

**Department of the Environment
Planning Service of Northern Ireland**

**REVIEW OF
PERMITTED DEVELOPMENT RIGHTS**

REPORT

by

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EXECUTIVE SUMMARY

1. Permitted development rights are provided by the Planning (General Development) (Northern Ireland) Order 1993 (the GDO) to allow certain types of development to proceed without the need for a planning application, since planning permission for them is deemed to be granted. Such rights have long played a role in reducing the number of planning applications for minor and uncontentious development and reducing the regulatory burden of the planning system.
2. This study reports on research undertaken for the Planning Service of Northern Ireland, to review the GDO and any issues and problems associated with the current operation of permitted development rights. Matters to be considered included how to make the GDO clearer and more comprehensible, the need for greater consistency within it, how it could provide greater support for Government policy aims and the effectiveness of the Articles, as well as the scope for extending existing permitted development rights without causing unacceptable effects.
3. The study process involved consultation with a wide range of organisations in Northern Ireland that use or are affected by permitted development rights, including statutory undertakers, environmental and heritage interest groups, Government departments, district councils and various private sector organisations representing business, planning, design and legal interests. This included approximately 50 structured interviews with organisations and individuals, after an initial postal questionnaire. The approaches to permitted development in England, Scotland and the Republic of Ireland were also reviewed.
4. The overall conclusion from the consultation process was that the GDO is working reasonably well and that there is no great need for change to it, other than to make it easier to use and to give greater protection to heritage areas and sensitive landscape and nature conservation areas. Very few proposals were made to widen permitted development rights, and then mainly for minor forms of development. A frequent comment was that changing the GDO was less important than improving the efficiency of the planning application process generally.
5. While there are significant differences between permitted development rights in Northern Ireland and other parts of the UK, and some calls for greater consistency in this respect, it was considered important that any proposals for change take account of the planning and political framework that applies in Northern Ireland. This reflects a situation with less deregulation of utilities and surface transport infrastructure than in England, much infrastructure operated by Government bodies under Crown Immunity from planning controls, and a planning function administered solely by the Planning Service, with no decision making role given to district councils. There is also a particular need for transparency in the planning process, a wide perception that

making planning applications can involve lengthy delays and that there is limited enforcement of planning control.

6. Based on the consultation process and review of earlier research, the types of permitted development giving rise to most problems for both the Planning Service and affected parties are those related to dwellinghouses, agriculture, minor operations and temporary uses. The main issues and problems arising from the current GDO were identified as:
 - the somewhat complex style of drafting, the lack of adequate and easily accessible definitions in some cases, and absence of comprehensive user guidance make it difficult to use and interpret for non regular users;
 - some inconsistencies between different categories of permitted development rights and limitations upon them;
 - some anomalies in drafting which allow for abuses or unintended effects;
 - adverse effects arising from certain permitted development rights and inadequate controls on them, particularly in conservation areas and other sensitive areas;
 - the limited effectiveness and use of Article 4 Directions to restrict permitted development rights;
 - the perceived failure of certain categories of permitted development rights to support Government policy aims for the rural and built environment;
 - significant differences in the extent of permitted development rights between Northern Ireland and the rest of the UK and the benefits of a more consistent approach.
7. Some consideration was given to radical alternatives to the current system of permitted development rights but none of these was considered to provide significant improvements or be justified by the scale of problems with the current GDO. Radical change could introduce new problems and make worse a well-tried system that works reasonably well. The preferred approach was to build upon the current system of permitted development provided by the GDO.
8. Consideration was given to how far permitted development rights encourage or hinder development consistent with Government policy aims, in which sustainability has emerged as the overriding theme. Other than for telecommunications, the GDO has been updated only to a limited extent to reflect changing policy themes and in other areas provides variable and generally limited support for Government aims.
9. To make permitted development rights a more positive tool to encourage change in appropriate directions, a key element of this study's approach was that permitted

development rights should promote development or environmental outcomes in tune with Government policy aims. However, as different strands of Government policy can conflict with each other, the overriding aim should be for permitted development rights to be defined so as to help achieve an acceptable outcome, with a positive balance of policy aims, recognising that this may not always be easy to assess.

10. A consequence of seeking to secure better support in the GDO for policy aims which have sustainability as an overriding theme may be a need for more restrictive permitted development rights, rather than any relaxation. It is important that imposing greater restrictions does not make the planning system less efficient and the GDO more complex and harder to understand than it currently is. A balanced approach is required, with any change to permitted development rights considered against these criteria:
 - Is the change needed to deal with a widespread problem rather than an exceptional case?
 - Is change needed now to address a likely future issue?
 - Is the change justified by the strength of the impacts/concerns identified?
 - Is it likely to bring about a real improvement in the operation of the system or in supporting policy aims?
 - Are the benefits acceptable in terms of other impacts on the planning system, including the Planning Service's workloads?
 - Is the change proposed the minimum needed to achieve the objective?

11. Taking account of these factors, the main areas of change to permitted development rights focused on:
 - making the GDO easier to use, understand and interpret;
 - providing increased control over development in the more sensitive open areas and built heritage;
 - controlling development that affects streetscape;
 - simplifying permitted development rights for householders, while removing loopholes that cause problems and adverse effects on amenity;
 - measures to support the Planning Service in dealing with permitted development;
 - seeking to improve consistency across the GDO where justified by circumstances.

12. To give a broad overview of the nature and balance of changes being proposed by this study, the main proposals involve improving ease of use and understanding of the GDO through simpler drafting, clearer definitions and interpretation, and

provision of a User Guide for the most problematic areas. The extent of relaxation of permitted development rights is limited by the lack of strong support for this from the consultation process but making the GDO easier to use and understand can itself be seen as a deregulatory measure. However, additional categories of permitted development are proposed for schools, hospitals and universities, reflecting rights available elsewhere in the UK. Some relaxation in the size limits for extension of industrial buildings is also proposed. At the same time, new rights are proposed for some minor types of development such as site investigations and minor waste management control facilities. Overall, a reasonable balance has been provided between relaxation and tightening of permitted development reflecting policy aims to give more protection to sensitive landscape, nature conservation, heritage areas and streetscape, to deal with loopholes affecting air traffic safety, and to remove rights causing real harm.

13. On this basis, recommendations from the study identified some areas of the GDO which appear to be operating adequately and causing few problems. For these no significant changes, other than clearer interpretation and drafting, are needed. For some areas of the GDO, relaxation of permitted development rights could take place and in others further restrictions on current rights were considered appropriate. A number of general changes to apply across the GDO as a whole were also identified. Some recommendations will involve changes to primary legislation. The main areas where changes are proposed are summarised below under these headings.

General Changes

14. **Improve Interpretation and User Friendliness of the GDO by:**

- redrafting in a legally robust but simpler style, in the positive rather than the negative;
- making available a composite, up to date, version of the GDO text via the Planning Service website;
- providing adequate definitions or interpretation for all terms that have given rise to problems in the past, with key definitions to be repeated within the relevant Parts;
- making each Part as self-contained as possible, in terms of cross references and definitions, removing the need to refer to other legislation;
- repeating, within each relevant Part of Schedule1, any restriction applying under Article 3, or at least under each Part make reference to any special restrictions imposed under other Articles;

- providing a regularly updated GDO “*User Guide*”, available over the Planning Service website, to aid use of Parts 1 and 6 of the GDO only; this could include illustrated examples and flowcharts where appropriate as well as guidance on the meaning of “*development*”.
15. **Sensitive Areas:** Amend Article 3 to remove permitted developments within or affecting Areas of Special Scientific Interest (ASSIs); impose additional restrictions on permitted development in sensitive landscape areas but in a targeted way so that the only changes proposed in this regard are to Part 9 improvements to private ways and to certain Part 13 works by statutory undertakers. In the longer term, consider a more targeted approach with any restrictions limited to Landscape Character Areas as defined in Area Plans.
 16. **Works affecting Streetscape:** Consider making deemed permission on works affecting streetscape (e.g. in Parts 12, 13, 17) conditional on this development causing no adverse impacts on streetscape and pedestrian flow, the extent of compliance being assessed against a new Street Management Code; require removal of redundant structures provided under permitted development.
 17. **Article 4 Directions:** Improve the effectiveness of these Directions by providing best practice guidance on their preparation and restricting through the GDO the permitted development rights most commonly removed by Article 4 direction.
 18. **Airport Safeguarding:** Changes are proposed to assist airport safeguarding by:
 - a) requiring prior notification to the Planning Service of any proposed development exceeding certain height limits within a specified distance from an aerodrome boundary, and removing permitted development rights for development that exceeds relevant height limits in the aerodrome safeguarding plan;
 - b) restricting permitted development rights across all relevant Parts for development that would lead to more people living, working or congregating within Public Safety Zones.
 19. **Redundant development:** Add to Article 3 a general requirement to remove redundant buildings, equipment and structures provided under permitted development rights.
 20. **Crown Immunity:** While no specific recommendations are made at this stage, any future removal of Crown Immunity from planning control in Northern Ireland, as now planned in England, may require the introduction of some form of permitted development rights for various Government bodies and agencies, which may otherwise have to submit a large number of minor planning applications.
 21. **Confirmation of Permitted Development:** Provide guidance encouraging use of Certificates of Lawful Use or Development to provide formal confirmation that rights apply, or some simplified application form along similar lines to these Certificates but with a modest fee.

Widening of Permitted Development Rights

22. The main areas where relaxation or widening of existing permitted development rights is considered appropriate include:
- **Industrial and Warehouse development:** increase the size limit for extensions from 750 to 1,000 m²; consider removing the requirement that extensions or alterations have no material effect on the appearance of the premises; consider removing the volume control on extensions and rely only on a percentage increase of floorspace and not exceeding existing building height.
 - **Changes of Use:** extend Class E to include several flats above shops/offices; in long term vacant retail units with upper floors, consider allowing total housing use as permitted development; introduce dual use planning permissions to support e.g. central area regeneration.
 - **CCTV:** allow pole mounted cameras within sites where not within 20 metres of the curtilage boundary;
 - **Development by District Councils:** clarify that waste recycling receptacles fall within Part 12 and could be permitted on highway land subject to limitations on size and distance from dwellings;
 - **Bus Shelters:** extending permitted development rights to erect a bus shelter to those carrying out the works on behalf of the statutory road transport undertakers, subject to various conditions on location and size;
 - **Electricity Development:** increasing the permitted length of single use overhead power lines;
 - **Postal Development:** making "*postal pouches*" permitted development outside conservation areas;
 - **Harbour Development:** including security measures at harbours/ports, such as fences up to 2.4 metres high, as permitted development;
 - **Telecommunications development by code system operators:** consider limited changes to allow operators to add additional equipment on to existing masts (both ground based and roof mounted) without the need for planning permission, with a limit on the number of antennas permitted if considered necessary;
 - **Householder development:** control extensions to dwellinghouses by floorspace and distance from the curtilage rather than by volume;
 - **New Categories:** consider providing permitted development rights for some additional categories:

- Schools: provide a new Part giving separate permitted development rights for school development with a building size limit of 250 m³ and a distance limit from the curtilage boundary;
- Universities, Colleges & Hospitals: provide a new Part giving separate permitted development rights for extensions or new buildings up to 1,000 m² beyond a certain distance from the curtilage boundary;
- minor works required for waste management, such as venting wells and development;
- various site investigation works, such as digging temporary trenches or bore-holes to investigate contamination or ground conditions.

Permitted Development where Additional Restrictions are proposed

23. The main areas where tighter restrictions on existing permitted development rights are considered justified by adverse impacts or conflict with Government policy aims include:

- **Householder development:** a range of changes to remove anomalies and adverse impacts are proposed including:
 - controlling permitted development rights for new buildings/extensions where unimplemented, valid planning permissions exist;
 - additional controls on alterations/extensions within conservation areas and other sensitive areas;
 - reducing the proportion of the curtilage which can be covered by buildings to 25%;
 - requiring height of new buildings within 2 metres of a boundary to be measured from the lower land level where differences exist in land level between two sites;
 - new buildings etc. under Class B to be at least 3 metres from an adjoining dwellinghouse;
 - requiring limited or non-opening opaque glass windows for any new openings in return frontages directly overlooking windows in a neighbour's property;
 - making permitted development rights consistent with Building Regulations;
 - restricting development that abuts a party wall;
 - clarifying that permitted development does not override trees with a TPO.
- **Minor Operations:** impose restrictions on materials used to form means of enclosures so as to require conventional materials and so as to exclude the use of waste materials; limit the length of a means of access and permit only a temporary means of access to serve a temporary use; ensure that railings on roof terraces/gardens/decking fall within Part 1; limit the height of a fence or other means of enclosure to 1 metre in height between the front/side building line of the dwellinghouse facing a highway and the highway; restrict painting of

buildings which are listed or in conservation areas and Areas of Townscape Character;

- **Agricultural Development:** a range of changes to remove anomalies, correct loopholes and address adverse impacts are proposed, including greater controls in ASSIs and preventing the tipping of waste as an engineering operation;
- **Forestry Development:** Restrict permitted development rights for construction of tracks in areas of archaeological interest;
- **Industrial Development:** specifically exclude incineration activities from Part 8 rights;
- **Private Roads:** within AONBs and National Parks, exclude the creation of a hard surface and widening or significant raising of levels of unadopted streets or private ways under Part 9.
- **Development by District Councils:** clarify that floodlighting and new car parks are specifically excluded from Part 12 rights; clarify that waste recycling facilities can be placed on land not owned by district councils subject to limitations on distance from dwellings, size and on being on highway land only;
- **Development by Railway Undertakers:** set a height limit of 15 metres on railway telecommunications masts permitted in AONBs, National Parks and conservation areas,
- **Demolition:** make demolition of sports facility buildings permitted development but conditional on planning permission for redevelopment having been granted; remove the right to demolish chimneys, porches, walls, fences and other means of enclosure in conservation areas;
- **CCTV:** subject to technological feasibility, consider reducing size limits for cameras; permit pole mounted CCTV within large sites but beyond 20 metres from curtilage boundaries;

Changes involving Primary & Other Legislation

24. The following recommendations would involve changes to primary or secondary legislation:

- Amending the definition of development in the Planning Order to include repair works within the highway by statutory undertakers.
- amend secondary legislation to bring demolition of sports facilities and certain works within conservation areas, including front garden walls and chimneys, within planning control;

- consider imposing control over demolition of local important buildings outside conservation areas or Areas of Townscape Character if a new designation for such buildings can be provided and supported by policies in Area Plans

Need for Further Research

25. The following areas require further investigation to support possible changes to the GDO:
 - investigate appropriate height and distance limits for permitted development within aerodrome safeguarding areas, aiming for consistency with those in the rest of the UK;
 - investigate the minimum size of an agricultural holding which can be viably operated;
 - investigate the scope for minor changes of use of redundant agricultural buildings to Use Classes 4, 5 or 11;
 - investigate agricultural building/structure sizes required for livestock/grain storage, in the light of EU and other Regulations and in relation to whether permitted development limits should be changed generally, or in sensitive areas.
26. These changes are intended to provide an appropriate balance between supporting Government policy aims, the regulatory burden on users of these rights and the efficiency of the planning system.

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The views expressed in this report are those reached by the consultants and do not necessarily represent the views of the Planning Service.

I.0 INTRODUCTION

- 1.1 Permitted development rights are provided by the Planning (General Development) Order (Northern Ireland) 1993 (the GDO), and subsequent amendments to it, to allow certain types of development to proceed without the need for a planning application, since planning permission for them is deemed to be granted. Such rights have long played a role in reducing the number of planning applications for minor development and reducing the regulatory burden of the planning system for many users.
- 1.2 The February 2002 Department of the Environment Consultation Paper, *Modernising Planning Processes*, indicated that the scope of permitted development could be critically examined on the basis that if regulation could be acceptably reduced, this would enable the planning system to proceed more quickly while freeing scarce resources to deal with more significant issues. It was also noted that additions to the categories of permitted development rights could bring benefits, provided that this did not threaten the protection of amenity and interests of acknowledged importance (paragraph 4.22).
- 1.3 Following from that commitment to review the GDO, this study reports on research undertaken, on behalf of the Planning Service of Northern Ireland, to examine any issues and problems associated with the current operation of permitted development rights and assess the scope for change and deregulation. The study has been carried out by development planning consultants Nathaniel Lichfield & Partners Ltd. (NLP).

Objectives of the Study

- 1.4 The specific aims of the research, as identified in the study brief, are to:
- a) evaluate the impact, effect and effectiveness of the permitted development regime;
 - b) assess existing permitted development rights to see if they are in line with current Government policy in the widest sense and up to date in their expression;
 - c) assess the existing conditions, qualifications and restrictions to see if they are in line with Government policy and up to date in their expression;

- d) consider whether any additional permitted development rights should be introduced or existing rights removed;
- e) consider whether any additional conditions, qualifications or restrictions should be introduced;
- f) consider whether there is a need for greater consistency across the GDO;
- g) consider how the GDO provisions, including the Articles, could be made clearer and more comprehensible;
- h) consider the operation of the Articles (and in particular Article 4) to see if they are fully effective;
- i) consider whether any changes should be made to primary legislation to facilitate changes to the GDO.

Approach

1.5 The research study process involved the following stages:

- a review of previous research and literature on permitted development issues and case law, including research on this topic within the English and Scottish planning systems;
- a review of relevant Northern Ireland Government planning policy documents, and related public consultation responses on such documents;
- a review of relevant planning legislation, including the GDO for Northern Ireland, as well as legislation relating to permitted or exempted development in Scotland, England and Wales and the Republic of Ireland;
- structured interviews with approximately 50 representatives from a wide range of organisations using or affected by permitted development rights, including district councils, statutory undertakers, airports, transport bodies, various environmental and conservation interest groups, education and health authorities and representative organisations in the business, design and planning fields;
- these interviews followed questionnaires sent out to a sample of some 80 organisations to elicit initial responses on the operation of permitted development in Northern Ireland.

Report Structure

1.6 The report is structured as follows:

- Chapter 2 summarises the role of permitted development rights within the planning system, and examines how these have evolved to reflect changing development and policy aims. The relationship of the GDO to current Government policy aims and the extent to which it supports these aims is also considered;
- Chapter 3 identifies the main issues and deficiencies relating to the permitted development rights, as identified by a review of literature, case law and consultation responses;
- Chapter 4 examines the pressures for change to the GDO, discusses possible alternatives to the current system of permitted development rights and defines the principles which should apply when considering any changes;
- Chapters 5–25 consider in detail the operation of permitted development rights and other elements of the GDO. For each category of permitted development in Schedule 1, issues and concerns identified by the consultation process are summarised, along with any identified anomalies and inconsistencies. The potential for change and likely impacts of possible changes are also examined;
- Chapter 26 assesses the scope to extend permitted development rights to additional categories of development;
- Chapter 27 considers the scope for general changes to the GDO as a whole, rather than to individual parts of it;
- Chapter 28 sets out the consultants' overall conclusions and a summary of recommendations.

1.7 The main report is supported by Annexes containing a list of consulted organisations, a review of relevant literature, and a summary of the relevant Government policy aims which permitted development rights should aim to support.

2.0 PERMITTED DEVELOPMENT RIGHTS WITHIN THE NORTHERN IRELAND PLANNING SYSTEM

- 2.1 Permitted development rights provided by the GDO grant planning permission for certain categories of development without the need to submit a planning application. For the most part, these categories relate to relatively minor forms of development which do not usually have significant impacts and which would generally have received planning permission if an application had been required.
- 2.2 These types of rights also exist in the planning systems of England & Wales and Scotland, as well as in the Republic of Ireland, where they are termed "*exempted development*". The usefulness of these rights and the need for changes to them relate to the planning system and the environment in which they must operate and it is important to understand how much these rights reflect local circumstances and are consistent with those of other parts of the UK.

The Northern Ireland Context

- 2.3 Covering a land area broadly equivalent to a large county in England, the Northern Ireland economy has an above average reliance on the agricultural sector and appears to experience less intense development pressures than other parts of the UK. Looking at sectors affected by permitted development rights, the size of agricultural units and forestry coverage tend to be smaller than in other parts of the UK, while utilities and surface transport infrastructure are largely controlled by single bodies, with very limited deregulation. Many of these public sector bodies operate under Crown Immunity and so are not subject to normal planning controls, although generally they operate as if they were.
- 2.4 Unlike other parts of the UK, Northern Ireland has centralised planning powers with the planning function administered solely by the Planning Service, an Agency within the Department of the Environment. Since October 1973, district councils have had no planning function but are consultees on planning applications made in their areas. Because of Northern Ireland's recent political history, there is a particular need for transparency in the

planning process. At the same time, there is a wide perception that the operation of the planning system is slow, that having to making planning applications can involve lengthy delays and political factors and that there is limited enforcement of planning control. These factors have implications in considering any changes to permitted development rights. Although this review examines planning systems elsewhere, the approach is to provide permitted development rights that are appropriate for Northern Ireland rather than to necessarily achieve greater consistency with other parts of the UK.

Evolution of Permitted Development Rights

- 2.5 Development orders permitting certain types of development had existed in the UK prior to the 1947 Town & Country Planning Act, which provided the basis for modern planning control. Development Orders remained part of the new system. In 1947, the function of these Orders was seen as: *“...being revocable, [they] may relax or tighten restrictions in such a way as to encourage forms of development which are from time to time the most necessary or desirable”* and to give the minister: *“..a wide discretion in order that in operation the system may have the greatest degree of flexibility.”*¹
- 2.6 The 1944 Interim Development Act in Northern Ireland had provided very limited permitted development rights, largely for housing development. The 1973 GDO for Northern Ireland broadly reflected the rights applying in the rest of the UK at that time, with 14 categories of permitted development types. The 1993 Order increased the number of categories to 20, with a number of changes to restrict certain existing rights including:
- extensions to dwellings involving roof alterations were restricted in conservation areas;
 - ancillary buildings over 10 cubic metres within the curtilage of dwellinghouses were no longer allowed in conservation areas, Areas of Outstanding Natural Beauty and National Parks;
 - a requirement for the restoration of land after forestry development and operations;

¹ Encyclopaedia of Planning Law, pp 39004–39005

- rights for industrial and warehousing development were restricted in Areas of Outstanding Natural (AONBs) and National Parks;
- extensions to buildings of electricity undertakings on operational land were restricted to 750 m² and not allowed in conservation areas, AONBs and National Parks.

2.7 Since 1993, the GDO has been amended a number of times to reflect changes in the nature of development and economic activity. For example, a new Part 21 was added to give permitted development rights for CCTV cameras on buildings, and a general restriction was introduced on development requiring Environmental Impact Assessment (EIA). Amendments were also made to permitted changes between use classes and, most recently, many of the rights applying to telecommunications development were removed.

2.8 The GDO for Northern Ireland contains significantly less categories of permitted development than appear in other parts of the UK and the Republic of Ireland. It currently has 21 categories compared with 33 in England & Wales, 25 in Scotland and 55 in the Republic of Ireland. By comparison with other countries, the main categories of permitted development not provided for in Northern Ireland include various mining-related operations, the demolition of buildings, toll road facilities, driver information systems, development by drainage bodies and highway authorities, the use of land by recreational groups, and educational and health facilities. Some of these differences reflect the Governmental responsibility for functions and the local conditions described above.

Scope of Permitted Development

2.9 The types of development now benefiting from permitted development rights in Northern Ireland can be broadly summarised as:

- those relating to certain types of building, including dwellinghouses, industrial and warehouse buildings, agricultural buildings and those within amusements parks; these rights mostly relate to fairly minor development incidental to existing uses of the land and with any adverse effects controlled by various conditions attached;
- those given to certain types of organisations which carry out development, including district councils, various statutory undertakers e.g. railways, electricity, ports, water authorities, and airports; these rights may have been given on the basis of the public

services provided by these bodies and the statutory controls and accountability that apply to them;

- rights that tie in with and provide limited expansion of development rights provided by other legislation, such as repairs to services and unadopted roads and development required by the Roads Service for road safety.

2.10 While the basic aim of permitted development rights is to exclude relatively minor development proposals from planning controls, the need to control any significant impact of even minor development in protected or sensitive environments means that the GDO provides for some permitted development rights to be withdrawn or limited in certain circumstances, as follows:

- in conservation areas, and certain other specified or designated areas such as National Parks, AONBs and sites of archaeological interest;
- by conditions, exclusions and limitations applying to specific rights within each Part of the GDO;
- through Articles in the GDO, including Articles 4 and 6 which give the Planning Service powers to remove permitted development rights, and Article 3 which removes permitted development rights for development where EIA is required;
- In a few Parts of the GDO, by requiring prior approval or notification of some of the details of permitted development proposals to be provided and determined by the Planning Service.

2.11 In addition, permitted development rights can be removed outside the GDO through conditions attached to a planning permission.

Importance to the Planning System

2.12 Permitted development rights are a long-standing part of the development control system. Some benefits attributed to them include:

- reducing the need for developers/operators to seek planning permission for minor development;
- reducing the number of planning applications made to the Planning Service, so allowing it to concentrate on larger or more contentious development proposals which may have greater impacts on the environment and amenity;

- generally helping improve efficiency in the planning system.

- 2.13 However, the increasing numbers of enquiries to the Planning Service seeking confirmation that permitted development rights apply in a specific case (e.g. before house purchase) can offset any reduction in workload that would otherwise result from fewer planning applications being required.
- 2.14 Permitted development rights are also important within the planning system since they provide a “*fall-back*” position for certain types of development. Based on appeal and case law decisions, this makes it harder to refuse planning applications where the developer is able to carry out slightly smaller works, under permitted development rights, than may be proposed in the application.
- 2.15 The GDO remains a key tool of the planning system, and is one of the documents most frequently referred to in the development control process. But the number of categories of permitted development it contains, each with different limitations, the accumulation of amendments in a piecemeal way over time, cross-references to other legislation and a somewhat complex form of drafting have combined to produce a document which is seen by some users as difficult to interpret.

Relationship to Government Policy

- 2.16 It may be argued that since permitted development rights relate to relatively minor development in most cases, they have limited ability to contribute greatly to Government policy aims. Nevertheless, it is important that permitted development rights should, as far as possible, be consistent with policy, avoid hindering its implementation and encourage development that accords with policy aims.
- 2.17 Government policy guidance and advice have been developing consistently since the early 1990’s, when sustainable development started to become the overriding theme across all policy fields. The main strands of current Government policy applying in Northern Ireland are set out in Annexe 2 but, within the overall theme of sustainable development, include the following:

- economic competitiveness,
- social cohesion and community involvement,
- integrated transport, reduced private car use, and improved public transport,
- encouraging growth of airport capacity to meet demand,
- urban regeneration with higher density housing in urban areas,
- use of brownfield land in preference to undeveloped land,
- protection of the countryside while encouraging rural regeneration and farm diversification,
- protection of the built heritage/historic landscape,
- biodiversity,
- development of world class telecommunications infrastructure,
- ensuring an adequate supply of minerals and energy in a sustainable way,
- good quality design,
- sustainable waste management.

2.18 Annexe 3 provides a summary assessment of how well each category of permitted development accords with current policy aims. This suggests the GDO has been updated only to a very limited extent to reflect these developing and changing policy themes.

2.19 The policy themes of urban regeneration, integrated transport, community involvement and promoting good design have only been developed in more recent years, while the stance of protecting the countryside for agricultural purposes has shifted to one of promoting rural regeneration and farm diversification while protecting specially designated areas.

2.20 Elsewhere, the GDO provides variable and generally limited support for Government aims. Indeed, the recent removal of permitted telecommunications development rights to Part 17 can be argued as conflicting with Government policy to promote world class telecommunications infrastructure. The provisions in Part 6 permitting certain agricultural

operations and buildings reflect Government support for the farming industry but do nothing to aid farm diversification and they allow no influence on the design quality of buildings.

- 2.21 For other parts of the GDO, Government policy advice plays little or no part in the development rights permitted. For example, development allowed within the curtilage of a dwellinghouse under Part 1 need pay no regard to Government advice on design quality. In addition, the floorspace limitations for Part 8: industrial and warehouse development are set quite low for any expansion of businesses to allow a great contribution to economic prosperity.
- 2.22 The extensive operational airport buildings allowed on airports under Part 15 permitted development rights can be regarded as supporting UK economic competitiveness and transport aims, although the lack of size limits does not help to protect the environment, while the only control – the need for EIA in some cases – may not always be effective for all scales of development.
- 2.23 The policy theme of promoting social cohesion and community involvement could be argued to run counter to permitted development rights which can generally be implemented without any consultation. It is also noticeable that, although waste management and recycling are key elements of Government policy, there are no specific permitted development rights applying to waste operations in the GDO.
- 2.24 It is also noticeable that while restrictions in the GDO provide protection for areas of archaeological interest, there is much less restriction on development with potential to harm areas of sensitive landscape, such as AONBs and National Parks.
- 2.25 Overall, many of the current provisions of the GDO support Government policy aims but it is apparent that some rights have not kept up with changing aims and emphases in policy. It is also clear that while certain permitted development rights support some policy aims, they can at the same time conflict with others, and a compromise often has to be accepted. It is in any event difficult to relate the GDO to current Government policy directly, as some of the

relevant Planning Policy statements (PPS) do not yet interpret more recent policy objectives adequately.

2.26 From the above review, a case can be made that permitted development rights should only be given to development which is marginal and incidental to existing uses of land. However, where these rights do relate to more significant development, they should be defined with reference to, and be based on, Government policy aims, but balancing different elements of policy where necessary. Such considerations need to be taken into account in reviewing current rights.

3.0 ISSUES & PROBLEMS

3.1 The GDO and the current operation of permitted development rights give rise to a number of problems and concerns, which have been identified from:

- a review of previous research on permitted development rights and related procedures, case law and other relevant studies (Annexe 4);
- responses from structured interviews with users and other interested parties;
- responses to recent consultation exercises on Government planning policy documents and proposed changes to legislation.

3.2 While the consultation process aimed to involve at least one representative of all the broad groups affected by permitted development rights – planning officers, Government departments, users and interest groups – the interview sample may not reflect the range of views on any issue or indicate how widespread a particular concern is. Many responses were concerned more with the overall planning system than with the detailed operation of permitted development rights. For these reasons, the interview process in this study provides only broad indications of where change may be needed. These broad indications need to be tested through further consultation.

Review of Literature

3.3 The review of post 1993 literature found very little previous work on permitted development issues in Northern Ireland. Most of the relevant material concerns the operation and effects of permitted development rights in England and Scotland, largely commissioned by the UK Government. Also in England, a number of studies by other organisations have considered the effects of permitted development rights when investigating other issues (e.g. conservation and streetscape).

3.4 Although the majority of literature relates to a different planning system and context than applies in Northern Ireland, many of the principles and issues applying may be of relevance.

Study findings and key issues arising from this literature and other permitted development legislation are summarised in Annexe 4 with key findings drawn out below.

Article 4 Directions

- 3.5 A 1995 study by the Department of the Environment (DoE) examined the use of Article 4 Directions, by local planning authorities in England & Wales, to restrict permitted development rights. The study found the main use of these Directions was in controlling permitted development alterations to buildings in conservation areas, temporary uses, and agricultural buildings in the countryside². However, such Directions were considered to be less effective in controlling temporary uses that move from site to site and there were deterrents to local authorities using them, such as the risk of paying compensation for refusal of planning permission, the time consuming, complicated procedures involved and because the requirement to demonstrate “*a real and specific threat*” was not sufficiently well-defined in policy guidance. This study recommended removing the compensation provisions related to these Directions.

Agriculture & Forestry Development

- 3.6 A 1995 DoE research study considered permitted development rights as part of a wider investigation of the operation and effectiveness of planning controls over agricultural and forestry developments in England & Wales.³ While concluding that the prior approval process (which requires details of certain types of permitted agricultural development to be approved by the local planning authority) was generally working well, it identified several problems:

- uncertainties among local authorities on how the prior approval procedure should operate in detail, meeting the 28 day deadline and inconsistency between authorities in operating it;

² Use of Article 4 Directions, Dept of the Environment, 1995.

³ Planning Controls over Agricultural & Forestry Development and Rural Building Conversions, DoE, 1995.

- difficulties in interpreting Part 6 such that some developments with no agricultural justification were allowed under these rights;
- there was little genuine agricultural activity on holdings under 5 ha.

3.7 Recommendations included reviewing Part 6, Class A to provide greater clarity on what types of developments were permitted development and what restrictions apply; making hardstandings over 465 m² subject to the prior approval process; continuing to make prior approval apply to forestry developments; and increasing the determination fee.

Permitted Development Rights of Statutory Undertakers

3.8 A 1997 study by the Department of Environment, Transport & the Regions (DETR) reviewed Parts 14–18 of the English General Permitted Development Order (GPDO) relating to the permitted development rights of statutory undertakers. It found that these permitted development rights generally operated satisfactorily with no need identified for wholesale change⁴. However, the GPDO generally was seen as being complex and difficult to understand, and concerns were noted on the level of development allowed to statutory undertakers on operational land, without controls on siting, design, scale etc; and the limited constraints on aviation buildings. Inconsistency was found between the permitted development rights of different statutory undertakers, and between statutory undertakers' rights and other categories of the GPDO. Further concerns were the lack of controls over design and siting of street furniture/infrastructure; the poor quality of re-instatement works after highway repair and installation of utilities; the adverse effects of telecommunications works; the difficulty of securing Article 4 Directions and the operation of consultation procedures. A need was identified for comprehensive guidance on permitted development rights and their interpretation; to amend the GPDO to deal with anomalies, clarify definitions and improve its format; improve consultation arrangements; provide Codes of Practice covering design, trees, communications and re-instatement works and review the Article 4 Direction process.

⁴ The Use of Permitted Development Rights by Statutory Undertakers, DETR, July 1997.

Streetscape

- 3.9 A 2002 study, commissioned by the Commission for the Built Environment (CABE) with DTLR support, aimed to analyse the failure to create and maintain quality streetscapes in England & Wales, focusing on the decision-making processes that produce the character of streets found at present and the impediments to good streetscape. It identified problems arising from permitted development works by utility companies to the highway/footway, including the siting of telephone boxes and equipment, without effective controls or permanent re-instatement works.⁵ Proposed measures to address these issues included addressing poor quality re-instatement work of openings in streets and the time of disruption involved by raising inspection charges, using fines and time-charging, as well as innovative tunnelling techniques; changes to regulations to allow for smaller traffic signs related to lower vehicle speeds; and giving local authorities responsibility for all roads and streets other than motorways, rather than the current two tier approach found in some areas.
- 3.10 Another study in 2002 by the Institution of Civil Engineers proposed the replacement of permitted development rights affecting streetscape in England & Wales by a new Street Management Code, to be drawn up with the local authority, all undertakers and interested parties involved, and to provide guidance on factors such as location and design of street furniture and signage and highway re-instatement standards. Only permitted development complying with this Code would be allowed.⁶
- 3.11 Research by English Heritage on threats to the historic environment in 2000 found that the character of conservation areas was being harmed by the effects of certain permitted development rights⁷. Reducing, or removing, certain permitted development rights in conservation areas was proposed to deal with problems such as:

⁵ Achieving Quality Streetscapes, CABE, 2002.

⁶ The 2002 Designing Streets for People Report, The Institution of Civil Engineers, 2002.

⁷ Power of Place: The Future of the Historic Environment, English Heritage, 2000.

- permitted changes which alter significantly the appearance of unlisted houses in conservation areas;
- uncontrolled and uncoordinated works by local authorities and utility companies to resurface streets and install traffic signage, cabinets, kiosks and other street furniture;
- the limited use made of powers to remove permitted development rights to control such effects.

Permitted Development Rights in Scotland

3.12 A 1998 Scottish Office study reviewed aspects of permitted development rights in Scotland. Its overall objective was to explore the scope for a fundamental shift towards an increase in permitted development so that the public might be better served by focusing development control effort elsewhere. The review found a general difficulty of understanding and interpretation of the Scottish GPDO and a need to improve user-friendliness.⁸ No scope was seen by key stakeholders for further extension of permitted development rights but there was potential to rationalise the classes of development within the curtilage of a dwellinghouse, with fewer classes of development. A number of anomalies were noted between different classes and there was a general problem of interpreting and understanding prior-notification procedures. Rationalisation and redrafting in a simpler format were proposed.

Use Classes & Temporary Uses

3.13 This 2001 study reviewed the need for change of the 1998 Use Classes Order for England & Wales. The main recommendations proposed removal of permitted development rights for temporary uses, with such uses only to take place on land with planning permission for such use⁹. The same study also found the loss of industrial uses to B1 offices affecting employment and mixed use aims. It recommended various changes within the A1 and B1 use classes, including a separate B1(c) class and permitting moves from B2 to B1(c). However, in

⁸ Research on the General Permitted Development Order & Related Mechanisms, Scottish Office, 1998.

⁹ Review of the Use Classes Order and Part 4 of the GPDO, DETR 2001.

August 2002, the Government announced that no changes would be made to temporary use permitted development rights.

