



FALKLAND ISLANDS

Planning Ordinance 1991

(ORDINANCE No. 7 of 1991)

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FALKLAND ISLANDS

Planning Ordinance 1991

AN ORDINANCE To make new provision as to the control of development and the use of land and development in the territorial sea of the Falkland Islands, and for purposes connected with the foregoing purposes.

[DATE OF COMMENCEMENT: 1ST MARCH 1991¹]

PART I INTRODUCTORY

1 Short title

This Ordinance may be cited as the Planning Ordinance 1991.

2 Commencement

This Ordinance shall come into operation on such date as is notified by the Governor by notice published in the Gazette.

[Date of commencement: 28th January 1991.]

3 Interpretation

(1) In this Ordinance, unless the context otherwise requires-

"**advertisement**" has the meaning assigned to it by section 78(4);

"**aftercare condition**" has the meaning assigned to it by section 41(2);

"**building**", except in Part V of this Ordinance, includes any structure or erection but does not include plant or machinery comprised in a building;

"**building operations**" includes -

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by persons carrying on business as a builder;

[S. 2(2)(a)/Ord. 11/05/w.e.f. 31/8/05.]

"buildings or works" includes waste materials, refuse and other matters deposited on land, and references to the erection or construction of buildings or works shall be construed accordingly;

"building operations" includes rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder;

"clearing" in relation to land, means the removal of buildings or materials from the land, the levelling of the surface of the land, and the carrying out of such other operations in relation thereto as may be prescribed;

"Committee" means the Planning and Building Committee established under section 4;

"curtilage" means, in relation to a dwellinghouse, land, including land covered by buildings structures or water, in the same ownership as the dwellinghouse and intimately connected with it, whether or not separated from it by a road, track or highway or by water of any kind, which is used and enjoyed with the dwellinghouse so as to augment the amenities of the dwellinghouse and not for any separate commercial purpose of any kind;

[S. 2(2)(b)/Ord. 11/05/w.e.f. 31/8/05.]

"development" has the meaning assigned to it by section 26;

"designated building" means a building the subject of a designation order under section 65 and "designation order" means an order under that section;

"development plan" means-

- (a) the provisions of the structure plan for the time being in force;
- (b) any alterations to that plan approved by the Governor;
- (c) any provisions of a local plan for the time being in force;
- (d) any alterations to that local plan approved by the Governor;
- (e) any provisions of a subject plan for the time being applicable; and
- (f) any alterations to a subject plan approved by the Governor,

and references in the foregoing provisions of this definition-

- (i) to the provisions of any plan shall, in relation to a part of the Falkland Islands to which they are applicable, be construed as references to so much of those provisions as are applicable to that part, and

- (ii) to the alterations to a plan being approved by the Governor shall be construed as meaning approved by him and notified in the Gazette;

"disposal" means disposal by way of sale, exchange or lease, or by way of the creation of any easement, right or privilege, or in any other manner, except by way of appropriation, gift or mortgage, and **"dispose of"** shall be construed accordingly;

"dwellinghouse"-

- (a) means a permanent building adapted for, and capable of, being dwelt in, in which the owner, tenant or occupier of it, or any member of the owner or tenant's family, habitually sleeps at night;
- (b) includes any part of such a building where that part is separately used as a dwelling and any buildings or;
- (c) notwithstanding (a) and (b) does not include any building the larger part of which is used for any business purpose;

[S. 2(2)(c)/Ord. 11/05/w.e.f. 31/8/05.]

"enactment" includes an enactment in any Ordinance, and an order, rule, regulation, by-law or scheme made under an Ordinance;

"enforcement notice" means a notice under section 80;

"engineering operations" includes the formation or laying out of means of access to highways;

"erection" in relation to buildings as defined in this subsection, includes extension, alteration and re-erection;

"established use certificate" . . .

[S. 3(a)/Ord. 9/14/w.e.f. 13/11/14.]

"functions" includes powers and duties;

"kelp" has the same meaning as it has under section 2 of the Control of Kelp Ordinance 1970;

[Revision w.e.f. 31/07/2017]

[S. 2(2)(d)/Ord. 11/05/w.e.f. 31/8/05.]

