determined under this Schedule that that permission is to be subject.

(2) Sub-paragraph (1) is without prejudice to paragraph 7(6).

Two or more applicants

12.—(1) Where the Department has received from any person a duly made application under paragraph 6 or 7—

- (a) that person may not make any further application under the paragraph in question in respect of the same site; and
- (b) if the application has been determined, whether or not in the case of an application under paragraph 7 it has been finally determined, no other person may make an application under the paragraph in question in respect of the same site.

(2) Where—

- (a) the Department has received from any person in respect of a mineral site a duly made application under paragraph 6 or 7; and
- (b) the Department receives from another person a duly made application under the paragraph in question in respect of the same site,

then for the purpose of the determination of the applications and any appeal against such a determination, this Schedule shall have effect as if the applications were a single application received by the Department on the date on which the later application was received by the Department and references to the applicant shall be read as references to either or any of the applicants.

Second and subsequent periodic reviews

13.—(1) In this paragraph, in relation to a mining site, but subject to paragraph 6 as applied by sub-paragraph (2) below, “review date” means—

- (a) in the case of the second periodic review, the date falling 15 years after the date upon which was finally determined an application made under paragraph 7 in respect of the site; and
 - (b) in the case of subsequent periodic reviews, the date falling 15 years after the date upon which there was last finally determined under this Schedule an application made in respect of that site under paragraph 7 as applied by sub-paragraph (2) below.
- (2) Paragraphs 5 to 12 shall apply in respect of the second or any subsequent periodic review of the mineral permissions relating to a mining site as they apply to the first such periodic review, but as if—
- (a) any reference in those paragraphs to the “first review date” were a reference to the review date; and
 - (b) the references in paragraphs 5(1) and 7(2)(a) to the first periodic review were references to the periodic review in question.

Compensation

- 14.—(1) This paragraph applies where—
- (a) an application made under paragraph 7 in respect of a mining site is finally determined; and
 - (b) the conditions to which the mineral permissions relating to the site are to be subject, as determined under this Schedule, differ in any respect from the proposed conditions set out in the application; and
 - (c) the effect of the new conditions, except insofar as they are restoration or aftercare conditions, as compared with the effect of the existing conditions, except insofar as they were restoration or aftercare conditions, is to restrict working rights in respect of the site.
- (2) For the purposes of this paragraph—
- “the new conditions”, in relation to a mining site, means the conditions, determined under this Schedule, to which the mineral permissions relating to the site are to be subject; and
- “the existing conditions”, in relation to a mining site, means the conditions to which the mineral permissions relating to the site were subject immediately prior to the final determination of the application made under paragraph 7 in respect of that site.
- (3) For the purposes of this paragraph, working rights are restricted in respect of a mining site if any of—
- (a) the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste;
 - (b) the depth to which operations for the winning and working of minerals may extend;
 - (c) the height of any deposit of mineral waste;
 - (d) the rate at which any particular mineral may be extracted;
 - (e) the rate at which any particular mineral waste may be deposited;

- (f) the period at the expiry of which any winning or working of minerals or depositing of mineral waste is to cease; or
- (g) the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the site,
- is restricted or reduced in respect of the mining site in question.

(4) In a case to which this paragraph applies section 26 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 shall have effect as if an order made under Article 38 had effect to modify those permissions to the extent specified in sub-paragraph (5) below.

(5) For the purposes of this paragraph, the order referred to in sub-paragraph (4) is one whose only effect adverse to the interests of any person having an interest in the land or minerals comprised in the mineral site is to restrict working rights in respect of the site to the same extent as the relevant restriction.”.

Article 27(1).

SCHEDULE 4

AMENDMENTS

Planning (Northern Ireland) Order 1991 (NI 11)

In Article 65A, in paragraph (2) for “65(1)” substitute “65(1B)”.

Planning (Amendment) (Northern Ireland) Order 2003 (NI 8).

In Article 11 (stop notices), in paragraph (1), sub-paragraph (b) ceases to have effect.

In Article 42A, in paragraph (4)(a) for “complied” substitute “compiled”.

In Schedule 1 (minor and consequential amendments), in paragraph 6, sub-paragraph (a)(iii) ceases to have effect.

Article 27(2).