Case Law & Reported Problems

- 3.14 Case law and queries involving permitted development rights, as reported in English planning and planning law journals, were reviewed. These highlighted concerns over the complexity of drafting of the GPDO, as well as problems of definition and interpretation. These cases also confirmed that most problems arise with permitted development rights related to householder, telecommunications and agricultural development, and that the visual impacts of works by statutory undertakers, telecommunications operators and other users of permitted development rights were problematic. A review of appeal decisions and other case law involving permitted development rights emphasised that many difficulties arise from interpreting parts of the GPDO (and GDO) and the lack of clear definitions.

Issues in Northern Ireland

- 3.15 Drawing on the above research as well as consultation responses to this study, examples of the types of general problems and issues associated with the GDO are described below.

Benefits and Drawbacks of Permitted Development

- 3.16 All respondents saw important benefits in permitted development rights; equally important were the greater certainty they provide to users, their perceived role in speeding up planning decisions and in reducing pressures on the planning system. However, these rights were also seen by a quarter of respondents as giving rise to some drawbacks, mainly adverse impacts on the built and the rural environment.
- 3.17 Approximately half of the responses made suggested that current permitted development rights were inconsistent with or hindered the delivery of Government policy aims in some way, and those views given were evenly balanced. The examples given of policy conflicts mainly related to adverse effects on sensitive landscape and conservation areas, with

individual points made on biodiversity aims; the lack of control over demolition hindering the re-use of existing buildings, and the absence of permitted development rights for hospital extensions conflicting with aims to maximise spending on health provision.

Ease of Use and Interpretation

- 3.18 Only moderate difficulties in using or interpreting the GDO were identified, possibly reflecting it being a shorter and more simply drafted document than its equivalents in other parts of the UK. The existence in Northern Ireland of a single planning authority, single highway authority and in many cases single bodies responsible for each statutory undertaking, probably reduces the scope for different interpretations and produces greater familiarity with relevant parts of the GDO.
- 3.19 Despite this, the GDO was still seen as overly legalistic in its wording and interpretation of it did cause some difficulties for some 75% of those consulted; this problem was felt particularly strongly by one organisation representing businesses. However, while many experienced some interpretation problems with specific Parts, particularly Parts 1, 2 and 6, few found the GDO generally very difficult to understand. The main concern was the difficulty of understanding for occasional users and lay persons, since regular users of specific parts indicated few problems. Although the lack of a consolidated version of the GDO, including all post 1993 amendments, was not raised as a major concern, this appears likely to make permitted development rights difficult for occasional users to use with confidence.
- 3.20 Although definitions within the GDO were not identified as a major area of concern, the current provisions do not appear ideal. Definitions of some terms used are provided within Article 1 while interpretations of other terms are found in the Part to which they specifically relate; this can mean that several places have to be looked at when interpretation is sought. In some cases, definitions are provided only by reference to other legislation and not specified in the GDO itself. Some commonly used terms (e.g. “road”) are not defined at all, while other definitions given are not helpful e.g. “plant and machinery” in Part 19. Some

problems with permitted development rights arise over disputes in the interpretation of terms and although a term may have been clarified by case law or legal opinion, many users do not have easy access to such clarification.

3.21 Overall, the most commonly sought changes in terms of improving ease of use were:

- simplification and the use of plain English;
- better clarification of areas of uncertainty and definition of terms;
- avoiding the need to cross refer to other legislation.

Guidance for Users

3.22 It was noted that there was little guidance available in Northern Ireland to help interpret permitted development rights. The Encyclopaedia of Planning Law and legal advice based on cases in England were used as a guide by some organisations.

3.23 Despite the difficulties in interpretation noted by some respondents, from the consultation responses there were no widespread calls for user guidance to help in interpreting the GDO. A few respondents saw benefits in a layman's guide to the GDO, especially for farmers, and including illustrated examples and flow charts. The existing guidance booklet on householder development was generally seen as useful, if not always entirely correct. Several respondents felt that, although improved guidance for users of permitted development rights could be helpful, a more simply worded GDO would avoid the need for this.

Main Problem Areas

3.24 The part of the GDO which was seen as giving rise to the most problems or adverse impacts was Part 1. This was identified by a quarter of all respondents, and gave rise to issues such as 4 metre high extensions affecting neighbours; impacts on conservation areas; and determining whether rights have been used up by past extensions. This was followed by Part 6 (new farm buildings), Part 4 (impacts of various temporary uses such as car boot sales and clay pigeon shooting), and Part 2 (heights of walls between neighbours' properties) and

permitted development by various statutory undertakers. Part 6 rights were considered as too loosely defined by the largest number of respondents, followed by rights for mineral exploration, telecommunications development, temporary uses and caravan development.

Overlaps between Parts

3.25 Unlike in other areas of the UK, there are only a few cases where the Northern Ireland GDO gives a choice of using permitted development rights under different Parts, allowing the user to make use of those which are least restrictive in a particular situation. Examples include the ability for a district council to erect a fence of different heights under Part 2 or Part 12, while a porch can be erected with different size limits under Part 2 or under Part 1. These choices do not appear to be a particular problem in Northern Ireland. However, the ability “to improve” a private access road under Parts 6 or 9 has given rise to some abuses.

Inconsistencies

3.26 As summarised in Annexe 5, differing size limitations apply within different Parts of the GDO, with the reason for the difference not always clear:

- For Parts 6 and 7 a height limit of 3 metres is imposed for buildings within 3 km of an airport, while plant of any height is restricted in this situation under Part 16 and no such restrictions apply to plant (which can be up to 15 m high) under Part 13;
- Part 6 imposes a general floorspace limit on agricultural buildings permitted while no such limits are imposed on forestry buildings in Part 7.

3.27 Although identified as an issue by very few respondents, it is noticeable that permitted development rights for building extensions, particularly under Part 1 and Part 8, are controlled by a volume limit in relation to the original building, unlike the system in Scotland where the control is based solely on floorspace. From experience elsewhere, calculating the volume of the original building can be difficult and time consuming for complex buildings that have been frequently altered in the past.

Anomalies

3.28 The drafting of some Parts of the GDO gives scope for unintended consequences or abuses. These are considered in detail within specific Parts later in this report but examples identified by respondents include:

- under Part 1, a building of up to 4 metres high can be erected on a boundary wall when Part 2 limits any wall/fence in that location to 2 metres; this has potential for adverse effects on neighbours;
- the absence of clear definitions on waste or limits on raising land levels under Part 6 can make it difficult to prevent extensive importation of building rubble and other waste on farm land allowing this to be used commercially as an alternative to landfill sites.

3.29 Other examples of potential issues identified from previous research and which could apply in Northern Ireland are:

- the current drafting of the GDO does not allow bus shelters to be erected by anyone other than the statutory road transport undertaker (Translink), which is not responsible for bus shelters;
- permitted development can proceed along with development authorised by outstanding planning permissions, resulting in very large residential extensions and site coverage;
- the 50% coverage limit for development within a dwellinghouse curtilage applies to the whole site, allowing buildings to cover all of a small rear garden where a large front garden exists.

Consultation Procedures

3.30 Different consultation procedures apply in different parts of the GDO. Under Part 15, aerodrome operators are required only to “consult” the Planning Service on certain operational development but no time limit is specified, or scope for refusal indicated. Unlike in other parts of the UK, the prior approval procedure is not widely used in the Northern Ireland GDO, appearing only in Part 11 and with no specified time limit, while prior notification of development appears only in Parts 16 and 17. While none of these existing consultation procedures was indicated as causing any problems, there was a strong feeling among respondents that applying the prior approval procedure more widely was not wanted

or justified in Northern Ireland. At the same time, any differential types of planning application for different purposes (as an alternative to prior approval) would not be acceptable in the Northern Ireland context, since it would raise perceptions of unfairness and decrease understanding of the planning system.

Article 4

3.31 Article 4 Directions appear to be used very little in Northern Ireland, with only 6 examples identified over the last 10 years; 5 of these were in relation to telecommunications development and none were used in conservation areas. The main deterrents identified by Planning Service officers to wider use were the complexity of the procedures and heavy staff and time resources required. Although the risk of compensation claims was also mentioned by a number of respondents, it is understood that compensation provisions following Article 4 directions do not apply in Northern Ireland. There is also no delay or uncertainty factor in having to obtain Secretary of State's confirmation of Article 4 Directions in Northern Ireland. Likely local opposition to these Directions and an increase in planning applications after their use were other factors given to explain their limited usage. However, it is understood that the Planning Service is in the process of using targeted Article 4 Directions in 3 pilot conservation areas.

3.32 A number of heritage and environmental interest groups felt that not enough use was made of this procedure, particularly in conservation areas and in areas where such directions are a pre-condition of funding for improvements under the Townscape Heritage Initiative, but also in areas of nature conservation importance, such as Areas of Special Scientific Interest (ASSIs). Suggestions were made that permitted development rights should be removed selectively within conservation areas, to avoid the need for Article 4 Directions. It was also noted that there are drawbacks in the Article 4 procedure, in the time required to prepare the Direction, which prevents urgent responses when damage is happening, and the ineffectiveness of this procedure against development already carried out.

Other Articles

- 3.33 Although few specific responses were received on the other Articles in the GDO, it is clear that Article 3 provides a range of important restrictions on certain permitted development rights that are not always immediately apparent from reading the relevant Part in Schedule 1 and there is no cross-referencing to draw users' attention to this. This necessitates reading several parts of the GDO to ascertain the extent to which permitted development rights apply, or are restricted. Although Article 3 withdraws rights where EIA is required, this was through a later amendment to the 1993 Order and occasional users would need to have both the Order and subsequent amendments to understand fully what restrictions apply.
- 3.34 No cases were identified of the use of Article 6 Directions to restrict mineral exploration rights and no problems were reported with their operation generally.
- 3.35 Article 41 applications are used to obtain confirmation that permitted development rights would apply in a given situation. The consultation process suggested that limited use of these applications is made for this purpose, and this procedure is only used for dwellinghouses and for important developments. This is largely because of the time delays involved in obtaining a decision, which can be longer than for a planning application, and the uncertain outcomes as these applications are perceived as being delegated to junior staff.

Controls on Permitted Development in Sensitive Areas

- 3.36 There are some inconsistencies in the GDO in restricting permitted development in sensitive areas such as AONBs and National Parks, ASSIs and areas of archaeological interest, with specific restrictions applying in some Parts of the GDO and not in others without obvious reasons. For example, restrictions on permitted development frequently apply in the GDO within areas of archaeological interest, to a much greater extent than in other parts of the UK, but there is much less protection for other sensitive areas. At the same time, other important areas e.g. World Heritage Sites have no specific protection.

3.37 The concern most frequently raised through the consultation process, by almost one third of respondents, was the insufficient control over permitted development in conservation areas, on alterations such as replacement windows and inappropriately designed extensions. Several environmental groups also considered permitted development in ASSIs and sensitive landscape areas were not sufficiently restricted to prevent adverse effects. Although controls exist under the EIA regulations, it is not always clear where they apply.

Consistency with the UK

3.38 A general issue raised by several respondents is that Northern Ireland permitted development rights should, as far as possible and appropriate, be consistent with those in other parts of the UK, in the range of development they apply to and in the size limitations that apply. This was seen as being beneficial in allowing English case law and legal guidance to be used more effectively but also in giving “*a level playing field*” with other regions for attracting businesses and other investment. For example, consideration could be given to extending permitted development rights in Northern Ireland to some additional categories of development that enjoy these in England, such as schools and hospitals.

Crown Immunity

3.39 Development by Government departments in Northern Ireland has not been subject to formal planning control in the past, although planning applications are usually made and informal service level agreement procedures, which are effectively used as permitted development rights, apply in some cases. If Crown Immunity were to be removed at some future time, this could mean a need for planning applications for a large number of minor, essential and often urgent public works that need to avoid delays in the planning process. In such cases, permitted development rights for certain Governmental bodies may need to be considered.

3.40 There were indications through the consultation process that this issue should be addressed by the current review of the GDO, to ensure that appropriate rights could be introduced swiftly in the event of Crown Immunity being removed. As well as the Roads Service, this

could apply to bodies such as the Rivers Agency, the Water Service and various security elements of Government (e.g. the Police Service, Prisons, military).

Need for Change

- 3.41 Overall, approximately half of respondents considered that the current GDO was 'about right' in its provisions and the way it operated, with no need for significant change. A minority saw the need for improved drafting and interpretation as the only change needed. While small groups saw the need for increased tightening or relaxation of certain Parts, these numbers were evenly balanced. There were no calls for complete change or abolition of permitted development rights.
- 3.42 The overall conclusion from the consultation process was that the GDO is working reasonably well and that there is no great need for change to it, other than to make more complex parts easier to understand and give greater protection to heritage areas and to sensitive landscape and nature conservation areas. Very few proposals were made to widen permitted development rights, and then mainly for minor forms of development. A frequent comment was that changing the GDO was less important than improving the efficiency of the planning application process generally.

Conclusions

- 3.43 Based on the above review and consultation responses, the Northern Ireland GDO appears to have only a limited number of areas where change is needed. The main issues in the current GDO are:
- the somewhat complex style of drafting, the lack of adequate and easily accessible definitions in some cases, and the absence of comprehensive user guidance make it difficult to use and interpret for non-regular users;
 - some inconsistencies between different categories of permitted development rights and limitations upon them;
 - some anomalies in drafting which allow for abuses or unintended effects;

- adverse effects arising from inadequate controls over certain permitted development rights, particularly in conservation areas and other sensitive areas;
- the limited effectiveness and use of Article 4 Directions to restrict permitted development rights;
- the perceived failure of certain categories of permitted development rights to support Government policy aims for the rural and built environment;
- significant differences in the extent of permitted development rights between Northern Ireland and the rest of the UK and the benefits of a more consistent approach;
- the need to consider, at some future stage, the implications for permitted development rights of any removal of Crown Immunity from planning control for Government bodies.

4.0 THE SCOPE FOR CHANGE

4.1 This Chapter considers the need for change to the GDO in order to address the issues arising from the current system of permitted development rights, and the extent of any changes required. Pressures for change arise from various sources:

- the need, identified by the consultation process, to make the GDO more easy to understand and address some practical problems and adverse impacts associated with its current operation;
- Government aims, expressed in the Modernising Planning Processes paper, to reduce the burden of planning regulation where possible;
- the conflict between some permitted development rights and Government policy aims, which now give greater emphasis to environmental protection, built heritage, and design quality;
- the potential for greater use than at present of permitted development rights as a mechanism to encourage particular types of development, and discourage others, in order to achieve better environmental outcomes;
- changes in economic activity, technology, and development that may not be adequately reflected in current permitted development rights e.g. telecommunications, improved design of infrastructure, and changes to farm buildings and plant.

Scope for Change

4.2 As a first step, it is important to consider the extent of change needed to the current regime of permitted development rights in Northern Ireland.

4.3 It is clear that permitted development rights play a useful role in the planning system. There are obvious benefits in being able to exempt certain types of development from normal planning control, in terms of reducing unnecessary regulation, reducing numbers of uncontentious planning applications and pressures on the planning system, giving greater certainty to those making uncontentious proposals and some comfort that a particular development is not unlawful. Permitted development rights are one way of providing such exemptions.

4.4 There are arguments that this approach creates inconsistencies because it tries to apply a series of set thresholds to a diverse range of developments and environmental contexts. Consideration has been given, in this and previous studies, to other possible approaches, ranging from radical alternative systems to limited changes to the current GDO. These included variations of the following:

- a) Completely removing permitted development rights and bringing all development under planning control. Applications for minor and uncontentious development could be filtered out by being dealt with at local community level, with proposals deemed to be granted after a specified time if no planning objections were raised. Only proposals with continuing objections would be referred to the Planning Service and dealt with as a normal planning application;
- b) Excluding more development from planning controls by widening the definition of development (below some defined threshold) in the Planning Order to exclude more relatively minor matters so that planning permission is not required for them in the first place. These thresholds could reflect some of those in the current GDO.

4.5 Although such radical alternatives were briefly considered, the consultation process suggested that the current GDO is working reasonably well and did not indicate any pressure or clear justification for radical change to the current system in Northern Ireland. Introducing a completely new system also has the potential to introduce new problems and it is noted that a recent independent review of the GDPO in Scotland considered more radical options but ultimately recommended amendment of the current system, rather than more fundamental change. On this basis, the review carried out by this study seeks to build upon the current system of permitted development provided by the GDO.

Approach to Reviewing the GDO

4.6 A review of the GDO can produce different degrees of change, ranging from simply improved drafting of the existing document to comprehensive changes to specific rights and the restrictions and size limitations that apply to them. As well as any general changes necessary to the GDO, this review considered whether the current permitted development rights in Schedule 1, along with the categories of development and the users they apply to, remain appropriate, and whether such rights should be extended to other categories.

4.7 To make permitted development rights a more positive tool to encourage change in appropriate directions, it is important that permitted development rights should promote development or environmental outcomes in tune with Government policy aims. As different strands of Government policy can conflict with each other, the overriding aim should be for permitted development rights to be defined such as to help achieve an acceptable outcome, and a positive balance against policy aims, recognising that this may not always be easy to assess.

4.8 With this overriding purpose in mind, the following chapters of this report consider each of the main components of the GDO examining any need for change. In doing so, it has to be recognised that a consequence of seeking better support for policy aims which have sustainability as an overriding theme may be a need for more restrictive permitted development rights, rather than any relaxation. In some cases, additional controls or consultation requirements may only formalise existing informal procedures. However, it is important that imposing greater restrictions does not lessen the efficiency of the planning system, make the GDO more complex and harder to understand than it currently is. A balanced approach is required, with any change proposed being the minimum needed to achieve the objective. Other factors also need to be taken into account in assessing change, including:

- the extent to which current rights are being used;
- the volume of planning applications which could result if specific rights were withdrawn;
- how urgently required the type of development permitted is;
- the adequacy of controls and limitations in place;
- the effect of any alterations on improving interpretation of the GDO.

4.9 Any change must also be justified on the basis that:

- it addresses a widespread problem, rather than an exceptional case;
- it is justified by the strength of the impacts/concerns identified.

- it is likely to bring about a real improvement in the operation of the system or in supporting policy aims.

4.10 Changes may be justified by benefits of greater community involvement and transparency, rather than addressing actual problems. Obvious loopholes should be addressed to avoid future problems even if not currently being exploited.

Individual Permitted Development Rights

4.11 Taking account of the above criteria, in each of the following chapters 5–25, the following aspects of permitted development rights in each of the Schedule 1 categories are examined:

- the purpose which permitted development rights in that category are intended to serve;
- how current rights compare with those in other parts of the UK and the Republic of Ireland;
- where possible, the types and extent of usage made of these rights, with examples of particular problems or benefits where found;
- a summary of any pressures for change or retention;
- the relationship between these permitted developments and Government policy aims;
- the consistency of any potential changes with the criteria set out above;
- an assessment of whether change is needed and justified and the types of changes proposed;
- what the implications of change would be for different affected parties.

5.0 PART 1: DEVELOPMENT WITHIN THE CURTILAGE OF A DWELLINGHOUSE

- 5.1 Part 1 rights allow various extensions and alterations to dwellinghouses, as well as developments within their gardens or curtilages.
- 5.2 Class A permits the enlargement, improvement or other alteration of a dwellinghouse, subject to restrictions relating (amongst others) to the design, external finishes and cubic content of the resulting building, being no nearer any road, the height and distance from the curtilage boundary, and the percentage of curtilage ground coverage.
- 5.3 Class B permits the enlargement, improvement or other alteration of a dwellinghouse consisting of an addition or alteration to its roof, subject to height, how far it extends beyond the plane of the roof, restrictions on the resulting dwellinghouse cubic content, and a requirement that its design and external finishes are in conformity with those of the original dwellinghouse.
- 5.4 Class C permits the erection or construction of a porch outside any external door of a dwellinghouse, subject to the design and external finishes being in conformity with those of the original dwellinghouse, the floor area not exceeding 2 m², a 3 metre height limitation, and the distance being more than 2 metres from the curtilage boundary with the road.
- 5.5 Class D permits the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse, or the maintenance, improvement or other alteration to such a building or enclosure. Development is not permitted if closer to any road which bounds the curtilage than the part of the original dwelling house nearest to that road, if within 5 metres of the house for development of over 10 cubic metres, and if exceeding height and curtilage area limitations (3 or 4 metres, and 50% excluding the original dwellinghouse). Class D specifically excludes the keeping of pigeons.
- 5.6 Class E permits a hard surface for any purpose incidental to the enjoyment of the dwellinghouse to be provided within the curtilage. A container for the storage of oil and gas

for domestic heating can be provided under Class F, subject to capacity, height and siting conditions.

- 5.7 Lastly, Class G permits a satellite antenna to be installed, altered or replaced within the curtilage of a dwellinghouse, subject to size, there being only one siting and height limitation. It excludes all antennas that project beyond the roof slope or wall of a house fronting a road and excludes all dwellings in conservation areas, AONBs or National Parks.
- 5.8 Certain Classes of Part 1 are also further restricted in conservation areas i. e. Classes A and B. Parts D and G extend this restriction to include National Parks and AONBs also.
- 5.9 The key differences with the English GPDO are:
- the requirement for external finishes to conform to those of the original dwellinghouse in Classes A, B and C;
 - reference is made to a *'road'* and not *'highway'*;
 - restrictions apply in England, on Article 1(5) land, (which includes conservation areas, National Parks, the Broads, designated wildlife areas and AONBs);
 - in England, no development is permitted *'closer to a highway than the original dwellinghouse or any point 20m from that highway whichever is nearer'*;
 - in the English GPDO, Part C permits any other alteration to the roof of a dwellinghouse, if it would not result in a material alteration to the shape of the dwellinghouse. This Class is not included in the Northern Ireland GDO;
 - there is no restriction on pigeons in England and porches in England are limited to 3 m² rather than 2 m²;
 - Class E of the English GPDO includes gas storage.
- 5.10 In Scotland, Part 1 GPDO rights are similar to those in Northern Ireland and England but they do not include porches as a separate Class while provisions for the alteration of a roof of a dwellinghouse are similar to Class B in the GDO. Floor area rather than volume is used in Scotland to measure whether extensions or curtilage buildings have permitted development rights. In the Republic of Ireland, eight classes apply to exempted development within the curtilage of a house, including garden structures, boundary walls and fences, landscaping,

and keeping a caravan or boat. Again, floor area and not volume is used to measure whether an extension or curtilage building has permitted development rights.

- 5.11 The specific aim of Part 1 residential permitted development rights is to exclude from planning controls minor householder development proposals which do not give rise to material planning issues.

Issues

- 5.12 In practice, Part 1 raises very many concerns, cited repeatedly in consultation responses and interviews with the Planning Service, users and interest groups. These concerns are widespread, wide-ranging and are summarised below but it should be noted that while views varied significantly, this variation did not reflect whether raised by a user of permitted development rights or a regulator of them. The diverse views ranged from that of Part 1 permitted development rights leading to *“the most adverse effects”*, their being *“about right”*, to being too loose and requiring *“major scrutiny”* and being the hardest Part to interpret. Comments are summarised below, in terms of general concerns and then others which are specific to Classes of Part 1 and its wording.

General concerns

- 5.13 Overall, the wording of Part 1 is agreed as being very complicated, not transparent and very cumbersome. In terms of their effects, residential permitted development rights are seen to have a harmful impact on the quality of the built environment, streetscape and the rural environment. The size limits appear to be arbitrary.
- 5.14 Part 1 permitted development rights were seen to have a particular bearing on the character of buildings in conservation areas, impacting also on the quality of the built environment and streetscape through the *“cumulative effects of unsympathetic features”*. As such, they detract from the value of conservation areas, Areas of Townscape Character and the environs of listed buildings. The change in character can arise relating to an individual or group of buildings but inevitably, such changes have the potential for harmful cumulative impacts.

- 5.15 By way of contrast, housing association projects can be delayed by having to apply for minor alterations e.g. ramps for disabled tenants.
- 5.16 In some conservation areas, it has been observed that property owners are “*responsible*” and see the designation as beneficial but in others, there is not the same feeling and the financial aspect means that people only look at “*improving*” their own property, disregarding advice on design and the use of appropriate materials. One particular example cited several times in consultation responses was the use of PVC windows in conservation areas, on street and other frontages. In sensitive and more rural areas, the loss of traditional stone walls cannot be controlled, when an extension is built under permitted development rights.

Detailed concerns

- 5.17 The calculation of cubic content for Part 1 Classes A, B and D can lead to dispute, regarding whether permitted cubic content has been exceeded or not. The Planning Service do not inspect sites and rely on information provided by householders, and (often incomplete) records. The absence of historical records of minor applications makes it difficult to assess the planning history of a property, or assess accurately if permitted development rights have been used up by previous extensions. This is particularly a problem in densely developed urban areas, and on sloping sites. Also, with reference to Part 1, Class A is unclear in terms of whether a detached garage is part of the permitted development area, when calculating the volume of the original dwellinghouse.
- 5.18 Harmful impact on residential amenity arises also from windows in permitted development extensions which overlook neighbours, e.g. in gable walls. Condition A.1(a), that the design and external finishes of household permitted development extensions should be “*in conformity with those of the original dwellinghouse*”, is very difficult to enforce and legal advice to the Planning Service is that it would be difficult to argue in the Courts. There does not seem to be a clear understanding of the meaning of the condition. Thus windows (and roofs) are constantly replaced with inappropriate materials. This is particularly critical to the historic fabric of buildings in conservation areas where e.g. windows and roofs of natural

materials are being replaced with inappropriate materials and details. There is also the unacceptable visual impact of cladding/pebbledash.

- 5.19 Class B roof volume restrictions were, in contrast, seen as often being too strict and their wider value was questioned. Inconsistencies included rear dormers being permitted development but not a new, small rear window. The inclusion of *“front of dwelling”* in Class B.1(c) is a further problem, when many modern housing developments *“front”* onto a green space but back onto a road.
- 5.20 Under Class E, hard surfaces and paved-over front gardens, sometimes but not always to accommodate car parking, are a problem in urban areas, leading to the loss of traditional street frontages.
- 5.21 Finally, adequate definitions were required for the terms *“antenna”*, *“ground level”* on a sloping site; and *“the curtilage”* of a dwellinghouse.
- 5.22 Problems in understanding and using Part 1 were cited as being exacerbated by *“Your Home and Planning Permission”*, the Householder’s Guide published by the Planning Service, being inaccurate in places, for instance with regard to extensions and to curtilage development volumes.
- 5.23 As a result of these concerns and the uncertainties they create, informal discussions and *“letters of comfort”* are frequently used (instead of formal applications like the current Article 41 procedure) to obtain advice on the need for planning permission. However, it is likely that Article 41 applications will become increasingly required by the Planning Service, or advice will be given that it is more expedient to lodge a planning application, as the status of informal advice is now being questioned more frequently. Article 41 applications are not favoured by the Planning Service, however, as they result in the Planning Service having to double handle proposals if a planning application for the proposed development is required as a consequence. Thus the Planning Service has to apply significant resources to queries on whether householder development is permitted. This situation may however change, once Article 41 provisions are repealed and Certificates of Lawful Use are introduced.

- 5.24 From the public's point of view, householder permitted development rights are unnecessarily complex, particularly where an aggrieved neighbour has to understand that the Planning Service has no control over permitted development activities.
- 5.25 These concerns closely reflect those raised in relation to English and Scottish permitted development rights for dwellinghouses.

Scope for Change

- 5.26 Policy advice in Northern Ireland is that any development and change should build on and respect the character of established residential areas. This includes retaining building lines, protecting boundary treatments (see also Part 2 below) and respecting the scale of built form. Increased pressure for development has however threatened the established character and quality of many Victorian and Edwardian residential suburbs.
- 5.27 Traditionally, most houses in the countryside have been plain and austere in character, with the principal exception being Victorian, more ornate housing. In more recent years, new dwellings in the countryside have tended to be in the style of, and have the appearance of, the typical suburban development of the period. These styles are generally incongruous in a rural setting, undermine the distinctive regional character of existing buildings and lessen the contrast between urban and rural areas.
- 5.28 Householders now have much greater capacity to make major changes to their homes compared with when Part 1 permitted development rights were conceived and the consequences can be seen as being inconsistent with Government policy objectives in Northern Ireland for sustainable development, good design and public involvement. Part 1 gives the right to extend buildings in floodplains and there is no scope for the Planning Service to influence design quality formally, nor for neighbours to comment and to formally seek scheme amendments. Advisory Supplementary Planning Guidance and local plan policies cannot be fully effective, as they cannot be applied to any formal application for individual proposals. Contraventions of householder permitted development rights are also seen as often too difficult to enforce against, due to the complexity of Part 1.

5.29 Overall, Part 1 can be concluded from the above analysis as not to be serving Government policy aims well, as being far too complicated, and its Classes too loosely defined to achieve the purposes that householder permitted development rights are intended to serve.

5.30 From the above concerns and criticisms, it is clear that there is pressure for change and Part 1 particularly should be redrafted, along with other Parts of the GDO. Based on recommendations for a review of the Scottish GPDO¹⁰, the scope for rationalising Part 1 from 7 classes to 2 should be considered, i.e. a new Class A for “*development attached to a dwellinghouse*” and a Class B for “*development within the curtilage of a dwellinghouse*”. This re-classification would assist in achieving the desirable outcome of simplifying the operation of Part 1 and dealing with the problems raised. The two classes could then be drafted as set out below, with a summary of the reasoning behind each category being given in parenthesis below each one:

“Class A Development attached to the dwellinghouse

5.31 Planning permission is not required for the enlargement, improvement or other alteration of a dwellinghouse. Development is not permitted and planning permission is required for the enlargement, improvement or other alteration of a dwellinghouse if:

(i) *the dwelling is a flat, an apartment, maisonette, park home or mobile home;*
or

(to reflect the fact that a flat, maisonette, park home or mobile home is not a dwellinghouse and therefore does not enjoy permitted development rights under the terms of this Class)

(ii) *the floor area (measured externally), including any roof or loft floorspace with velux or dormer windows, would exceed the floor area of the original dwellinghouse –*

- *in the case of a terraced house, by more than 16 sq.m. or 10%, whichever is the greater;*
- *in any other case, by more than 24 sq.m. or 15%, whichever is the greater;*

¹⁰ Research on the General Permitted Development Order and Related Mechanisms, Scottish Office, 1998

- *in any case, by more than 40 sq.m;*

(volume is replaced by comparable area measurements in order to simplify understanding and interpretation of permitted development rights)

- (iii) *the enlargement, improvement or other alteration creates a separate unit of residential accommodation; or*

- (iv) *the height of the resulting building exceeds the height of the highest part of the roof of the original dwellinghouse; or*

(to reflect existing Class A .1(c) and Class B.1(b))

- (v) *the alteration is to change from a hipped to a partially hipped or to a gable end roof; or*

(to reflect design concerns arising from Class B)

- (vi) *the dwellinghouse is within an ASSI, if it directly abuts or is within 5 metres of the boundary of a Listed Building, if within the curtilage of a Listed Building, or if within a conservation area or Area of Townscape Character.*

(to enable a significant streamlining of the GDO, assist in the preservation and enhancement of such areas, and reduce the need for Article 4 Directions. This will replace existing Classes A.1(i), A.2(a)(i) and B.1(f))

- (vii) *the erection or construction of a porch outside any external door of the dwellinghouse would exceed 2 sq.m. (measured externally) ground area, any part of the structure would be more than 3 m above ground level or any part of the structure would be within 2 m of any boundary of the curtilage of the dwellinghouse with a road;*

(to reflect existing Class C)

- (viii) *with the exception of a porch or a satellite antenna, any part of the development would be nearer to the road than the part of the original dwellinghouse nearest to that road; or*

(to reflect Class A.1(d))

- (ix) *any part of the development which is within 4 m of the boundary of the curtilage of the dwellinghouse is increased in height as a result of the development or exceeds 3 m in height; or*

(to amend existing Class A.1(e))

- (x) *in consequence of the development the area of ground covered by buildings within the curtilage would exceed 25% of the total area of the curtilage (excluding the ground area of the original dwellinghouse and any garage or ancillary buildings permitted by the original planning permission or built at the same time as the original dwellinghouse); or*

(to amend existing Class A.1(f) and prevent over-development)
- (xi) *it involves a projection beyond any existing roof slope by more than 150 mm on any side facing a highway; or*

(to allow pitched roof extensions and other roof alterations at the rear of dwellinghouses without the requirement for planning permission. Reviews existing Class B.1(c))
- (xii) *the development takes the form of or creates (with or without a means of enclosure) a balcony, roof garden, roof terrace or decking;*

(to prevent harm, by overlooking, to residential amenity of neighbouring properties)
- (xiii) *the development creates a new window or door above ground floor level or above 3 m in height from ground level, whichever is the lower.*

(to reflect concerns regarding access or overlooking and/or access to a flat roof at first floor level).

Class B Development within the curtilage of a dwellinghouse

Planning permission is not required for development within the curtilage of a dwellinghouse, where for the carrying out of engineering operations or the provision of any building, enclosure, structure or other apparatus required for a purpose incidental to the enjoyment of the dwellinghouse or the maintenance, improvement or alteration of such a building, enclosure, structure or other apparatus. Development is not permitted and planning permission is required if:

- (i) *it consists of the erection or creation of a separate or new dwelling or a building for a purpose other than incidental to the enjoyment of the dwelling house ; or*
- (ii) *with the exception of a porch, hard surfaces, satellite antenna, walls, gates and fences, any part of the development would be both within 20 m of a highway and nearer to the highway than the original dwellinghouse; or*

(to reflect Class A.1 (d) and apply to curtilage development)

- (iii) *the dwellinghouse and its curtilage directly abut or are within 5 m of the boundary of a Listed Building, or if the dwellinghouse is within a National Park, an Area of Outstanding Natural Beauty, an ASSI, the curtilage of a Listed Building or in a conservation area; or*

(to enable a significant streamlining of the GDO, assist in the preservation and enhancement of such areas, and reduce the need for Article 4 Directions. Would amend/replace existing Classes D.1(e) and H.1(f))
- (iv) *the height of the development exceeds 3 m ; or*

(to reflect Class D.1(c)(i) and (ii))
- (v) *in consequence of the development the area of ground covered by buildings within the curtilage (other than the original dwellinghouse) would exceed 25% of the total area of the curtilage (excluding the ground area of the original dwellinghouse and any garage or ancillary buildings permitted by the original planning permission or built at the same time as the original dwellinghouse); or*

(to reflect existing Class D.1(d) and prevent over-development)
- (vi) *the area of any hard surface provided would exceed the lesser of 15 sq.m. or 50% of the garden area on any side of the dwellinghouse; or*

(to revise existing Class E to reflect concerns about the scope for hardstanding and the protection of garden ground at the front, rear and side of dwellinghouses)
- (viii) *it involves the provision of more than one container for the storage of oil or liquefied petroleum gas within the curtilage of dwellinghouse or a single container exceeding 3500 litres in capacity or such container is more than 3 metres above ground level; or*

(to simplify existing Class F.1)
- (ix) *engineering operations for embanking and terracing result in changes to natural ground levels exceeding 1 m in height; or*
- (xi) *the structure is to be used for the keeping of pigs, poultry or pigeons, or any other purpose other than a purpose incidental to the enjoyment of the dwellinghouse as such.*

5.32 The above draft Classes do not include any provisions for satellite dishes or antennas which should be inserted following the results of the separate consultation process on these elements.

5.33 Additional conditions attached to the two classes should cover:

- relating permitted development rights for new curtilage buildings/dwellinghouse extensions to other development which has been granted planning permission but which has not yet been implemented, or which has been partially implemented. Where planning permission is granted for an extension, is extant and has yet to be built or completed, the permitted development rights of the property should be taken as having been used. If the applicant wants a further curtilage building or extension, a planning application must be made. The Planning Service could then consider if the two together would constitute over-development. While this issue was not identified as a particular problem during consultation, it is an obvious loophole that should be closed to avoid future problems.
- requiring matching materials to those of the original dwellinghouse (rather than “*design and external finishes*” being in conformity);
- the natural ground level not sloping or dropping either within the planning unit, adjacent to or adjoining it. Where there is a difference in natural ground level between two sites, if any part of the building proposed comes within 2 metres of the boundary of the adjoining premises, the height should be measured from the lower, natural ground level adjacent to where the structure is proposed;
- new buildings etc. under Class 2 being at least 5 metres from an adjoining dwellinghouse (to overcome loss of amenity issues, particularly relating to corner plots);
- limited or non-opening opaque glass windows being required for any new openings in return frontages directly overlooking windows in a neighbour’s property;
- any roof extension under Class A should not abut a party wall;
- new buildings not removing, or falling within 3 m of, any tree covered by a TPO.

5.34 It would also be appropriate for Part 1 permitted development rights to be consistent with Building Regulations, or vice versa, in effect to require Building Regulations approval for all relevant householder permitted development rights, and thus assist all users of both procedures.

5.35 The interpretation of Part 1 should also make clear that, for the purposes of Part 1 permitted development, party walls are included within the curtilage of both properties abutting that curtilage but, as indicated above, permitted development rights do not apply where a roof extension abuts a party wall.