"land" includes land covered by water (including the sea) and the bed of any river or of the sea or other body of water and any corporeal hereditament, including a building;

[S. 2(2)(e)/Ord. 11/05/w.e.f. 31/8/05.]

"lease" includes an underlease and an agreement for a lease or underlease, but does not include an option to take a lease or a mortgage, and **"leasehold interest"** means the interest of the tenant under a lease as so defined;

"means of access" includes any means of access, whether private or public, for vehicles or for foot passengers, and includes a street;

"mineral" means any substance, other than water, and whether that substance is in a solid, liquid or gaseous form, which has been formed by or is subject to geological process and any naturally occurring inorganic substance beneath or at the surface of the earth, and whether or not any such substance is under water; and includes every mineral and substance in or under land of a kind ordinarily worked for removal by underground or surface working;

[S. 3(b)/Ord. 9/14/w.e.f. 13/11/14.]

"mortgage" includes any charge or lien on any property for securing money or money's worth;

"owner", in relation to any land, means (except in section 32) a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;

"planning decision" means a decision made on an application under Part IV;

"Planning Officer" means the incumbent of the post created by section 10, and includes the person formally acting in that capacity during the temporary absence from duty of the incumbent;

[S. 3(c)/Ord. 9/14/w.e.f. 13/11/14.]

"planning permission" means permission under Part IV, and in construing references to planning permission to develop land or to carry out any development of land, or to applications for such permission, regard shall be had to section 44(2);

"planning permission granted for a limited period" has the meaning assigned to it by section 40(2);

"prescribed" (except in relation to matters expressly required or authorized by this Ordinance to be prescribed in some other way) means prescribed by regulations under this Ordinance;

"prohibition notice" means a notice under section 66;

"public notice board" means the notice board in the foyer of The Secretariat building, Stanley on which public notices are customarily displayed;

"relevant building" has the meaning assigned by section 69(4);

"restoration condition" has the meaning assigned to it by section 41(2);

"steps for the protection of the environment" except in section 57, and **"proposals for the protection of the environment"** mean steps or proposals, as the case may be, for preventing or ameliorating any damage or danger of damage to or loss of the amenities of the area in which the land is, or under which the land development has been, is being or is proposed to be carried out, and for the purposes of this definition "amenities", without prejudice to the generality of that expression include any plant, tree, shrub, fish, bird, mammal or other living creature or thing, whether naturally occurring or not and any view or outlook from any part of that area and any geological or geophysical feature; and without prejudice to the foregoing provisions of this definition include steps or proposals for-

- (a) the prevention or reduction of the emission or discharge of any ionising radiation, fumes, smell, gas, liquid or solid substance and the prevention or reduction of noise or vibration;
- (b) the exterior treatment of any building or structure whether by the materials of which it is constructed or by external decoration or otherwise;
- (c) the screening of the land affected whether by fences, walls or other structures or by the planting, maintenance, aftercare and replacement of trees and shrubs or otherwise;
- (d) measures to deal with any danger or nuisance caused by the discharge by accident or misadventure of any thing referred to in subparagraph (a) of this definition; and
- (e) the storage, treatment or removal of any deposit or waste material and any matters incidental thereto;

"**stop notice**" has the meaning assigned to it by section 85;

"**suspension order**" and "**supplementary suspension order**" have the meanings assigned to them by section 57;

"**use**", in relation to land, does not include the use of land for the carrying out of any building or other operations thereon.

(2) With respect to references in this Ordinance to planning decisions-

- (a) in relation to a decision altered on appeal by the reversal or variation of the whole or part thereof, such references shall be construed as references to the decision as so altered;
- (b) in relation to a decision upheld on appeal, such references shall be construed as references to the decision of the Committee and not to the decision of the Governor on the appeal;
- (c) in relation to a decision given on an appeal in the circumstances mentioned in section 48, such references shall be construed as references to the decision so given; and
- (d) the time of a planning decision, in a case where there is or was an appeal, shall be taken to be or have been the time of the decision as made by the Committee (whether or not that decision is or was altered on that appeal), or, in the case of a decision given on an appeal in the circumstances mentioned in section 48, the time when in accordance with that section notification of a decision of the Committee is deemed to have been received.