SCHEDULE 5

REPEALS

Short Title	Extent of repeal
The Mineral Development Act (Northern Ireland) 1969 (NI 35).	Section 60.
The Planning (Northern Ireland) Order 1991 (NI 11).	Article 26. In Article 32, in paragraph (3), the words “or such longer period as the commission may allow”. Articles 113 to 117. In Article 118, paragraph (3). In Schedule 4, paragraph 4.

Short Title	Extent of repeal
The Further Education (Northern Ireland) Order 1997 (NI 15).	In Schedule 4, the amendment of the Planning (Northern Ireland) Order 1991 (NI 11).
The Planning (Amendment) (Northern Ireland) Order 2003 (NI 8).	<p>In Article 11, in paragraph (1), sub-paragraph (b).</p> <p>In Article 26, paragraph (5).</p> <p>Article 30.</p> <p>In Schedule 1, in paragraph 6, sub-paragraph (a)(iii).</p> <p>In Schedule 1, paragraphs 17 and 18.</p>

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the law relating to planning.

Part I of the Order is introductory.

Part II makes miscellaneous amendments to the law relating to planning.

Part III provides for the correction of errors in documents relating to planning decisions.

Part IV provides for the application of the Planning (Northern Ireland) Order 1991 to the Crown.

Part V provides for the review of old mineral planning permissions and the periodic review of planning permission for minerals development.

Part VI makes miscellaneous and supplementary provision.

DRAFT PLANNING REFORM (NORTHERN IRELAND) ORDER 2005

Explanatory memorandum

INTRODUCTION

1. The above Order is being made under the Northern Ireland Act 2000 and is subject to affirmative resolution.
2. This Explanatory Memorandum has been prepared by the Department of the Environment (“the Department”) to assist the reader in understanding the Order. It does not form part of the draft Order.
3. The Order makes provision for the Department to reform and improve planning processes while also enhancing transparency and community involvement in the planning system. It also amends The Planning (Northern Ireland) Order 1991 to make planning legislation bind the Crown. Many of these provisions will reflect measures in Great Britain (GB) introduced by the Planning and Compulsory Purchase Act 2004 (c.5) which received Royal Assent on 13 May 2004.

BACKGROUND AND POLICY OBJECTIVES

4. The Order includes a number of measures relating to the Department’s development control, enforcement, and development plan preparation functions, including commitments made in the Department’s Modernising Planning Processes Implementation Plan published in February 2003. It also fulfils a long-standing commitment to end the Crown’s immunity from the planning system.
5. The primary objectives are to better manage and improve existing planning processes, particularly in relation to planning applications and development plans; contribute to the improved design and accessibility of the built environment; enhance protection of the built and natural environment, including conservation areas; introduce stronger controls over mineral development; strengthen enforcement powers by introducing temporary stop notices and increased fines for unauthorised advertisements; enhance community involvement in the planning system by providing more flexible, efficient and less adversarial procedures for considering objections to development plans and promote the achievement of sustainable development.

CONSULTATION

6. On 19 August 2004 the Department published a Consultation Paper – Reforming Planning Proposals to Amend Primary Legislation in Northern Ireland. The closing date for comments on the paper was 12 November 2004. There was a very encouraging response, with some 114 responses received. Respondents covered a wide spectrum of planning interests and most supported the proposals.

OPTIONS CONSIDERED

7. A number of policy options were considered within the consultation exercises including changes to administrative processes, legislation and self regulation, and decisions were taken on the way forward having taken account of the responses received. Most topics required primary legislation to maintain parity with comparable GB legislation and to legislate for other issues that have received widespread public support in Northern Ireland. Some topics for example, planning fees, permitted development rights following the removal of Crown immunity, control over increases of internal floor space such as retail mezzanine floors, plus access and design statements will also be progressed in subordinate legislation.

FINANCIAL EFFECTS OF THE ORDER

8. Overall the measures in the Order are not expected to impose any significant material cost to the public or the Consolidated Fund.

EUROPEAN CONVENTION ON HUMAN RIGHTS

9. The provisions of the Order are considered to be compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

10. The Department has carried out an equality screening exercise. No adverse impacts for any of the 9 Section 75 categories were identified. A full Equality Impact Assessment was therefore not required.