- 5.36 Although not recommendations at this stage, further possible changes which could be considered would include:-
- (i) in Conservation Areas and Areas of Townscape Character, specifically excluding new cellars including the provision of new basement windows (as these often have the effect of altering the street scene);
 - ii) specifically excluding render, harling and pebbledash from sensitive areas;
- 5.37 Certain elements of the new Part 1 would require substantial advice in any new householder User Guide, e.g. explaining that replacement windows in Conservation Areas and Areas of Townscape Character constitute development if altering the appearance of the dwellinghouse by non-use of matching materials. It should also clarify that buildings incidental to the enjoyment of a dwellinghouse within 5 metres of it, built at the same time or referred to in the planning permission for the dwellinghouse, do not count against permitted development limits, and that sheds and conservatories have to comply with Part 1. The Part 1 User Guide should also explain how to measure buildings (including swimming pools) and how to calculate area.
- 5.38 One effect of the above re-drafting would be to remove the current control over size of extensions by volume limits in relation to the original dwellinghouse. Instead, control would be in terms of floorspace and height limits with a specified distance from curtilage boundaries, as currently applies in the Scottish GPDO. The area limits being proposed are not substantially different in terms of the size of extension that would result from the current volume measurements and should have no effect on the number of planning applications required.
- 5.39 The main benefit from all the above proposed changes would be to bring about greater scope for the Planning Service to exert influence on the quality of design of householder developments, by requiring planning applications for the more significant categories of such development, and for categories of development in protected and sensitive areas. Public involvement in householder developments would then be possible in more cases than at present. This outcome would be in line with the Government wishing to see national policy

implemented at the local community level. Achieving design quality is also one of the Government's current and principal policy objectives in itself. A neighbour prior-notification system of permitted development rights to be exercised would however be of limited merit. It could only contribute nominally to the Government's aim of wishing to see greater community involvement in the appearance and character of their locality, thus contributing to social cohesion objectives, as there would only be scope to change a scheme if the householder proposing it agreed.

5.40 The revised and redrafted Part 1 would also make these rights more accessible to ordinary people i.e. it would be clearer, if not more concise. Part 1 would be made yet more accessible, if easier informal contact with the Planning Service could be enabled. A two tier system of applications (e.g. an expedited procedure for householders) has been considered, as suggested by one interest group, but it was concluded that this approach would not be acceptable as it would in effect rely on the speed of consultation responses being adequate to support a prior notification/approval process.

5.41 The main recommended changes to this Part are therefore to:

- rationalise Part 1 to 2 Classes, with a new Class A for *“development attached to a dwellinghouse”* and Class B for *“development within the curtilage of a dwellinghouse”*. This re-classification, together with redrafting in a simpler format, address a number of problems and involve replacing the volume control on extensions to one based on floorspace and distance from boundaries and reducing the proportion of the curtilage which can be covered by buildings to 25%. Additional controls would apply variously to extensions/alterations to dwellinghouses and curtilage development in conservation areas and Areas of Townscape Character, and in ASSIs;
- additional conditions attached to the two classes would cover:
 - i) relating permitted development rights for new curtilage buildings/dwellinghouse extensions to other development which has been granted planning permission but which has not yet been implemented, or which has been partially implemented;
 - ii) requiring matching materials to those of the original dwellinghouse (rather than *“design and external finishes”* being in conformity);
 - iii) differences in natural ground level;

iv) new buildings etc. under Class B being at least 3 metres from an adjoining dwellinghouse;

v) limited or non-opening opaque glass windows in return frontages directly overlooking windows in a neighbour's property;

vi) any roof extension under Class A not abutting a party wall; and,

vii) clarification that Part 1 rights do not override and should respect TPOs;

- to provide consistency and thus assist all users of both procedures, consideration should be given to making Part 1 permitted development rights consistent with the Building Regulations, or vice versa.

5.42 These proposed revisions to Part 1 would have the disadvantage of resulting in more planning applications, with the implications for Planning Service workloads and resources being significant. This should however be counterbalanced sufficiently by fewer informal enquiries, less *“double-handling”* of queries/Article 41 type applications and planning applications, by schemes being revised to comply with the new permitted development limitations, and fewer Article 4 Directions being necessitated in future.

6.0 PART 2: MINOR OPERATIONS

- 6.1 Part 2 permits various minor forms of development, on the basis that their scale and nature is such that they would be granted planning permission if an application was required.
- 6.2 Class A allows the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, unless within the curtilage of or surrounding a listed building, or if the height of a new means of enclosure which is adjacent to a road, used or designed to be used by vehicular traffic, exceeds 1 metre, or 2 metres above ground level otherwise, or if it involves land regarded as a private street.
- 6.3 Class B permits the formation, laying out and construction or alteration of a means of access to a road which is not a special, trunk or classified road, where that access is required in connection with development permitted by any Class other than Part 2, Class A, unless it is within a site of archaeological interest.
- 6.4 Class C allows the exterior painting of any building or work, other than for advertisements.
- 6.5 The main differences from Part 2 of the English GPDO are that the latter has no restriction in Class B on sites of archaeological interest, it relates Part 2 rights to a *“highway”* rather than a *“road”* and does not have restrictions relating to a *“private street”*. In Scotland, *“sundry minor operations”* in Part 2 are similar to those in England and Northern Ireland. *“Sundry works”* in the Republic of Ireland include Classes of exempted development for new gates, fences and walls other than on the curtilage of a dwellinghouse, plastering or capping of concrete walls, for external painting and for improvements or repair of a private road etc. (similar to Part 9 in England and in Northern Ireland).

Issues

- 6.6 The consultation process highlighted concerns with Classes A and B principally raised by the Planning Service and other Government departments, relating to streetscape and the amenity

and urban design of residential areas. The impact of Part 2 in such areas can be significant and sometimes detrimental.

- 6.7 In urban areas, problems arise over the height of walls/fences between neighbours. The poor quality of walls was also noted (some unconventional materials are used but this is not seen as a widespread problem). Means of enclosure in the garden of a dwellinghouse could also be an issue, as householders frequently do not realise that they need to obtain planning permission if walls etc. are over 2 m in height.
- 6.8 Fences and walls were noted as often being removed in the countryside, thus changing the character of the landscape, while provisions for laying out accesses in rural areas were seen as being too generous in terms of visual and environmental impact.
- 6.9 Unacceptable resurfacing materials were noted as being used under Part 2 Class B for roads in conservation areas. External painting was also seen to have a major impact on conservation areas and Areas of Townscape Character. Lastly, definitions requiring clarification included *“1 m adjacent to a road”* and *“road”*.
- 6.10 These concerns are less extensive than those identified by research in England, where the use of unconventional materials as a means of enclosure (such as waste or old tyres) was highlighted as having unacceptable environmental consequences, albeit in few cases. No proposals were made by consultees to widen these rights.

Scope for Change

- 6.11 While Part 2 was not seen by most consultees as needing significant change, the above concerns suggest that developments under Part 2 are having some harmful impacts on the environment in urban, rural and historic locations, contrary to Government policy aims of achieving sustainable development, high quality design and more indirectly, provisions for means of access being contrary to PPS13 policies for promoting the use of non-car means of transport.

be offset to some extent by landowners/householders amending their proposals to fall within the new permitted development rights.

- 6.15 A further change, which may be beneficial in the future in helping to further environmental aims, would be to limit the types of materials used for means of enclosure under Class A to "*conventional materials*", to match and be in conformity with the character of those used in the locality. Interpretation could also specifically exclude the use of waste and other types of materials such as old car tyres to form means of enclosure.

7.0 PART 3: CHANGE OF USE

7.1 Part 3 permitted development rights are linked to the Planning (Use Classes) Order (Northern Ireland) 1989 (as amended), and grant permission for changes of use between certain of its classes. The Use Classes Order is also under separate review.

7.2 In Part 3:

- Class A permits changes of use from betting offices or food and drink premises, including hot food takeaways, to shops (Class 1) or professional services (Class 2). This differs from the English GPDO, in which Class A permits changes of use from Class A3 (food and drink), or from the sale/display of motor vehicles, to Class A1 (shops).
- Class B permits changes of use from Class 5 (general industrial) to Class 4 (light industrial), from Class 11 (storage and distribution) to Class 4 and from Class 4 or Class 5 to Class 11; this is subject to any change to or from Class 11 being less than 235 m². In the English GPDO, the latter changes of use are permitted from Class B2 (general industry) or B8 (storage and distribution) to Class B1 (business uses), and from B1 or B2 to Class B8, subject to any change to or from B8 being for an area of less than 235 m².
- Class C permits the change of use from Class 2 (financial and professional services) to Class 1 (shops) where there is a ground floor display window. This is similar to Class C of the English GPDO, which also permits changes of use from Class A3 to A2 (financial and professional services).
- Class D permits the change of use from Class 12 (guest houses and hostels) and Class 13 (residential institutions) to Class 14 (dwellinghouses). The English GPDO has no permitted changes relating to these uses.
- Class E permits a single residential flat within Class 1 and 2 and change of use from Class 2 to Class 1 with a single flat (where there is a ground floor display window), subject to the flat being on the first floor or above and being occupied by a single person, family or not more than 6 people. In the English GPDO, Class F permits, subject to conditions, various changes of use to mixed uses, including from Class A1 to Class A1 and a single flat, from Class A2 to Class A2 and a single flat, and from Class A2 to Class A1 and a single flat.
- Class F permits the same changes as Class E in reverse, providing the flat was previously in Class 1 or 2 use. This is the same as Class G of the English GPDO, providing that the flat was previously in A1 or A2 use.

- 7.3 These are all designed to be one way changes, with the underlying purpose being to permit changes of use which are likely to result in a use which is more desirable in planning terms.
- 7.4 The only other key difference from the English GPDO is Class E of the latter, which has no equivalent in the Northern Ireland GDO. This Class permits development consisting of a change of use of a building or other land from a use permitted by planning permission granted on application, to another use which that permission would have specifically authorised when it was granted. Such development would not be permitted if carried out more than 10 years after the grant of permission or if it would be in breach of that planning permission. Class E makes it easier for local authorities to grant flexible “dual use” planning permissions i.e. which authorise alternative possible uses.
- 7.5 Changes of use in Part 3 of the Scottish GPDO are again similar to those permitted in Northern Ireland but refer to permitted changes to the business class (4), as for Class B in England. In the Republic of Ireland, the changes of use defined as exempted development are more limited and quite different. They do however, as in England, permit a car showroom to change to retail, and the same for a public house. Additional changes of use permitted include re-conversion from more than 2 flats to a single dwelling, and use as a house to a residence for up to 6 people needing care.

Issues

- 7.6 Although the Use Classes Order is currently the subject of a separate Planning Service review, certain limited concerns regarding Part 3 of the GDO were raised in the consultation process. Planning Service officers referred to uncertainty over whether certain uses e.g. estate agents and taxi offices could change from one to another without planning control; this was despite taxi businesses being specifically excluded from any Use Class in the Order. There was also confusion in the Planning Service, as well as for the public, regarding the existence or otherwise of permitted development rights in commercial buildings, for example where upper floors were in residential use. Dual use permissions were seen by all

as potentially being beneficial in providing flexibility for developers and owners in changing the use of buildings to cater for fluctuations e.g. in the letting market.

- 7.7 Another Government department commented that Part 3 permitted development rights had a particular bearing on the character of buildings in conservation areas, impacting on the quality of the built environment and streetscape, due to the differing characteristics of different permitted uses. Longer term vacancies due to alternative uses not coming forward were however acknowledged as more likely to have harmful effects.
- 7.8 User groups representing community groups noted that community-based regeneration schemes sometimes needed flexibility on use classes i.e. a scheme may have planning permission for Class 1 (shop) but can only be let as a café. Subjecting such schemes to planning control was indicated as imposing an unnecessary burden on them. Similarly, Part 3 permitted development rights were seen as too narrow to be of benefit to housing associations, as unnecessary delays arose when they had to apply for planning permission for change of use e.g. for a “*group home*” from an existing dwellinghouse. This also caused extra expense.
- 7.9 Finally, it was suggested by several consultees that, as in England, change of use of car showrooms to retail should be permitted development.

Scope for Change

- 7.10 According to the Regional Development Strategy, Northern Ireland’s economy has improved in the last 10 years at one of the fastest rates for the UK regions. However, it still has a predominantly low wage economy biased towards the declining sectors producing low value-added manufactured goods and with an over-dependence on the public sector. Northern Ireland’s town centres have faced special difficulties in the past but, in more recent years, regeneration measures have been successfully implemented and revitalisation has occurred. The “*Living over the Shop*” scheme is promoted in Government policy. The flexibility provided by Part 3 permitted development rights should therefore help achieve an outcome

of continuing to bolster the economy and promote regeneration, while enhancing central area vitality and viability.

7.11 While Part 3 permitted development rights are broadly in line with sustainable development objectives to encourage the re-use and mixed use of existing buildings, and they also promote the provision of housing, they are not generally considered to be sufficiently extensive and flexible. The following suggested changes aim to address the main deficiencies identified above:

- clarification of permitted development rights for business premises with residential use above, to support the promotion of *“Living over the Shop”* schemes. Class E should be extended, to include several flats above shops/professional services;
- for long term vacant retail units total housing use of the premises should be considered as permitted development;
- introduction of permitted change of use for dual use planning permissions, to help enable e.g. central area regeneration.

7.12 Consideration could also be given, after further investigation, to permitting change of use of small scale, redundant agricultural buildings to Class 4, 5 or 11 uses. This is dealt with in more detail under Part 6.

7.13 It is not recommended that car showrooms should be allowed to change to Class 1 retail, as proposed by several consultees, as this would not be consistent with Planning Service retail policy to maintain and enhance central areas, and with transport policy to reduce the need to travel particularly by car, as car sales often take place out-of-centre and in industrial areas where existing showrooms would be relatively inaccessible to shoppers dependent on public transport. Similarly, commercial premises with upper floor residential uses should not benefit from wider permitted development rights relating to the ground floor use because of the residential element above.

7.14 None of the recommendations from the recent review of the Use Classes Order in England were considered to support any changes to Part 3 of the GDO in Northern Ireland.

7.15 The above changes would have the beneficial effect of reducing the number of planning applications made in relation to minor changes of use, and of enabling the more flexible use and re-use of existing buildings, and of those with a dual use permission, to adjust to changes in the economy and occupiers' needs more readily.

8.0 PART 4: TEMPORARY BUILDINGS AND USES

- 8.1 Class A permits, subject to conditions, the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining it. These rights are frequently used for temporary storage and plant during construction works and for construction camps by statutory undertakers, for example laying a pipeline. This Class specifically excludes mining operations, development that requires planning permission but has not been granted, and land within a site of archaeological interest. Removal and reinstatement are required when the operations have been carried out.
- 8.2 Class B permits the use of any land for any purpose for not more than 28 days in total in any calendar year, of which no more than 14 days can be for a market or motor car/motor cycle racing, and the provision on the land of any moveable structure for the permitted use. Development is not permitted if the land is a building or within the curtilage of a building, if for a caravan site, or if within a site of archaeological interest. No special restrictions apply in sensitive areas such as conservation areas or ASSIs. Street trading is not included, but it is not specifically excluded either.
- 8.3 Apart from the restriction on sites of archaeological interest, these rights are similar to Part 4 of the English GPDO but a key difference is that the English GPDO restricts Class B rights in a Site of Special Scientific Interest (SSSI) to exclude motor sports, clay pigeon shooting, a war game or advertisement display. Provisions for temporary buildings and uses in Scotland are similar to those for England and Northern Ireland in relation to building operations but less restrictive for other temporary uses, as only a 28 day period is referred to and activities such as markets or motor racing are not restricted to 14 days. In the Republic of Ireland, exempted temporary uses benefiting from permitted development rights are more tightly defined but more extensive in terms of including the use of public buildings for a religious activity and development in connection with visiting dignitaries.

Issues

- 8.4 Consultation responses highlighted concerns with both Classes of Part 4, with Class B rights being criticised in particular. The Planning Service highlighted problems arising from builders' huts erected under Class A but not being removed,. For Class B, definitions were required for "a calendar year", "land" and "curtilage" (as temporary uses move from one part of a holding to another at present). There is a current dispute on whether moveable mining equipment can utilise Part 4 rights on the basis that this does not constitute a building or a moveable structure, and the Planning Service is awaiting legal opinion on this issue.
- 8.5 Also for Class B, it was noted that temporary "*buildings*" could be of canvas and tied down with guy ropes, which are difficult for the Planning Service to exercise sufficient planning control over. In any event, it was difficult to monitor/measure use for 14 or 28 days. "*Practising*" of temporary activities was often claimed not to count towards the 14/28 day limit and disputes arise over the number of days a temporary use was carried out. Re-instatement of land after temporary uses was then not easily enforced and it was difficult to define what is meant by "*previous condition*". Thus abuses of temporary permitted development rights could lead to uses becoming permanent.
- 8.6 According to environmental interest groups, Part 4 permitted development rights have the potential to lead to damage to sites of nature conservation importance, such as ASSIs, in addition to their more general impact on the quality of the wider rural environment and on biodiversity. A significant problem exists with clay pigeon shooting having permitted development rights due to noise, habitat destruction and site contamination. The National Trust noted that temporary uses of land e.g. for car parking often uses conspicuous coastal sites. A planning interest group noted that "*difficult uses*" could make use of Part 4 e.g. travellers putting 40 caravans on a field for 28 days, then claiming permitted development rights.
- 8.7 Finally, the issue of licensed street markets was raised by the Planning Service. Some 400 such markets have now been designated in the Region and all theoretically require planning

permission as they do not fall within Part 4. This requirement, usually for retrospective planning permission, raises severe workload implications for the Planning Service.

Scope for Change

- 8.8 The desirable outcome with regard to Part 4 rights would be for temporary uses to be able to take place without having a material impact on sites of nature conservation importance and on amenity generally. It is of note that the temporary use provisions in the English GPDO were reviewed, by way of suggested options, in a January 2002 Government consultation paper. It was then announced by the Planning Minister in August, 2002 that the Part 4 temporary use provisions would remain unchanged, on the basis that in England, consultation responses had apparently indicated that there was no widespread problem relating to temporary uses. Responses to this study's consultation exercise have suggested otherwise and this may be because the Northern Ireland GDO is less restrictive than its English counterpart.
- 8.9 Part 4 permitted development rights are seen to conflict directly with Government policy for sustainable development and for protecting and caring for the countryside. They also conflict with transport objectives in terms of temporary uses often requiring access by car but dependence on the car is very apparent in rural areas, reflecting the dispersed settlement pattern and limited public transport. Such uses do also support the rural economy and farm diversification (see commentary on Part 6 below, for further detail).
- 8.10 Part 4 rights clearly give rise to material planning issues. While no consultees suggested that permitted development rights for all temporary uses should be removed, more moderate amendments could clarify exactly what these rights extend to, address the above concerns and make Part 4 more consistent with the Government's policies for Northern Ireland for sustainable development, while recognising that some temporary uses can benefit particularly the rural economy. These changes could include:
- making temporary uses apply to whole units of ownership or occupation;

- amending Part 4 to remove any potential threat to sites of nature conservation importance such as ASSIs e.g. Class B should specifically exclude sensitive areas and the use of such land for motor car and motorcycle racing and all other motor sports such as scrambling or quad biking (including speed trials and practising), clay pigeon shooting and any war game;
- introducing a requirement to give advance notification of events to the Planning Service, e.g. two weeks in advance to allow recording of the number of events taking place;
- limiting clay pigeon shooting, motorised sports and war games to 14 days;
- subject to the outcome of legal opinion now being sought, making clearer that all forms of moveable mining equipment are excluded from Part 4;
- introducing a new Class specifically giving permitted development rights to designated and licensed street markets for the number of days specified by the licence.

8.11 Definitions for the following terms would assist in improving the clarity of Part 4: market; curtilage; planning unit (for Class B); *“required”* temporarily (for Class A); motor sports; and *“moveable structure”* (for Class A).

8.12 It should also be made clear in the interpretation of Part 4 that no permanent means of access can be provided to serve a temporary permitted use.

8.13 Other than for street markets, no proposals were made by consultees for extending rights for temporary uses. Consideration was however given to allowing temporary uses within the curtilage of buildings as a possible relaxation of permitted development rights. This was not considered appropriate as there is scope for such uses e.g. car boot sales, to take place on sites closely adjoining other buildings and uses and create unacceptable impacts on amenity. Requiring a planning permission for such uses provides the opportunity to apply conditions to control such impacts.

8.14 These changes may increase the workload of the Planning Service in relation to Class B uses proposed for more than 14 days but this should be counterbalanced by the notification of events reducing time spent checking how many times they have already taken place, and by

the removal of a requirement for the 400 or so designated and licensed street markets to obtain planning permission retrospectively.

9.0 PART 5: CARAVAN SITES.

9.1 This Part allows the temporary use of land for caravans. Planning and licensing control over caravan sites is complex and these two areas are closely inter-related.

9.2 Class A permits the use of land as a caravan site in circumstances specified in the Caravans Act (Northern Ireland) 1963. Schedule 1, paragraphs 2, 3 and 6–10 of this Act list cases where a caravan site licence is not required and for which permitted development rights therefore apply under Part 5. These are:

- use by a person travelling with a caravan for no more than 2 nights (up to a total of 28 days per year, for any one piece of land or adjoining land), providing there is no other caravan stationed on the site for human habitation;
- use of holdings of 5 acres or more for up to 3 caravans for not more than 28 days;
- meetings organised by exempted organisations, lasting up to 5 days;
- agricultural and forestry works;
- on land forming part of, or adjoining, building and engineering sites;
- travelling showmen.

9.3 The Department of Environment is responsible for issuing exemption certificates to specified organisations.

9.4 Permanent caravan sites require planning permission, and caravans or mobile homes on them (i.e. *“park homes”*) do not have permitted development rights.

9.5 The English GPDO and the English Caravan Sites and Control of Development Act 1960 have similar provisions to those in Northern Ireland but the GPDO has additional and extensive provisions for exempted organisations in Class A. Another notable difference is the English GPDO’s Part 5 Class B, which permits development required by the conditions of a site licence in force under the Act. Such conditions can require *“adequate sanitary facilities”*, services and equipment. These might include lavatory/shower/laundry blocks, roads,

hardstanding, footpaths, street lighting, fire and water points, recreation areas, electrical installations and foul and surface water drainage.

- 9.6 In Scotland, caravan site provisions closely resemble those in England, referring to the same Act. In the Republic of Ireland, "*limited use for camping*" is exempted development in rural areas, but including only very restricted and temporary use (for up to 10 days) for general camping or for a scouting organisation's camp (up to 30 days).

Issues

- 9.7 The only specific concern raised in the consultation process related to rural conservation areas potentially being harmed by caravan sites locating adjacent to villages and detrimentally altering views.
- 9.8 No cases were identified of Article 4 Directions or EIA regulations being used to restrict Part 5 rights.
- 9.9 The general view from consultees was that caravan sites are well-controlled by the 1963 Caravans legislation, the licensing system, and the "*certificates of exemption*" granted to exempted organisations, which include conditions that must be complied with to avoid withdrawal of exemption. No proposals were made by any consulted group to widen Part 5 rights.

Scope for Change

- 9.10 With reference to Government policy objectives, Part 5 permitted development rights would appear to have potential to conflict with aims for achieving sustainable development, countryside protection, good design quality and a reduced need to travel. Such conflicts have not however been identified in Northern Ireland. It would therefore appear that Part 5 permitted development rights can support tourism, recreation and rural diversification aims, without significant detrimental environmental consequences.

- 9.11 –Adding a new Class B to permit development required by a site licence as is the case in the English GPDO, has been considered but was not seen as appropriate in view of the potential conflicts, with the Government policy aims outlined above, of such extensive development in rural areas.
- 9.12 No recommended amendments to Part 5 are therefore put forward. It would however be useful to provide guidance to explain clearly the relevant provisions of the Caravans Act (Northern Ireland) 1963. This could explain each of paragraphs 2, 3 and 6–10 of Schedule 1 of the 1963 Act, to prevent the possible scope for wide interpretation by users.

10.0 PART 6: AGRICULTURAL BUILDINGS AND OPERATIONS.

- 10.1 This Part gives permitted development rights for various agricultural buildings and operations.
- 10.2 Class A of Part 6 permits the carrying out on agricultural land in an agricultural unit of works for the erection, extension or alteration of a building or any excavation or engineering operations. All have to be *“reasonably necessary for the purposes of agriculture within that unit”*. Development is not permitted (A.1) if:
- (a) It is on agricultural land less than 0.5 ha. in area;
 - (b) it is for the erection, extension or alteration of a dwelling;
 - (c) a building, structure or works not designed for the purposes of agriculture is provided;
 - (d) the nearest part of the development is (i) more than 75 m from the nearest part of a group of principal farm buildings and where it is (ii) more than 300 sq.m in ground area and less than 75m from a dwellinghouse not associated with the agricultural unit;
 - (e) the ground area of any works, structure, plant, machinery or building erected, extended or altered would exceed 300 m²;
 - (f) the height within 3 km. of an aerodrome exceeds 3 m, or elsewhere 12 m;
 - (g) within either 9 or 24 m of the edge or middle of a road, depending on its classification.
- 10.3 There are no restrictions within designated sensitive areas such as AONBs, National Parks or ASSIs.
- 10.4 Part 6 of the English GPDO differs significantly from the Northern Ireland approach and is highly complex. It distinguishes between larger (more than 5 ha.) and smaller (0.4 – 5 ha.) farm holdings in Classes A and B respectively. Other main differences are restrictions in National Parks, a higher building size limit (of 465 m²), prior approval requirements for *“significant”* development and distance restrictions between livestock/slurry/sludge accommodation and protected buildings e.g. dwellings.

- 10.5 The English GPDO also permits waste materials to be brought on-site for certain works, if incorporated "*forthwith*", and providing that the height of the land is not "*materially increased*" by the deposit. Removal and restoration of buildings or extensions is required, in Classes A and B, if agricultural use permanently ceases.
- 10.6 Class B of Part 6 of the Northern Ireland GDO permits the winning and working on land used for agriculture of any minerals "*reasonably necessary*" for agricultural purposes within the unit of which it forms part. Excavation must again not be within either 9 or 24 metres of the edge or middle of the road depending on the classification of the road. Unlike the English GPDO, conditions require the land to be levelled, top soil replaced and the land to be restored to its former condition before the extraction took place. The purposes of agriculture for which extracted minerals can be used are defined.
- 10.7 Class C permits the construction, formation, laying out or alteration of a means of access to a road, unless it is required in connection with development for which a planning application is necessary or the land is within a site of archaeological interest. This Class is not separately included in the English GPDO but provision etc. of a means of access is included in Classes A and B.
- 10.8 Part 6 permitted development rights in Scotland are similarly complex to those in England. They apply to all holdings of over 0.4 ha. and therefore, as in Northern Ireland, there is just one Class for buildings etc. However, floorspace limitations and distance requirements most closely follow the English GPDO. Waste is referred to. A prior notification/approval procedure also applies in similar circumstances to England but only for a "*significant*" building, alteration or extension, or for the formation or alteration of a private way. Land drainage works are also permitted.
- 10.9 Exempted development in rural areas in the Republic of Ireland applying to agricultural structures includes 5 classes e.g. for small roofed structures for livestock, and other structures (up to 200 m²), stores (of up to 300 m²) and manèges. Land reclamation is also exempted development, if for various defined purposes (including marshland reclamation if

not contrary to a development plan objective for the area). Miscellaneous provisions include other works for housing greyhounds (up to 50 or 100 m²). The use of up to 100 ha. of uncultivated land for intensive agricultural purposes is also exempted development, as is peat extraction (subject to an area limit).

10.10 In November, 1996, the DoE (NI) drafted a Consultation Paper, "*Review of Planning Control over Agricultural Development*", although this was not issued. This paper would have invited comment on some suggested changes to the permitted development rights granted to agricultural buildings and operations by the 1993 GDO. It highlighted some concerns about agricultural developments, relating to:

- the environmental impact of farm buildings and farm roads;
- the fragmentation of farm holdings;
- impact on residential amenity;
- redundancy and conversion;
- the misuse of permitted development rights.

10.11 Perceived problems identified as arising from Part 6 of the GDO related to:

- interpretation and definitions;
- the size of holding;
- the scale of buildings or structures which could be erected within 75 m of a group of existing farm buildings;
- there being no control over cumulative impact;
- first buildings on holdings not having to have express planning permission;
- there being no variation between the different uses of agricultural buildings e.g. for livestock or for slurry or sewage sludge.

10.12 The suggested changes to agricultural permitted development rights put forward in the draft Consultation Paper included introducing a two tier system; one applying to holdings of more than 5 ha. and one to those of between 0.5 and 5 ha. Within each new class, changes related to: full planning permission being required for the erection of the first farm building, height, volume, distance and area limits and the particular use. The purpose of the new

limitations was described as being to prevent over-development on small parcels of agricultural land, while accepting that some forms of intensive agriculture existed on holdings of less than 5 ha.. In both classes, the area of a dwellinghouse and garden would be excluded from the measured area i.e. that benefiting from agricultural permitted development rights. However, none of the suggested changes were consulted upon nor, of course, implemented.

Issues

10.13 Consultation responses from all parties showed a high level of criticism of Part 6, which was seen as one of the most problematic Parts, together with Part 1. Part 6 was cited as being poorly drafted and inconsistent with Government policy for sustainable development; for safeguarding the character of the countryside; the Green Belt; development in flood plains; access; and the Northern Ireland waste management strategy. However, it was also cited as not supporting Government policy aims for farm diversification and maintaining/enhancing the rural economy.

10.14 Specific points raised by operators, users and interest groups regarding Part 6 are therefore summarised below, in terms of general and then detailed concerns:-

General Concerns

10.15 Part 6 permitted development rights were perceived as being too loose, according to operators and interest groups, and *“requiring major scrutiny”*. A wholesale review was seen to be required, to simplify the Classes, as their complexity leads to adverse effects. The Classes were seen as poorly drafted, with poor grammar and double negatives making them generally difficult to understand. Problems also arose from the interpretation and definitions of:-

- *“agricultural land”*;
- *an agricultural unit*,
- *“reasonably necessary”*;
- *“livestock”* (i.e. whether it includes poultry or horses);
- *“engineering operation”* (e.g. whether this includes the importation of waste).

- 10.16 Planning Service officers commented that agricultural permitted development is very difficult to monitor, in terms of whether it relates to land genuinely in agricultural use. There is also no way of knowing in advance of the proposed implementation of agricultural permitted development rights. Farm buildings are often erected as permitted development but may in fact need planning permission. A planning problem then arises if the farmer wants to diversify. The impact on residential amenity in terms of siting was a specific problem cited with agricultural permitted development rights.
- 10.17 Other Government departments and agencies were of the view that greater controls were needed in areas of sensitive landscape, as major issues arise in such areas where land acquired is in agricultural use and agricultural permitted development buildings can be just as harmful as buildings requiring planning permission. Even derelict houses in the countryside are being used for agriculture and then agricultural permitted development rights are used for new buildings (or planning permission applied for). Farm buildings can also be unacceptably sited in relation to historic monuments, even if they are not immediately adjacent to them.
- 10.18 When there was grant aid for the construction of farm buildings, the Department for Agriculture and Rural Development (DARD) was able to have an input and control building size and siting. The consequence of this past involvement was seen by all parties as less harm being caused to the countryside. In any event, poultry houses are now the main type of agricultural building being developed and these have to obtain planning permission due to their size (1,000 m² gross).
- 10.19 New agricultural tracks were identified as a further problem, due to their length, inappropriate materials and their use to reach previously inaccessible areas by vehicle. They can have detrimental landscape and drainage effects. Rights of way are often intentionally eradicated by agricultural permitted development rights being implemented, as the district councils have not kept records of routes up to date.

- 10.20 Finally, it was indicated that very high volumes of waste were being brought onto farms and deposited. This illegal dumping of waste is a problem, as it is often used for the filling in of bogs and then results in a planning application for a dwelling. Farmers' groups, however, saw the importation of waste more as *"a bit of a grey area"*, with waste disposal being regulated by other legislation but it was acknowledged that problems arise with farmers accidentally importing biodegradable waste, leading to pollution. Such tipping adjacent to an ASSI could similarly cause pollution problems.
- 10.21 Users otherwise had few comments or concerns regarding problems and concerns arising from Part 6. Their main point, in addition to the comment on waste above, was that Part 6 permitted development rights *"double"* the regulations of construction standards for farm buildings/structures. This lack of detailed comment from users may be largely due to only the most minor permitted (and other) development being undertaken for agricultural purposes at the present time, due to the absence of grant aid for new buildings.
- 10.22 The wider view of the users of Part 6 permitted development rights and their representative organisations was that over the last 8 or 9 years, in spite of all the initiatives to increase rural prosperity/tourism/diversification, farmers remain very deprived. Even where a farmer has a larger land holding, the economic problems are just a little less obvious. If the Planning Service view was that Part 6 did not limit development sufficiently, user organisations were of the view that other legislation/regulations prevent harm. Farmers may be trying to improve their operations but the overlap and complexity of legislation and regulations for agriculture generally are excessive and inappropriate.
- 10.23 Interest groups had, as might be expected, wider ranging and mainly environmental concerns. In principle, the cumulative impact of agricultural permitted development rights on the quality of the rural environment was a major concern, and also, impact on biodiversity. There was a perception that Part 6 gives agriculture a favoured position, allowing larger buildings than are refused in planning applications e.g. for new dwellings in the countryside.

- 10.24 The size limit of 300 m² for permitted agricultural buildings was seen by interest groups as being too large, particularly in sensitive landscape areas. In contrast, the Planning Service noted that it was too small from a farmer's point of view. As also noted by the Planning Service, interest groups were concerned that buildings/extensions are erected on the pretext of being for agricultural purposes but it soon becomes clear that they are not. Changes of use are then granted planning permission anyway, as the building has already been erected.
- 10.25 Interest groups also referred to the considerable potential for permitted development rights to lead to damage to sites of nature conservation importance, such as ASSIs, mainly by development outside designated sites. If just outside an ASSI, there is no control on permitted development e.g. there can be harmful impacts of drainage, pollution and infilling works. Some agricultural buildings are built too close to lakes, causing pollution and with no tree screening to limit visual impact.

Detailed concerns

- 10.26 The following detailed concerns were raised by the Planning Service and/or interest groups:
- uncertainty arises from Class A.1(c), as to whether it removes Part 6 permitted development rights if a planning permission has been granted for another use;
 - confusion is also caused by Part 6, Class A1 (d)(i) and (ii), and the use of the word "and" to link them, as this can lead to sizeable buildings being erected if only within 75 m of a group of existing farm buildings and no other non-farm dwelling, or other buildings erected in the last 2 years;
 - while Part 6 limits development within 75 metres of another dwelling, there is no similar limitation on the siting of a new dwellinghouse in the countryside in close proximity to a farm. This was not perceived to be an issue, however, according to the Planning Service;
 - Class A.1(g), and the distance restrictions from different categories of roads, mean that much agricultural development is not permitted but farmers are not aware of this and the Planning Service do not enforce, as it is not seen to be expedient when it is not perceived to be a problem. There is also a contradiction in Article 3(5) with Part 6, Class C. This Class allows the formation of an access which Article 3(5) prevents on classified roads or where there is an obstruction to view;
 - the 2 year time limit before exercising further development rights cannot be easily checked (Class A.2(1)(b)).

- 10.27 Lastly, Class B for winning/working minerals was seen by the aggregates and minerals industries as being abused by the farmers, with minerals being taken off-site for use elsewhere.
- 10.28 Opposing views were expressed by consultees on whether “*horsiculture*”, a growing rural industry based on livery and riding schools, was a problem. Government departments/agencies were of the view that it is, or at least is beginning to be, a problem in sensitive areas such as the Mournes.

Scope for Change

- 10.29 Part 6 is clearly a problematic part of the GDO, giving rise to a range of material planning issues. The desired outcome of Part 6 permitted development rights must be to permit farmers to proceed with modest development on their land, required to meet genuine and realistic agricultural (and countryside stewardship) needs. Such development must be in scale with and in the character of existing buildings, and not detrimental to the landscape, to amenity and the environmental quality of the land.
- 10.30 Similar to Government departments and interest groups, the representative organisations stressed that farmers want to see a balanced approach and the attractiveness of the environment not threatened by harmful development. Certainly some farmers are aware of development constraints e.g. in archaeological areas and ASSIs and they will respect protected areas/landscapes/species if informed of the reasons for doing so. Like others, they can then appreciate their significance, as the past focus on intensive agriculture is being superseded by the current approach of the European Union (EU) and others.
- 10.31 Users’ representatives therefore considered that permitted development rights should be revised, to help deliver Government policy to maintain and enhance the rural economy more, as farmers improve the quality of the rural environment by helping to create a living, working countryside. There was, however, seen to be a conflict between national agricultural policy and development control. The Planning Service is perceived as showing a lack of understanding of farming, and taking too strict an approach to permitted development. This

is particularly the case in the context of farm diversification, which DARD, through *“Rural Connect”* is seeking to implement. This initiative provides advice to help farming families understand the services available from DARD, as rural development funding is now so complicated and some premiums are being slashed to fund rural enterprise. DARD promotes planned businesses in the countryside, for the countryside to be kept viable.