(3) Subject to section 51(1), for the purposes of this Ordinance development of land shall be taken to be initiated-

- (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
- (b) if the development consists of a change in use, at the time when the new use is instituted; and

- (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in the preceding paragraphs.
- (4) In relation to the sale or acquisition of an interest in land, references in this Ordinance to a contract are references to a contract in writing, enforceable in accordance with law and, where the interest is or was conveyed or assigned without a preliminary contract, are references to the conveyance or assignment; and references to the making of a contract are references to the execution thereof.
- (5) In this Ordinance-
 - (a) references to a person from whom title is derived by another person include references to any predecessor in title of that person;
 - (b) references to a person deriving title from another person include references to any successor in title of that other person;
 - (c) references to deriving title are references to deriving title either directly or indirectly.
- (6) References in this Ordinance to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment, including this Ordinance.

3A Meaning of "**determine**"

- (1) In this Ordinance and any subsidiary legislation made under it, "**determine**" must be construed in accordance with the following rules-
 - (a) when used in relation to applications for planning permission submitted by an applicant other than the Crown and that are to be considered by the Committee, "**determine**" means the right to-
 - (i) grant planning permission; and
 - (ii) refuse planning permission,

at the Committee's discretion, after taking into account the views of the Planning Officer as required by section 4(2);
 - (b) when used in relation to applications for planning permission that are submitted by the Crown and are to be considered by the Committee, "**determine**" means, in either case after taking into account the views of the Planning Officer as required by section 4(2)-
 - (i) the right to grant planning permission; and
 - (ii) the duty, where the Committee is of the view that planning permission should be refused, to refer the application to the Governor with written reasons for its recommendation that planning permission be refused,

but does not confer on the Committee power to refuse planning permission;
 - (c) when used in relation to an application for planning permission under section 39, regardless of the identity of the applicant, "**determine**" means-

- (i) with respect to the Committee, the right (after taking into account the views of the Planning Officer as required by section 4(2)) to make recommendations (including reasons) to the Governor as to whether the application should be granted or refused, following which it must refer the application to the Governor who has the power to grant or refuse;
- (ii) with respect to the Governor, the right, on receipt of an application referred to the Governor by the Committee under sub-subparagraph (i), to either grant or refuse planning permission;

[S. 13/Ord. 14/15/w.e.f. 24/12/15.]

- (d) when used in relation to the Planning Officer in respect of any application, **"determine"** means-

- (i) the right to grant planning permission; and
- (ii) the duty, where the Planning Officer is of the view that planning permission should be refused, to refer the application to the Committee with written reasons for the Planning Officer's view that planning permission be refused,

but does not confer on the Planning Officer power to refuse planning permission;

- (e) when used in relation to applications for planning permission submitted by the Crown and that are to be considered by the Committee on referral from the Planning Officer as referred to in paragraph (d), **"determine"** means-

- (i) the right to grant planning permission contrary to the recommendation of the Planning Officer; and
- (ii) the duty, where the Committee is of the view that planning permission should be refused (for the reasons given by the Planning Officer, or for other reasons as well or in the alternative), to refer the application to the Governor with written reasons for its recommendation that planning permission be refused,

but does not confer on the Committee power to refuse planning permission;

- (f) when used in relation to any application to be considered by the Governor, **"determine"** means full power to either grant or refuse planning permission,

and in all cases it is required that only material considerations, as set out in section 34, that are applicable be taken into account.

(2) In this Ordinance, in each case where any of the words "approve", "consider" or "decide" is used with respect to action to be taken by the Governor, the Committee, or the Planning Officer, in relation to an application for planning permission, that word must be construed as a synonym for "determine" and must be construed in accordance with the relevant provision of subsection (1).

[S. 4/Ord. 9/14/w.e.f. 13/11/14.]

PART II ADMINISTRATION

4 Planning and Building Committee

(1) This section creates for the purposes of this Ordinance a Planning and Building Committee which, subject to any regulations made under section 36(1) conferring power on the Planning Officer to deal with applications for planning permission, is the authority responsible for the administration of this Ordinance.