SUMMARY OF THE REGULATORY IMPACT

11. The Order will not impose any significant costs on businesses, voluntary sector or charities. The partial regulatory impact assessment is available on the Department's internet site at www.planningni.gov.uk.

MAIN ELEMENTS OF THE ORDER

12. The draft Order is in 6 Parts and has 27 Articles and 5 Schedules. Part I contains introductory provisions. Part II deals with reform provisions, which aim to improve the management of planning processes, promote the achievement of sustainable development, enhance transparency and community involvement in the planning system and strengthen enforcement powers. Part III deals with the correction of errors in planning decisions. Part IV makes amendments to the Planning (Northern Ireland) Order 1991 to remove Crown immunity from planning legislation. Part V introduces new provisions dealing with mineral planning permissions and Part VI deals with miscellaneous and supplementary provisions. The 5 schedules contain detailed provisions relating to Parts IV, V and VI.

COMMENTARY ON ARTICLES

13. A commentary on the provisions follows below (comments are not given where the wording is self-explanatory).

PART I – INTRODUCTORY

Articles 1 and 2 Title and commencement and Interpretation

14. Articles 1 and 2 are introductory provisions.

PART II – PLANNING REFORM

Article 3 – Statement of community involvement

15. This Article introduces a requirement for the Department to produce a statement of its policy for involving the community in development proposals, including both development control and development plan making functions.

Article 4 – Status of development plans

16. Article 4 confirms in law the importance of a development plan in the determination of planning applications. Where regard is to be had to the development plan, the determination must be in accordance with the development plan unless material considerations indicate otherwise.

Article 5 – Independent examination of development plans

17. Article 5 replaces the powers whereby the Department may cause a public local inquiry to be held by the Planning Appeals Commission for considering objections to development plans. Instead it enables an independent examination to be carried out by the Planning Appeals Commission for the purpose of considering objections to a development plan or to the alteration, repeal or replacement of a development plan. A person, who makes objections, will still be given the opportunity to appear before and be heard by the Planning Appeals Commission providing he has made a request to do so.

Article 6 – Sustainable development

18. This Article imposes a statutory duty on the Department and the Planning Appeals Commission. In exercising functions in relation to the making, alteration or repeal of development plans, the Department and the Planning Appeals Commission must do so with the objective of contributing to the achievement of sustainable development. The Department and the Planning Appeals Commission are also required to have regard to planning policy and advice contained in guidance issued by the Department of the Environment and the Department for Regional Development.

Article 7 – Development to include certain internal operations

19. Article 7 provides the Department with the power to bring increases of internal floor space within the definition of development. The threshold, above which

planning permission would be required, will be defined within subordinate legislation.

Article 8 – Statements of principles of design and accessibility

20. This Article requires certain applications for planning permission and consent to be accompanied by a statement about the design principles and concepts that have been applied to the development and/or a statement about how issues relating to access to the development have been dealt with. Powers are also provided to enable the applications to which this is intended to apply to be prescribed in subordinate legislation.

Article 9 – Power to decline to determine applications

21. Article 9 provides the Department with a power to decline to determine any planning application or consent deemed to be the same or substantially the same as another application for the same site within the preceding two years. The provisions apply where the Department has refused a similar application or has refused more than one similar application and there has been no appeal to the Planning Appeals Commission; or where the Planning Appeals Commission has dismissed an appeal for a similar proposal and there has been no material change in circumstances (Repeat Applications). In addition the Department may decline to determine an application if the Department thinks that it is similar or substantially similar to another application which has not been finally determined or is still under consideration by the Planning Appeals Commission (Twin Tracked Applications).

Article 10 – Duration of planning permission and listed building consent

22. This Article introduces new powers which will remove the ability to renew a planning permission, listed building or conservation area consent by applying to vary the time commencement condition. The powers also remove the ability to vary the time within which reserved matters must be submitted with regard to outline permissions.

Article 11 – Removal of discretion to extend time for bringing appeal

23. Article 11 removes the Planning Appeal Commission's discretion to extend the time for submitting an appeal.

Article 12 – Conservation areas

24. Article 12 provides for wider consultation on the proposed designation of conservation areas to include such other persons or bodies as may be prescribed. This Article also enables conservation area controls, including demolition control and the preservation of trees to be put in place on a temporary basis before such consultation takes place.