- 10.32 The issue is therefore seen as being one of maintaining a balance between the Planning Service keeping some control over agricultural development but allowing rural businesses to flourish. Farm diversifications are generally small businesses with 1 or 2 people employed, and often only part-time. Very few become major employers. Already, many farmers have other off-site employment, based on historic land ownership arrangements and farming patterns.
- 10.33 The Northern Ireland countryside is characterised by its scattered distribution of farms and houses. This creates an impression of a populated countryside, where world-wide trends in the last 25 years of more intensive farming methods have led to increased outputs, a reduction in agricultural employment, restructuring and diversification. These trends will continue, although intensive production is being replaced as a key objective by more environmentally aware methods. Farming remains the major land user in rural areas, with 99% of farms being owner-occupied. Average farm size has increased, and it is recognised by the Government that additional sources of income are likely to continue to be necessary for the foreseeable future, to retain farm viability. Agri-environment schemes for agreed environmental enhancement have been introduced to support farm incomes but these schemes tend to be taken up by owners of the more viable holdings, as those have some capital available.
- 10.34 A criticism of the Planning Service was that there is not a recognition of the need for farmers to diversify on-site and not in local business centres. The Planning Service responded that normally, if a planning application is made by a bona fide farmer for some form of minor diversification, planning permission will be granted. However, users referred to difficulties

in obtaining change of use permissions e.g. for small engineering businesses (mostly for employing farmers and their farm staff).

10.35 Delays in determining applications have led to a view amongst farmers that it is not advisable to make a planning application for change of use, due to the time taken in the process to get permission for diversification and the likelihood of refusal.

10.36 Thus, in putting forward proposed changes, particular regard has to be paid to the Government's commitment to maintain a strong, sustainable, competitive, environmentally-friendly and diverse agricultural industry, and to reduce as far as possible, regulatory burdens on farmers given the longstanding difficulties facing the industry in Northern Ireland.

10.37 From the above concerns raised in the consultation process, it is evident that regulators, third parties and pro-conservation interest groups would like to see full planning controls replace Part 6 permitted development rights, particularly in sensitive areas, with these consultees questioning why farmers should have greater permitted development rights than e.g. residential or other employment uses.

10.38 In direct contrast, there was also a general perception amongst farmers that new housing in the countryside is not as heavily controlled as farm diversification. Farmers and their representatives therefore seek the retention of existing Part 6 permitted development rights. However, it cannot be in the interests of the farming industry for Part 6 to be hard to understand and perceived as having "*to be got around*", as is currently the case. While the workload of the Planning Service may be reduced by Part 6 permitted development rights, enforcement to ensure compliance cannot be relied on in rural areas, where it is often extremely difficult to locate and then substantiate what is unauthorised development.

10.39 Overall, if its permitted development rights are looked at in isolation, Part 6 cannot be seen as assisting Government policy aims of achieving a quality environment. These rights take away the tools necessary to achieve this. However, the counterbalance must be recognised that agricultural permitted development rights in Northern Ireland contribute to some extent

to another vital Government policy i.e. that of bolstering the rural economy and assisting farmers in meeting the numerous other Government and EU regulatory measures and farm assurance schemes e.g. for animal welfare and crop storage.

10.40 Some changes to Part 6 are therefore seen as being appropriate. These seek to balance the potentially conflicting Government policy objectives of a buoyant rural economy, achieving farm diversification, protecting the rural environment and statutory nature conservation designations, social cohesion, sustainable development and new development being of high design quality. The suggested changes are set out below.

General Changes

10.41 The following general changes to Part 6 are suggested, principally to prevent further harm to sensitive environments:-

- general redrafting of Part 6, along with other Parts of the GDO, in a simpler format;
- ensure that all of the Classes of Part 6 are more carefully defined, so as to prevent new development with significant impacts proceeding without planning permission being required;
- in the short term, restrict any significant permitted development in statutorily defined and designated areas for nature conservation and archaeological interest in each Class i.e. including ASSIs and sites of archaeological interest. In the longer term, consider removing permitted development rights for all but the most minor development in such areas;
- there needs to be a clearer connection e.g. between ASSI legislation/protection/designation, agri-environment schemes and permitted development rights, with contacts in Government departments for liaison and better links to implement policies collectively;
- the 0.5 ha. minimum size of holding for having Part 6 rights should be reviewed and assessed in terms of whether it should be increased. A working farm is likely to be at least 2 ha. and more likely to be a minimum of 5 ha. (except if for mushroom farming, intensive livestock rearing and horticulture). Criteria for a workable farm size could then be included in a revised GDO. Alternatively, the 0.5 ha. limit could exclude the farm dwellinghouse and garden, or require demonstration of being a bona fide farm;

- review building/structure size limits against current and forecast farming requirements for livestock and grain/other storage, and against design/environmental/visual impact considerations;
- the erection of any first building on an agricultural unit should require planning permission, to enable future development to be controlled e.g. where land ownership is being divided and e.g. on siting and landscape, to prevent the loss of hedgerows and to control use;
- clarify that agricultural land must be actively used/occupied land the proposed development must also be reasonably “*necessary for the purposes of agriculture*” on that unit. (This would reflect case law).

Specific Changes

10.42 More detailed suggested changes are to:

- correct the anomaly of the GDO not authorising, according to Article 3(5), the construction, formation, laying out or alteration of a means of access and Part 6, Class C doing so;
- correct the loopholes relating to Class A.1(d), (i) and (ii), by requiring express planning permission for all buildings of over 300 sq.m and ensuring the protection of dwellings other than the farm dwelling;
- revise Class A.1(c) to ensure that it is not interpreted as removing agricultural permitted development rights when buildings/structures/works for other uses have taken place with the benefit of planning permission;
- define the principal group of farm buildings as the main group of farm buildings on the holding at the operative date of the amended Order;
- limit the distance of the nearest part of a proposed building from the principal group of farm buildings;
- limit the distance of any part of a proposed building from the nearest part of a road;
- prevent the importation and tipping of waste from being capable of being defined as an engineering operation, by specifically excluding waste from Part 6.

10.43 Permitted development rights should also not apply to building works for the accommodation of livestock or for the storage of slurry or sewage within 400 metres of the curtilage of a protected building i.e. any building occupied by people other than a building within the agricultural unit.

10.44 If the lower size limit of 0.5 ha. was to be retained, or amended to 2 ha. and not 5 ha., then further/different conditions should be applied to permitted development rights on these smaller holdings, to prevent over-development. These conditions should relate to further limiting:

- design and external finishes;
- the percentage increase in the floorspace of the existing building;
- any increase in the height of the existing building;
- the distance of any part of the extended building from the original building;
- the ground area of the extended building;
- the distance of the extended building from the boundary of the unit which adjoins a residential curtilage outside the holding;
- the distance from the nearest part of a public highway;
- the distance from the boundary of the holding.

10.45 These general and specific changes are suggested on the basis that the countryside has to continue to be a source of employment, without overly restrictive agriculture permitted development rights having the possible consequence of leading to the abandonment of holdings. Some changes do however have to be put forward, principally because current Part 6 permitted development rights are not seen as adequately reflecting or supporting the controls exercised in ASSIs by other legislation but also because they are exploited for non-agricultural land holdings.

10.46 The unanimous view of consultees was that no prior notification procedure should be introduced but, for this view to be sustained, ASSIs in particular need to be better protected, as there would otherwise remain no scope to apply any degree of control to the design/landscaping of permitted development. This endorses the need to review the size of buildings/structures and other development permitted under Part 6, and whether there should be more/less control of the more major/significant developments in sensitive/non-sensitive areas. If agricultural permitted development rights were to remain largely

unchanged for buildings and structures in non-sensitive areas, it would then be for any Farmers' Guidance, or Government policy guidance, to seek to influence/advise on siting, design and landscaping.

10.47 A GDO User Guide for farmers would be beneficial, if it were to provide guidance on agricultural permitted development rights, particularly on assessing first whether:

- the proposal is development;
- the proposed development is for the purposes of the agricultural undertaking;
- the interests of farmers and others are being properly balanced;
- the development otherwise benefits from permitted development rights;
- the land is agricultural.

10.48 Such guidance could also advise on:

- how proposals could be designed to comply with landscape policy;
- avoiding harm arising from the proposals, on the basis of a set of strong environmental criteria;
- encouraging the retention and re-use for agriculture of older buildings and otherwise for an alternative use i.e. a sequential approach to use being incorporated (reflected from the proposed PPS for the countryside);
- clarifying that permitted development rights do not override and should respect TPOs.

10.49 User Guide advice on how to obtain information from Government departments and other organisations, and how to improve dialogue, would be essential. The Manual could also provide a flowchart of Part 6 permitted development rights, if they were sufficiently simple.

10.50 These suggested changes would ensure that a proliferation of unnecessary (in terms of agricultural needs) and unsightly development on land or around a holding could be prevented, while development which is necessary in a particular location for genuine operational reasons would normally be permitted, providing that it was not unduly intrusive in the landscape or detrimental to environmental quality. The Planning Service would be

encouraged via the User Guide to adopt a sympathetic approach to farmers' genuine needs e.g. by advising on preferable design and siting criteria in Supplementary Planning Guidance.

- 10.51 If any change to the size of a permitted agricultural building or structure were to be taken forward, evidence would have to show first that the measures were necessary, based on clear evidence from case studies confirming either the need to permit larger buildings to overcome specific problems in meeting EU or other requirements, or in ASSIs, the benefits of reducing the size of permitted buildings and structures due to the detrimental effects of specified agricultural permitted development rights.
- 10.52 The minimum size of agricultural holding which can be viably operated as such would similarly have to be the subject of further research and findings would also be relevant to the above consideration of the appropriate sizes for buildings and structures.
- 10.53 Where current Part 6 permitted development rights are removed, provision could be made for reduced fees or fee exemptions for the first planning application made.
- 10.54 In response to criticisms that the GDO does not enable farmers to diversify, the scope for minor (i.e. up to say 235 m²) changes of use of redundant farm buildings to Use Classes 4, 5 or 11 could be considered, as a change to Part 3 of the GDO. Research would have to be undertaken, to ascertain the likely costs and benefits in relation to e.g. PPS 3 and 13 implications and the absence of scope to control such development by condition.
- 10.55 Any changes to Part 6 permitted development rights must take into account sustainable development, transport and social cohesion issues, particularly in relation to providing for farm diversification projects. Whatever changes are taken forward, it must be recognised that the objective of achieving farm diversification should remain subservient to supporting and meeting the needs of the agriculture industry. This is in spite of the fact that farm diversification may be the only way a farmer can keep the farm going at present and in the short term future. Nevertheless, farmers too need to recognise that significant change is underway in the industry, e.g. through CAP restructuring and agri-environment schemes, requiring better business planning.

10.56 Consideration was given to the need to restrict Part 6 rights for buildings within sensitive landscape areas, such as AONBs and National Parks, since no such limitations currently apply as they do in other Parts of the GDO, and in England restrictions apply in National Parks. However, it was considered, on balance, that additional restriction of this type was not appropriate in the Northern Ireland context given the nature of the landscape areas, the extent of farm buildings within such designated areas and other restrictions on agriculture.

10.57 Overall, there is a clear need for change to Part 6 and the basic conclusion from the above is that, by way of a staged process, agricultural permitted development rights should be tightened particularly in ASSIs by making various changes to Classes A, B and C. In the longer term, and if confirmed by further research, planning permission should be required for development on smaller land holdings and for all but the most minor development in sensitive areas. Such change should only occur, however, if farmers can be assured that any planning application would be processed expeditiously.

10.58 The principal recommended changes that relate specifically to Part 6 are therefore to:

- review the 0.5 ha. size of holding minimum for having Part 6 rights and assess whether it should be increased;
- review building/structure size limits against current and forecast farming requirements for livestock and grain/other storage, and against design/environmental/visual impact considerations;
- the erection of any first building on an agricultural unit should require planning permission to enable future development to be controlled;
- clarify that agricultural land must be actively used/occupied and that the proposed development must also be reasonably *“necessary for the purposes of agriculture”* on that unit;
- prevent the importation and tipping of waste from being capable of being defined as an engineering operation, by specifically excluding waste from Part 6.

10.59 The planning system also has to become more in tune with farmers’ needs, to ensure that farmers have confidence in the planning application process being capable of delivering desired outcomes. The practical consideration of buildings needed for modern day farming,

particularly in ASSIs may be best addressed through the consideration of sustainable development and other issues on a case by case application basis, rather than by applying blanket rules through permitted development rights.

11.0 PART 7: FORESTRY BUILDINGS AND OPERATIONS.

- 11.1 While the use of land for forestry does not constitute development, Part 7 permits a range of development reasonably necessary for forestry and afforestation. This includes (a) works for the erection, extension or alteration of a building other than a dwelling, (b) the formation, alteration or maintenance of a private way, (c) operations on the land or other land held to obtain the materials for private ways, and (d) any other operations except for engineering or mining.
- 11.2 Development is not permitted if over 3m high within 3km of the perimeter of an aerodrome, or if within 9m or 24m of the edge or centre of a road, depending on its classification. Part 7 development is subject to conditions requiring the land to be levelled, top soiled and restored to its condition before the development took place. Otherwise, no height or other size limitations apply to buildings. There are no specific restrictions on these rights in sensitive areas but forestry development is subject to EIA under the Environment Impact Assessment Forestry (Northern Ireland) Regulations 2000.
- 11.3 The treatment of forestry within the planning system may reflect historic factors concerned with securing timber supplies and the rationale for these permitted development rights would appear to be to allow forestry bodies to carry out modest development on their land required for forestry operations that does not cause harm to the environment.
- 11.4 These rights are broadly similar to those in the English and Scottish GPDOs, which are however more restrictive, since they require prior approval for formation/alteration of private ways and for *“significant extensions or alterations”* (i.e. those more than 10% by volume or increased height) and allowing such extensions to be only carried out once. Such prior approval allows siting, design and appearance of a building or the siting and means of construction of a private way to be considered by the Planning Service. In the Republic of Ireland, initial afforestation, minor drainage, fencing and land reclamation related to forestry, and the replacement of up to 10 ha. of broadleaf high forest with conifer species

are defined as exempted development but there are no exemptions for forestry buildings or tracks.

- 11.5 These rights are not restricted to specific organisations but are mainly used by private landowners carrying out forestry activities, since the Forestry Service, which is the largest single woodland owner and user of such rights, is part of a Government Department and has Crown Immunity from planning control. Despite this, the Forestry Service typically makes planning applications for its works.
- 11.6 Typical types of development carried out under these rights in the past include the erection of storage buildings for forestry maintenance equipment and for maintenance workshops. Such buildings are often located within forests and the Forestry Service normally makes planning applications for them, even though it is not strictly required to do so. Other than buildings, operations can include fencing work and laying out of forest tracks. Approximately 10 new forestry buildings are erected per year by the Forestry Service but very few new roads are being built in forests.
- 11.7 The increasing use of forests for recreational purposes also gives rise to demand for new types of development such as visitor car parks, toilet blocks, caravan sites and cafés. However, most of this infrastructure is now in place and has generally been carried out by the Forestry Service through obtaining planning permission.

Issues

- 11.8 Forestry areas in Northern Ireland tend to be small in scale and there is low overall land coverage compared with the rest of the UK, with the private sector areas dominated by very small, scattered units of only a few hectares each. At the present time, it is understood that commercial forestry is experiencing low levels of new planting and associated works due to depressed timber prices.
- 11.9 The types of concerns associated with forestry permitted development elsewhere in the UK include:

- the creation of vehicle tracks for extraction of timber in remote areas with highly visible impacts on sensitive landscape areas;
- the large size of buildings erected for forestry causing adverse visual impacts on the landscape and being seen as more generous than those allowed for agricultural buildings.

11.10 In Northern Ireland, no particular problems or impacts were identified by Planning Service officers consulted as currently arising from Part 7 rights. Nor were any cases identified of Article 4 Directions being used to remove permitted development rights for forestry purposes. However, concerns were raised by two environmental interest groups. One conservation body called for increased restrictions on Part 7 rights by introducing a prior approval requirement for the siting of new buildings to avoid damage to sites of nature conservation importance, such as Areas of Special Scientific Interest (ASSI). A second group sought size limits on forestry buildings, and specific restrictions on Part 7 rights in AONBs. Both of these groups also sought a general removal of permitted development rights in ASSIs.

11.11 Users of Part 7 permitted development rights did not identify any particular difficulties with their operation or the few limitations currently applying. The major forestry organisation, the ForestService, currently makes only limited use of Part 7 rights, typically making planning applications in most cases to ensure transparency. However, no reduction of current rights was seen as appropriate by this body since this would reduce development options in some areas and could cause unnecessary delays to forestry operations. Organisations representing small private forestry growers consider that current rights work well and no problems arise from them, although this may partly reflect the low level of commercial forestry activity at present.

11.12 Redundant forestry buildings erected by the Forest Service can be demolished or disposed of. Examples are forestry workers' houses being sold to their tenants and another building being converted to a rural college. With small forestry holdings, new buildings are rarely erected. While Part 7 contains no condition requiring redundant buildings to be removed, there does not appear to be a significant problem with buildings erected under Part 7 rights

becoming derelict or being used to secure buildings or uses for other purposes for which planning permission would be more difficult to obtain.

- 11.13 There are also wider arguments that permitted development rights for forestry should be brought into line with those for agriculture which have size limits on buildings, and that forestry permitted development should be subject to greater restrictions within more sensitive landscape areas, as for other types of permitted development.

Scope for Change

- 11.14 These rights generally support Government policy aims for forestry in Northern Ireland – the sustainable management of existing woods and forests and the steady expansion of the woodland area to provide more benefits for society and the environment. While there is some potential for such permitted development to conflict with policy aims to protect the countryside and sensitive landscape areas, there are no reported examples of this or evidence of widespread adverse effects. The desirable outcome with respect to these rights would be for essential forestry development to be undertaken without delays or giving rise to significant impacts on the surrounding countryside.
- 11.15 These rights are currently subject to very few limitations but forestry is subject to control under specific EIA regulations and consultation responses did not identify Part 7 as causing significant or widespread problems or indicate any pressures for major changes. Overall, no major change appears necessary for this Part but the need for further restrictions or clarifications is considered below.
- 11.16 *Limitations on Building Size:* There is currently no restriction on the size of new forestry buildings, unlike agricultural buildings which are limited to 300 m² in floorspace. In other parts of the UK, suggestions have been made that forestry permitted development should be brought into line with industrial and agriculture development for consistency. Against this, it can be argued that forestry typically requires fewer buildings than agriculture for a given area of land, very few large buildings, and that these are normally less visible in forested areas and few problems arise. While this lack of a size limitation is inconsistent with Part 6,

particularly in sensitive landscape areas such as AONBs or any future National Parks, circumstances appear sufficiently different for forestry and there is no clear evidence of problems arising that would justify changes to current limitations.

11.17 *Greater Restrictions in Sensitive Areas:* There have been suggestions in other parts of the UK that greater controls should apply on forestry buildings and tracks in National Parks, AONBs and other protected landscape areas. In England, this is controlled by a prior approval requirement (for siting and means of construction) for significant extensions of buildings and private ways in such areas. However, given its different landscape characteristics and much less forestry activity, there is no indication that the current or anticipated use of Part 7 rights will cause significant harm to such areas in Northern Ireland and no clear justification for change in this respect.

11.18 The consultation process identified a request by one interest group for prior approval controls over Part 7 rights to avoid inappropriate siting of buildings in nature conservation areas. Development in ASSIs is subject to some control under the Habitats Directive but it is not clear that the Environment Order 2002 restricts permitted development in ASSIs. To provide greater clarity to potential users of forestry permitted development rights and to support policy aims on biodiversity, it appears appropriate to restrict permitted development in such areas. This should be a general restriction of permitted development rather than one applying only to Part 7. This would not be a further restriction on development since controls already apply under other legislation.

11.19 Although Part 6 rights to form a means of access to a road are restricted in areas of archaeological interest, there is no similar restriction for formation of access under Part 7. While no problems have been identified in this regard, there appears a case for imposing such a limitation on Part 7, to support policy aims to protect heritage.

11.20 *Clarification of Recreational Uses in Forestry:* While the wording of Part 7 can be interpreted as allowing forestry visitor centres and other related built recreational facilities, these appear more likely to give rise to material impacts and should be subject to normal planning control

above a specified size limit e.g. 1,000 sq.m. Since such development would only be carried out by the ForestService, there does not appear to be a need to amend the GDO in this regard at the present time. If, however, Crown Immunity were to be removed at some future date, it would be helpful to add further text to clarify that forestry visitor centres and other recreation facilities above a specified floorspace threshold do not fall within Part 7 rights.

- 11.21 *Removal of Redundant Buildings:* although there is a condition requiring the restoration of land after the formation of a private way, there is no requirement to remove redundant forestry buildings. Some users indicate that they remove redundant buildings but some can be sold or leased to non-forestry organisations. Most changes of use of such buildings would be subject to normal planning control. While there is some potential for buildings to be erected under Part 7 permitted development rights and converted to dwellings that may not otherwise have been permitted in that location, this does not appear to be a significant issue in Northern Ireland and such buildings would tend to be screened by woodland and could also support rural diversification aims. On this basis, there is no clear justification for a restriction to remove redundant forestry buildings.
- 11.22 *Potential to Widen Part 7 Rights:* No obvious areas to extend or relax Part 7 rights were identified through the consultation process, while the review of similar rights in other planning systems did not point to any appropriate changes for Northern Ireland.
- 11.23 The only recommended change to this Part is therefore to restrict permitted development rights for the construction of tracks in areas of archaeological interest. This proposed minor amendment should not give rise to any significant change in the current number of planning applications for forestry development.

12.0 PART 8: INDUSTRIAL AND WAREHOUSE DEVELOPMENT

- 12.1 These permitted development rights allow various extensions and works within sites used for industrial or warehousing uses.
- 12.2 Class A permits the extension or alteration of an industrial building or a warehouse but not if the building is to be used for another purpose, if the height exceeds the original, if the new cubic content would exceed the original building by more than 20%, or if the original floorspace would be exceeded by 750 m² or more.
- 12.3 Class A rights specifically do not apply in a conservation area, National Park, or AONB. In addition, the external appearance of the premises must not be *“materially affected”*, no new development must be within 5 m of the curtilage boundary, or within any curtilage boundary that adjoins the curtilage of a dwellinghouse or flat and the development must not reduce parking or turning space. Conditions applying to Class A restrict provision of night time facilities for employees not working on the site and development where a notifiable quantity of a hazardous substance is present.
- 12.4 Class B permits the installation of plant and machinery, the provision of/changes to a sewer, cable or other apparatus, or a private way, railway or conveyor providing that they do not materially affect the external appearance of the premises, nor exceed a height of 15 m or the height of anything replaced, whichever is the greater. Class C allows the provision of hard surfaces within the curtilage of an industrial building or warehouse, for associated use, unless it involves the removal of trees.
- 12.5 Key differences for this Part between the Northern Ireland GDO and the English and Scottish systems are that outside Northern Ireland:
- the size limit on extensions is higher in England and Scotland – 1,000 m² for floorspace, and a 25% increase by volume or floorspace;
 - in Scotland, the size limit for extensions is based purely on floorspace, not volume;

- Class A development is permitted in sensitive areas in England but with reduced size limitations, while in Scotland there are restrictions in such areas;
- there is no restriction on development beside residential premises;
- In Class C, there is no restriction on the removal of trees;
- there is a further Class D, which permits the deposit of waste material from an industrial process on any land within a site so used on 1 July, 1948 (but not mineral waste).

12.6 In the Republic of Ireland, no provision or extension of industrial buildings is permitted although hard surfaces, private ways and plant (up to 15 m in height) is allowed under a general proviso that the external appearance of the premises is not materially altered.

Issues

12.7 Few responses were made in the consultation process on Part 8 permitted development rights or on industrial development generally, and there were few indications of particular problems arising from the current rights. The only issue identified by Planning Service officers was the increasing use of Part 8 rights for incineration operations, which could be interpreted as an industrial process and can cause adverse impacts on the amenity of adjoining areas.

12.8 This limited response suggests that there are no major concerns on how these rights operate or that only limited use is being made of Part 8 rights by industrial firms. At the same time, no cases were found of Article 4 Directions or the EIA Regulations being used to restrict Part 8 rights. There were also no suggestions that the size limits were inadequate or that businesses suffered from the current limitations, although one interest group suggested that these rights could be expanded to support business.

12.9 In the absence of many specific issues arising from the consultation process, several points identified from previous research elsewhere in the UK were considered in the local context:

- whether the provision to allow hardstanding, which could be used for ancillary car parking, and the restriction against reducing parking or vehicle turning areas conflict with aims to reduce parking and may no longer be appropriate;

- the difficulties in establishing the extent of the original buildings for large complex industrial sites where much development has taken place over time, and calculating how much volume or floorspace has been involved in extensions;
- the requirement that the external appearance of premises should not be “*materially altered*” can be interpreted as preventing quite minor alterations and effectively removing many of the rights granted by Class A.

12.10 A further issue identified from English case law was the lack of clarity, for Class A rights, on what forms the curtilage boundary of premises within industrial estates. An appeal case held that the industrial estate boundary was applicable rather than the estate’s service road boundary.¹¹

Scope for Change

12.11 These rights broadly support policy aims on economic competitiveness. While they have some potential to conflict with aims for the protection of built heritage, design quality, the countryside and residential amenity, any impacts will be limited by the various size and distance limitations, their restriction within designated sensitive areas and the additional restriction beside residential premises. On balance, these rights generally support Government policy aims.

12.12 The desirable outcome with regard to Part 8 rights would be for industrial/warehouse firms to be able to carry out minor developments to assist their economic competitiveness, but without delays or material impacts on amenity. Based on the consultation responses, the current rights do not appear to be causing problems.

12.13 The current size limits and restrictions are consistent with those in other parts of the GDO e.g. statutory undertakers and there are no calls for increases. On this basis, there is no case to alter these rights substantially. However, to support economic competitiveness aims more strongly and in the spirit of deregulation where no adverse impacts will arise, there may be a case to apply the slightly higher size limits (1,000 m² or 25%) that currently apply

¹¹ EPL pp. 39129

in England and Scotland. The additional restrictions in Northern Ireland on Part 8 development in sensitive areas and adjoining residential premises suggest that there are other suitable controls in place to allow this relaxation.

- 12.14 Although again not sought by any respondent and no problems were identified from the current approach, for consistency with a redrafted Part 1 and to reduce complexity on large sites, consideration should be given to removing the volume control on extensions under Class A and relying instead on a percentage increase in floorspace (the lesser of 25% or 1,000 m²) as well as no increase in existing building height. This would reflect the provisions currently operating in Scotland, which were not proposed to be changed in the 1998 review.
- 12.15 To avoid doubt, the term *“materially affects the external appearance of the premises of the undertaking concerned”* should at least be clarified through interpretation within Part 8, to indicate that this test should apply to the industrial site or affected street frontage as a whole, rather than to an individual building or individual site. A more radical approach in the spirit of deregulation would be to remove this somewhat subjective limitation on the basis that it doesn’t achieve any great benefits and adequate controls are provided by the various size limitations and other restrictions in Part 8. If necessary, it could be replaced by one requiring materials to be in conformity with the original building. This change should be considered.
- 12.16 Since many industrial premises lie within industrial estates, clarification could also usefully be provided on how the curtilage boundary should be defined in such cases, with reference to the appeal decision identified above.
- 12.17 The restriction on development under Class A that involves a reduction in parking area could be regarded as inconsistent with transport policy aims. However, removal of this restriction could potentially result in more off-site parking of larger vehicles, with adverse impacts on amenity. On balance, no change is proposed in this regard.

12.18 To give control over potentially significant impacts, the interpretation of Part 8, or the definition of an industrial process in the GDO, should be amended to clarify specifically that incineration activities do not fall within the industrial processes permitted by Part 8.

12.19 The proposed increase in size limits of extensions should result in a modest decrease in the number of planning applications submitted. None of the other limited changes proposed above is likely to affect the workloads of the Planning Service significantly and they offer some benefits of greater clarity for users.

12.20 In summary, recommended changes to this Part therefore include:

- increasing the floorspace limit for extensions from 750 to 1000 m²;
- excluding incineration operations from the definition of industrial processes permitted by Part 8;
- improved interpretation to clarify how curtilage boundaries relate to roads on industrial estates;
- consider removing the requirement that extensions or alterations have no material effect on the appearance of the premises;
- consider controlling extensions by height and floorspace rather than volume.

13.0 PART 9: REPAIRS TO UNADOPTED STREETS AND PRIVATE WAYS

- 13.1 Part 9 permits the carrying out, on land within the boundaries of an unadopted street or private way, of works required for the maintenance or improvement of the street or way.
- 13.2 Section 11(2) of the 1991 Planning Order does not exclude works by the Roads Service for the maintenance or improvement of adopted roads from the meaning of development, but such repair works fall within Crown Development not requiring planning permission. Part 9 of the GDO effectively extends this exemption from normal planning control to include works to *“unadopted streets”* and *“private ways”*, regardless of who carries out these works. Typical works carried out include regular resurfacing of roads and raising the level of rural tracks and private ways. No restrictions in designated areas or other limitations apply to this Part.
- 13.3 The English and Scottish GPDOs differ from the Northern Ireland GDO only in that they provide an interpretation of *“unadopted street”* in England and *“private road”* in Scotland. Broadly similar rights to Part 9 apply in the Republic of Ireland, but with a restriction that the width of any private footpath (not any private road) shall not exceed 3 m.

Issues

- 13.4 No specific issues were raised on this Part by the Planning Service, but one environmental interest group reported that historically there had been a problem with rural tracks being concreted over, with an adverse impact on visual amenity and drainage in sensitive environmental areas. No cases were found of Article 4 Directions or the EIA Regulations being used in Northern Ireland to restrict Part 9 rights.
- 13.5 From research elsewhere in the UK, adverse impacts on sensitive landscape areas from widening or raising the levels of rural tracks using Part 9 rights have been identified as a significant problem. Although not raised as an issue in Northern Ireland, this has been considered in case it emerges as a problem in the future.

Scope for Change

- 13.6 For the most part, these rights involve fairly minor works within narrowly defined boundaries and the scope for impact is not great, provided that suitable controls apply. Part 9 rights relate to numerous, routine and essential maintenance works and, based on consultation responses, do not appear to give rise to widespread planning problems. They appear to perform a useful function and it would therefore seem appropriate that they should remain as permitted development but that some amendments be considered to address specific concerns. At the same time, there were no calls for widening of these rights.
- 13.7 However, creating a hard surface to an unsurfaced private way has the potential for material impacts in sensitive areas, with certain materials having adverse visual effects and changing the character of an area. To address this problem, there is a case for removing the right to create a hard surface to a private way within the more environmentally sensitive rural areas such as AONBs and National Parks. In order to achieve this, Part 9 rights could be removed within these areas, but it may be more appropriate to provide better definitions of what constitutes an ‘improvement’ of the street or way.
- 13.8 Case law in England has held that the ordinary meaning of “*improvements*” is “*limited to changes which do not alter the basic character of the thing which is improved*” and that works permitted by Part 9 could only affect the surface and foundations of a way but not widen it or alter its route.¹² The creation of a hard surface to an existing track was also held to be capable of being an improvement which would not alter the character of the way. However, as indicated above, such “*improvements*” can give rise to undesirable impacts such as concreting over of “*tracks*”.
- 13.9 It may, therefore, be appropriate to clarify in the GDO that “*improvements*” should not include changes which significantly alter the nature or appearance of an unadopted street or private way. Given the lack of evidence that this is a widespread problem, it is more appropriate to target any restrictions to sensitive landscape areas (National Parks, AONBs

¹² Court of Appeal in *Cowen v. Peak District National Park* [1999], PLR 108

etc.). On this basis, the creation of a hard surface or the significant raising of levels under Part 9 should not be permitted development within AONBs and National Parks.

13.10 This proposed change would increase the number of planning applications within a limited number of sensitive areas, but the numbers are not anticipated to be great, and would be balanced by the improved protection given to these more important landscape areas.

13.11 The only recommended change for this Part is therefore to add a condition or text to clarify that widening or significant raising of levels or changes in materials of unadopted streets or private ways are not permitted development and require planning permission within AONBs or National Parks.

14.0 PART 10: REPAIRS TO SERVICES

- 14.1 Part 10 permits works for the purposes of inspecting, repairing or renewing any sewer, main, pipe, cable or other apparatus, including breaking open any land for that purpose.
- 14.2 As indicated by Section 11(2) of the 1991 Planning Order, these types of work do not constitute development when carried out by statutory undertakers. Part 10 therefore extends this freedom from planning control to other users, including private landowners, who may have an urgent need to repair services, such as septic tanks and associated sewers. No conditions apply and no special restrictions apply in designated areas.
- 14.3 These rights are directly comparable to those in England. In the Scottish GPDO, however, there is a condition that the land must be restored to its previous condition on completion of Part 10 works or by nine months after commencement of the works. Similar rights exist in the Republic of Ireland, where Class 48 exempted development allows the connection of any premises to services and includes the breaking open of any street or other land for that purpose, with no conditions or restrictions.

Issues

- 14.4 No issues were raised specifically by the Planning Service or any interest groups on Part 10, as it appears that it is a fairly infrequently used Part of the GDO, only applying to private landowners. The issue of the impact of similar works on public streetscape carried out by statutory undertakers, such as electricity and gas companies was raised by a number of interest groups, but this is not development and currently not subject to planning control. This issue is considered in more detail in Chapter 29.

Scope for Change

- 14.5 Most concerns about repair works relate to those by statutory undertakers rather than Part 10 works, which have only limited scope for conflict with policy aims to protect the character of the built and natural environment.

- 14.6 Part 10 works are often carried out at short notice in response to damaged infrastructure and no widespread problems appear to arise from these rights. Given that such works may need to be undertaken in emergencies, are generally uncontentious and few material planning issues are associated with them, it would seem inappropriate to bring them within planning control. At the same time, no calls were made to widen or relax these rights and there no obvious need for this was identified.
- 14.7 Although not raised as an issue by the consultation process in Northern Ireland, from experience elsewhere in the UK, an interpretation issue has arisen in the courts on whether a drain is included within Part 10. To avoid any future interpretation disputes in Northern Ireland, it appears appropriate to specifically include “*drain*” within the description of permitted works in Part 10. This would be consistent with English case law in that the purpose of Part 10 is to allow landowners to carry out repair work on their land without having to obtain planning permission and that the definition of a sewer should extend to include drains and drainage channels.¹³
- 14.8 If, following the consideration of this issue in Chapter 29, any changes are made to primary legislation to make repair works by statutory undertakers development subject to planning control, permitted development rights for these works could then be included within an expanded Part 10, with any such rights made conditional on providing re-instatement of the original surface, or as otherwise agreed with the Planning Service.
- 14.9 No change is therefore recommended for this Part other than to include “*drain*” within the description of permitted works within Part 10.

¹³ EPL pp. 39133

15.0 PART 11: DEVELOPMENT UNDER LOCAL OR PRIVATE ACTS OR ORDERS

- 15.1 This Part permits development authorised by a local or private Act of Parliament, or by certain Parliamentary Orders, which designate specifically both the nature of the development and the land on which it may be carried out. Conditions specifically exclude the erection, construction, alteration or extension of any building, bridge, aqueduct, pier or dam or means of access to any road used by vehicular traffic without the prior approval of details by the Department.
- 15.2 In effect, Part 11 provides only an outline permission, as prior approval is required for detailed plans and specifications for any building or infrastructure. No details are given on what grounds of refusal apply to prior approval applications, unlike the English and Scottish GPDOs which specify that injury to amenity or possible better siting are the only grounds for refusal.
- 15.3 No special restrictions apply in designated areas and Article 3 indicates that Article 4 directions do not apply to Part 11 rights. Article 3 also indicates that no development authorised by an Act or Order subject to the grant of any consent or approval is to be treated as authorised under Part 11 unless or until that consent or approval is obtained i.e. specifically enabling deemed permission under the GDO to constitute such approval.
- 15.4 Key differences between this Part and the English and Scottish GPDOs are that outside Northern Ireland:
- EIA requirements do not apply to Part 11 permitted development;
 - Part 11 rights based on post 1948 Acts cannot be withdrawn by an Article 4 Direction.
- 15.5 The Republic of Ireland system has no equivalent exempted development but contains a number of individual classes each of which exempts development under specific Acts.

Issues

- 15.6 These rights appear to perform a useful function by permitting works which have already been subject to, in principle, approval under other legislation which does not specifically give planning permission for the works. Part 11 rights appear to be mainly used by statutory undertakers, such as harbour operators, and some of the enabling legislation they relate to can date from the 19th century.
- 15.7 No issues or concerns on the operation of this Part were raised through the consultation process by Planning Service officers, interest groups, or users of permitted development rights. Indeed, there appeared to be very little use or awareness of these rights by organisations, particularly statutory undertakers, which might have been expected to apply them.
- 15.8 Although no specific issues were identified in Northern Ireland, previous research in England found a few concerns. These mainly involved a perception by local planning authorities that undertakers were circumventing modern planning controls by using Part 11 rights related to 19th century legislation that took no account of current environmental constraints. There was also a lack of understanding among some local planning authorities on the operation and applicability of Part 11 rights that frequently led to seeking legal opinion and delays on prior approval notifications.