[S. 5/Ord. 9/14/w.e.f. 13/11/14.]

(2) The Committee shall, before exercising any function under this Ordinance, seek and consider the advice of the Planning Officer.

(3) The question of whether the Committee has exercised any function after seeking and considering advice in accordance with subsection (2) shall not be enquired into in any court of law.

5 Composition of Planning and Building Committee, etc.

(1) The Planning and Building Committee shall consist of not fewer than five and not more than seven persons but may exercise its functions under this Ordinance notwithstanding any vacancy in its membership, provided that no business shall be transacted by the Committee if its membership is reduced to less than three persons.

(2) Two of the members of the Committee shall be elected by the elected members of the Legislative Assembly from among their number and all other members of the Committee shall be appointed by the Governor.

[Revision w.e.f. 31/07/2017]

(3) . . .

[S. 2/Ord. 8/06/w.e.f. 30/3/06.]

(3A) The references in subsection (2) and (3) to "elected members of Legislative Assembly" and "an elected member of the Legislative Assembly" include, in relation to the period falling between a dissolution of the Legislative Assembly and the next following meeting of the Legislative Assembly, any person who was an elected member of the Legislative Assembly immediately preceding its dissolution.

[S. 3(1)/Ord. 17/01/w.e.f. 11/10/01 and Revision w.e.f. 31/07/2017.]

(4) The Planning Officer shall be entitled to attend at all meetings of the Committee and to take part in its proceedings, except that if a matter is put to the vote, he shall not vote.

(5) If a member of the Committee has a direct or indirect financial or other personal interest in a matter being considered by the Committee, that member-

(a) must, subject to subsection (6), declare that interest;

(b) must not take part in the Committee's consideration of that matter; and

- (c) if so required by the Chairperson or other person presiding at the meeting, must not attend the meeting or that portion of it during which the Committee considers the matter in which the member has, in accordance with paragraph (a), declared an interest,

but the provisions of this subsection do not affect the member's rights under subsection (6A).

[S. 6(a)/Ord. 9/14/w.e.f. 13/11/14.]

(5A) In subsection (5) "other personal interest" means any interest, other than a financial interest, such as relationship or marriage or a relationship analogous to marriage to an applicant for planning permission or a person who might be affected adversely or beneficially by the decision of the Committee in respect of the application or other matter before the Committee, or employment by or partnership with any such person (but not political, religious or other beliefs, age, gender, ethnic origin or nationality, education, wealth, poverty or position in society or any other like factor), and which reasonable person, possessed of all the facts known to the member, might consider likely to render the member predisposed, regardless of the merits of the application or matter, to decide the application or matter in a particular way.

[S. 3/Ord. 11/05/w.e.f. 31/8/05.]

(6) A member of the Committee declaring an interest in any matter is not obliged to specify the nature or extent of his interest.

(6A) Despite subsection (5), a member to whom that subsection refers may-

- (a) exercise rights under other provisions of this Ordinance to make oral representations to the Committee as an applicant or member of the public; and
- (b) assert the right to be present at a Committee meeting for the purpose referred to in paragraph (a), and this right must prevail over a requirement of the Chairperson or other person presiding at the meeting under paragraph (c) of subsection (5); but only for so long as is necessary for the purpose.

[S. 6(b)/Ord. 9/14/w.e.f. 13/11/14.]

(7) A decision of the Committee on any matter is not invalidated by the presence during the consideration of a matter of a member who has declared his interest in that matter or who has failed to declare his interest in that matter when he ought reasonably to have done so.

(8) A member of the Committee who is present during consideration by the Committee of any matter in which he ought reasonably to have declared his interest and who has failed to declare that interest commits an offence and on conviction of that offence is liable to a fine not exceeding the maximum of level 5 on the standard scale.

(9) Proceedings for an offence under subsection (8) may only be instituted by or with the consent of the Attorney General.

6 Chairman of the Committee

(1) The Chairman of the Committee shall be such one of the two members of the Committee elected from among their number by the elected members of the Legislative Assembly as they shall designate and the Vice-Chairman of the Committee shall be the other of such two members.