Article 13 – Temporary stop notice

25. The Department may serve temporary, stand alone, stop notices to halt a breach of planning control for a period of up to 28 days as soon as the breach is identified.

It enables the Department to prevent unauthorised development at an early stage without first having had to issue an enforcement notice. In addition it allows the Department up to 28 days to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue. The provisions also impose certain limitations on activities and specify that contravention of such a notice would become a criminal offence, punishable on summary conviction by a fine of up to £30,000 or on indictment by an unlimited fine; and outline arrangements for compensation.

Article 14 – Increase in fines for unlawful advertisements

26. This Article increases the maximum level of fines for the offence of displaying an advertisement in contravention of advertisement regulations from level 3 on the standard scale of fines (£1000) to level 4 (£2500) with daily fines raised from up to £100 to a maximum of £250.

Article 15 – Procedure of Planning Appeals Commission

27. Article 15 introduces change to allow the Chief Commissioner of the Planning Appeals Commission to delegate decision making in certain appeal cases to a single Commissioner. The Chief Commissioner will have the discretion to decide which cases are to be so delegated. The requirement for all other planning appeals decisions to be made by a minimum of 4 Commissioners will remain. Detailed changes may be prescribed in subordinate legislation.

Article 16 – Fees and charges

28. Article 16 widens provisions for the payment of both charges and fees relating to planning applications. The provisions enable the Department to charge for the recovery of the costs of performing its functions (e.g. the quality audit of planning decisions).

PART III – CORRECTION OF ERRORS

Article 17 – Correction of errors

29. Article 17 provides the power for the Department to correct minor typographical errors in its decision documents/notices. Article 18 requires the Department to notify, in writing, the relevant person of any correction or decision not to make a correction as soon as practicable. Article 19 explains the effect of a correction made or not made and Article 20 deals with supplementary provisions relating to the correction of errors in decision notices.

PART IV CROWN APPLICATION

Article 21 and Schedule 1 – Crown application

30. This Article removes Crown immunity subject to certain provisions and exceptions. It inserts new provisions regarding enforcement and applications for planning permission etc by the Crown, and in relation to the service of notices on the Crown. Further amendments relating to the Crown are included in Schedule 1. These relate to service of enforcement notices, hazardous substances consent,

rights of entry, compulsory acquisition of land for planning purposes and the service of purchase notices. Definitions relating to the Crown are revised and there are provisions requiring the Crown to provide information as to estates in Crown land.

31. The exceptions relate to the recovery by the Department of costs relating to the execution of works required by an enforcement notice, injunctions, urgent works to preserve a building in a conservation area and the recovery by the Department of costs relating to the execution of works required by an Article 82 enforcement notice (enforcement of duties as to replacement of trees).

Article 22 – National security

32. Article 23 introduces new procedures for planning applications, etc, where, in the opinion of the Secretary of State, the consideration by the Department of objections or representations received in relation to the application raise issues of national security. Procedures will enable decisions to be made where, for security reasons, details of the development cannot be revealed but where to withhold such details would impact on the ability of interested parties to fully participate in the planning process. The Department will be required to hold a public inquiry in such circumstances.
33. Special provision is made for the giving of evidence at inquiries under the 1991 Order where national security issues are raised. The Secretary of State may direct that certain evidence may only be heard by, or open to inspection by certain persons. If the Secretary of State gives such a direction the Attorney General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting such evidence.
34. Powers provide for the appointment, payment and functions of a person (appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.

Article 23 – Trees in conservation areas: acts of Crown

35. This Article prohibits the Crown from doing any act to a tree in a conservation area which might be prohibited by a tree preservation order, unless it serves notice of its intention on the Department and does the act either with the consent of the Department or between six weeks and two years after the date of the notice.

Article 24 - Subordinate legislation

36. Article 24 provides the Department with a power to make an order to apply existing planning subordinate legislation to the Crown, with or without modifications.