Scope for Change

- 15.9 This Part appears to give rise to relatively few material planning issues. Its main function is to enable development to proceed which has been considered appropriate through other legislation but only after consideration of detailed matters. In this way, it can be seen as indirectly supporting a range of policy aims but at the same time may give rise to conflicts with, for example, protection of the built and rural environment. However, the prior approval requirement on details provides a control against adverse effects.
- 15.10 The lack of any identified problems arising from this Part does not indicate any need for significant change. There were also no calls for any relaxation of these provisions. The only possible issue (and one not raised in Northern Ireland) is the apparent loophole in giving a

choice of permitted development rights for certain undertakers, particularly through very dated legislation brought in at a time when environmental conditions were very different.

- 15.11 Discussions with railway infrastructure providers and regulators in England, which are among the largest users of Part 11 rights, indicated that these rights are essential to carry out important railway works not covered by other Parts. These works include the replacement of bridges, the upgrading of track, signalling facilities and alterations to buildings and other infrastructure, all of which are seen as vital to the maintenance, upgrading and safety of the railway network. These bodies argued that any loss of Part 11 rights would bring substantial delays associated with many planning applications for track upgrade works, which need to be undertaken in short, carefully planned time slots. Although the railway legislation relied on there is Victorian in origin, it continues to serve an important purpose and has not needed to be replaced by newer legislation.
- 15.12 In addition, investigation of developments elsewhere in the UK where Part 11 rights have been used failed to find any examples of adverse impacts arising which could not be adequately controlled by local planning authorities through the prior approval procedure. Concerns relating to the use of Part 11 therefore appeared to be ones of perception rather than actual harm. Overall, while understandable concerns apply to this Part 11, no case has been made for significant restriction of these rights.
- 15.13 No time limit is specified for prior approval determinations under this Part and this could lead to delays in obtaining a decision where urgent works are needed. While imposing a set limit could give greater certainty for undertakers, no problems were identified in this regard and there are no prior approval time limits in other Parts of the Northern Ireland GDO, or for Part 11 rights in England or Scotland. The absence of problems does not justify a recommendation for change here.
- 15.14 Overall, no recommendations for significant changes are made in this Part. However, to address any possible deregulation of statutory undertakers or increased outsourcing of functions, consideration could be given to clarifying whether bodies other than only the

inheritors of the original enabling legislation should be able to benefit from these rights. If feasible, it appears reasonable that lessees or contractors acting for the inheriting body should be able to use Part 11 for relevant works.

16.0 PART 12: DEVELOPMENT BY DISTRICT COUNCILS

- 16.1 This Part enables a wide range of relatively small public services works and infrastructure to be carried out by district councils. It specifically permits the erection, construction, maintenance, improvement or other alteration by a district council of any small ancillary building, works or equipment required by its functions on land it owns or maintains. Size limits of 200 m³ by volume and 4 metres in height apply to such small ancillary buildings, works or equipment. In addition, a range of specified structures is allowed on any land where required for the operation of a public service administered by the council, without any indication of size limits. No specific restrictions apply in designated areas.
- 16.2 These rights would appear to have been given to enable numerous and wide ranging public works to be carried out without undue delay, particularly since most will be uncontentious and carried out by a publicly accountable body. The types of development typically carried out under this Part include street furniture, public shelters, refuse bins, lamp standards and information kiosks.
- 16.3 The rights given under this Part are similar to those in the English GPDO Part 12: *Development by Local Authorities* and in the corresponding Part 12, Class 30 of the Scottish GPDO. Small differences in the Northern Ireland GDO include no mention of barriers to control queues. No specific exempted development rights for district councils appear to apply in the Republic of Ireland, although some rights are given for specific works that a district council might normally undertake.

Issues

- 16.4 Relatively few responses were made by district councils during the consultation process. These responses indicated that Part 12 was too vaguely worded, that there was a need for an adequate scale of waste recycling receptacles (e.g. bottle banks) to be specifically permitted by this Part to avoid delays in meeting waste recycling aims and that the size limits should be set to reflect this requirement. One response also sought clarification that public toilets

could be erected under Part 12, and for Part 12 rights to permit small buildings by district councils on land not owned by them e.g. on private car parks. The responding councils considered these rights as important to their operations, working reasonably well and would typically exercise them many times annually for minor works.

- 16.5 No concerns were raised on these rights by Planning Service officers but it was noted that district councils often make planning applications for play equipment, which could be covered by Part 12, and that they are likely to be undertaking town centre environmental improvement schemes involving various streetworks and provision of CCTV cameras. No cases were identified of Article 4 Directions being used to remove permitted development rights for Part 12 activities or for an EIA being required for such works.
- 16.6 One interest group involved with the historic environment raised concerns on works, such as signs, poles and boards, erected by district councils with no apparent regard to impacts on listed buildings or the character of conservation areas.
- 16.7 The following additional issues identified from district council responses, from a review of the GDO generally or from previous research elsewhere in the UK have also been noted:
- while a 200 m³ limit applies to small ancillary buildings, it is not always clear what size limits apply to works and structures; for example, what size of extension to a Council car park would be allowed under "*small ancillary works*" and whether playground equipment or a climbing wall would be limited only by the 4 m height restriction;
 - clarification could usefully be provided on some terms e.g. whether the term "*lamp standards*" includes floodlighting around sports pitches and whether council signs and notices are included;
 - there may be different interpretations by councils of what is included under "*works and equipment*" particularly whether this covers kick-about areas, outdoor basketball facilities, shelters for teenagers and children's play equipment, and extensions to car parks; if fences are included under Part 12, this would allow them to be up to 4 m high, compared with the 2 m allowed under Part 2;

- while Part 12 permits the erection or construction of small buildings, it is not always clear whether this includes the placing of pre-fabricated buildings on the site (e.g. a container for storage of playing field equipment);
- with a general trend for councils to use contractors or outsource works, there may be a need to clarify that Part 12 rights are usable by those carrying out Part 12 works on the councils' behalf.

Scope for Change

- 16.8 These rights broadly support Government aims to improve public services, but have some potential for conflict with those for the protection of the built environment and heritage, and improved quality of design and streetscape. These rights can be justified by their enabling of a large number of facilities providing for essential public services, some urgently required. However, while few material planning issues arising from Part 12 in Northern Ireland were identified by the consultation process, other research has identified adverse impacts on streetscape elsewhere in the UK from inappropriate or badly sited street furniture.
- 16.9 While there is a strong case for retaining Part 12 rights, no proposals were made for their substantial widening, other than possibly in relation to waste recycling receptacles.
- 16.10 The 200 m³ size limit for small buildings and structures is consistent with limits elsewhere in the UK. While relaxation to allow for larger recycling facilities has been suggested, the responses have not made clear what increased size limit is needed. While a modest increase to say 250 m³ would give greater flexibility, anything beyond that size would be more likely to give rise to adverse impacts on amenity. From discussion with respondents, the issue is more one of clarifying that such receptacles are covered by Part 12 rights rather than the size of the receptacle, since 200 m³ is considered reasonable for most cases. In some areas, planning applications are reportedly being sought for such receptacles, even when on district council land.
- 16.11 The current wording of Part 12 does allow for certain Council facilities other than buildings to be erected on land owned by others but does not specifically include waste receptacles.

Because of the potential for impacts and to ensure transparency, it does not appear unreasonable to require a planning application for a small building in cases where private land is involved, but less so for, say, placing a recycling receptacle on a public area e.g. a road. Since other controls are understood to apply in such situations, there is a case for permitting such provision on highway land subject to a minimum distance from residential properties and a specified size limit e.g. 200 m³.

- 16.12 One issue raised was the effect of Part 12 works on heritage interests, but looking to the future it is possible that such works could also lead to impacts on streetscape and street clutter. Additional controls on Part 12 rights within sensitive areas e.g. conservation areas could be considered. However, requiring a planning application for all council works within conservation areas or AONBs may require a large number of repetitive applications. Article 4 Directions could provide a more targeted approach if problems arise but have resource implications and appear to be rarely used.
- 16.13 For consistency with other permitted development rights affecting streetscape, at least within conservation areas, consideration should be given to making Part 12 rights for street furniture conditional on avoiding adverse impacts on streetscape; this could be assessed in terms of guidelines agreed in a National Street Management Code, as indicated in Chapter 29. In any event, guidance should be provided by the Planning Service to encourage consultation by district council departments and compliance with appropriate streetscape guidelines.
- 16.14 Clear definitions and/or interpretation should be provided for certain terms that could give rise to uncertainty, including *“small ancillary building”* and *“works/equipment”*. Floodlighting should be specifically excluded from the latter to ensure control over potentially adverse effects, while information boards, and play equipment such as basketball nets etc. should be specifically included. The term *“material affect on external appearance”* should be interpreted as applying to the site as a whole.

- 16.15 Again, although no problems of interpretation were raised, size limits should be clarified to the effect that only the 4 m height limit applies to works/equipment, rather than the volume control. It would not appear unreasonable that 4m high mesh fences, for example, to be allowed under this Part around tennis courts etc., but perhaps not for a 4 m high brick wall adjoining a residential garden, and specifying the type of means of enclosure and materials. Although not raised as an issue during consultation, this should be clarified and on balance it appears better to specifically exclude means of enclosure above 2 metres high from Part 12 rights. Given the potential impacts, new car parks should be specifically excluded but minor extensions of existing council car parks (within say a 10% limit) could be permitted.
- 16.16 The wording of Part 12 could usefully be amended to clarify that these rights also apply to those carrying out works *"on behalf of the District Council"*.
- 16.17 These limited changes are not anticipated to give rise to a significant number of additional planning applications but should provide greater clarity and control.

17.0 PART 13: DEVELOPMENT BY STATUTORY AND OTHER UNDERTAKERS

- 17.1 Part 13 of the GDO permits a wide range of types of development when carried out by bodies carrying out their functions under statutory powers, i.e. *“statutory undertakers”*.
- 17.2 Although not defined in the GDO, Article 2, Part 1 of the 1991 Planning Order defines the term *“statutory undertaker”* as persons authorised by any statutory provision to carry on any railway, road transport, air transport, water transport, inland navigation, dock or harbour undertaking, or any undertaking for the supply of electricity or gas, or the Post Office.
- 17.3 Part 13 is one of the longest Parts of the GDO, including 7 classes of development, relating to different types of statutory undertaker. In general, each class allows a specific statutory undertaker to carry out development required to fulfil its statutory functions, without having to seek planning permission.
- 17.4 As a general point, it is useful to note that development by statutory undertakers permitted under Part 13 has fewer restrictions than found in many other parts of the GDO. For example, no special restrictions apply in designated areas, such as conservation areas, National Parks, or AONBs, other than for electricity development. However, in all cases, unlike in the English GPDO, development by statutory undertakers is not permitted in sites of archaeological interest.
- 17.5 A general issue with statutory undertakers, raised by a few environmental interest groups, was the potential for significant impact on the quality of the streetscape from the proliferation of street furniture (telecom cabinets, etc.) and poor re-instatement works following repairs to services. This issue is considered in more detail in Chapter 29, while the following sections consider issues identified under each Class of Part 13.

Class A: Railway Undertakings

- 17.6 Class A permits development, by railway undertakers on their operational land, required in connection with the movement of traffic by rail, except if that development consists of or

includes the construction of a railway, or hotel, railway station or bridge, or the construction otherwise than wholly within a railway station of an office, residential building, or a building used for manufacturing or repair work.

- 17.7 The interpretation of Class A clarifies that any alterations or reconstructions that materially affect the external appearance of buildings or structures are not permitted development. Development is also not permitted in sites of archaeological interest.
- 17.8 Similar rights for railway works apply in the Republic of Ireland, England and Scotland, but there are a number of important differences. In England and Scotland, a number of additional specific uses are referred to as not being permitted development outside the boundaries of a railway station: car parks, shops, restaurants, garages or petrol filling stations. In the Republic of Ireland, however, railway car parks of up to 60 spaces on any operational land do not require planning permission. In Scotland, the GPDO also extends permitted development rights to the lessees of railway undertakers and permits development for the washing, maintenance and cleaning of rolling stock. From previous research, railway undertakers in England and in Scotland also make frequent use of Part 11 permitted development rights (*Development under Local or Private Acts or Orders*) to carry out railway development. To some extent, the different railway permitted development rights in the Republic of Ireland, England and Scotland reflect the extent and structure of the rail network in these countries.
- 17.9 There is only one railway company, "*Northern Ireland Railways*" (NI Railways), which was founded as a public corporation in 1968 to operate the railway services of the former Ulster Transport Authority, which in turn had taken over three private railways between 1948 and 1957. NI Railways is, however, a subsidiary of The Northern Ireland Transport Holding Company (NITHCo), established under the Transport Act (NI) 1967, to oversee the provision of public transport in Northern Ireland. NITHCo is responsible to the Department for Regional Development (DRD) but since 1996 has used the brand name "*Translink*" for its integrated public transport services: Ulsterbus, Citybus and NI Railways. It also holds a property portfolio of operational land, including 58 rail stations, 210 miles of track and bus

stations. For the purposes of the GDO, both NITHCo and NI Railways are railway undertakers and benefit from permitted development rights, although it is understood that NITHCo carries out railway development work, while NI Railways provides the train services.

17.10 The Northern Ireland situation contrasts to that in Great Britain, where the rail network is overseen by the Strategic Rail Authority, with services provided by various private train operating companies and freight operating companies, and infrastructure provided by Network Rail. Representatives from both NITHCo and Translink were consulted during this study.

Issues

17.11 No issues were raised by the Planning Service with regard to Class A, but the following issues were raised by NITHCo and Translink:

- permitted development rights are considered to be very limited and of little practical use;
- there was limited awareness of the existence of permitted development rights for railways;
- there is a perception that public transport issues are not high on the agenda or well understood by the Planning Service;
- there is an urgent need to improve NI Railways, with planned investment in new trains and stations, but historically very low levels of development;
- the requirement to comply with the Disability Discrimination Act, to improve access at railway stations, will lead to a large number of planning applications for ramps, etc.;
- a number of stations are listed buildings, which acts as a further planning control for development at railway stations;
- there is uncertainty as to whether the replacement of passenger shelters at railway stations (commonly used at small NI Railway halts) is permitted development;
- there is currently no provision in the GDO for light railways/tramways, which could operate in Northern Ireland in the future;

- the requirement to submit planning applications for railway works can lead to delay in the implementation of projects;
- future plans to introduce a telecommunications-based safety system will require the installation of new masts on operational land and could have implications for the planning process.

17.12 The only issue raised by interest groups in the consultation exercise was that the design of new structures at railway stations can be poor, and can have a particularly negative effect in conservation areas.

Scope for Change

17.13 These permitted development rights relate to the provision of rail infrastructure, such as signals, trackside cabinets and minor developments at railway stations. They clearly support Government aims to modernise rail infrastructure, encourage rail travel and improve rail safety. There is some potential for conflict with aims to protect built and rural environments, heritage issues and residential amenity although there appears to be very little evidence of any adverse impact. This may be a function of the historically low levels of development activity on NI Railways. On balance, these rights should be retained on the basis of an overall positive contribution to policy aims, particularly given the need to invest in the rail network.

17.14 Any scope for widening of these rights was also considered. Class A allows development on operational land, *“required in connection with the movement of traffic by rail”*, subject to specific exclusions, specifically proposals which alter the external appearance of a building or structure. It would seem appropriate to retain this control, to help achieve a high standard of design and the protection of heritage and residential amenity. Although the majority of replacement shelters at railway halts would be unlikely to raise any material planning issues, it would be difficult to define a *“passenger shelter”* without introducing scope for misinterpretation and allowing developments which could give rise to material planning issues, such as the replacement of larger passenger shelters and platform canopies. In any case, it is understood that improvements are normally carried out at

stations as part of a wider package, some of which may require planning permission, while other elements may benefit from permitted development rights. It does not appear too onerous to include any minor works within planning applications for larger changes and no need for change is seen.

17.15 Equally, there would be similar issues with extending permitted development rights to development required under the Disability Discrimination Act, such as ramps. While minor developments, such as ramps to station platforms would be unlikely to raise any planning issues and probably fall within Part 13 rights, ramps to allow wheelchair access to pedestrian footbridges could raise design and amenity issues and are probably excluded by the restriction on no material change to external appearance. On balance, no change to Class A rights is considered appropriate in this respect.

17.16 Railway undertakers are aware of future plans to introduce a new mobile telecommunication based rail safety scheme in Northern Ireland, which will require the installation of a number of masts on operational land, but there is at present no timetable for implementation. A similar programme is underway in England and Scotland, where Network Rail uses its rights in the GPDO to install the masts without requiring planning permission. However, a number of planning authorities have raised concerns at the height and location of some of these masts and consideration is being given in England to restricting the height of these masts to 15 m, with any above this height requiring a planning application. To protect residential and visual amenity from inappropriately sited development, consideration should be given to applying the same restriction in Northern Ireland, as such masts could have significant visual effects.

17.17 Overall, current railway permitted development rights allow most essential infrastructure to be installed, maintained and repaired without the need to apply for planning permission. It would seem appropriate to require planning permission for other forms of railway development which could give rise to material planning issues, such as design and protection of residential and visual amenity and on balance, there is no clear case for extending permitted development rights for the railways.

17.18 The only recommendation for this Class is therefore to introduce a height restriction of 15 m on telecommunication masts on operational railway land.

Class B: Dock, Pier, Harbour or Water Transport Undertakings

17.19 Class B permits development on operational land, by undertakers or their lessees, which is required for the purposes of shipping or development required in connection with the transport of passengers, livestock or goods, unless the land is within a site of archaeological interest.

17.20 Development is, however, not permitted for the erection of or changes to a bridge or other building which is not required in connection with the handling of traffic, i.e. only bridges and buildings which are required to handle traffic are permitted development.

17.21 Under the English and Scottish planning systems, this Class also extends to canal or inland navigation undertakings and there are similar exclusions as for Class A, including a hotel, a bridge and other buildings not required in connection with the handling of traffic, and restrictions on the buildings or uses allowed other than wholly within the limits of a dock. There is an additional class of permitted development in both England and Scotland, which allows improvements to inland waterways and the use of land for the spreading of dredging materials. Exempted development rights for harbours and ports in the Republic of Ireland are very similar to those in England and Scotland.

Issues

17.22 No problems were reported by the Planning Service or the consulted port operators with understanding who is a statutory undertaker for the purposes of Part 17 Class B, as it appears that most harbours and ports are long-standing facilities, with readily identifiable boundaries. In addition, most ports in Northern Ireland are controlled by a Board of Commissioners, which is appointed by the Regional Development Minister to reflect local business and community interests in the running of the port's commercial and development

activities. Only one port, at Larne, is a private company, but is still subject to control by DRD and the Department for Transport Security Division in London.

17.23 The four responding harbour and port authorities in Northern Ireland reported no major problems with understanding or using this Part. All ports stressed their importance to the Northern Ireland and UK economies and the vital role that they play as gateways to the province.

17.24 In terms of the current scope of permitted development rights, the responding users indicated that Class B allowed them to carry out the majority of their operational developments adequately, which include cabling, minor road layout changes and ramps etc. with the following exceptions:

- Installation of 2.4 m high security fencing and other measures not allowed for within Class B, while Parts 2 and 21 do not allow the necessary heights of fencing and CCTV cameras;
- Land acquired after 1 October 1973 for operational purposes does not benefit from permitted development rights unless there exists a planning permission for its use as operational land; this causes problems for undertakers when they reclaim land, which is not used for the undertaking;
- Larger scale works (e.g. new docks) urgently required to upgrade port facilities to support the Northern Ireland economy.

Scope for Change

17.25 These permitted development rights support water transport operations and indirectly can be considered as contributing to economic competitiveness, although there is some scope for adverse impacts on the environment. However, there appears to be very limited conflict with policy aims and no significant impacts were identified by the Planning Service, users or interest groups. At the same time, these rights relate to the operation of essential infrastructure and appear to give rise to very few material planning issues despite the absence of specific limitations.

17.26 There is some case for extending permitted development rights within Class B to include security fencing and pole-mounted CCTV cameras as they are reasonably required in connection with shipping and the movement of traffic and goods, although they would need to be subject to an appropriate height restriction and distance from the site boundary to avoid potential impacts on adjoining uses. Permitting fences or other means of enclosure in excess of 2 metres would be inconsistent with rights under Part 2, could set a precedent for other statutory undertakers and has some potential for adverse impacts, depending on the form and materials of enclosure used. However, the importance of such security to a port's operations and to retain its licence would justify some relaxation in this case. To avoid adverse impacts, this relaxation would only apply to a fence, rather than all means of enclosure, and would not apply where the fence adjoined the curtilage of a residential property.

17.27 The current definition of operational land in the GDO states that land acquired since 1973 for operational purposes is not operational land for the purposes of the GDO, unless there is a planning permission for its use as operational land. Only one port undertaker reported a problem with this definition as it has reclaimed land from the sea, which it uses as an industrial estate, although it is part of the harbour estate. If the port wanted to use the land for operational purposes, it would need to apply for a change of use, but is concerned that permitted development rights may be removed by condition if planning permission were to be granted. However, the port operator could appeal against any such condition, if it were unreasonable or unnecessary, and this situation does not justify change to the GDO's definition of operational land.

17.28 The recommendations for this Class are therefore to:

- permit erection of fences up to 2.4 metres in height on the curtilage boundary of the port except where this adjoins a residential curtilage;
- extend Class B permitted development rights to include pole mounted security CCTV cameras on operational land, subject to an appropriate height restriction.

Class C: Electricity Undertakings

- 17.29 Under Class C, development is permitted for the generation, transmission, distribution and supply of electricity, including works in connection with (a) the laying of underground pipes, cables or any other apparatus, including the construction of shafts and tunnels; (b) the installation in an electric line of feeder or service pillars, substations enclosed in chambers below ground; (c) installation of service lines for individual consumers from an electric line; (d) addition or replacement of a single fibre optic telecommunications cable to an existing overhead line; (e) the sinking of boreholes and installation of associated plant or machinery; (f) the extension or alteration of buildings on operational land; (g) the erection of a building for protecting plant and machinery on operational land; or (h) any other development in, on, over or under operational land, subject to a number of exclusions and conditions.
- 17.30 Stronger restrictions apply than in other Classes of Part 13, since Class C(f) development is specifically not permitted in a National Park, an AONB or a conservation area and no Class C development is permitted within an archaeological site. Regardless of where the development is, planning applications are required where the height of any support exceeds 18 metres, or a consumer's service line would exceed 100 metres in length. The height of the original building must not be exceeded, the cubic content of the original building must not be exceeded by more than 20% and the floorspace of the original building should not be exceeded by more than 750 m². Any chamber housing apparatus must not exceed 40 m³ or be constructed under a road or above ground. Undertakers must also seek prior approval of the design and external appearance of any buildings under Class C (g) from the Department. Conditions require the removal, after completion of works, of any, plant or machinery required by Class C(e) works and restoration "*as soon and so far as practicable*" to its previous condition.
- 17.31 The main differences from the English and Scottish GPDOs are that these do not include clauses (b), (c) and (d) of the Northern Ireland Class C, although they do permit the installation or replacement of any telecommunications line up to 1,000m long. Other restrictions in the English system include a height restriction on plant of 15m, and

extensions to buildings not exceeding the original buildings by 25% of volume (10% in AONBs, National Parks and conservation areas), or 1000 m² in terms of floorspace (500 m² in AONBs, National Parks and conservation areas).

17.32 In the Republic of Ireland, exempted development rights are less strict, with overhead lines of up to 20kV (usually to serve a single user) not requiring planning permission, with no restrictions on length or location, compared with the 100m length restriction in Northern Ireland. However, sub stations allowed under exempted development in the Republic of Ireland cannot exceed 11 m³, compared with 40 m³ in Northern Ireland.

Issues

17.33 There are a number of electricity undertakers in Northern Ireland, the main one being Northern Ireland Electricity plc (NIE), which distributes electricity. Northern Ireland's power stations, operated by a number of private companies, also benefit from Class C rights. This situation contrasts with Great Britain, where there is a deregulated market with numerous electricity undertakers.

17.34 Neither the Planning Service nor any interest groups raised any problems with interpretation or adverse impacts arising from the use of Class C permitted development rights.

17.35 Responding electricity undertakers expressed general satisfaction with the operation of Class C. All undertakers consulted stressed that every exercise of their permitted development rights is necessary to their statutory functions and that they carry them out in a responsible manner. These rights are frequently used, with NIE installing approximately 4 new single user overhead lines per month and up to 12 new sub-stations in one month.

17.36 Specific issues raised by electricity undertakers included:

- The requirement to apply for planning permission to replace existing overhead lines was seen as overly restrictive;
- The 100m length limit on single user lines is not sufficient for the majority of rural connections, which require lines of up to 500m. Almost all planning applications for

lines of longer than 100m are approved, but only after an unacceptable delay for the consumer who requires electricity supply immediately.

17.37 No undertakers reported any experience of Article 4 directions or of the requirement for Environmental Impact Assessment removing permitted development rights.

Scope for Change

17.38 While these permitted development rights can give rise to material planning issues, they relate to provision of essential services and infrastructure often required urgently or in emergencies. These rights are exercised by a regulated body and there generally appear to be adequate controls against adverse impacts through the size limitations and the EIA regulations. No major conflicts with policy aims were identified and no significant impacts were identified by the Planning Service, users or interest groups.

17.39 On this basis, there is a strong argument for retaining these rights and consideration has been given to the need for amendments to address certain specific concerns raised by users, or to relaxing rights where appropriate.

17.40 NIE reports that when it wishes to replace and upgrade existing overhead power lines, it does so by first installing a parallel line and then dismantling and removing the redundant line. This process requires planning permission for the new line, which NIE reports as having significant implications in timing of works. However, it would seem appropriate to retain some form of planning control over the installation of replacement power lines, which can be extensive in length and could give rise to material planning issues over a wide geographical area. There could be cases where it is not possible to install new poles/pylons in similar locations and the new design could be different in its use of materials and its height, which could impact on residential and visual amenity. It is therefore recommended that replacement overhead lines remain within planning control.

17.41 Turning to single user overhead lines, NIE reports that it currently installs 3 or 4 single user lines per month, usually to serve new single residential developments in the countryside, as a result of a recent planning permission. These lines consist of poles approximately 10m in

height with a 'one span' length of 11kV line. The majority of these lines are in excess of 100m and therefore require planning permission. It is understood from NIE that all of these planning applications are approved (the only exceptions being in AONBs), but only after a delay, which is often unacceptable for the consumer, who requires an immediate electricity supply at a reasonable cost. A four span single user line costs in the region of £5,500 if overhead, but £75,000 if underground. On the basis that planning applications for single user lines are usually uncontentious and get approved, and are made on a regular basis by NIE, there is a case to extend the length of permitted single user lines outside protected areas – AONBs, Conservation Areas and National Parks – from the current 100m limit to say 200m. This would, however, need to be the subject of consultation and further discussion with NIE.

- 17.42 The only recommendations for this Class is therefore to extend the permitted length of single user overhead 11 kV power lines from the current 100m (Class C(c) development) to 200m, except within AONBs, conservation areas and National Parks.

Class D: Gas Undertakings

- 17.43 Under Class D, a gas supplier is permitted to carry out development required for the purposes of its undertaking, including (a) the laying underground of mains, pipes or other apparatus, (b) the installation of a gas distribution system and (c) structures for housing associated apparatus and any other development in, on, over or under operational land.
- 17.44 Restrictions include a 15 metre height limit for plant or machinery and any structure housing apparatus must not exceed 29 m³ or be above ground or under a road. Prior approval of the details of the design and external appearance of development carried out under Class D (c) must be sought from the Department. No specific restrictions apply in designated areas other than areas of archaeological interest.
- 17.45 Differences from Part 17 Class F of the English and Scottish GPDOs are that the latter refer to public gas transporters, and additionally allow the construction of any storage and protective area, boreholes or associated plant or machinery (c), storage of pipes and other apparatus

on land (d), and the erection of a building for protecting plant or machinery on operational land (e). Conditions are also similar although in England a public gas transporter is also required to give not less than 8 weeks written notice to the local planning authority of its intention to lay a pipe-line for Class F(a) development. In the Republic of Ireland, there appear to be no exempted development rights for any above ground development by gas undertakers, but underground development is exempted.

Issues

- 17.46 Phoenix Natural Gas, as the principal public gas transporter in Northern Ireland, reported few if any problems in using, understanding or interpreting Class F, or in the operation of these rights. At present, a gas distribution network is under development in the Greater Belfast area, but in the future licences may be awarded to other gas companies to develop distribution networks elsewhere in Northern Ireland and there may be other gas undertakers.
- 17.47 Planning Service officers reported no problems in understanding Class F permitted development rights and no adverse impact of these rights on the environment or on residential amenity. No issues were raised by interest groups.

Scope for Change

- 17.48 These rights relate to the provision of essential services and infrastructure often required urgently or in emergencies, and are exercised by a regulated body. While there is some potential for conflict with countryside protection aims, there appear to be adequate controls against adverse impacts through the size limitations and the EIA regulations and no significant impacts were identified by local authorities, users or interest groups. At the same time, no case was made for any widening of these rights.
- 17.49 On this basis, there is no obvious reason to reduce these rights or for other major changes to Class D. There are also no obvious areas, other than improved drafting as part of that for the GDO as a whole, where alterations are required to respond to specific concerns.
- 17.50 No recommendations for change are therefore made for this Class.

Class E: Road Passenger Transport Undertakings

- 17.51 This Class permits development required in connection with the operation of public service vehicles, including the installation of cables and apparatus, huts, stop posts, signs and the erection, construction, maintenance, improvement or other alteration of passenger shelters and barriers. It also permits 'any other development' on the undertaking's operational land, unless the design or external appearance of a building would be materially affected, or any new plant or machinery would exceed 15m in height or the development lies within a site of archaeological interest.
- 17.52 The main differences from Class H of the English and Scottish GPDOs are that the latter also permit tramway development and, compared with the size limit of 17 m³ elsewhere, there is no size threshold in Northern Ireland for the capacity of any structure. There appear to be no exempted development rights in the Republic of Ireland for road passenger transport undertakers and the City of Dublin planning office confirmed that planning applications are required to erect bus shelters.
- 17.53 Ulster Bus is responsible for virtually all bus services in Northern Ireland, except Belfast city services, which are operated by Citybus. These two companies are subsidiaries of the Northern Ireland Transport Holding Company (NITHCo), which was set up as a public corporation under the Transport Act (NI) 1967 to oversee the provision of public transport (including the railways) in Northern Ireland. Since 1996, the integrated bus and train services in Northern Ireland have been marketed under the brand name Translink.
- 17.54 While bus stations and depots are developed, operated and maintained by NITHCo/Translink/Ulster Bus/Citybus, all of which are road transport undertakers for the purposes of the GDO, most bus shelters and stops in Northern Ireland are provided by Adshel under a contract with The Roads Service. Adshel is not a road transport undertaker for the purposes of the GDO, and therefore has to submit planning applications for shelters. However, as a contractor to the Roads Service, which has Crown Immunity from planning control, it is not clear why permission is needed.

Issues

17.55 The only issue raised by the Planning Service with regard to Class E rights was that it would like to retain control over the design of bus shelters, particularly in sensitive locations such as conservation areas and near listed buildings and dwellings, and that planning permission should be required for all shelters. Otherwise, no problems were identified with the operation of the current rights.

17.56 Consultation with road transport undertakers raised the following issues:

- Translink was not fully aware of the permitted development rights available for bus shelters.
- bus shelters are provided by Adshel under a contract from the Roads Service and a planning application is always submitted by Adshel. While a bus shelter with advertising would always require advertisement consent, it is not clear why planning applications should have to be submitted for all shelters, including those with no advertisement panels.
- Adshel/Translink advised that most planning applications for bus shelters are approved anyway, but the delay in obtaining approval does not assist timely and efficient delivery of public transport investment, which is a policy aim.
- Adshel/Translink advised that it had been particularly difficult to obtain planning permission for bus shelters in Donegal Square, central Belfast, due to design objections from the Planning Service.
- Translink noted that the introduction of 15 Quality Bus Corridors in Belfast will require a large number of new and improved bus shelters, which could result in up to 50 planning applications in one corridor. It was added that the planning process can be very slow and delay the implementation of urgently needed public transport improvements.
- Translink considered that the location of bus shelters is already controlled by the Roads Service through the contract and the design by the Translink bus stop design manual, and therefore questioned whether it is also necessary to have additional control by the Planning Service.

17.57 On other aspects of Class E, Translink raised no issues, advising that it rarely carries out minor developments on operational land, i.e. small buildings within bus stations, and did not seek any widening of these rights.

Scope for Change

- 17.58 These permitted development rights relate to provision of essential services and infrastructure and are exercised by a regulated body. They broadly support Government policy aims on public transport but have some potential for conflicts on aims for improving streetscape and design quality although it would appear that Adshel is either unaware of or unable to use Class E rights to erect bus shelters. As it is understood that as Adshel is not a road transport undertaker, it is not able to use permitted development rights. There may therefore be a case to extend Class E to include bus shelters erected by a contractor undertaking permitted development works on behalf of the undertaker.
- 17.59 In support of extending these rights, Translink anticipates that a large number of new bus shelters will be required in the Belfast area as part of the Quality Bus Corridor initiative. The majority of these shelters would not raise any material planning issues and from past experience would be likely to be approved, but in the interests of speeding up the planning process, it would seem that there is a case for extending rights to those carrying out works on behalf of the undertaker, subject to certain conditions such as on size, siting and design.
- 17.60 In the English GDO, there is a volume limit for a bus shelter of 17 m³, above which it is necessary to apply for planning permission. Although there is no evidence of widespread problems at present, since there is understood to be some pressure to introduce larger shelters which may have adverse visual effects, consideration could be given to introducing such a limitation in Northern Ireland.
- 17.61 In this context, it would also be important to give some control on design and location of new bus shelters in sensitive areas, such as conservation areas, and within close proximity of a residential property or listed building. Inputs by the Planning Service into the design of the shelters in Donegal Square, Belfast, secured a better standard of design. Equally, public scrutiny of proposals to site bus shelters within close proximity of residential properties should assist the protection of residential amenity. Control on road safety issues would be maintained through Adshel's contractual arrangements with the Roads Service, which decides on the location of any bus shelter. Although there is already some design control

under the Translink Design Manual, this may not lead to tailored approaches in more sensitive locations. Reported problems with bus shelters near residential properties also suggest a case for a distance limitation.

17.62 Such carefully targeted limitations on permitted development rights for bus shelters appears more appropriate than a general removal of these rights, which would be against the aim of deregulation and not obviously justified by the number of applications for bus shelters that are refused. This change would not necessarily lead to an increase in planning applications, since applications are already made for most shelters.

17.63 While extending such restrictions to AONBs and National Parks would be consistent with policy aims to protect sensitive areas, the absence of clear evidence of problems makes it difficult to recommend further restriction. This change should be given further consideration and further evidence to support it investigated.

17.64 The recommendations for this Class are therefore to:

- introduce a volume limit of 17 m³ for bus shelters;
- clarify that Class E permitted development rights apply to bodies carrying out works on behalf of the road transport undertaker;
- restrict permitted development rights for bus shelters within conservation areas, and within 20m of a listed building or residential property
- consider, after further investigation, restricting permitted development rights for bus shelters within AONBs and National Parks.

Class F: Lighthouse Undertakings

17.65 Class F permits development required for the functions of a general or local lighthouse authority under the Merchant Shipping Act 1894 and any other statutory provision made with respect to a local lighthouse authority, or in the exercise by a local lighthouse authority of rights, powers or duties acquired by usage prior to the 1894 Act. Specific exclusions are the erection of offices, or the reconstruction of offices where their design or external

appearance would be materially affected or where the land is within a site of archaeological interest.

17.66 The main difference from rights elsewhere in the UK is that the last restriction on archaeological sites is not included in Part 17 Class I of the English GPDO. In the Republic of Ireland, the exempted development rights schedule states that the erection, placing or keeping on land of any lighthouse, beacon, buoy or other aid to navigation on water (or in the air) does not require planning permission if the structure is below 40 metres in height. There are no other conditions or restrictions.

17.67 Class F permitted development rights are used by the Commission for Irish Lights in Dublin, which provides nearly 300 aids to navigation across all of Ireland, including 48 beacons, 80 lighthouses and 147 buoys; 11 of these lighthouses are in Northern Ireland.

Issues

17.68 No issues were raised by Planning service officers or by any interest groups with respect to these rights.

17.69 The Commission for Irish Lights considers that these rights are an important tool, allowing it to carry out its statutory duties efficiently and effectively. Many lighthouses are also listed buildings and although most developments are permitted under Class F, those affecting listed buildings require listed building consent, giving the Planning Service additional control over development at some sensitive locations.

Scope for Change

17.70 These permitted development rights relate to provision of essential services and infrastructure and broadly support aims on sea transport and safety. Although there could be some potential for adverse impacts in sensitive coastal areas, no significant planning issues were identified by users or interest groups. On this basis, there is no reason for change to this part of the GDO.