[Revision w.e.f. 31/07/2017]

(2) The Chairman shall preside at all meetings of the Committee at which he is present, save that he shall not preside during consideration of any matter in which he has declared an interest.

(3) The Vice-Chairman of the Committee shall preside at all meetings of the Committee at which he is present and at which the Chairman is not present, and during consideration of all matters considered at a meeting of the Committee in which the Chairman has declared an interest, save that he shall not preside during consideration of any matter by the Committee by which he himself has declared an interest.

(4) This subsection applies where the operation of the foregoing subsections of this section in the opinion of the Chairman of the Committee (or, if for any reason he is not available, in the opinion of the Vice-Chairman of the Committee) would not result in an elected member of the Legislative Assembly presiding at a meeting of the Committee. In any such case the Chairman, or as the case may be, the Vice-Chairman of the Committee, may appoint another elected member of the Legislative Assembly to preside in his place, and whether or not the person appointed is a member of the Committee, the person so appointed shall, in respect of all matters before the Committee during which he presides, be deemed to be a member of it appointed under section 5(1), even if his appointment results in the number of members of the Committee exceeding eight. This subsection also applies if no person having the right by virtue of the foregoing provisions of this section (including this subsection) at a meeting of the Committee or during consideration of a matter before the Committee (as the case may be) is present, when the members of the Committee then present shall elect one of their number to preside.

[Revision w.e.f. 31/07/2017]

(5) The references-

(a) in subsection (1) to "elected members of the Legislative Assembly";

[Revision w.e.f. 31/07/2017]

(b) in the subsection (4) to "an elected member of the Legislative Assembly" and "another elected member of the Legislative Assembly",

[Revision w.e.f. 31/07/2017]

include, in relation to the period falling between a dissolution of the Legislative Assembly and the next following meeting of the Legislative Assembly, any person who was an elected member of the Legislative Assembly immediately preceding its dissolution.

[S. 3(2)/Ord. 17/01/w.e.f. 11/10/01 and Revision w.e.f. 31/07/2017.]

7 Meetings of the Committee

(1) Subject to subsections (2) and (3), the Committee shall meet when called upon so do to by the Chairman.

(2) The Chairman shall convene a meeting of the Committee to take place within fourteen days of receipt by him of request in writing signed by not less than three members of the Committee requesting him to do so.

(3) If the Chairman is outside the Falkland Islands or is for any reason unable or unavailable to perform his functions under subsections (1) and (2), the Vice-Chairman shall perform those functions in place of the Chairman. If the Vice-Chairman is also absent from the Islands or

unable to perform the Chairman's functions under subsections (1) and (2), the Chief Executive shall do so.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

(4) Subject to this subsection, every member of the Committee and all appropriate public officers shall be given by the Secretary at least five days' notice of any meeting of the Committee. A majority of the members present at any meeting of the Committee called on shorter notice may, however, resolve to accept shorter notice of that meeting.

(5) The question as to whether due notice has been given of any meeting of the Committee shall not be enquired into in any court of law.

8 Quorum

(1) Subject to subsection (3) no business shall be transacted at any meeting of the Committee when there are not three members of the Committee present.

(2) Any member who has declared an interest in any matter shall not be counted amongst the members present for the purpose of determining whether there is a sufficient number of members personally present.

(3) Notwithstanding subsection (1), a meeting of the Committee may adjourn to a further meeting of the Committee the business of the meeting or such part of it in respect of which a sufficient number of members is not present.

9 Attendance of public officers and other persons at meetings of the Committee

(1) Any public officer or other person may, by the invitation or with the permission of the Chairman or other person presiding at the meeting of the Committee or (as the case may be) during consideration of any matter by the Committee, attend at the Committee.

(1A) A member of the public is entitled, upon notifying the Chairperson or other person presiding at the meeting to this effect, to-

- (a) attend meetings of the Committee for the sole purpose of exercising the right, provided for in section 31A, to make oral representations; and
- (b) prevail over any objection to such attendance, but only insofar as is required for the making of those representations,

and so is not entitled to be present at the meeting before the time at which oral representations will be accommodated, and must leave immediately after making those representations if required to do so.

