Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2003 No. (N.I.)

NORTHERN IRELAND

The Planning (Amendment) (Northern Ireland) Order 2003

Made - - - - 2003

Coming into operation in accordance with Article 1(2)

At the Court at Buckingham Palace, the day of 2003

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:–

Introductory

Title and commencement

1.—(1) This Order may be cited as the Planning (Amendment) (Northern Ireland) Order 2003.

(2) In this Order—

(a) this Article, Article 2, Articles 27 to 29 and Article 31 come into operation two weeks after the date on which this Order is made;

(b) the remaining provisions of this Order come into operation on such day or days as the Department of the Environment may by order appoint.

(3) An order under paragraph (2) may contain such transitional provisions and savings as the Department of the Environment considers appropriate in connection with the order.

(4) Nothing in any provision of this Order affects the punishment for an offence committed before the provision comes into operation.

Interpretation

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

(2) In this Order "the principal Order" means the Planning (Northern Ireland) Order 1991 (NI 11).

(3) This Order shall be construed as one with the principal Order.

New enforcement powers

Planning contravention notices

3. In Part VI of the principal Order (enforcement) before Article 68 there is inserted—

"Planning contravention notices

Power to require information about activities on land

67C.—(1) Where it appears to the Department that there may have been a breach of planning control in respect of any land, it may serve notice to that effect (referred to in this Order as a "planning contravention notice") on any person who—

(a) is the owner or occupier of the land or has any other estate in it; or

(b) is carrying out operations on the land or is using it for any purpose.

(2) A planning contravention notice may require the person on whom it is served to give such information as to—

(a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land; and

(b) any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted,

as may be specified in the notice.

(3) Without prejudice to the generality of paragraph (2), the notice may require the person on whom it is served, so far as he is able—

(a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;

(b) to state when any use, operations or activities began;

(c) to give the name and address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;

(d) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operations;

(e) to state the nature of his estate (if any) in the land and the name and address of any other person known to him to have an estate in the land.

(4) A planning contravention notice may give notice of a time and place at which—

(a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to refrain from carrying out any operations or activities or to undertake remedial works; and

(b) any representations which he may wish to make about the notice,

will be considered by the Department, and the Department shall give him an opportunity to make in person any such offer or representations at that time and place.

(5) A planning contravention notice must inform the person on whom it is served—

(a) of the likely consequences of his failing to respond to the notice and, in particular, that enforcement action may be taken; and

(b) of the effect of Article 67(5)(b) of the Planning (Northern Ireland) Order 1972 (NI 17).

(6) Any requirement of a planning contravention notice shall be complied with by giving information in writing to the Department.

(7) The service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control.

(8) In this Article references to operations or activities on land include operations or activities in, under or over the land.

Penalties for non-compliance with planning contravention notice

67D.—(1) If, at any time after the end of the period of 21 days beginning with the day on which a planning contravention notice has been served on any person, he has not complied with any requirement of the notice, he shall be guilty of an offence.

(2) An offence under paragraph (1) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.

(3) It shall be a defence for a person charged with an offence under paragraph (1) to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If any person—

(a) makes any statement purporting to comply with a requirement of a planning contravention notice which he knows to be false or misleading in a material particular; or

(b) recklessly makes such a statement which is false or misleading in a material particular,

he shall be guilty of an offence.

(6) A person guilty of an offence under paragraph (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.".

Enforcement of conditions

4. After Article 76 of the principal Order there is inserted—

"Breach of condition

Enforcement of conditions

76A.—(1) This Article applies where planning permission for carrying out any development of land has been granted subject to conditions.

(2) The Department may, if any of the conditions is not complied with, serve a notice (in this Order referred to as a "breach of condition notice") on—

(a) any person who is carrying out or has carried out the development; or

(b) any person having control of the land,

requiring him to secure compliance with such of the conditions as are specified in the notice.

(3) References in this Article to the person responsible are to the person on whom the breach of condition notice has been served.

(4) The conditions which may be specified in a notice served by virtue of paragraph (2)(b) are any of the conditions regulating the use of the land.

(5) A breach of condition notice shall specify the steps which the Department considers ought to be taken, or the activities which the Department considers ought to cease, to secure compliance with the conditions specified in the notice.

(6) The Department may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve on him a further breach of condition notice in respect of the conditions specified in the earlier notice or any other conditions.

(7) The period allowed for compliance with the notice is—

(a) such period of not less than 28 days beginning with the date of service of the notice as may be specified in the notice; or

(b) that period as extended by a further notice served by the Department on the person responsible.

(8) If, at any time after the end of the period allowed for compliance with the notice—

(a) any of the conditions specified in the notice is not complied with; and

(b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,

the person responsible is in breach of the notice.

(9) If the person responsible is in breach of the notice he shall be guilty of an offence.

(10) An offence under paragraph (9) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.

(11) It shall be a defence for a person charged with an offence under paragraph (9) to prove—

(a) that he took all reasonable measures to secure compliance with the conditions specified in the notice; or

(b) where the notice was served on him by virtue of paragraph (2)(b), that he no longer had control of the land.

(12) A person who is guilty of an offence under paragraph (9) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) In this Article—

(a) "conditions" includes limitations; and

(b) references to carrying out any development include causing or permitting another to do so.".

Injunctions

5. After Article 76A of the principal Order (as inserted by Article 4 of this Order) there is inserted —

"Injunctions

Injunctions

76B.—(1) Where the Department considers it necessary or expedient for—

(a) any actual or apprehended breach of planning control;

(b) any actual or apprehended contravention of Articles 44(1) or (5), 66 or 66A; or

(c) any actual or apprehended contravention of hazardous substances control,

to be restrained by injunction, it may apply to the court for an injunction, whether or not it has exercised or is proposing to exercise any of its other powers under this Part.

(2) On an application under paragraph (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court and county court rules may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this Article "the court" means the High Court or the county court.".

Other changes relating to enforcement

Time limits on enforcement action

6.—(1) At the beginning of Part VI of the principal Order (enforcement) there is inserted—

"Introductory

Expressions used in connection with enforcement

67A.—(1) For the purposes of this Order—

(a) carrying out development without the planning permission required; or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted,

constitutes a breach of planning control.

(2) For the purposes of this Order—

(a) the issue of an enforcement notice; or

(b) the service of a breach of condition notice,

constitutes taking enforcement action.

Time limits

67B.—(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.