Class G: Post Office

- 17.71 Class G permits development required for the purposes of the Post Office consisting of the installation of posting boxes or self-service machines, and any other development carried out in, on, over or under the operational land of the undertaking.
- 17.72 Exclusions to this Part include where development includes the erection of a building, where design or external appearance of buildings would be materially affected, or where the installation or replacement of any plant or machinery would exceed 15 m in height or the height of any existing plant or machinery, whichever is the greater, or where the land is within a site of archaeological interest.
- 17.73 This last clause is not included in Part J of the English GPDO which is otherwise similar but applies to Universal Service Providers rather than just the Post Office following Government plans for deregulation of postal services. In the Republic of Ireland, An Post enjoys similar exemption from the requirement to obtain planning permission for post boxes and stamp machines but these rights extend to include roadside boxes for the delivery of mail (mainly used in rural areas) and deposit boxes for the temporary storage of mail for local delivery (known by the Post Office as *“postal pouches”*). *“An Post”* does not, however, benefit from any exemptions for other development on operational land.
- 17.74 In summary, postal service providers benefit from rights to install posting boxes or self-service machines on any land, and there is a broader permission for other development on operational land only. These permitted development rights are currently used frequently by Royal Mail to install posting boxes and less frequently to install self-service stamp machines. Royal Mail reported that it also uses Part 13 Class G to carry out development on operational land, but on a less regular basis.

Issues

- 17.75 The Planning Service reported no difficulties in the interpretation of Class G, and no consultee identified any problems or adverse impacts with the operation of these permitted development rights.
- 17.76 Royal Mail reported no current significant problems or difficulties in understanding or using the GDO, but noted that in the past there had been an inconsistent approach between English planning authorities to the question of whether “*postal pouching boxes*” are permitted development or not. In 1989, however, the Secretary of State ruled on appeal that the installation of a postal pouching box is development requiring planning permission.¹⁴
- 17.77 We understand that in Northern Ireland, the Planning Service has always requested that a planning application be submitted for a postal pouch. This issue was not raised in Northern Ireland but recent research in England found views from a number of planning authorities that postal pouching boxes should be included within the scope of permitted development, as they cause little or no visual impact on the streetscape. In contrast, some interest groups, including English Heritage, considered that postal pouching boxes should remain within planning control as they can have an adverse visual impact on the streetscape, particularly in sensitive locations. In the Scottish GDO, postal pouches outside conservation areas have been permitted development since 1992.
- 17.78 With regard to post boxes, Royal Mail noted that the traditional design of posting boxes makes them usually acceptable and often welcomed in the streetscape. However, a recently published joint policy statement in England by Royal Mail, English Heritage and Consignia indicates that where it is proposed to relocate a post box, prior written notification should always be made to the conservation officer or the relevant person in the highways department, to identify an appropriate new site. This should improve the siting and location of new post boxes. This policy statement also specifically indicates that no postal pouches will be attached to post boxes in the future and where this has occurred in the past, they will

¹⁴ The Use of Permitted Development Rights by Statutory Undertakers, DETR, July 1997

be progressively removed. It is understood that the same approach will be taken in Northern Ireland.

Scope for Change

- 17.79 These permitted development rights relate to provision of essential services and infrastructure and are exercised by a regulated body. No major conflicts with policy aims were identified and no significant impacts were identified by the Planning Service, users or interest groups. These rights also reduce the need for a sizeable number of repetitive and generally uncontentious planning applications.
- 17.80 On this basis, there is a strong argument for retaining these rights and no case has been made for major changes to Class G. While informal controls apply, to reinforce these and for consistency with other street furniture, permitted development rights for post boxes should be conditional on siting so as to minimise any effects on pedestrian flow and visual impact.
- 17.81 With regard to free-standing postal pouches, the absence of problems in the Scottish system suggests these could be specifically included under Class G with the compromise to design and heritage aims being to restrict them within conservation areas. While the current system does not appear to cause widespread problems, this extension should be considered subject to a condition, as for other street furniture, that these pouches are sited so as to minimise any effects on pedestrian flow and visual impact.
- 17.82 The only recommended change for this Class, therefore, is to make free-standing postal pouches permitted development outside conservation areas, subject to a condition that they are sited so as to minimise any effects on pedestrian flow or visual impact.

18.0 PART 14: DEVELOPMENT BY CIVIL AVIATION AUTHORITY

- 18.1 These rights are available to the Civil Aviation Authority (CAA), which is responsible for some smaller aerodromes and for certain air traffic control and navigation facilities, both within and outside the airport boundary. The rationale for these rights is to enable the timely provision of essential air traffic control, navigation and safety facilities without delays since these facilities are often required to meet safety and security directives at short notice. Many such facilities are minor in scale.
- 18.2 Class A permits works, by the CAA or its agents, for air traffic control and navigation within an aerodrome. Class B allows for similar development by the CAA and its agents on operational land, except where this takes place in a conservation area, AONB, National Park or site of archaeological interest. Height limits of 4 metres for buildings and 15 metres for masts apply in Class B.
- 18.3 The following three classes – Class C (Development by the Civil Aviation Authority in an emergency); Class D (Development by the Civil Aviation Authority for air traffic control etc.); and Class E (Development by the Civil Aviation Authority for surveys etc.) – all relate to temporary apparatus and structures for a 6 month period, and require removal and restoration of land after the expiry of a six month period. These works are not restricted to aerodromes or operational land, but Class D works are prevented in sites of archaeological interest.
- 18.4 In England, the Transport Act 2000 (Consequential Amendments) Order 2001 has produced changes in the wording of the bodies able to use these rights. These changes mainly related to replacing references to the CAA by the more general term “air traffic services licence holder”. These changes do not appear to apply yet in Northern Ireland.
- 18.5 The other main differences between this Part and the English and Scottish GPDOs are that:
- in England and Scotland, both CAA and other aviation development are dealt with under the same Part;

- only the Northern Ireland system has restrictions on Class B rights within sensitive areas.

18.6 In the Republic of Ireland, much less extensive rights apply, with only visual navigational aids within an airport being exempted development and this is subject to the prior notification of the planning authority and size limits on the extension of buildings (500 m² or 15%).

Issues

18.7 No problems or issues were identified through the consultation process with regard to Part 14 rights by Planning Service officers, airport operators or other organisations. Comments by the CAA on permitted development rights in the UK as a whole indicated that these rights were defined about right. The CAA and others also raised concerns on the risk to air safety of high structures erected under permitted development rights within the safeguarding areas around an aerodrome, although this relates to other parts of the GDO rather than Part 14.

Scope for Change

18.8 These rights generally support Government policy aims for air safety and encouraging airport growth to meet demand, while minimising its environmental effects. There is also some indirect support for economic competitiveness aims, as airports form attractors of investment and gateways for trade. While some airports are located in open countryside or urban areas, the generally small scale nature of these works reduces the potential for adverse impacts.

18.9 The desirable outcome of Part 14 rights would be for the CAA to be able to bring forward essential navigational and other essential development without delays but with adequate controls in place to prevent material planning impacts.

18.10 Most of the Part 14 permitted development rights can be argued as justified by the need to meet quickly and efficiently operational requirements and safety standards. Indeed, failure to

comply quickly with certain air traffic, navigational and safety requirements can lead to closure of an airport.

- 18.11 Since Classes D to F relate to temporary works with restoration conditions in place, Class A works can take place only within an aerodrome site and Class B works are subject to height limits and restrictions in sensitive areas and EIA regulations apply generally, there appear to be adequate controls in place against adverse impacts. Given the relatively small scale of many of these works, their essential and often urgent nature, the absence of identified problems, and the range of controls in place, there is no clear justification for any significant change to these rights.
- 18.12 There is a number of issues related to the impacts of permitted development rights on airport safeguarding but these do not derive from Part 14 rights and are dealt with under general changes in Chapter 28.
- 18.13 No particular benefit is seen in merging Parts 14 and 15 into a single Part, as currently applies in other parts of the UK, since these rights apply to different users and appear easier to locate and use for relevant bodies in their current format.
- 18.14 No changes are therefore recommended with respect to Part 14.

19.0 PART 15: AVIATION DEVELOPMENT

- 19.1 This Part relates to various operational developments on and around aerodromes by their operators and in broad terms it permits airport operational infrastructure, fuel farms, navigational equipment and buildings but not new runways or passenger terminals.
- 19.2 Class A: *Development at an Aerodrome* permits development by an aerodrome undertaking on operational land, in connection with the provision of services and facilities at an aerodrome. This specifically excludes construction or extension of a runway, a new passenger terminal, extension to a terminal involving over 15% of the original floorspace and any non-operational development, as well as alteration or reconstruction that would materially affect the design or external appearance. Such development is not permitted within an AONB, conservation area, National Park or site of archaeological interest. The aerodrome undertaking has to consult the Department before carrying out the development unless the development is urgently required for the “*efficient running*” of the airport, or the works do not exceed 4 metres in height and 200 cubic metres in volume.
- 19.3 Under Class B: *Air Navigation Development at an Aerodrome*, the provision of development for air traffic control services, navigation and monitoring of movement is permitted on operational land within the aerodrome by an aerodrome undertaking.
- 19.4 Class C: *Air Navigation Development near an Aerodrome* permits such development, again on operational land, if up to 8km. beyond the perimeter of a relevant airport, for the same functions as Class B. Development is again not permitted in a conservation area, AONB, National Park, or site of archaeological interest, or if it exceeds 4 metres in height for a building or 15 metres in height for a mast.
- 19.5 Class D permits the use of buildings within an aerodrome, where managed by an aerodrome undertaking, for “*purposes connected*” with air transport services or other flying activities at that aerodrome.

19.6 Key differences between Part 15 and the corresponding Parts of the English and Scottish GPDOs are:

- Part 15 rights apply to any aerodrome undertaking, while in England and Scotland only a limited number of “*relevant airports*” (and their agents) that can levy landing fees above a certain level can benefit;
- the English GPDO allows small passenger terminals of up to 500 m² floorspace;
- Class A and C aviation permitted development in England and Scotland is not restricted in sensitive areas;
- outside Northern Ireland, aviation permitted development rights fall within the same Part of the GPDO as rights applying to the CAA.

19.7 In the Republic of Ireland, narrower rights apply to those in Northern Ireland, allowing construction of aprons, taxi ways and air-side roads and extensions to operational buildings of up to 500 m² or 15% of the original floorspace, but not new buildings. These rights are also subject to prior notification of the planning authority.

Issues

19.8 In Northern Ireland, there are only 3 commercial airports (Belfast City, Belfast International and Londonderry) and a few general aviation airports (e.g. Ards and St. Angelo’s) as well as some very small airfields. It is understood that none of these airports lies in a Green Belt, National Park or AONB although Belfast City airport lies close to an important nature conservation site. The larger airports tend to use Part 15 rights only a few times in a year, mainly for minor developments, although both Belfast airports made use of the right to a 15% extension of their passenger terminals. No large aviation buildings or hangars have been erected under Part 15 rights and planning applications tend to be made for larger developments such as a control tower.

19.9 Responses on behalf of two airport operators considered permitted development rights critical to their operations, particularly because lengthy delays could result from making planning applications, because aviation works are often required urgently to meet CAA

requirements, and failure to meet safety requirements could result in the airport's closure. Objections by the public, who may not understand the scale or nature of proposals, to planning applications can also be a delaying factor. No significant problems were seen with current rights but the 15% terminal extension limit was felt to be too restrictive and a case seen for allowing the same limit to apply again after a 5 year period from a previous extension. Greater clarity was also sought with regard to permitted development rights for piers and satellites and whether they are restricted by the floorspace limit for extending terminals. No problems were seen with the consultation requirement for Class A buildings (although it did not always appear clear about what was supposed to happen), or with the ease of interpretation of Part 15 generally.

19.10 No major problems with Part 15 development were raised by Planning Service officers or other Government departments, although the need for greater protection of nearby nature conservation sites was raised. Several interest groups raised concerns that the rights to extend terminals could lead to higher air traffic levels, with greater noise and air quality impacts for residential areas. No cases were found of Article 4 Directions or the EIA regulations being used to restrict Part 15 rights in Northern Ireland.

19.11 Although not an issue for Part 15 specifically, Government Circular 1/03 on Public Safety Zones around airports makes clear that any development in these Zones that enables more people to live, work or assemble there should be restricted, as should permitted development rights that facilitate such activity. This general issue is addressed in Chapter 28.

Scope for Change

19.12 These rights generally support the Government policy aim of encouraging airport growth to meet demand while minimising its environmental effects. There is also some indirect support for economic competitiveness aims. Potential for conflict with aims to protect the countryside is limited, since no airports are located in sensitive landscape areas, although there is also scope for conflict with aims on noise, air quality and sustainable transport. The

desirable outcome would be for airports to be able to bring forward essential operational development without delays but with adequate controls in place to prevent material planning impacts.

- 19.13 Many of the permitted development rights available at airports can be argued as justified by the need to meet operational requirements and safety standards quickly and efficiently. Indeed, failure to comply quickly with certain CAA requirements can lead to the loss of the airport's licence and closure of the airport. This applies particularly to air traffic and navigational equipment and there is no obvious justification for change to these rights. For other areas, the relatively few issues identified through the consultation responses, and some others emerging from previous research in England, are considered below.

Passenger Terminal Extensions

- 19.14 There does not appear to be a strong case for re-applying the 15% extension limit on passenger terminals after a specified time period. While this would clearly give greater flexibility and certainty to airport operators, this could lead to large incremental increases in air traffic levels and associated noise and air quality effects, which ought to be subject to proper planning control. While the EIA regulations and Article 4 Directions do provide alternative controls, this does not appear sufficient justification for change in this case.

Size Limits on Airport Buildings

- 19.15 Unlike other Parts of the GDO, there is no size limit on operational buildings allowed under Class A. This can allow very large airport buildings, such as hangars or cargo centres, which can have potentially significant visual impacts. The only controls available are where an EIA is required or by issuing an Article 4 Direction, both of which are somewhat cumbersome tools with uncertain results. While this has not appeared as a problem in Northern Ireland, some planning authorities in England have suggested a limit on any building under Class A (e.g. to say 200 m³).

- 19.16 In considering this issue, it has to be noted that while airport buildings can form the largest structures normally erected under permitted development rights, their size is dictated by their function e.g. tall control towers, or hangars to allow maintenance and storage of large aircraft. Hangars are analogous to large sheds for storage of trains, which are permitted under Part 13, and airport operators are also statutory undertakers with a need to provide and maintain essential transport infrastructure. A hangar is an essential operational building for an airport since, without such covered storage, aircraft maintenance cannot take place and the airport cannot meet safety and emergency procedures and would be unable to operate effectively.
- 19.17 It could be argued that airports, by their nature, are often sites where very large structures, such as terminal buildings, already exist and have usually been granted planning permission, and that new hangars would not have the same adverse impact as in other, less developed locations. In addition, Part 15 requires such development to be only for essential operational purposes and, given the high cost of such large structures, airport operators will generally not bring forward such developments unless they are needed. Because of safeguarding and operational factors, operators often argue that there are also only limited areas within an airport operational area where such development can take place, preventing proliferation of large buildings.
- 19.18 The EIA regulations also impose a measure of control, if the individual or cumulative effects of such buildings were to cause significant impacts. The Article 4 Direction procedure provides a further fall-back control, although it is recognised that this is a cumbersome and time consuming procedure.
- 19.19 In terms of policy aims, many airports are within open areas and restricting their ability to erect anything more than very small operational buildings could be seen as constraining their growth and that of the air transport industry. On balance, while recognising the potential problems that can arise from this form of development, this type of development provides for essential public transport infrastructure and the limitations and other controls

which apply to it are considered adequate. No change, including to size limitations, is therefore proposed to Part 15 in this respect.

Consultation Procedures

- 19.20 With regard to consultation procedures, aerodrome undertakings are required only to consult with the Department on buildings above certain size limits but with no specific procedure or time limit, and no guidance on how this consultation process should operate. This procedure can result in operators amending or mitigating proposals in various ways, and there is potential for lengthy delays to obtain a response. However, no problems were identified with the operation of this procedure in Northern Ireland.
- 19.21 Consideration could be given to setting a time limit for a response by the Planning Service, after which it can be taken that no objections apply. This would give the aerodrome undertaking greater certainty but possibly lead to less time for a considered response by the Planning Service on larger developments. A two tier time limit e.g. 28 days for small developments, 56 days for major ones would be another option. However, on balance, given the lack of problems identified with the current system, it is difficult to recommend change. Consideration could however be given to aerodrome undertakings establishing with the Planning Service informal time limits or responses, as happens at other UK airports.

Interpretation Problems

- 19.22 Although few interpretation problems were identified for Part 15 in Northern Ireland, it may be useful to define within the GDO various terms, including *“piers”*, *“satellites”* and *“terminal”*. Piers and satellites are treated inconsistently by different authorities across the UK, with some considering them restricted by the floorspace limits on terminals. However, it is understood that piers and satellites do not affect airport passenger capacity, having no check-in, security or immigration facilities and so are not subject to the expansion constraints of the terminal itself. While the interpretation in Part 15 that these elements are not to be counted as floorspace appears clear, further clarification that these elements do not form part of a terminal would be helpful to avoid disputes.

19.23 Overall, the only changes proposed to Part 15 are:

- to consider setting a time limit for the consultation period for Class A development, or establish informal procedures on timescale to give greater certainty to airport operators;
- to provide better interpretation of certain terms used.

20.0 PART 16: MINERAL EXPLORATION

- 20.1 This Part allows for temporary operations for exploration for various minerals.
- 20.2 Development for mineral exploration is permitted on any land for up to 4 months, including drilling boreholes, seismic surveys, other excavations and provision of any connected structures. Such rights do not apply in an ASSI or on a site of archaeological interest, or if certain explosive charge thresholds are exceeded or any structure would exceed 3m in height within 3km of an aerodrome. The developer must notify the Department in advance of the development proposals and timescales. Conditions require the work to be in accordance with the developer's notification, no damage to trees and the removal of structures/materials and restoration after activities cease.
- 20.3 These rights are less restrictive than the corresponding sections of the English and Scottish GPDOs, which only permit development on land for either 28 consecutive days or 6 months and also restrict development within 50 metres of housing, a hospital or school, and within an AONB, SSSI, a site of archaeological interest or in a National Park or National Scenic Area. Conditions also relate to times of operations. The English and Scottish GPDOs both impose a height limit of 12 metres on structures, while no such limit applies in Northern Ireland other than near aerodromes. There is also no restriction on exploration for oil and gas in Northern Ireland as there is elsewhere.
- 20.4 Furthermore, under Class A of these other countries' systems there is no requirement for developers to notify local planning authorities of their proposals and timescales. However, the English and Scottish GPDOs also have a further Class which allows similar development to Class A but which is less restrictive, allowing use of larger explosive charges and giving permission for 6 months, rather than 28 days (4 months in Scotland), but prior notification is required in this case.

- 20.5 The Republic of Ireland provides exempted development rights for “*minerals and petroleum prospecting*”. No restrictions in terms of height or designated areas apply but works must comply with the terms of a licence granted under various minerals development Acts.
- 20.6 Although Article 6 of the GDO allows the Department to make a Direction removing permitted development rights for mineral exploration for reasons such as location within a sensitive area, impact on listed buildings, nuisance to nearby housing or community facilities or endangering aircraft using nearby aerodromes. However, unlike in the English planning system, it is understood that any subsequent refusal of planning permission does not enable a claim for compensation in Northern Ireland.

Issues

- 20.7 While no major concerns relating to this Part were identified through the consultation process, a number of issues were raised by mining operators and Government departments.
- 20.8 Users of Part 16 generally considered these rights to be critical to their operations and they are typically used 20–30 times annually. They are widely used and considered to work well, although many operators were not aware that exploration rights are subject to any planning control. Before exploration takes place and land is bought, operators normally have extensive discussions with planners and environmental agencies to avoid any impacts. There was also a view from operators that if additional controls on Part 16 rights were imposed in sensitive landscape areas, this could push exploration into fewer and fewer areas and reduce future mineral supplies. They emphasised that the quarry industry is a key element of the Northern Ireland economy but is facing a possible increase in aggregates tax and needs to avoid further planning controls that could indirectly increase construction costs.
- 20.9 Other organisations representing users suggested that Part 16 rights work effectively, although the period allowed may be a little short, depending on the type of exploration and the size of area involved.

- 20.10 One Government organisation concerned with environmental protection indicated that some complaints had arisen that land was not restored properly after boreholes had been drilled, plant had been left on site too long and that sometimes operators build new tracks or roads to put plant in place. However, no need was seen for additional controls in AONBs and similar areas, as sand/gravel exploration does occur in such areas and no problems arise.
- 20.11 Government departments involved with minerals also considered that Part 16 works well at present, including the 4 month time limit, which can be extended on request and that no obvious adverse impacts arise as responsible operators restore land well afterwards. No complaints have arisen about Part 16 rights causing problems near housing and no cases are known of EIA regulations resulting in removal of these rights. No cases were identified of an Article 6 Direction being used to remove these rights. This is despite exploration taking place in AONBs, since the drilling operations are generally quite small scale in Northern Ireland and reputable companies normally restore land adequately.
- 20.12 Planning Service officers saw Part 16 rights as important to the mineral industry and to the planning system, which has limited resources for minerals in particular and should not get *"bogged down"* by many minor applications. The drafting of Part 16 is considered reasonable to understand for the officers who use it frequently and no problems were seen with current definitions or interpretations.

Scope for Change

- 20.13 These permitted development rights support the broad aims of Government energy and mineral policies. While they have potential to conflict with aims to protect the countryside, built heritage and other environmental interests, any impacts would be limited given that they involve only temporary works with restoration conditions applying. The limitations on proximity to certain designated areas, as well as the prior notification requirement and the existence of the Article 6 procedure, help control the scope for adverse impacts but the absence of any size limits and restrictions in sensitive landscape areas appears a potential weakness.

- 20.14 Based on the consultation responses, this part of the GDO is not giving rise to major concerns or widespread planning issues. These rights also appear to continue to perform a useful function by reducing the need to submit repetitive and often uncontentious planning applications. As these rights do not appear to cause adverse outcomes in policy terms, there is no obvious reason for major change on these grounds.
- 20.15 However, an obvious difference from other parts of the UK is the absence of any restrictions on oil and gas exploration, which is understood to require larger drilling equipment and involve more intensive operations. There are also no height limits on drilling plant. Based on the lack of any examples of harm, it is difficult to make a case for proposing change to restrict permitted development rights for these activities, for the reason of consistency alone. If any clear examples of harm emerge from further consultation, this conclusion should be re-examined.
- 20.16 Another area of concern is the absence of restrictions on Part 16 rights near or within sensitive locations or uses, such as within 50 metres of housing, a hospital or school, or in an AONB or National Park, as apply in the Scottish and English systems. There is the potential to remove rights in such areas using an Article 6 Direction. The fact that this procedure has been used so little may indicate a lack of problems, as responsible operators consult in advance, although it may also reflect a lack of Planning Service resources for such action.
- 20.17 Imposing further restrictions on Part 16 rights to reflect those applying in other parts of the UK would accord with policy aims to protect the countryside and sensitive areas but would add a modest additional burden on the mineral industry and lead to a moderate increase in planning applications. However, exploration works do appear to take place in AONBs at present without problems and this combined with the lack of reported harm and no requests for change by regulatory and environmental bodies, makes it difficult to recommend change in this regard. Again, this could be re-examined if clear cases of adverse impacts are identified through the consultation process.

20.18 On the basis of the above assessment, no changes are recommended to Part 16.

21.0 PART 17: DEVELOPMENT BY TELECOMMUNICATIONS CODE SYSTEM OPERATORS

- 21.1 These permitted development rights apply to various forms of telecommunications facilities but are available only to Code System Operators; these are companies granted a licence under section 7 of the 1984 Telecommunications Act, which applies the telecommunications code to it in pursuance of section 10 of that Act. There are currently 110 such operators, the best known ones being BT and mobile phone companies such T-Mobile (UK), BT 3G, O2, Vodafone, "3", Orange Personal Communications Service, Orange 3G and Dolphin Telecommunications. Part 17 rights do not apply to broadcasters such as the BBC, which are licensed under the Broadcasting Act 1981.
- 21.2 The current permitted development rights for Telecommunications Code System Operators were introduced by the Planning (General Development) (Amendment) Order (Northern Ireland) 2003, which came into force on 26 March, 2003.
- 21.3 Class A permits development by or on behalf of a code system operator for the purpose of the operator's telecommunication system in, on, over or under land controlled by that operator or in accordance with his licence consisting of the installation, alteration or replacement of any telecommunications apparatus or development ancillary to radio equipment housing.
- 21.4 Under Class A, six criteria need to be addressed to determine whether development is permitted. These criteria include whether the site is within a conservation area, whether the proposal involves development relating to a mast, as well as limits upon the base area of the installation and the cubic capacity of any equipment housing. These criteria are stringent and severely limit the type of work that can be undertaken. In particular permitted development rights do not apply if the work involves the installation, alteration or replacement of a mast or installation, alteration or replacement of an antenna, structure, or other apparatus including equipment housing associated with a mast. Conditions on Class A also require that any equipment housing or development ancillary to equipment housing

installed, altered or replaced on a building shall, so far as is practicable, be sited so as to minimise its effect on the external appearance of the building.

- 21.5 Class B permits development by or on behalf of a telecommunications code system operator in emergency situations. It allows development for the purpose of the operator's telecommunications system in, on, over or under land controlled by that operator or in accordance with his licence consisting of the use of land for a period not exceeding 6 months to station and to operate moveable telecommunications apparatus required for the replacement of unserviceable telecommunications apparatus, including the provision of moveable structures on the land for the purposes of that use.
- 21.6 Class B development is subject to conditions requiring that the operator gives written notice of the development to the Department as soon as possible after the emergency begins, and in any case not later than three days thereafter. It also requires that any structure provided shall be located as close as operationally practicable to the existing unserviceable equipment, where operationally practicable not exceed the height of the existing apparatus and at the end of the relevant period be removed from the land and the land restored to its condition before the development took place.

Background

- 21.7 In considering the scope for any change, it is relevant to understand the background to the current Part 17 rights. Prior to March 2003, Part 17 permitted development rights were set out by the Planning (General Development) (Amendment) Order (Northern Ireland) 2000. Under these rules, permitted development rights only existed for the use of land in an emergency for a period not exceeding 6 months to station and operate moveable telecommunications apparatus required for the replacement of unserviceable telecommunications apparatus, including the provision of moveable structures on land for the purpose of that use.
- 21.8 These relatively restrictive rules had only been in effect since June 2002, having replaced much more extensive rights, and were intended to address public concern about the rollout

of mobile phone networks. Whilst they achieved this aim, they also had a knock-on effect on minor telecommunications development, such as the installation of small equipment cabinets used extensively by operators such as BT and often sited on highway land. The most recent amendment was intended to resolve this problem by re-introducing limited permitted development rights relating to routine maintenance works. For example, BT undertakes in the region of 25,000 maintenance works involving mending and laying of cables each year. Under the 2002 rules, all these works required planning permission, whereas under the March 2003 amendment the majority now benefit from permitted development rights. These changes should significantly reduce the Planning Service's planning application workload.

Comparison with other legislation

21.9 The key differences between current permitted development rights for Code System Operators in the Northern Ireland GDO and the English, Scottish, and Republic of Ireland systems are:

- In Northern Ireland, Scotland and England permitted development rights apply only to Code System Operators. In the Republic of Ireland Part 31 rights apply to the carrying out of works by a statutory undertaker authorised to provide a telecommunications service;
- In England, Code System Operators still benefit from extensive permitted development rights including the erection or alteration of ground based masts;
- Under the English system many aspects of permitted development are subject to the requirement to seek the prior approval of the local planning authority, as was the case in Northern Ireland prior to June 2002. There is no prior approval process in the Republic of Ireland or Scotland;
- In England, operators are able to undertake many works under the Licence Notification regime without the need for prior approval or planning permission;
- In the Republic of Ireland, operators have a wide range of permitted development rights under Class 31 but these do not permit the erection of new ground based masts; they do however allow the replacement of existing masts subject to a range of stringent criteria;

- In Scotland, operators are able to undertake a limited range of work under Part 20 permitted development rights. Like the Republic of Ireland these rights do not extend to the erection of a new ground based mast;
- In the Republic of Ireland, conditions require that development shall not result in the field strength of the non-ionising radiation emissions from the radio installations on the site exceeding the limits specified by the Director of Telecommunications Regulations;
- In Scotland all development involving the construction of one or more antennas is required to be accompanied by a declaration that that installation is designed to be in full compliance with the requirements of the International Commission on Non Ionising Radiation Protection (ICNIRP);
- In Scotland, there is no prior approval process but in cases involving the construction of one or more antennas or of equipment housing, there is a requirement for operators to give written notice to the planning authority of its intention to carry out such development no fewer than twenty eight days before the development is due to commence;
- The conditions used in the Republic of Ireland are intended to ensure that works undertaken with the benefit of permitted development rights have a minimal visual impact. For example where an antenna is attached to the façade of a building the condition requires that the antenna be coloured to match and blend in with the colour of the façade. This provides an extra level of control not present in the English system.

21.10 Overall, the permitted development rights for Code System Operators in Northern Ireland are considerably more restrictive than in England, Scotland or the Republic of Ireland.

Issues

21.11 The key point arising from the consultation exercise was that the prior approval process, which had been previously operated in relation to development by Telecommunication Code System Operators, was universally disliked except by the operators themselves. The complete removal of permitted development rights in 2001 was seen as a major victory for objectors to mobile phone masts who strongly felt that all proposals should be subject to full planning applications.

21.12 In terms of workload for the Planning Service, the removal of the previous, more extensive permitted development rights did not result in a dramatic increase in planning applications. Previously, staff had spent a considerable time dealing with queries seeking advice on

whether equipment was *de minimis* and whether or not prior approval or a planning application was required. The current view was that at least now everyone knows that mobile phone equipment needs full planning permission and the Planning Service no longer receives this type of query and can concentrate on determining applications.

Additional antennas on an existing ground based mast

21.13 Discussions with the Planning Service indicated that there may be scope to introduce permitted development rights for the erection of additional equipment onto an existing mast, provided that this did not result in an increase in the height of the structure. This approach was also supported by Orange and Hutchison 3G. Whilst under Part 24 in England there is no limit on the number of antennas which can be installed on an existing ground based mast as permitted development, the system in the Republic of Ireland limits the total number of antennas to 12, of which not more than 8 can be dish-type. In addition, the Republic of Ireland system restricts the dimensions of the permitted antennas. Allowing additional antennas on existing masts could help encourage site sharing in accordance with policy aims. It could also significantly reduce workload for the Planning Service.

Roof Top Antennas

21.14 There was no support within the Planning Service for introducing permitted development rights to allow for the installation of masts or free-standing antennas on rooftops because of the visual impact. However, similarly to ground based masts, it was suggested that there was scope to allow limited permitted development rights for the installation of antennas on to existing masts on buildings, provided that the buildings were above a certain height.

21.15 Reference was made to the wording of the permitted development rights in the Republic of Ireland which include conditions requiring antennas to be painted to match the façade on which they are mounted. It was considered that conditions of this nature were an excellent way of ensuring that permitted development rights did not have an adverse impact on amenity. In the case of flat roofs, the Republic of Ireland rights allow the use of a supporting fixture provided that it does not exceed the height of any existing parapet or railing on the

roof by more than two metres. This was considered a better system than in England, where a supporting structure is permitted provided that it does not exceed the height of the building at the point of installation by more than 4 metres.

21.16 There was, however, support from the mobile phone operators for the re-introduction of permitted development rights for roof top equipment.

Designated Areas

21.17 The view of the Planning Service was that permitted development rights were for telecommunications code system operators should not be extended within designated areas.

Impact on Broadband Rollout

21.18 The key concern expressed by consultees at the Department of Enterprise, Trade and Investment (DETI) was the impact of the lack of permitted development rights on the rollout of a modern broadband service in rural areas. Whilst broadband can be provided by cable within the urban area, it is too expensive for operators to take cable to some rural areas. It was felt that the need to obtain planning permission was putting operators off developing wireless systems.

21.19 The main concern related to the need for domestic occupiers to apply for planning permission for their dishes, and it was considered that domestic permitted development rights should be extended to address this. However, this issue is dealt with in the Planning Service paper on 'Satellite Dishes and Other Antennas: Possible Changes in Planning Permitted Development Rights'. In terms of the operators themselves, the consultees agreed that their masts should remain outside of the permitted development system since they affect a wider range of people than the small dishes.

Overall, the DETI consultees felt that any amendments to permitted development rights should concentrate on Local Wireless Area Networks such as Mesh rather than re-introducing permitted development rights for mobile phone operators.

Scope for Change

- 21.20 The main concerns expressed by consultees on this Part related to the need to extend permitted development rights for domestic dwellings to assist in the development of a modern communications system throughout Northern Ireland. This is the subject of the separate paper by the Planning Service referred to at paragraph 21.19.
- 21.21 Under the current restricted regime of rights, the mobile phone companies cannot generally exercise permitted development rights under Part 17, Class A. This would appear to be at odds with the Northern Ireland Regional Development Strategy aim *“to promote the development of an up to date, highly competitive telecoms infrastructure in terms of capacity, technology, access and costs”*. At the same time, it is necessary to take account of the strong public concerns on this issue, that such development should be subject to full planning control. For these reasons, although the scope for relaxation has been considered, no recommendations are made to move back towards the earlier, less restrictive form of Part 17 rights.
- 21.22 In terms of permitted development rights for operators, the Planning Service and DETI consultees considered that the rights currently afforded are broadly sufficient. However, it was acknowledged that this regime may not encourage operators to upgrade the telecommunications infrastructure in Northern Ireland in future and this may have implications for economic competitiveness and attraction of investment.
- 21.23 To steer an acceptable way forward in terms of competing policy aims, some compromise may be possible that makes only limited changes to the current situation. On this basis, consideration could be given to introducing limited permitted development rights to allow operators to add additional equipment on to existing masts (both ground based and roof mounted) without the need for planning permission. If considered necessary, a limit on the number of antennas permitted could be set in a similar manner to the Republic of Ireland. This would help reduce the workload for the Planning Service, and could reduce the number of applications made for new masts but would not have an adverse impact on visual amenity,

and should not be seen by district councils and interested parties as giving too much power back to the operators.

22.0 PART 18: OTHER TELECOMMUNICATIONS DEVELOPMENT

22.1 This part is the subject of the paper on ‘Satellite Dishes and Other Antennas – Possible Changes to Planning Permitted Development Rights’ published by the Planning Service to accompany this report and the related consultation paper.

23.0 PART 19: DEVELOPMENT AT AMUSEMENT PARKS.

- 23.1 This Part permits development on land used as an amusement park for the erection or extension of booths or stalls, and installation of plant or machinery in connection with the entertainment of the public there. Height limitations of 5 metres generally apply to booths and stalls and extensions to existing buildings/structures and 15 metres to plant or machinery. No additional restrictions apply in designated areas although no development is permitted within 3 km of an aerodrome.
- 23.2 These rights are broadly similar to the corresponding Parts of the English and Scottish GPDOs although slightly more restrictive in terms of height and proximity to an aerodrome, since these other systems allow for buildings up to 25 metres high. There are no corresponding exempted development rights for amusement parks in the Republic of Ireland.
- 23.3 Amusement parks cover seaside piers as well as other enclosed areas, including permanent amusements for the public. In Northern Ireland, very few such facilities were identified, the main example being at Portrush. In other parts of the UK, such rights are generally accepted as applying to theme parks although this term is not used in the definition provided, and appeal cases have held that parks mainly exhibiting animals are excluded.
- 23.4 The nature of amusement parks and the fast changing, competitive leisure market in which they operate means that the structures and plant will frequently be replaced or altered to update facilities and maintain the attractiveness of the park; this can take place each season. The purpose of giving permitted development rights to amusement parks would therefore appear to be to reduce the number of minor planning applications within what would typically be a large, enclosed commercial area containing existing large structures. In these circumstances new development of no greater height than that existing could not be seen from the outside, and external impacts should therefore be minimal.

Issues

- 23.5 No issues or problems were identified through the consultation process as arising from these rights by Planning Service officers or other organisations. No cases were identified of Article 4 Directions being applied to Part 19 permitted development rights.
- 23.6 Research relating to other parts of the UK also identified very few issues with these rights. These mainly related to the interpretation of certain terms such as “*enclosed land*” and “*stalls/booths*”, the lack of which had led to disputes with operators seeking to include a take-away food stall as permitted development and to define additional land as part of the park by placing old railway sleepers around it to enclose it. There also appear to have been a number of disputes as to whether permanent buildings are allowed by this Part.
- 23.7 Changes were sought by a few amusement park operators in England to confirm that “*booths or stalls*” include permanent buildings, and that stalls can be occupied by ancillary retail or catering facilities within the park, on the basis that food and souvenirs are seen as an essential part of the amusement park experience. A suggestion was made to replace the term “*booths & stalls*” with “*buildings or structures*” within specified height and floorspace limits. Other changes sought by operators in England which may have some relevance in Northern Ireland included the need for clearer interpretation of the terms:
- “*plant and machinery*” to confirm that this includes not only rides but also stations and platforms for rides, their installation, necessary ground works and any structure which covers them and waiting users;
 - “*enclosed area*” – ideally to mean the whole of the area occupied by the amusement park.