[S. 7/Ord. 9/14/w.e.f. 13/11/14.]

(1B) The Chairperson or other person presiding at a meeting of the Committee must allow a member of the public to attend the meeting in accordance with subsection (1A).

[S. 7/Ord. 9/14/w.e.f. 13/11/14.]

(2) A person attending under subsection (1) may take part in the Committee's proceedings except that if a matter is put to the vote, he shall not vote.

10 Appointment of the Planning Officer

(1) This section creates the post of Planning Officer, which is a public office the incumbent of which must appointed by the Chief Executive.

(2) The functions of the Planning Officer include-

- (a) advising the Committee as required by this Ordinance;
- (b) making decisions on planning applications or referring applications to the Committee or the Governor, as required by this Ordinance or any subsidiary legislation made under it;
- (c) attending meetings as required by this Ordinance;
- (d) instituting surveys, and-
 - (i) preparing or modifying plans or memoranda;
 - (ii) preparing, modifying or submitting proposals; or
 - (iii) approving the design or external appearance of buildings, as required by this Ordinance;
- (e) publishing documents as required by this Ordinance;
- (f) giving notification as required by this Ordinance;
- (g) giving views as required by this Ordinance;
- (h) keeping and updating registers as required by this Ordinance;
- (i) liaising with applicants as required by this Ordinance;
- (j) issuing certificates, giving consent, or receiving claims for compensation, as required by this Ordinance;
- (k) making representations as required by this Ordinance;
- (l) demanding and receiving notices as required by this Ordinance;
- (m) entering land or being present at such place, as authorised in accordance with this Ordinance; and
- (n) performing such other function reasonably consistent with the foregoing functions as may be instructed in writing by the Governor.

[S. 8/Ord. 9/14/w.e.f. 13/11/14.]

11 Secretary of the Committee

(1) A public officer shall be appointed by the Chief Executive to be the secretary to the Committee.

(2) It shall be the duty of the secretary-

- (a) to attend at all meetings of the Committee;

- (b) to prepare minutes of all meetings of the Committee; and
- (c) save as is provided by this Ordinance to have custody of the Committee's records;

[S. 9(a)/Ord. 9/14/w.e.f. 13/11/14.]

- (d) to perform such other functions as may be conferred on the secretary by any subsidiary legislation made under this Ordinance.

[S. 9(b)/Ord. 9/14/w.e.f. 13/11/14.]

12 Copies of minutes to be sent

A copy of the minutes of every meeting of the Committee shall be sent, as soon as they are prepared, to the Governor and to the Chief Executive.

PART III DEVELOPMENT PLANS

Survey and Structure Plan

13 Survey of Falkland Islands

(1) The Planning Officer shall institute a survey of the Falkland Islands, in so far as this has not already been done, examining the matters which may be expected to affect the development of the Falkland Islands or the planning of their development and, in any event, shall keep all such matters under review.

(2) Notwithstanding that the Planning Officer may have carried out his duty under subsection (1), the Planning Officer may if he thinks fit, and shall if so directed by the Governor, institute a fresh survey of the Falkland Islands examining the matters mentioned in that subsection.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

(3) Without prejudice to the generality of the preceding provisions of this section, the matters to be examined and kept under review shall include-

- (a) the proposed balance of future development between Stanley and Camp;
- (b) broad policies for controlling new industrial, mineral and other development anywhere in the Falkland Islands;

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

- (c) proposals for the improvement of infrastructure in so far as these have land use implications; and
- (d) policies to be followed in relation to the conservation of flora and fauna, protection of the environment generally, the prevention or reduction of pollution and the protection of the landscape.