Article 25 and Schedule 2 – Crown application: transitional

37. Article 25 introduces Schedule 2 which makes transitional provisions to deal with applications for planning permission submitted by the Crown to the Department

PART V MINERAL PLANNING PERMISSIONS

Article 26 and Schedule 3 – Mineral planning permissions

38. This Article and the new provisions introduced by Schedule 3 enable the Department to make an initial review of all old mineral permissions granted in Northern Ireland to ensure that their conditions meet current environmental standards. The provisions also prevent dormant sites from reopening without a review of the conditions attaching to the permission being carried out and place a duty on the Department to make periodic reviews of all mineral sites.

PART VI MISCELLANEOUS AND SUPPLEMENTARY

Article 27 and Schedules 4 and 5 – Amendments and repeals

39. Article 27 introduces Schedule 4 which makes minor amendments to the Planning (Northern Ireland) Order 1991 (NI 11) and the Planning (Amendment) (Northern Ireland) Order 2003 (NI 8). It also introduces the repeal of the statutory provisions set out in Schedule 5.

COMMENCEMENT

40. Commencement provisions will be reviewed after consultation.

List of consultees

20:20 Architects
Age Concern NI
Alliance Party of Northern Ireland
Altnagelvin Hospitals HSS Trust
Archbishop Of Armagh & Primate Of All Ireland
Architecture and Planning Info. Serv.
Arcus Architects
Ards Airport
Armagh and Dungannon HSS Trust
Association of Consulting Engineers
Atlas Communications
B9 Energy Services Ltd
Bar Library
BB Planning & Design, Lisburn Enterprise Organisation
BBC
Belfast City Airport
Belfast City Hospital HSS Trust
Belfast Civic Trust
Belfast Education and Library Board
Belfast Harbour Commissioners
Belfast Healthy Cities
Belfast Hills Partnership
Belfast Institute of Further & Higher Education
Belfast Metropolitan Residents Group
Belfast Solicitors Association
Bishop Of Down and Connor
Brennen Associates
British Telecom (NI)
Bryson House
Building Design Partnership
Cable & Wireless
Cabletel (NI) Ltd
Carers Northern Ireland
Causeway HSS Trust
Central Services Agency for the HPSS
Chartered Institute of Environmental Health
Chartered Institute of Housing
Chinese Welfare Association
City of Derry Airport
Coalition On Sexual Orientation
Coleraine Harbour Commissioners
Commissioner for Children & Young People
Committee for the Administration of Justice
Community Technical Aid (NI) Ltd
Confederation of British Industry, NI Branch CBI
Construction Employers Federation
Council for Catholic Maintained Schools
Council for Nature Conservation and the Countryside
Countryside Access & Activities Network for NI
Craigavon and Banbridge Community HSS Trust

Craigavon Area Hospital Group HSS Trust
Crown Castle UK Ltd
Democratic Unionist Party
Department of Civil Engineering QUB
Derryhale Residents' Association
Development Planning Partnership
Disability Action
Down Lisburn HSS Trust
Environment and Planning Law Association of NI
Equality Commission for NI
Federation of Small Businesses
Ferguson & McIlveen
Fire Authority for Northern Ireland
Fisheries Conservancy Board for Northern Ireland
Forest of Belfast, C/o Parks and Amenities Section
Foyle HSS Trust
Friends of the Earth
Geological Survey of Northern Ireland
Gingerbread Northern Ireland
Green Park HSS Trust
Help The Aged NI
Historic Buildings Council
Historic Monuments Council
HM Council of County Court Judges
Homefirst Community HSS Trust
Human Rights Commission
I – Document Systems
Inland Revenue
Institute Of Directors
Institute of Historic Building Conservation
Institute of Professional Legal Studies, QUB
Institution of Civil Engineers (NI Association)
Institution of Highways and Transportation (NI Branch)
International Tree Foundation
Invest Northern Ireland
Kenneth Crothers, Deane & Curry
Lagan Valley Regional Park Officer
Laganside Corporation
Laganside Courts
Landscape Institute NI
Larne Harbour Commissioners
Law Centre (NI)
Law Reform Advisory Committee
Londonderry Port & Harbour Commissioners
Lough Neagh and Lower Bann Management Committees
LPG Association
Marks and Spencer
Mater Infirmorum Hospital HSS Trust
McClelland/Saulter Estate Agents
Mens Action Network
Methodist Church In Ireland
Ministry of Defence
Ministry of Defence HQNI
Mobile Operators Association
Mono Consultants Limited