Scope for Change

- 23.8 These permitted development rights could be argued as broadly supporting policy aims for tourism and local economies. While there is some potential for conflict with aims to protect the built heritage, this is limited by the rights being restricted to enclosed areas and by the height limitations that apply. The desirable outcome would be for commercial leisure operations to be able to carry out regular upgrading of facilities without harming local

amenity or the environment and, based on the consultation responses, this part of the GDO is not giving rise to major concerns or material planning issues.

23.9 These rights also appear to perform a useful function by reducing the need to submit repetitive and largely uncontentious planning applications. On balance, therefore, Part 19 rights do not appear to be giving rise to any significant conflicts with Government policy aims. There is therefore no clear reason for major changes to this Part.

23.10 Based on the absence of identified problems, no case was made for imposing additional restrictions for Part 19 development in sensitive landscape or conservation areas.

23.11 Although not raised as a problem in Northern Ireland, in the interests of greater certainty and ease of use of the GDO, it may be worth considering scope to improve interpretation of this Part by providing clearer definitions and guidance on the following matters:

- *amusement park*: To avoid possible disputes and allow for future forms of development, the current interpretation could be amended to clarify that it applies to theme parks satisfying the same criteria, but not to wildlife parks or to zoos or parks where the primary function is to exhibit animals;
- “*booths or stalls*” is interpreted in Part 19 as including “*buildings or structures similar to booths or stalls*” although there is no specific definition of these terms and no size limitations are given. This definition appears to confirm that a modest permanent building is covered by Part 19 rights but the definition or interpretation should be amended to make this explicit, with a more specific limitation on the floorspace of buildings permitted. This term can also be interpreted as excluding small buildings to be used for selling hot take-away food when such a use would be ancillary to, but not directly used in connection with, the entertainment of the public. There is similar scope for dispute on whether small retail uses within stalls are covered by Part 19. Such uses appear to be a normal part of amusement park activity and should not give rise to material issues, if small scale and purely ancillary to the activity of the park. However, conflicts with policy aims could arise for out-of-centre catering or retail uses that are accessible to the general public, rather than only visitors to the park. On balance, it is considered that the interpretation could allow for such uses in booths/stalls, subject to them being purely ancillary, not available to the general public and within suitable size limitations;

- *“plant”* is defined under Article 1 as *“a structure or erection in the nature of plant”* while *“machinery”* is defined similarly. Both terms appear to be commonly interpreted as including rides and there is no obvious reason why they should not also include platforms for rides or covers for users etc. This could be clarified in the interpretation of this Part.

23.12 Other than the clarifications identified above, no recommendations for change are proposed for Part 19.

24.0 PART 20: DEVELOPMENT REQUIRED UNDER THE ROADS (NORTHERN IRELAND) ORDER 1980

- 24.1 These permitted development rights relate to minor works which the Roads Service can require landowners to carry out to ensure road safety.
- 24.2 Although the description of this category of permitted development refers to the Roads (Northern Ireland) Order 1980, this Order has been repealed and its provisions re-enacted in the Roads (Northern Ireland) Order 1993. Reference to both the 1993 and 1980 Orders is therefore made within this Chapter.
- 24.3 Under Article 49, Schedule 4 of the 1993 Order (Article 30, Schedule 2 of the 1980 Order), the Roads Service can require buildings, structures, walls, fences, hoardings, trees, hedges, structures and means of vehicular access to be either removed or altered, in the interests of road safety. Part 20 of the GDO clarifies that any such development does not require a planning application, and gives it deemed permission.
- 24.4 Similarly, under Article 86(1) of the 1993 Order (Article 44(1) of the 1980 Order), the Roads Service can require the construction of a vehicle crossing, where a vehicle is habitually taken across a kerbed footway or a verge in the road. Part 20 of the GDO clarifies that works to comply with any such requirement are permitted development.
- 24.5 There are no restrictions on these rights in designated areas. No similar permitted/exempted development rights to these exist in England, Scotland or the Republic of Ireland. England and Scotland have a wider category of permitted development for works, carried out by local highway authorities, adjoining the highway but in Northern Ireland, such works are carried out by the Roads Service and are not subject to planning control.

Issues

- 24.6 No issues were raised by either the Planning Service, the Roads Service or other organisations consulted in connection with Part 20 rights, either for tightening or relaxation of them. It would appear that the Roads Service uses the above powers on an infrequent

basis and where it has done so, it has been able to confirm to the landowner/occupier who must comply with the notice, that there is no need to go through the planning application process for the works required.

24.7 Although Part 20 appears to be relatively little used, there is no case for removing this Part. This reflects that the works required by one of the above Notices are for road safety, and it would seem inappropriate to bring them within planning control, as this could delay urgently required works. In addition, the majority of any such required works would be unlikely to raise any material planning issues. No requirement to extend these rights was indicated by the Roads Service at present.

24.8 Despite the lack of issues with current Part 20 rights, in the future, the Roads Service may require its own Part within the GDO to be able to carry out development works if Crown Immunity is removed. If this were the case, it is relevant to note that one of the environmental organisations consulted queried the scale of road improvements and maintenance that the Roads Service is able to carry out without applying for planning permission and an issue was raised by an architectural group that the Roads Service appears to take no account of the character of conservation areas in designing traffic management and road schemes, leading to adverse impact on townscape.

Scope for Change

24.9 Based on the consultation process and the lack of identified problems, there appears to be no case at the present time for changing existing Part 20 rights, other than updating the text to refer to the 1993 Roads Order.

24.10 The only recommendation relating specifically to Part 20 is to replace references to the “Roads (Northern Ireland) Order 1980” with the “Roads (Northern Ireland) Order 1993”; ⁽²⁾ those to “Article 30 and Schedule 2” with “Article 49 and Schedule 4”, and those to “Article 44(1)” with “Article 86(1)”.

25.0 PART 21: CLOSED CIRCUIT TELEVISION CAMERAS

- 25.1 Added in 1995, this Part permits the installation, alteration or replacement on a building of closed circuit television cameras (CCTV) used for security purposes. These rights do not apply if the building is listed, in a conservation area or in a site of archaeological interest, if the cameras exceed specified size (75 cm by 25 cm by 25 cm), height (not below 2.5 metres above ground) and spacing limitations, or if there are more than 16 cameras on the building or more than 4 on any side.
- 25.2 These rights are not specific to any type of development or user, and therefore apply to provision of CCTV cameras on shops, offices, flats, houses and other buildings. The only conditions relate to minimising the effect on the external appearance of the building and removal *“as soon as reasonably practicable”* after the cameras are no longer required for security purposes. Other than those indicated above, no special restrictions apply in designated areas.
- 25.3 This Part is similar to the corresponding Parts of the English and Scottish GPDOs, except that the English system has no restrictions within conservation areas and on land of archaeological interest, but does restrict CCTV on scheduled ancient monuments, while the Scottish system has restrictions only within conservation areas and national scenic areas. The Scottish GPDO also contains a restriction that, *“the field of vision of the camera shall not extend beyond the boundaries of the land upon which the building or structure is erected or of any area which adjoins that land and to which the public have access”*. There are no specific exempted development rights for CCTV generally in the Republic of Ireland.
- 25.4 Obvious purposes of CCTV installations have been for security and for crime reduction. Part 21 rights facilitate such aims, without the need for planning applications for a large number of minor developments.

Issues

- 25.5 No concerns or problems were raised during the consultation process with regard to Part 21 rights by Planning Service officers or other organisations consulted, including firms providing CCTV security services. One respondent, however, noted the absence of any provision for pole mounted cameras, which could be useful within university sites for example. No cases were identified of Article 4 Directions being used to restrict these rights.
- 25.6 Although not raised in Northern Ireland, issues identified from previous experience elsewhere in the UK included:
- the limitation to only four cameras on any one side of a building was considered as too few for large, high security buildings;
 - the maximum spacing requirement of 10 metres between cameras was seen as too small for some situations, especially near building entrances and for adjacent walls and courtyards.

Scope for Change

- 25.7 CCTV facilities can be seen as supporting the Government's 1999 Crime Reduction Strategy and any potential for conflict with design and protection of heritage aims is limited by the tight size and other limitations which apply. These cameras involve large numbers of generally minor and uncontentious development works, which do not appear to give rise to material planning issues. There is therefore no case for major changes to this Part, although some issues identified from previous research have been considered.
- 25.8 Looking to the future, there is some risk of a proliferation of CCTV cameras and some account should be taken of technological changes which could help reduce potential impacts. There is an argument therefore for regular review of this part of the GDO to reflect future advances.
- 25.9 The current permitted dimensions for cameras, which may have reflected technology available in the past, are quite large in terms of current technology available. This means

that significantly smaller camera dimensions could be applied to minimise visual impacts. While a reduced size of cameras may be considered to exert less of a crime deterrent effect, the benefits on visual impact justify consideration being given to reduced size limits. It is also understood that very small cameras are now possible which can fit inside lamp standards; although these are unlikely to be development. While the absence of identified problems with CCTV at present makes it difficult to recommend change in this regard, to move towards a more acceptable outcome, consideration should be given to reducing the current size limitations of cameras to at least half the current limit.

25.10 The overlooking of neighbours by CCTV could become a concern in residential areas and there is general acknowledgement that uncontrolled surveillance is unacceptable. The condition restricting field of vision found in the Scottish GPDO provides one way of dealing with this issue. However, it is understood that CCTV is subject to control under the Data Protection Act 1998 and a CCTV Code of Practice which sets out how CCTV schemes should operate to comply with this Act with regard to privacy. On the basis that this provision applies in Northern Ireland, there is no need to consider limitations in the GDO to control privacy issues relating to CCTV. If not, adding a condition along the lines of the Scottish approach could be considered.

25.11 The restriction on the number of cameras per building also reflects the aim of protecting visual appearance. However, many high security buildings are of a considerable size and some users elsewhere have argued that more than four cameras are required on the same side of a building. While an alternative density measure (cameras per area of external walls) may offer an alternative, this appears more complex and the current restrictions do not appear to cause problems in Northern Ireland. In addition, a requirement to submit a planning application for camera numbers beyond this GDO limit does not appear unreasonable to give greater control in the interests of streetscape and design aims.

25.12 In certain situations, especially at building entrances or where building walls meet, the requirement for at least 10 metres between cameras may be a problem for achieving adequate surveillance. While consideration could be given to relaxing this limit beside

building entrances and on adjacent walls which overlook each other, there is no indication that large numbers of planning applications result from this constraint and no change is proposed.

25.13 The current rights appear to allow cameras on buildings but not on structures, such as poles, which are not interpreted as being “buildings” in some appeal decisions, although it is not that clear since the GDO defines buildings as including certain structures and erections. There appear to be some benefits in allowing CCTV cameras to be applied to existing poles or structures, although some risk of additional street clutter if cameras appear more visible in such locations. Within large sites, such as hospitals, universities or industrial premises, pole mounted CCTV should be acceptable if mounted on existing poles beyond a specified distance e.g. 20 m from a site boundary, and this change is proposed. If Part 21 is not intended to permit CCTV cameras on poles generally, it would be useful to clarify this in text within this Part.

25.14 Overall, the only recommendation for this Part is therefore to consider reducing the size limits of CCTV cameras.

26.0 ADDITIONAL CATEGORIES OF DEVELOPMENT

- 26.1 This Chapter considers the scope to extend permitted development rights to various other types of development not currently provided for in the Northern Ireland GDO. Widening of permitted development is an important aim of the study, where such changes did not have unacceptable consequences. There may also be some benefits in achieving greater consistency with the range of rights available elsewhere in the UK, to encourage a level playing field for attracting investment.
- 26.2 Very few areas for widening of current permitted development categories were proposed during the consultation process. It is also noted that, in the 1998 review of the Scottish GPDO, none of the key stakeholders saw a case for extending permitted development rights and it was considered that permitted development rights had probably been taken as far as they could. However, the Scottish GPDO already contains more categories of permitted development than the Northern Ireland Order.
- 26.3 In these circumstances, consideration was given to whether any of the categories of permitted development that currently apply in planning systems elsewhere in the UK could usefully be added to those available in Northern Ireland, taking account of local circumstances. Other categories of development were also considered, based on the common types of development and uses which do not currently enjoy any permitted development rights, rather than any indication of need for such changes.

Schools, Colleges, Universities and Hospitals

- 26.4 The English GPDO provides permitted development rights for buildings for use as part of, or incidental to, a school, college, university or hospital. These are subject to limitations on scale of development – a 10% floorspace increase and a volume increase of 250 m³ over the original – and no building being erected within 20 metres of the site boundary, or preventing the use of existing playing field land. The only condition imposed is that materials should be *“of a similar appearance”* to those used for the original building and no special

restrictions apply in designated areas. The introduction of such rights for colleges and universities reflected the anticipated rapid expansion of the sector at that time, with a need for frequent minor developments e.g. research facilities within a campus.

- 26.5 Providing similar rights in Northern Ireland would broadly support Government policy aims for health and education, while any potential conflicts with aims to protect the countryside and the built environment and to improve design quality could be minimised by the tight size and distance limitations that apply. The case for including each of these categories of development is considered separately.

Schools

- 26.6 Discussions with school boards in Northern Ireland gave mixed responses on the need for permitted development rights. The Belfast Education Board alone makes some 30–50 planning applications annually, many of which are for temporary classrooms, small extensions, minor works, ramps etc. While allowing buildings of up to 250 m³ was seen as useful in principle, particularly in more rural areas, one board raised concerns that in urban areas such rights would avoid the transparency and consultation involved with a planning application, and could lead to objections at a later stage when amending a scheme would involve greater costs and delays. A distance limit of even 10 metres from the site boundary was also seen as likely to make such rights inoperative in urban schools.
- 26.7 Providing rights for small scale buildings at schools would support education aims and have the potential to reduce numbers of planning applications significantly. While education is a sensitive issue in Northern Ireland, provision of such rights would not preclude the option of submitting a planning application in circumstances where it was considered that transparency and consultation were essential, and may provide benefits in less restricted locations. On this basis, the creation of a new category of permitted development for schools is proposed, with restrictions similar to those applying in England. This would allow a cumulative increase of 250m³ by volume, but be limited by a 20 m distance from the

curtilage boundary and there being no loss of playing field area. To protect heritage aims, these rights would not apply in conservation areas.

Universities & Colleges

- 26.8 There are relatively few universities in Northern Ireland, and Queens University in Belfast, for example, is greatly constrained by much of its campus lying within a conservation area and many buildings being listed. Proximity of many buildings to street frontages would also mean that a 20 metres distance limit to site boundaries would restrict the scope for permitted development. However, other less constrained university and college sites may be able to utilise such rights. Many university developments tend to be large scale and would make limited use of permitted development rights for small buildings, although they could be useful for some small research laboratories, which are often needed urgently and planning permission is needed before a grant is given.
- 26.9 A similar picture emerged from previous research in England, where there appeared to be only limited use of these existing rights by universities. Some were unaware of the rights available, while for others it was normal practice to submit planning applications for all works, particularly since most such development would exceed the size limitations. Other users indicated that the small building limits had long ago been used up and a body representing universities called for an increased cumulative limit of 1,000 m³ for these rights to be useful. Several cases were identified where universities faced delays in obtaining planning permission for uncontentious but urgently needed research office or laboratory accommodation of little more than 250m³ in the middle of large campuses. Several bodies also saw these rights as potentially useful for temporary accommodation, which would be erected and removed over time to meet changing needs, and for cycle sheds.
- 26.10 Over time, these rights will effectively disappear as the cumulative limit is exhausted. While they appear unlikely to reduce numbers of planning applications significantly, they would support education aims, and it would be inconsistent for these uses not to have such rights if hospitals and schools are given them. Although the benefits may be quite limited, a size

limit of 1,000 m³ could provide some benefits to users. Given the 20 metres distance from curtilage boundary controls that should also apply, no significant impacts are anticipated, particularly if these rights do not apply in conservation areas. A new category for universities and colleges is therefore proposed, with these restrictions, which may also include hospitals.

Hospitals

- 26.11 Consultation responses from the Health Estates Agency (HEA), which advises on development and estate issues at hospitals, health centres and residential care homes in Northern Ireland, indicated that up to 500 planning applications are made per annum, most of which are for minor developments, such as fire escapes, storage buildings, road realignments, temporary buildings and minor built extensions. The HEA also lodges a number of major applications in a year for larger developments, including major extensions and new hospitals, and it is appropriate to retain planning control over these types of large scale developments.
- 26.12 It is understood that the majority of the applications for minor works raise no material planning issues and are granted planning permission, but the HEA reported that there can be considerable delays, which can delay implementation of often urgently needed projects. The HEA therefore sought extension of permitted development rights to certain types of hospital/health care development, in order to support Government policy on delivering cost efficient and modern health care and also to reduce the burden on the Planning Service. It noted that any development it proposes is subject to control by the individual Hospital/Health Trust, Buildings and Workplace Regulations and sometimes listed building control (about 50 hospitals in Northern Ireland are listed). In addition, as most hospital sites are self-contained, most minor developments, if placed away from the site boundary, would be unlikely to raise material planning issues. Health centres and residential care homes are more likely to be surrounded by other uses and developments could be more likely to impact on visual and residential amenity

26.13 From research elsewhere into how hospitals are able to use permitted development rights, it would appear that, in England, allowing buildings of up to 250 m³ at a distance of more than 20 m from the site boundary is not of much practical use, as a small portacabin can account for 250 cubic metres. The Northern Ireland HEA suggested that a percentage increase on the floorspace of hospitals on a fixed date be introduced, as the HEA maintains a database of floorspace levels within hospitals. In order to balance the need to provide medical facilities on a cost effective basis with the need to protect residential and visual amenity and retain control over developments which could lead to significant traffic generation, it is suggested that hospital buildings be allowed to increase in size up to 10%, subject to a maximum floorspace increase of 1,000 sq m, but restrict this to single storey development, not within 20m of the site boundary or within conservation areas.

26.14 It is therefore recommended that permitted development rights be extended to hospitals, subject to a number of conditions and size limitations as noted above. This may be within an additional Part of the GDO including universities and colleges also.

Development by the Historic Buildings Council

26.15 The English GPDO provides permitted development rights for English Heritage to maintain, repair or restore certain buildings or monuments in its care, to erect screens, fences or covers to protect or safeguard a building or monument, or to carry out works to stabilise ground conditions of buildings. Such works only apply to buildings that English Heritage hold as guardians, have to be required to secure the preservation of the building or monument, and must not involve an extension. Any screens, fences etc. to protect buildings erected under these rights must be removed after 6 months or an agreed longer period. The purpose of these rights appears to be to enable English Heritage to perform its role of maintaining certain buildings, which can be listed buildings or ancient monuments requiring urgent repairs, without being delayed by the need for a planning application.

26.16 However, investigation of these rights suggests that they are little used and many of the works they cover would probably not require planning permission or would be permitted

under other parts of the GDO. On this basis, no strong case was seen for extending such rights to the equivalent body in Northern Ireland, which did not indicate a need for them.

Driver Information Systems

26.17 Driver information systems allow information on traffic conditions on the main road network to be transmitted into receivers within cars. The most visible equipment in public areas comprises tall, blue coloured poles with camera-like structures on top of them along the sides of main highways. The English GPDO allows for the installation, alteration or replacement of apparatus by, or on behalf of, a driver information system operator, subject to area and a 12 m height limitation and the number of microwave antennas on a building or structure. Any apparatus has to be sited to minimise its effect and be removed when no longer needed but no specific restrictions apply in designated sensitive areas such as National Parks.

26.18 In England, these structures are mainly placed along more important routes and it is understood that much of the infrastructure required by the main operator of these systems is already in place there, although it is possible that increased coverage of the country or the emergence of another operator could require additional installations. No similar rights apply in Scotland, possibly reflecting less congested traffic conditions.

26.19 Responses through the consultation process suggested that current traffic conditions in Northern Ireland also may not justify the need for such rights. However, looking to the future, if such coverage was proposed, such rights would avoid the need for many hundreds of repetitive planning applications. Providing such rights would broadly support aims to avoid traffic congestion but there is some potential for adverse impacts on open countryside and sensitive areas.

26.20 The absence of any identified need for such rights at present makes it difficult to recommend their provision but this is an area where consideration could be given to rights possibly needed in the future. Based on experience in England, any such rights should be subject to controls in sensitive areas such as AONBs, National Parks and conservation areas,

either by removing rights or through some kind of prior approval procedure, as applies under Part 11. Since it is unclear whether such rights would be needed in Northern Ireland in the foreseeable future, this category is suggested for further consideration rather than a recommendation for change.

Use by Members of Certain Recreational Organisations

- 26.21 The English GPDO permits the use of land and the erection of tents by members of certain recreational organisations for the purposes of recreation or instruction, unless the land in question is a building or within the curtilage of a dwellinghouse. No specific restrictions apply in designated areas and no similar rights apply in Scotland.
- 26.22 These rights were intended to allow well-known organisations with camping among their activities to use land and erect/place tents and caravans on it for these purposes without time limits, with the safeguard being that these organisations lay down strict codes of rules for their members. The 28 day temporary use rights under Part 4 were considered inadequate, since some camps could last all summer. The organisations to which this right applies are only those holding a certificate of exemption under Section 269 of the Public Health Act 1936. In England, they currently apply to the Boys Brigade, the Scout Association, the Girl Guides Association, the Salvation Army, the Church Lads and the Church Girls Brigade, the National Council of YMCA's; the Army Cadet Force Association, the Caravan Club, the Camping & Caravanning Club and the London Union of Youth Clubs.
- 26.23 Since no permitted development rights of this nature apply in Northern Ireland, it is assumed that either camping by recreational groups relies on Part 4 and Part 5 rights and that any longer camping periods are ignored by planning control, or that planning permission is sought by landowners or the groups themselves. From experience in England, voluntary recreational groups find it onerous to make planning applications for this activity or to ask landowners to do so.
- 26.24 There is no obvious problem with the absence of such permitted development rights in Northern Ireland. The only reason for providing them would appear to be to give some

certainty and immunity from enforcement for recreational groups and landowners. This may have some indirect benefits for policy aims on social development and community cohesion and no obvious conflicts with aims to protect countryside. On this basis, there is not a strong case for recommending a new Part for this category but it is an area which could be given consideration. If it was decided to extend rights in this way, an appropriate mechanism would have to be found to specify which groups are eligible since it is not clear that exemption certificates from Section 269 of the Public Health Act 1936 apply in Northern Ireland. Simply specifying a list of eligible groups in the GDO itself would be an alternative but may result in a need for regular review.

Toll Road Facilities

- 26.25 Both the English and Scottish GPDOs permit the setting up of toll collection facilities and the provision of ancillary hard surfaces for parking use. Development is permitted subject to certain distance, height and floorspace requirements and, within sensitive areas, land is subject to a prior approval procedure relating to siting, design and external appearance. A building height limit of 7.5 metres applies (or 10 metres for a rooftop structure).
- 26.26 These rights apply to toll roads and bridges and may have been introduced in Great Britain in anticipation of increased construction of such infrastructure, although there are currently only a limited number of existing toll crossings and small, private toll roads. From recent research, there also appears to be very limited use of the rights in England and many facilities eligible to use them do not do so, or are given permission for such works through other legislation.
- 26.27 At the present time, it is difficult to see any need for permitted development rights for this category of development in Northern Ireland, as there are understood to be very few, if any, toll roads or crossings. Consideration could be given to providing such rights only if it is anticipated that toll roads will be introduced in Northern Ireland to a significant extent and it is Government policy to promote these facilities.

Development Related to Mining Operations

26.28 Both the English and Scottish GPDOs provide a number of categories of permitted development for mining-related operations not found in Northern Ireland. These include:

- a) development ancillary to mining operations on land used as a mine, including the erection, extension, rearrangement, replacement, repair or other alterations of any plant or machinery, buildings, private ways, railways or sidings or sewers, pipes, cables or other similar apparatus. This allows erection of mineral processing plants on a mine site that processes material primarily derived from that mine;
- b) the creation of spoil heaps or infilling of excavations at mining sites using materials from the mining operation there;
- c) removal of material from deposits held at mines or in other locations, for purposes such as allowing sale or processing of these materials or further processing. Such rights are used, for example, by mining operators for reprocessing old waste tips to recover materials which now have value;
- d) development underground, by a licensee of the Coal Authority or British Coal Corporation, in a mine in a “*designated seam area*” and development at an authorised site where required for the purposes of the mine in connection with coal-mining operations.

26.29 It is not clear why permitted development rights in Northern Ireland do not include all those in the English GPDO but this may reflect the Northern Ireland situation, with no large mines or significant coal mining, and many small private mining operations with quarries closer to housing and with greater reason for more control. Spoil tips in Northern Ireland also tend to be small, since most quarry waste can be sold and planning permissions generally have conditions limiting the height of spoil tips. However, these differences in permitted development rights reportedly cause some problems for English-based mineral operators in Northern Ireland.

26.30 Despite this, the consultation process did not indicate any strong demand from mineral operators to provide additional permitted development for mining operations. Indeed, there were concerns on introducing similar rights to Northern Ireland, especially as the mineral industry is geared up to making planning applications and there was a view that any additional rights, particularly to allow mineral processing plant, may be abused by less

reputable operators. Planning Service officers also did not have strong views on the need to extend Northern Ireland permitted development rights for mining to reflect the English system, but had some concerns that wider rights could be abused.

26.31 While there would be some potential benefits in more extensive rights, which could broadly support policy aims on minerals and energy, there is an absence of any clear need for change, concerns on possible abuses and no indication that this would produce a significant reduction in uncontentious planning applications. On this basis, no change is recommended in this respect.

Retail Development

26.32 Extensions or other alterations to retail buildings have no permitted development rights in any part of the UK. In 1993, aiming to reduce administrative burdens on small businesses, the Government carried out consultation on proposals to give limited permitted development rights for shops in England & Wales, subject to safeguards to protect the environment and amenity of those living, working and visiting the area.¹⁵ These involved the ability to:

- a) enlarge, alter or improve premises at the rear by up to 10% of the volume of the existing building, subject to a maximum of 100 m³ and provided the height of the resulting building does not exceed that of the existing building or 4 metres high and not within 1–2 metres of the boundary. Alterations were not to materially affect the external appearance viewed from the front;
- b) provide outbuildings at the rear, provided they are not over 4 metres high and not within 1 or 2 metres of the boundary or do not occupy more than 50% of the area surrounding the building.

26.33 None of these changes was subsequently introduced in England and no respondents in the current consultation process proposed similar changes in Northern Ireland. Such a change could expand existing out-of-centre retail development in conflict with policy aims for town centres, although the scale of development allowed is very small. There may also be concerns that rear extensions would restrict servicing, so worsening on street congestion. On balance, no change is proposed.

Offices

- 26.34 Extensions or other alterations to office buildings have no permitted development rights in any part of the UK. In 1993, aiming to reduce administrative burdens on small businesses, the Government carried out consultation on proposals to give limited permitted development rights for financial and professional offices in England & Wales. These involved the ability to enlarge, alter or improve premises at the rear by up to 10% of the volume of the existing building, subject to a maximum of 100 m³ and provided the height of the resulting building did not exceed that of the existing building or 4 metres high and not within 1–2 metres of the boundary. Alterations were not to materially affect the external appearance of the premises viewed from the front. However, no changes were subsequently introduced in this regard.
- 26.35 No proposals were made through the consultation process for extension of permitted development rights to office uses in Northern Ireland. While some flexibility may have modest benefits for businesses and economic competitiveness generally, extensions of offices appear more likely to give rise to material impacts, particularly since they can be located in residential areas. They are also typically high traffic generators and unrestricted extension could conflict with policy aims to direct such uses to town centres. No changes are proposed in this regard.

Flats

- 26.36 Although not raised during consultation, there are general arguments that it is inequitable that a building divided into flats does not enjoy permitted development rights for say an extension or roof alterations when an identical single dwellinghouse next door is not restricted in this way. Such rights could however indirectly support policy aims encouraging higher density residential development, which is likely to mean more flats. Arguments against extending rights to flats appear to be the greater potential for impact on other dwelling units in the building and greater likelihood of alterations to different units

¹⁵ Streamlining Planning, Dept of Environment, December 1993

producing a discordant external appearance to the building as a whole. Although consideration could be given to allowing garden sheds etc. for flats with gardens, this may lead to excessive coverage of gardens if every flat utilised its rights. On balance, no change is proposed in this regard.

Alterations to Buildings under Construction

- 26.37 Proposed changes were sought, through the consultation process, by housebuilders and other construction groups to permit minor alterations to the approved design of dwellinghouses that were still under construction and do not yet have the permitted development rights that would apply to a completed dwellinghouse. This was seen as important in meeting the needs of purchasers, who may require changes, from the approved plans, in the position of a door or window during construction but the absence of permitted development rights can mean a long wait for planning permission for often uncontentious works. It was contended that the Planning Service no longer deal with such cases quickly by means of a letter accepting them as a minor variation to the approved plans.
- 26.38 While it appears unreasonable that such minor variations should add to the workload of the Planning Service and delay the development sector in this way, it is difficult to see how this could easily be dealt with through amending the GDO, or indeed in a way that did not allow unrestricted changes that may cause amenity impacts on neighbouring properties. Introducing a specific new category "*Minor alterations to dwellinghouses under construction*", for example, with a condition requiring no material effect on the external appearance of the property or on the amenity of adjoining properties would go some way towards this, but appears likely to be subject to misinterpretation and to lead to disputes. An alternative approach might be to combine such rights with imposition of conditions within the original planning permission to prevent alteration to any element of the scheme that could lead to adverse impacts, but this appears difficult to operate in practice. A simplified procedure for minor variations to a permitted scheme, with an application form and modest fee, would appear a reasonable compromise if this could be dealt with speedily. This, or simply dealing with these changes by letter, would be the preferred options but both

imply a need for improved resources for the Planning Service. No recommendation is made on this issue.

Demolition of Buildings

- 26.39 The GDO contains no permitted development rights relating to the demolition of buildings. Indeed, other than for listed buildings and within conservation areas, there are understood to be no controls over demolition, which is not currently defined as development. Although the demolition of buildings is soon to be made development, it is understood that such works will remain outside planning control, except within designated Areas of Townscape Character.
- 26.40 This situation differs from England, where the GPDO grants permitted development rights for demolition of dwellings, and buildings adjoining them, but subject to prior notification as to the demolition method. However, in 2001 following the *Shimizu* Judgement relating to partial demolition within conservation areas, the Government proposed changes to control removal of certain parts of buildings within conservation areas in England (chimneys, porches and front garden walls) as well as demolition of sports facility buildings (unless planning permission is granted for the redevelopment of the site).
- 26.41 The consultation process identified some problems in Northern Ireland of locally important, but unlisted buildings, being demolished. Problems of partial demolition of townscape features in conservation areas do not however appear to be a widespread concern as yet, but have potential to occur in future. Demolition of buildings which could be converted to other uses can be regarded as conflicting with sustainability aims, as well as aims to protect built heritage.
- 26.42 If it was important for Northern Ireland to have greater consistency with the UK, there would be a case for introducing similar controls on demolition and then applying permitted development rights with suitable conditions attached. No clear evidence was found through the study of redevelopment pressures on sports grounds in Northern Ireland, but this would conflict with policy aims and if it is a significant issue, consideration could be given to

following the English approach to change. This would involve amending primary legislation to classify demolition of such buildings as development, and then making this permitted development in the GDO only if planning permission for redevelopment of the site had been granted. This change ought not to produce any significant change in planning application numbers but give greater control over retention of important recreation facilities.

26.43 Similarly, based on consultation responses, there is a case for controlling the demolition of certain features in conservation areas to prevent adverse impacts on their character, particularly if Article 4 directions are not going to be extensively used. Again the proposed changes to the English GPDO would provide a starting point by controlling the loss of chimneys, porches and front garden walls. This would also require an amendment to the definition of development in the Planning Order.

26.44 If greater control is needed over demolition of unlisted but important buildings outside conservation areas and Areas of Townscape Character, this would require some new way of designating these buildings and then making their demolition subject to planning control by changing secondary legislation. At present, there is no *“local listing”* provision within Northern Ireland that could be used for this purpose. The increased controls provided in Areas of Townscape Character are a step in the right direction, will protect some of the more important buildings and it may be possible to extend such areas to include important buildings. On the evidence available from this study, it is difficult to assess whether the legislative changes and creation of a new designation for buildings is justified by the number and importance of buildings to which it will apply, but if it is, then such radical changes could be considered.

Waste Management Facilities

26.45 There have been proposals that permitted development rights should be introduced for waste management operations in England, with a new Part: *Development for Landfill & Landraising Operations* being suggested. More flexibility to interchange between waste management activities and the B2 and B8 use classes was also sought, reflecting trends to

locate waste transfer facilities on industrial estates. This was argued as likely to improve planning efficiency.

26.46 While Government sustainability aims would support sustainable waste management and recycling, it is considered that provision of waste management sites are likely to raise significant planning or environmental issues and should generally be subject to planning control.

26.47 Separately, a number of mineral planning authorities in England suggested that minor infrastructure associated with waste management sites should be covered by permitted development rights, including equipment for monitoring boreholes and minor leachate, and landfill gas management equipment. Some landfill sites may have several hundred such items. These are sometimes regarded as *de minimis* and occasionally covered by the initial planning permission for the site, but not always and there is frequently a need to relocate or alter them. While most appear likely to give rise to few impacts, they can be up to 5 metres high and some kind of size restriction is needed. While few cases were found of separate planning permissions being sought for such infrastructure, to avoid doubt there is a case for applying permitted development rights. Such equipment would support waste management aims, and would involve works which are mainly minor in nature or replacing existing structures, which with suitable restrictions should be acceptable in the context of a waste management site. Since specific height limits would not work on sites of varied levels, a restriction along the lines of their having no material effect on the appearance of the site as a whole may be more appropriate. Since no case has been made for these facilities in Northern Ireland and they are probably currently considered to be *de minimis* and do not appear to cause problems, it is difficult to recommend change in this regard but provision for them could be considered further.

Occasional Use of Public Buildings

26.48 Although not raised during the consultation process, consideration was given to the scope to permit occasional use of various buildings e.g. schools, halls, clubs, art galleries, museums,

libraries, churches etc for social or recreation purposes. Such uses are often carried out outside of planning control or regarded as *de minimis* because of the small scale or temporary nature of the activity. Such activities are specified as exempted development in the Republic of Ireland. Making this use permitted development would avoid any uncertainty and possibly reduce the regulatory burden and costs of applications in some cases for often voluntary groups. The potential drawbacks of this change would be the loss of control over traffic generation and associated noise impacts, while the number of planning applications saved is likely to be very small. On balance, no change is proposed in this respect.

Site Investigation Works

26.49 Although not raised during the consultation process, some disputes occasionally arise in the UK generally with regard to various site investigation works, such as digging temporary trenches or bore-holes to investigate contamination or ground conditions generally. While such works are often regarded as *de minimis* by local authorities, in some cases planning applications are sought. To avoid such uncertainty for what are generally small scale and uncontentious engineering works, often essential to development of brownfield land, there is a case for making such works permitted development subject to conditions specifying a time period (e.g. 28 days), a size threshold and a requirement to restore land to its original condition. This could be in the form of a new Part of the GDO, or possibly a new Class within Part 4: *Temporary Buildings & Uses*. It is useful to note that “*exempted development*” in the Republic of Ireland includes a category: “*Any drilling or excavation for the purpose of surveying land or examining the depth and nature of the subsoil, other than the drilling or excavation for the purposes of minerals prospecting*”. This change is recommended.

Crown Immunity

26.50 At some future date, there is some possibility of removal of “*Crown Immunity*” from planning controls that is currently enjoyed by various Government departments and agencies. This would have significant implications for a range of developments and a number of bodies, such as The Ministry of Defence, The Police Service, The Roads Service, The Rivers Agency

and The Water Service. In such circumstances, the need to extend permitted development rights to various Government agencies would need to be considered. If such bodies were not to benefit from such rights, the Planning Service would have to process a huge number of minor planning applications for works, many of which would not raise any material planning issues. If the GDO is amended at some stage to include new Parts to replace the “*Crown Immunity*” system, the Planning Service should consider whether it may be appropriate at that stage to introduce added controls on works by these bodies in sensitive areas, such as conservation areas.

26.51 On the basis of the above analysis, the only recommended additional categories of permitted development rights are therefore:

- small buildings and extensions to schools, universities, hospitals and colleges by creating new Parts of the GDO for these categories;
- minor works required for waste management, such as venting wells;
- various site investigation works, such as digging temporary trenches or bore-holes to investigate contamination or ground conditions generally.

26.52 At the same time additional categories proposed which would impose more control on what is not currently development would be:

- making demolition of sports facility buildings permitted development but conditional on planning permission for redevelopment having been granted;
- removing the right to demolish chimneys, porches, walls, fences and other means of enclosure in conservation areas.

27.0 GENERAL CHANGES

27.1 Responding to the various issues identified earlier, this Chapter considers the need for general changes that relate to the GDO and its procedures as a whole, rather than to specific categories of permitted development. The key areas are examined below.

Improving Interpretation and User Friendliness

27.2 As complex drafting and some difficulties in interpretation were identified as drawbacks of the current GDO by some users, a key aim must be to provide a more clearly drafted document that is simpler to use and interpret.

Drafting & Layout

27.3 Although the document is not overly difficult for many regular users, the consultation process pointed to the need for some improvements to the GDO for lay users, including a need for simpler and clearer wording that is consistent with being legally robust. The GDO should be redrafted in a more positive and simpler style and an example of how one Part could be redrafted along these lines is provided in Chapter 5. Where conditions are provided, their wording should minimise the scope for subjective interpretation.

27.4 Consideration was also given to adopting a different layout, including a tabular format, but on balance, subject to better use of sub-headings, the current linear format was considered more flexible and comprehensible, particularly for use in any future electronic versions of the GDO.

27.5 A particular issue is the lack of any consolidated, up to date version of the GDO. While this was not raised specifically as a problem, it was clear from the consultation responses that some users were not aware of all amendments since 1993. Making available a composite, up to date version of the GDO text via the Planning Service website would be useful in this regard.

Definitions

- 27.6 It would be helpful to provide new or improved definitions or interpretation for all terms that give rise to problems, in order to reduce disputes on the meaning of terms and the need to seek definitions from other documents. These definitions should be fully set out, not require cross-reference to other documents, be based where possible on case law and definitions found in relevant legislation and make clear any specific inclusions or exclusions.
- 27.7 It would be useful to have a single, easy to find point of reference for all these terms that is clearly located through a table of contents. A reference superscript on each term so defined would confirm that a definition is provided and make location of it quicker. However, for ease of reference, key definitions should also be provided within the relevant Parts, even if this involves repetition.
- 27.8 Terms which the consultation process identified as in need of better definition include *“road”*, *“special road”*, *“original dwellinghouse”* (in relation to garages) and *“adjacent to a road”*. If consistency with the rest of the UK is regarded as important, and this does not involve changes to other legislation, there would appear to be benefits in use of the term *“highway”* rather than *“road”*. “Highway” would need to be carefully defined to include footpaths and verges abutting the road.

Rationalisation

- 27.9 While some parts of the GDO were not obviously well-used at present e.g. Part 11, these were seen as continuing to perform useful functions or to deal with possible future situations, and no clear case was seen for removing any Parts to reduce the length of the Order.
- 27.10 Some Parts do allow users a choice of which permitted development rights to use for particular development, but some of these relate to relatively minor works. Where no particular problems appear to arise from such overlaps, these should be addressed by

changes to specific Parts e.g. works to tracks under Parts 6 and, and fences under Parts 2 and 12.

27.11 To make individual Parts simpler to use, any re-drafting should also aim to reduce the need for cross-references to other sections of the GDO, ideally by including within each Part of Schedule 1 the text of any relevant restriction set out in Article 3 (or at least making reference to it) and any appropriate extracts or definitions from other legislation. This change may add a little to the length of the GDO but would greatly aid interpretation.

Inconsistencies and Anomalies

27.12 It is considered that most of the anomalies and unintended effects of permitted development rights can be addressed through improved drafting of the relevant parts of the GDO and providing better definitions and interpretations within it. Where this is not sufficient, specific restrictions to the provisions are recommended under each Part.

27.13 The wording of the GDO could usefully be amended to clarify which bodies are able to make use of certain permitted development rights. To allow for the increasing outsourcing of works, rights could explicitly be made available to bodies acting "*on behalf of*" the specified undertakers in the GDO where this is appropriate, rather than relying on an interpretation of this position.

27.14 Otherwise, while consistency across permitted development rights should be aimed for where possible, in some cases there appear good reasons for adopting a different approach related to the scale and nature of the impacts involved and the other controls which apply. A rigid approach to achieving consistency for its own sake is not therefore recommended.

Guidance for Users

- 27.15 There appear to be some benefits in providing a “*User Guide*” to help interpretation of the GDO and keep it up to date. Regular review of the GDO is needed to keep it up to date and address problems as they appear, and it is recognised that this may not be practical so that a regularly updated User Guide may go some way to addressing this need. This could usefully include an explanation of the purpose of different parts of the GDO, why permitted development rights are given to certain functions, references to case law, simple explanation of specific rights and illustrated examples of how the rights may apply, as well as guidance on procedures, and flowcharts where appropriate.
- 27.16 However, the consultation process did not provide a clear cut case for a comprehensive guide to the GDO. Most parts of the GDO do not appear particularly difficult for users to understand and interpretation should be improved by the simplified drafting recommended. On this basis, it appears more appropriate to focus on the more complex sections that are frequently used by lay persons. This would mean updating the existing guidelines for householder and telecommunications development, as well as providing a separate user guide for agricultural permitted development, perhaps along the lines of “*A Farmer’s Guide to the Planning System*” booklet in England. Regularly updated guidance booklets of this type made available on the Planning Service website would be especially beneficial.

Sensitive Areas

- 27.17 Restrictions on permitted development rights in sensitive areas (e.g. AONBs, National Parks, conservation areas, ASSIs and areas of archaeological interest) are not applied consistently across different categories of development, and some categories of development have no specific restrictions (Annexe 5). For example, extensions to buildings in sensitive areas are restricted for Part 8 but no similar restrictions apply for many potentially large permitted developments under Parts 6, 7 and 13. Sites of archaeological interest appear to have more widespread protection than sensitive landscape areas.

National Parks and AONBs

- 27.18 In most cases, the GDO applies similar restrictions on permitted development in AONBs and National Parks. It is understood that any future National Park designations in Northern Ireland will be largely wilderness areas where little built development will exist. This could justify a greater level of protection for National Parks than in AONBs, where more development exists, but there is also likely to be less permitted development works there to restrict. It was also noted that AONBs cover large areas and are of variable landscape quality; it was suggested by the Environment & Heritage Service that a more targeted approach would be more beneficial, with restrictions imposed within Landscape Character Areas as defined in Area Plans. This approach should be considered further, as an alternative to a blanket restriction in AONBs, once all such areas are defined.
- 27.19 While other legislation, the size limitations and EIA requirements provide some control in certain designated areas, improved protection for these sensitive landscape areas would support policy aims. However, the prior approval procedure used extensively in England to provide more control over siting and appearance in sensitive landscapes is not considered appropriate in Northern Ireland. The absence of widespread identified problems also indicates that a carefully targeted approach to further restriction is needed, and each Part has been considered separately rather than propose blanket restrictions. Restrictions on Part 1 householder development rights was not considered appropriate in the Northern Ireland context, where housing is common in rural areas and AONBs and extensions within the current size limitations are unlikely to have significant impacts. While consideration was given to restricting Part 6 agricultural development in such areas, this was not considered appropriate in the particular circumstances of Northern Ireland. On this basis, further restrictions in sensitive landscape areas are recommended only for Part 9 rights to improve private ways and for certain major infrastructure works by statutory undertakers under Part 13.
- 27.20 With regard to nature conservation sites, various interest groups and Government bodies raised the potential for adverse effects from permitted development within or beside such

sites, particularly ASSIs. Some of these sites have designations as of European importance. There is also some protection under the Habitats Regulations and the Environment Order 2002, but this legislation only requires notification before exercising permitted development rights. Only two Parts of the GDO (Part 16: Mineral Exploration and Part 17: Telecommunications) have specific restrictions applying to ASSIs and it is not clear why similar restrictions should not apply to other Parts if it has been considered necessary to restrict some forms of permitted development when other forms of protection apply. Relatively few examples of actual harm were identified but relevant interest groups noted that any adverse impacts in ASSIs can have major effects and may be irreversible, and not all users of permitted development rights may be aware of such restrictions. To reflect the importance of these areas to biodiversity, provide adequate protection and to ensure that all potential users of permitted development rights are aware of restrictions, it is proposed to remove permitted development rights within ASSIs for those categories more likely to cause harm. These are Parts 1, 2, 4, 5 –10 and 12 – 15. Many undertakers already consult informally in such areas and formalising this process need not necessarily cause additional delays or greatly increased workloads for users or the Planning Service.

Archaeological Sites

27.21 Relevant parts of the GDO already contain restrictions on permitted development rights in areas of archaeological interest, to a much greater extent than found in other parts of the UK. No specific problems with the operation of this restriction were raised through the consultation process, while it supports policy aims to protect heritage interests and does not appear to impose an excessive burden on users of permitted development rights. On this basis, no change is proposed.

World Heritage Sites

27.22 Although not raised in the consultation process, there appear benefits in controlling permitted development rights that could potentially harm these internationally important sites. However, there is only one such site in Northern Ireland and this already has some

protection from lying within an AONB. World Heritage Sites are also defined as sensitive areas in the EIA regulations where any development proposals should be screened and on this basis permitted development rights can be removed if significant impacts are likely. Although the World Heritage designation is a material factor for planning applications, in 1989 the UK Government did not consider there was a need for any specific planning restrictions in such areas¹⁶.

27.23 Rather than amend the GDO for a single site that is already subject to protection, the most appropriate course would be to impose an Article 4 Direction to remove any permitted development rights not already restricted by the AONB designation and which are likely to give rise to adverse effects. This is the approach used to protect the World Heritage Site around Stonehenge in England. No changes are therefore proposed to the GDO in this respect but given the infrequent application of Article 4 Directions in Northern Ireland in the past, it may be that this situation should be treated as an exceptional case.

Airport Safeguarding

27.24 A restriction currently applied to some categories of permitted development (e.g. Parts 6, 7 and 16) but not others is the height limitation on development within a specified distance of an aerodrome to allow consideration of potential hazards to aircraft. There is general concern in the UK that there is no procedure to enable the CAA or airports to be consulted on high buildings or structures erected under permitted development in airport safeguarding areas, when they do have to be notified of certain planning applications near airports with a safeguarding map. The appropriateness of the current height limitations in the GDO is also not clear since the limits are very low, they apply only within 3 Km of an airport although safeguarding areas can extend much further, and they take no account of ground levels.

27.25 Since height limits in safeguarding areas vary with distance from the airport and the level of the land, it is difficult to specify a simple height/distance limitation within the GDO. Detailed investigation of this issue did not identify a simple control mechanism acceptable to aviation

¹⁶ Debate in House of Lords, Hansard, February 1989.

bodies. The simplest, but relatively crude, approach would be to extend the current type of control found in Part 6, for example, to other Parts of the GDO which involve significant structures, so that any development exceeding a specified height (or the height of the highest structure on the site) within 3km of an aerodrome boundary would not be permitted development. An appropriate height limit should be agreed with the CAA. This control could be through an insertion in Article 3 and for most airports in Northern Ireland should not involve large numbers of applications, although it may be appropriate to exclude Part 1 development to avoid many unnecessary applications in this regard.

27.26 An alternative and more satisfactory approach in some ways would be to make permitted development rights conditional on any such development within an airport safeguarding area (as defined by a safeguarding plan lodged with the Planning Service) complying with the limitations of that plan, it being notified to the Planning Service and no objection being raised by the aerodrome operator/CAA within a specified period e.g. 28 days. This would place the onus for consultation on those exercising the permitted development and would require them to check with the Planning Service, which would hold the safeguarding plan, whether their proposal lay in the affected area and complied with relevant limits. This could potentially impose a significant additional burden on Planning Service workloads, although this may be limited by the relatively few airports in the region, some in rural areas. To reduce this to some extent, the safeguarding plan could be made available in district council and Planning Service divisional offices or attached as an Annexe to the local development plan.

27.27 A compromise option to reduce the number of planning applications submitted would be to require prior notification of any development exceeding a specified height (or the height of the highest structure on the site) within 3 km (or other agreed distance) of the perimeter of an aerodrome. These proposals would then be checked against the aerodrome safeguarding plan by the Planning Service and only those exceeding the safeguarding height limits would be subject to full planning control, or require prior approval of siting and height. This would require an insertion in Article 3 that permitted development rights are removed (or subject

to prior approval) for development that exceeds relevant height limits in the safeguarding plan.

27.28 On a separate issue, in England, Department for Transport Circular 1/02 advises restriction of permitted development rights that would lead to more people living, working or congregating within defined Public Safety Zones at the ends of airport runways, through, for example, extensions of buildings. On the basis that a similar regime applies in Northern Ireland, the GDO should be amended to reflect this clear policy aim. While it appears more likely to affect Parts 1, 4, 5, 6, 7, and 8, additional text should be inserted in Article 3 to impose this restriction across all relevant Parts.

Article 3 Restrictions

27.29 The need is recognised for a set of general restrictions in the GDO that apply to more than one category of permitted development, as Article 3 currently does. The main concern with this approach is that it requires users to refer to more than one part of the GDO to form a complete view on the extent of the rights that apply, and those less familiar with the GDO may not do so. For easy reference, the relevant restriction would ideally be repeated under the Part to which it applies. If this results in too long and repetitive a document, each Part should at least refer to any special restrictions imposed under other Articles of the GDO.

27.30 Several instances are identified in this report where additional, general restrictions on permitted development rights are considered appropriate to add to Article 3. One of these should be a requirement to remove redundant equipment/structures provided under permitted development rights (e.g. telephone boxes), a principle which already applies in certain parts of the GDO and should support aims to improve the built environment. While a restriction on permitted development in ASSIs could also be inserted here, for clarity it may be better if this was stated explicitly in each part it applies to.

Article 4 Directions

27.31 As indicated in Section 3, Article 4 procedures are rarely used in Northern Ireland and are seen as a resource intensive control tool, and of limited value where quick action is needed. Since the greatest problem with this procedure appears to be limited Planning Service resources to utilise it, there may be limited scope for improvement in its effectiveness through amending the GDO. To expedite the process where it is used, however, there may be benefits in preparing best practice guidance on making Article 4 applications, perhaps sample Directions, and agreeing situations where it would most appropriately be used and what rights should be restricted.

27.32 Given this situation, the focus in this study is to propose changes to restrict permitted development rights that would otherwise require an Article 4 Direction to address, rather than to propose any direct changes to the current Article 4 procedure. With regard to conservation areas, in future it appears better to remove automatically in conservation areas, at the time of their designation and based on a character assessment, the permitted development rights that tend to have adverse effects elsewhere, in order to avoid the need to impose Article 4 Directions when problems arise. The requirement to demonstrate a real threat to the conservation area before using Article 4 is a constraint to this approach but would not necessarily prevent it.

Article 6 Directions

27.33 Although they appear little used, the ability to remove certain rights for mineral exploration provides an important fall-back control and no problems were identified with the operation of these directions by mineral operators or the Planning Service. On this basis, no change is proposed.

Consultation Procedures

27.34 No specific problems with consultation procedures in the GDO were identified and the prior approval procedure that is widely used in England was not seen as appropriate or helpful for

wider use in Northern Ireland, given the greater transparency and scope for consultation that planning applications provide. Given that the prior approval procedure is perceived as not working well by local planning authorities in England, there is no obvious benefit in applying it more widely as a way of giving greater control over permitted development in Northern Ireland. Where adverse impacts of permitted development are identified, the preferred approach in this review is to remove or restrict the rights causing the problem. This is dealt with on a Part by Part basis and no general changes to consultation processes are therefore recommended. However, the lack of clarity on consultation requirements under Parts 11 and 15 needs to be considered.

27.35 Although not identified as a particular problem, the consultation process for operational airport development under Part 15, Class A is not subject to any specified time limit, and no indication is given of any right to refusal or the details which should be provided. Given the special circumstances of airports, with works often needed urgently to meet safety or security requirements, it may be helpful to give greater certainty to operators by setting a time limit, which could be subject to consultation but perhaps set at 42 days. At other UK airports, informal consultation procedures are agreed between many airport operators and local planning authorities; these agree a response period for consultation, and this may be an acceptable alternative to formal consultation with a fixed period specified in the GDO, and should be encouraged by the Planning Service.

Size Limits

27.36 A review of the current size limitations across different parts of the GDO indicates that generally these are consistently applied with any variations appropriate to the type of development involved (see Annexe 5). There are inconsistencies in height limitations of development near aerodromes but this is dealt with separately above. The absence of any general height limit on mineral exploration plant appears anomalous, especially given that height limits apply elsewhere in the UK, and while the Article 6 procedure is available in this case to address problems, this appears to be little used. While there appears a reasonable case for setting a 15 metres height limit on such plant, at least within AONBs and National

Parks, given the absence of identified problems and the control mechanism provided by Article 6, no change is recommended.

27.37 While the proposed increase in floorspace extensions to industrial buildings under Part 8 would make this limit inconsistent with others in the GDO, this is considered to be justified by the potential benefits to business and the additional restrictions that apply in Part 8.

27.38 There are no size limits in the GDO for new operational buildings for airports and railway undertakings, and these could potentially be very large and have adverse visual effects. As discussed under Part 15, airports have special circumstances, with a need for very large buildings to meet operational and regulatory requirements within sites already containing large structures. In the absence of clear evidence of adverse effects, no changes appear justified in terms of imposing or altering height limits.

27.39 A common mechanism for controlling the scale of permitted development extensions of buildings is a volume limit based on that of the original building. This applies particularly to Part 1 but also to other parts including Parts 7, 8 and some classes of Part 13. However, there are some indications that this mechanism is difficult to operate for larger, complex buildings, some residential premises and buildings which have been frequently altered over a period of time. The main problem area is Part 1, due to the large number of extensions involved and the difficulties in checking whether rights have been used up.

27.40 Although not supported by evidence of widespread problems in Northern Ireland, for simplification and to make a planning system with limited resources easier to operate, consideration should be given to an alternative control mechanism that does not involve these difficulties, at least for Part 1 which involves the most calculations of this type and for Part 8 to simplify matters for complex industrial sites. These could be a combination of one or more factors such as a floorspace limit, building height, length of extension, proportion of the site curtilage or distance from the site boundary. The proposed redrafting of Part 1 in Chapter 5 proposes a control on extensions based on floorspace, distance from the site boundary and proportion of the curtilage – factors which are relatively simple to estimate.

The Scottish GDO has relied for some time on floorspace rather than volume limits for extensions under Part 1 and Part 8.

Streetscape Issues

- 27.41 The impact of permitted development rights on streetscape, for example from proliferation of badly sited street furniture and signage or poor quality reinstatement of road surfaces after repairs to utilities, does not appear to be a significant problem in Northern Ireland at present. However, experience in England suggests that this situation could worsen if deregulation of services occurs in future while design quality is a key concern of Government policy.
- 27.42 There is potential for adverse impacts of this type from several Parts of the GDO, e.g. Parts 12, 13, and 17, as well as from works by Government agencies that are not currently defined as development. Although some controls do exist under other legislation, few enforceable restrictions apply to relevant permitted development rights in the GDO.
- 27.43 Although not justified by current widespread problems, to address any possible longer term problems and better support Government policy aims, additional restrictions should be considered. Various approaches have been examined. Requiring a planning application for every item of street infrastructure appears unduly onerous. While Conservation Area Statement guidelines cover such issues in some areas, it is not clear how enforceable these are against permitted development.
- 27.44 Other than to bring all such works under full planning control, the most radical approach would be to make permitted development rights apply to certain types of street infrastructure works only where these are located below the surface of the pavement, with anything above ground level requiring prior approval, or full permission. This approach offers the greatest potential for there being less street clutter but could have significant implications for undertakers and should be subject to wider consultation as to feasibility.

- 27.45 An alternative and less onerous approach would rely on the preparation of a Street Management Code in consultation with relevant organisations involved in streetscape issues e.g. the Roads Service, Planning Service, Water Service, district councils. This would contain guidelines on the siting, sharing, colour etc. of street furniture and on re-instatement works, and could be a nationally agreed set of guidelines to offer greater consistency for undertakers. It may also be supported by local development plan policy. At the same time, it would be possible to make permitted development rights under the relevant Parts conditional on the works being sited, and their external appearance being designed, such as to minimise visual impact on streetscape and on pedestrian flows. This would be consistent with restrictions in other Parts of the GDO and, while the main purpose would be to encourage undertakers towards better practice, it would also enable the Planning Service to seek changes to or refuse unacceptable works. The acceptability of works against this condition would be assessed by reference to guidelines set out in the Street Management Code, which would explain this approach to encourage such compliance and educate users.
- 27.46 For this approach to be fully effective, it may be necessary for highway works to come within normal planning control, and to amend primary legislation so that certain works by statutory undertakers within roads are defined as development. There may be an opportunity for this if Crown Immunity is removed in future. In this event, such works could be made permitted development but then made subject to conditions requiring minimisation of visual impact on streetscape and on pedestrian flows. Otherwise, such conditions could be applied only to existing permitted development that affects streetscape. In the absence of evidence of current problems, no recommendations are made on this issue, which is identified for further consideration.

Confirmation of Permitted Development Rights

- 27.47 There is understood to be an increasing number of requests or enquiries requesting written confirmation from the Planning Service that permitted development rights apply to a particular situation, many relating to Part 1 householder development where such confirmation is needed prior to a house sale. The time required to check and respond to

these requests can reduce the benefits to Planning Service workloads from having permitted development rights, while a simple response letter has no legal status. Lack of a simple procedure to deal with this issue could simply encourage submission of more planning applications, rather than use of permitted development rights. The provisions for Certificates of Lawful Use or Development being introduced into the Planning Order will offer a formal way of dealing with these queries, with a fee to cover some costs, although this would not reduce workloads. While the idea of a simplified application procedure was not supported by the consultation process, some simple application form along the lines of the Certificates of Lawful Use or Development, but with a modest fee may be an appropriate compromise. The proposals to simplify the drafting of the GDO and update the householders' development user guidance should also help clarify the provisions and may help reduce the need for formal confirmation to some extent.

28.0 SUMMARY OF RECOMMENDATIONS

28.1 Based on the findings in the previous sections, the key changes proposed to the GDO are summarised below.

Part 1: Development within the curtilage of a Dwellinghouse

28.2 Part 1 should be rationalised to two Classes with a new Class A for “*development attached to a dwellinghouse*” and Class B for “*development within the curtilage of a dwellinghouse*”. This re-classification, together with redrafting in a simpler format, would address a number of problems and would involve replacing the volume control on extensions to one based on floorspace and distance from boundaries and reducing the proportion of the curtilage which can be covered by buildings to 25%. Additional controls would apply to extensions/alterations to dwellinghouses in conservation areas, in Areas of Townscape Character, and in other sensitive areas.

28.3 Additional conditions attached to the two classes should cover:

- relating permitted development rights for new curtilage buildings/dwellinghouse extensions to other development which has been granted planning permission but which has not yet been implemented, or which has been partially implemented. Where planning permission is granted for an extension, is extant and has yet to be built or completed, the permitted development rights of the property should be taken as having been used. If the applicant wants a further curtilage building or extension, a planning application must be made. The Planning Service could then consider if the two together would constitute over-development;
- requiring matching materials to those of the original dwellinghouse (rather than “*design and external finishes*” being in conformity);
- the natural ground level not sloping or dropping either within the planning unit, adjacent to or adjoining it. Where there is a difference in natural ground level between two sites, if any part of the building proposed comes within 2 metres of the boundary of the adjoining premises, the height should be measured from the lower, natural ground level adjacent to where the structure is proposed;
- new buildings etc. under Class 2 being at least 3 metres from an adjoining dwellinghouse (to overcome loss of amenity issues, particularly relating to corner plots);

- limited or non-opening opaque glass windows being required for any new openings in return frontages directly overlooking windows in a neighbour's property;
- any roof extension under Class A should not abut a party wall;
- new buildings not removing, or falling within 3 metres of, any tree covered by a TPO.

28.4 To provide consistency and thus assist all users of both procedures, consideration should be given to making Part 1 permitted development rights consistent with the Building Regulations, or vice versa.

Part 2: Minor Operations

28.5 Recommended changes are to:

- a) add conditions relating to sloping land and where levels change between adjoining properties/land holdings and on field/highway boundaries. The height of new development should relate to the lowest natural ground level adjacent to where the structure is proposed;
- b) limit the height of a fence or other means of enclosure to 1 metre in height between the highway and the front/side building line of the dwellinghouse facing a highway;
- c) limit the types of the materials used for "*means of enclosure*" to "*conventional materials*" and specifically restrict use of waste materials;
- d) amend Class B, to limit the length of a means of access and add a condition to allow only a temporary means of access to be provided to serve a temporary use;
- e) ensure that railings on roof terraces/gardens/decking are controlled within Part 1;
- f) restrict Class C (painting of buildings) in conservation areas, Areas of Townscape Character and where a building is listed.

Part 3: Changes of Use

28.6 Proposed changes are:

- clarification of permitted development rights for business premises with residential use above, to support the promotion of “*Living over the Shop*” schemes. Class E should be extended, to include several flats above shops/professional services;
- for long term vacant retail units with flats above, total housing should be considered as permitted development;
- introduction of permitted change of use for dual use planning permissions, to help enable e.g. central area regeneration.

Part 4: Temporary Buildings and Uses

28.7 Recommended changes include:

- making temporary uses apply to whole units of ownership or occupation;
- removing any potential threat to ASSIs e.g. Class B should specifically exclude sensitive areas and the use of such land for motor car and motorcycle racing and all other motor sports such as scrambling or quad biking (including speed trials and practising), clay pigeon shooting and any war game;
- introducing a requirement to give advance notification of events to the Planning Service, e.g. two weeks in advance;
- clay pigeon shooting, motorised sports and war games should be limited to 14 days;
- a new Class, giving permitted development rights to designated and licensed street markets for the periods specified by the licence.

28.8 Definitions should be provided for the following terms: market; curtilage; planning unit (for Class B); “*required*” temporarily (for Class A); motor sports; and “*moveable structure*” (for Class A).

28.9 The interpretation of Part 4 should also clarify that no permanent means of access can be provided to serve a temporary permitted use.

Part 5: Caravan Sites

28.10 No changes are proposed but guidance from the Planning Service would be useful to explain clearly the relevant provisions of the Caravans Act (Northern Ireland) 1963, to prevent possible scope for wide interpretation by users.

Part 6: Agricultural Buildings and Operations

28.11 Changes to Part 6 include proposals to:

- ensure that all of the Classes of Part 6 are more carefully defined, so as to prevent new development with significant impacts proceeding without planning permission being required;
- in the short term, restrict any significant permitted development in each Class in ASSIs, and sites of archaeological interest. In the longer term, consider removing permitted development rights for all but the most minor development in such areas;
- there needs to be a clearer connection between ASSI legislation/protection/designation, agri-environment schemes and permitted development rights, with contacts in Government departments for liaison and better links to implement policies collectively;
- the 0.5 ha. size of holding minimum for having Part 6 rights should be reviewed and assessed in terms of whether it should be increased. A working farm is likely to be at least 2 ha. and more likely to be a minimum of 5 ha. (except if for mushroom farming, intensive livestock rearing and horticulture). Criteria for a workable farm size could then be included in a revised GDO. Alternatively, the 0.5 ha. limit could exclude the farm dwellinghouse and garden, or require demonstration of being a bona fide farm;
- review building/structure size limits, against current and forecast farming requirements for livestock and grain/other storage, and against design/environmental/visual impact considerations;
- the erection of any first building on an agricultural unit should require planning permission, to enable future development to be controlled e.g. re. siting and landscape and/or where land ownership is being divided, to prevent the loss of hedgerows and to control use;
- clarify that agricultural land must be actively used/occupied (to reflect case law), and the proposed development must also be reasonably "*necessary for the purposes of agriculture*" on that unit.

28.12 More detailed changes are to:

- correct the anomaly of Article 3(5) of the GDO restricting the construction, formation, laying out or alteration of a means of access while Part 6 Class C permits this;
- correct the loopholes relating to Class A.1(d), (i) and (ii), by requiring express planning permission for all buildings of over 300 sq.m and ensuring the protection of dwellings other than the farm dwelling;
- revise Class A.1(c) to ensure that it is not interpreted as removing agricultural permitted development rights when buildings/structures/works for other uses have taken place with the benefit of planning permission;
- define the principal group of farm buildings as the main group of farm buildings on the holding at the operative date of the amended Order;
- limit the distance between the nearest part of the proposed building and the principal group of farm buildings;
- limit the distance of any part of a proposed building from the nearest part of a highway;
- prevent the importation and tipping of waste from being capable of being defined as an engineering operation, by excluding waste from Part 6.

Part 7: Forestry Buildings and Operations

28.13 Recommended changes are to:

- restrict permitted development rights for the construction of tracks in areas of archaeological interest;
- clarify that the erection of forestry visitor centres and other related built recreational facilities above say 1,000 m² are not permitted development.

Part 8: Industrial and Warehouse Development

28.14 Recommended changes include:

- increase floorspace limit for extensions from 750 to 1000 m²;
- exclude incineration operations from the definition of industrial processes permitted by Part 8;
- improved interpretation should clarify how curtilage boundaries relate to roads on industrial estates;

- consider removing the requirement that extensions or alterations have no material affect on the appearance of the premises;
- consider controlling extensions by height and floorspace rather than volume.

Part 9: Repairs to Unadopted Streets and Private Ways

28.15 Recommended changes include:

- Excluding widening or significant raising of levels or change in materials within National Parks or Areas of Outstanding Natural Beauty.

Part 10: Repairs to Services

28.16 Recommended changes include:

- no change, other than include *“drain”* within the description of permitted works within Part 10;
- a more radical measure for consideration would involve changes to primary legislation to make repair works by statutory undertakers development subject to planning control; permitted development rights for these works could then be included within an expanded Part 10, with any such rights made conditional on providing reinstatement of the original surface, or as otherwise agreed with the Planning Service.

Part 11: Development under Local or Private Acts or Orders

28.17 No changes are proposed.

Part 12: Development by District Councils

28.18 Recommended changes include:

- permit waste recycling facilities on land not owned by district councils subject to limitations on distance from dwellings, size and on being on highway land only;
- clarifying in interpretation that Part 12 rights apply to those carrying out works *“on behalf of the District Council”*;
- within conservation areas, considering making Part 12 rights for street furniture conditional on avoiding adverse impacts on streetscape.

Part 13: Development by Statutory and Other Undertakers

28.19 Recommended changes include:

- a) setting a height limit of 15 m for railway telecommunications masts permitted under Class A in AONBs, National Parks and conservation areas;
- b) extend Class B permitted development rights (ports and harbours) to include security fencing and pole mounted CCTV cameras on operational land, subject to appropriate height restrictions;
- c) extend the permitted length of single user overhead electricity lines from 100 m to 200 m, except within sensitive landscape areas;
- d) extend Class E permitted development rights to those carrying out works on behalf of the road transport undertaker;
- e) consider restricting permitted development rights for bus shelters to a size limit of 17m³ and not lying within conservation areas, AONBs, National Parks or within 20 m of a residential property;
- f) make postal pouches permitted development outside conservation areas, subject to not adversely impacting pedestrian flow or visual amenity.

Part 14: Development by Civil Aviation Authority

28.20 No changes proposed.

Part 15: Aviation Development

28.21 No significant changes proposed other than:

- to consider setting a time limit for the consultation period for Class A development, or establish informal procedures to give greater certainty to airport operators on timescale;
- to provide better interpretation of certain terms used.

Part 16: Mineral Exploration

28.22 No changes are proposed.

Part 17: Development by Telecommunications Code System Operators

28.23 Consideration should be given to introducing limited permitted development rights, to allow operators to add additional equipment on to existing masts (both ground based and roof mounted) without the need for planning permission. If considered necessary, a limit on the number of antennas permitted could be set in a similar manner to the Republic of Ireland.

Part 18: Other Telecommunications Development

28.24 The proposed change is to remove the differentiation on size limits and siting under 15 metres in height between a terrestrial microwave antenna and a satellite antenna, while maintaining different conditions applying to buildings or structures above and below 15 metres in height to address the potential for visual impacts. Consideration should be given to widening the number of dishes/antennas permitted on non-residential buildings subject to separate consultation.

Part 19: Development at Amusement Parks

28.25 No significant change is proposed, other than to improve definitions and interpretations of terms.

Part 20: Development Required under the Roads (Northern Ireland) Order 1980

28.26 No changes are recommended, other than to update references to reflect the Roads (Northern Ireland) Order 1993 and related legislation, rather than older versions. Definitions should be provided within the GDO for terms such as *“road”*, *“special road”* etc.

Part 21: Closed Circuit Television Cameras

28.27 The recommended changes are to:

- consider reducing the size limitations of cameras on buildings;
- permit pole mounted cameras on existing structures within large sites but not within 20m of the curtilage boundary.

Additional Permitted Development Rights

28.28 Consider providing permitted development rights for:

- small buildings and extensions to schools, universities, hospitals and colleges by creating new Parts of the GDO for these categories;
- minor works required for waste management, such as venting wells;
- various site investigation works, such as digging temporary trenches or bore-holes to investigate contamination or ground conditions generally.

Demolition

28.29 Demolition of sports facility buildings should be made permitted development but conditional on planning permission for redevelopment having been granted. The right to demolish chimneys, porches, walls, fences and other means of enclosure in conservation areas should also be removed. These changes would require such demolition to be redefined as development in other legislation.

Entitlement to Permitted Development rights

28.30 Clarify that permitted development rights apply to those acting on behalf of the specified undertaker or user.

Article 4 Directions

28.31 Recommended changes include:

- Providing best practice guidance on preparation of Article 4 Directions;
- Restricting through the GDO the permitted development rights most commonly removed by Article 4 directions.

Airport Safeguarding

28.32 It is recommended that prior notification to the Department be required of any development exceeding a specified height (or the height of the highest structure on the site) within a

specified distance of an aerodrome boundary and Article 3 be amended to remove permitted development rights for development that exceeds relevant height limits in the aerodrome safeguarding plan.

28.33 Article 3 should also be amended, to restrict permitted development rights across all relevant Parts for development that would lead to more people living, working or congregating within defined Public Safety Zones at the ends of airport runways.

Article 3

28.34 Within each relevant Part of Schedule 1, any restriction applying under Article 3 or imposed under other Articles should be repeated or at least made reference to.

28.35 A requirement to remove redundant equipment/structures provided under permitted development rights should also be added.

Article 6 Directions

28.36 No changes are proposed.

Sensitive Areas

28.37 Article 3 should be amended to remove permitted development rights for works that are within or would adversely affect ASSIs.

28.38 Within sensitive landscape areas such as AONBs and National Parks, further restrictions on permitted development rights are recommended for Part 9 rights to improve private ways and certain Part 13 works by statutory undertakers e.g. railway telecommunications masts over 15 metres high. An alternative approach for future consideration would be to apply such restrictions only within Landscape Character Areas as defined in Area Plans.

Improving Interpretation and User Friendliness

28.39 Recommended changes include:

- re-drafting of the GDO in a legally robust but simpler style, in the positive rather than the negative;
- making available a composite, up to date version of the GDO text via the Planning Service website;
- providing new or improved definitions or interpretation for all terms that have given rise to problems in the past, based where possible on case law and definitions found in relevant legislation and make clear any specific exclusions; there should be no need to refer to other legislation for definitions.
- making all definitions accessible in a single location with a reference superscript on each term so defined but with key definitions to be repeated within the relevant Parts.

GDO User Guide

28.40 The User guide for householder permitted development should be updated and a new User Guidance booklet for agricultural permitted development provided. Regularly updated versions of these guidance documents should be made available over the Planning Service website, to help interpretation of the GDO and keep it up to date. These guides could include:

- guidance on checking whether proposals are development or not;
- simple explanation of specific rights with illustrated examples and flowcharts where appropriate;
- guidelines on good practice for carrying out permitted development to comply with policy aims.

Confirmation of Permitted Development Rights

28.41 The provisions for Certificates of Lawful Use or Development now introduced into the Planning Order would offer a formal way of confirming that permitted development rights apply in a particular situation, with a fee to cover some costs. Alternatively, some simple application form along the lines of the Certificates of Lawful Use or Development, but with a modest fee may be an appropriate compromise.

28.42 The proposals to simplify the drafting of the GDO and update the householders' development user guidance should also help clarify the provisions and may help reduce the need for formal confirmation.

Changes to Primary and Other Legislation

28.43 The following, possibly longer term, recommendations would involve changes to primary or other legislation:

- redefine development in the Planning Order to include repair works by statutory undertakers;
- amend secondary legislation to bring demolition of sports facilities and certain works within conservation areas, including front garden walls, within planning control;
- consider imposing control over demolition of local important buildings outside conservation areas or Areas of Townscape Character if a new designation for such buildings can be provided and supported by policies in Area Plans.

Further Research Needed

28.44 The following further research is suggested:

- investigate appropriate height and distance limits for notification of permitted development within aerodrome safeguarding areas, aiming for consistency with those in the rest of the UK;
- investigate the minimum size of an agricultural holding which can be viably operated;
- investigate the scope for minor changes of use of redundant agricultural buildings to Use Classes 4, 5 or 11;
- investigate agricultural building/structure sizes required for livestock/grain storage, in the light of EU and other Regulations and in relation to whether permitted development limits should be changed generally, or in sensitive areas.