Mourne Heritage Trust
Mournes Advisory Council
National Trust
Newry and Mourne HSS Trust
NI Association of Citizens Advice Bureau
NI Chamber of Commerce and Industry
NI Chamber of Trade
NI Council for Voluntary Action
NI District Councils
NI Government Departments
NI Quarry Products Association
NI Residents Magistrates' Association
NI Women's European Platform
NIC/ICTU
NICARE
NICOD
NIPSA
North and West Belfast HSS Trust
North Eastern Education and Library Board
North West Architectural Association
Northern Group Systems (Environmental Health)
Northern Health And Social Services Board
Northern Ireland 2000
Northern Ireland Agricultural Producers Association
Northern Ireland Ambulance Service HSS Trust
Northern Ireland Amenity Council
Northern Ireland Assembly Ombudsman
Northern Ireland Association Engineering Employer's Federation
Northern Ireland Blood Transfusion Service Agency
Northern Ireland Council For Ethnic Minorities
Northern Ireland Council for Integrated Education
Northern Ireland Court Service
Northern Ireland Economic Council
Northern Ireland Electricity Plc
Northern Ireland Environment Link
Northern Ireland Federation of Housing Associations
Northern Ireland Gay Rights Association
Northern Ireland Health Promotion Agency
Northern Ireland Housing Council
Northern Ireland Housing Executive
Northern Ireland Local Government Association
Northern Ireland Publications Resource
Northern Ireland Quarry Owners Association
Northern Ireland Regional Medical Physics Agency
Northern Ireland Tourist Board
NTL Cabletel
O2
OFCOM
Office of the Deputy Prime Minister
OFREG
Orange
Ostick and Williams
Phoenix Natural Gas Ltd
Planning Appeals Commission
Playboard NI Ltd

Policing Board Of Northern Ireland
Pragma Planning
Presbyterian Church In Ireland
Progressive Unionist Party
Property Services Agency
PSNI Architectural Liaison Officer
PSNI Traffic Branch HQ
RELATE
Robert Turley Associates
Royal Group of Hospitals and Dental Hospital HSS Trust
Royal Institution of Chartered Surveyors
Royal National Institute For Deaf (RNID)
Royal National Institute For The Blind
Royal Society for Protection of Birds
Royal Society of Ulster Architects
Royal Town Planning Institute
Royal Town Planning Institute (Irish Branch, Northern Section)
RPS
Rural Community Network
Rural Development Council for Northern Ireland
School of Law, QUB
Scottish Executive
Sinn Fein
Social Democratic and Labour Party
Society of Local Authority Chief Executives
South and East Belfast HSS Trust
South Eastern Education and Library Board
Southern Education and Library Board
Southern Group Public Health Committee
Southern Health and Social Services Board
Sperrin-Lakeland HSS Trust
Sports Council for Northern Ireland
St Angelo Airport, Enniskillen
Strangford Lough Management Advisory Committee
Sustrans
TBI Belfast International Airport
The British Wind Energy Association
The Conservative Party
The Executive Council of the Inn of Court of NI
The General Consumer Council for NI
The Green Party
The Labour Party
The Law Society of Northern Ireland
The Liberal Democrat Party
The Office of Law Reform
The UK Unionist Party
The Workers Party
Three
T-Mobile
Training for Women Network Ltd
Translink
Transport 2000
Travellers Movement NI
Ulster Anglers Association
Ulster Architectural Heritage Society

Ulster Community and Hospitals Trust
Ulster Farmers' Union
Ulster Society for the Preservation of the Countryside
Ulster Unionist Party
Ulster Wildlife Trust
Ulster, North Down and Ards Hospitals HSS Trust
United Hospitals HSS Trust
University of Ulster
University of Ulster, School of the Built Environment
URPA
UTV Engineering Information Department
Victim's Unit. OFMDFM
Vodafone Ltd
Warrenpoint Harbour Authority
WDR & RT Taggart
Welsh Assembly
Western Education and Library Board
Western Group Environmental Health Committee
Western Health And Social Services Board
Wildfowl and Wetland Trust
Womens Forum NI
Woodland Trust
World Wildlife Fund (NI)
Youth Council For Northern Ireland