14 Preparation of preliminary draft structure plan

- (1) In the preparation of the preliminary draft structure plan the Planning Officer shall consult with such other public officers as the Governor may direct and, in the absence of any such direction, such other public officers as he thinks fit. In addition, the Planning Officer may consult such persons appearing to him to have an interest in the matter as he thinks fit.
- (2) The preliminary draft structure plan shall be a written statement-
 - (a) formulating the Government's policy and general proposals in respect of the development and other use of land in the Falkland Islands and
 - (b) containing such other matters as may be prescribed or as the Governor may direct.
- (3) The written statement may be illustrated by maps, plans and diagrams.
- (4) In preparing the written statement referred to in subsection (2), the Planning Officer shall have regard-
 - (a) to the current policies of the Government with respect to the economic planning and development of the Falkland Islands;
 - (b) to the manpower and financial resources likely to be available for carrying out the proposals embodied in the structure plan;
 - (c) to the economic and social justification for the proposals set out in the structure plan; and
 - (d) to such other matters as the Governor may direct him to take into account.
- (5) The preliminary draft structure plan shall contain or be accompanied by an explanatory memorandum summarizing the reasons which in the opinion of the Planning Officer justify each and every policy and general proposal formulated in the plan.

15 Approval in principle of draft structure plan

- (1) As soon as possible after he has completed the preparation of the preliminary draft structure plan, the Planning Officer shall submit the preliminary draft structure plan to the Planning and Building Committee.
- (2) On submission of the preliminary draft structure plan under subsection (1), the Planning and Building Committee shall consider it and shall within a period not greater than two months forward it together with its comments and observations thereon to the Governor.
- (3) On receipt of the preliminary draft structure plan from the Planning and Building Committee and that Committee's comments and observations on the preliminary draft structure plan, the Governor shall cause all the same to be considered by the Executive Council.
- (4) On consideration of the preliminary draft structure plan prior to publication under the provisions of this section, the Executive Council shall advise the Governor whether any amendments, alterations or additions need, in its opinion, to be made to the draft structure plan before it is published in draft and, subject thereto, whether it approves the draft structure plan in principle.

- (5) The draft structure plan shall not be published-
- (a) until all amendments, modifications or alterations required by the Governor have been made to the preliminary draft structure plan; and
 - (b) unless the preliminary draft structure plan has been approved in principle (subject, as the case may be, to amendments, modifications and alterations) by the Governor.

16 Publication of draft structure plan

(1) The Planning Officer shall, as soon as the draft structure plan has been approved by the Governor (and after, if appropriate, all amendments, modifications and alterations required by the Governor have been incorporated therein)-

- (a) publish the draft structure plan in such manner as the Governor may direct;
- (b) publish it in any case in such a manner that adequate publicity is given to the contents of the draft structure plan and the right of all the persons interested to make comments and representations in relation thereto under subsection (2); and
- (c) shall notify its publication by notice in the Gazette.

(2) Any person may, within a period of two months from the appearance in the Gazette of the notice required by subsection (1)(c) of the publication of the draft structure plan, or such greater period as the Governor may have directed prior to the publication of the draft structure plan, make written representation or comments upon the draft structure plan. All such written representations or comments shall be sent to the Planning Officer who shall send a copy of them to the Governor.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

(3) As soon as may be after the expiration of the period during which written representations or comments may be made in relation to the draft structure plan under subsection (2), the Planning Officer shall, after he has consulted the Committee thereon, send to the Governor his written observations (if any) in relation to the written representations and comments received by him.

(4) The Governor shall, as soon as conveniently possible after the expiration of the period referred to in subsection (2), submit to the Executive Council all written representations and comments received in relation to the draft structure plan together with the Planning Officer's written observations in relation thereto.

17 Substantive approval or rejection of structure plan by Governor

(1) The Governor may, after consulting the Executive Council on the documents required to be submitted to the Executive Council under section 16(4) and, after considering the draft structure plan, either approve it (in whole or in part and with or without modifications or reservations) or reject it.

(2) In considering the draft structure plan under subsection (1), the Governor may take into account any matters which he thinks are relevant, whether or not they were taken into account in the draft structure plan as submitted to him under section 16, and notwithstanding the earlier approval in principle of the preliminary draft structure plan by the Governor.

(3) Where on considering the draft structure plan under subsection (1), the Governor does not determine then to reject it, he shall, before determining whether or not to approve it, consider any written representations or comments upon the draft structure plan and the Planning Officer's observations (if any) in relation to such written representations or comments.

(4) On considering the draft structure plan under subsection (1), the Governor may consult with, or consider the views of, any persons or body or association of persons as he thinks fit but he shall not, other than as provided by subsection (3), be under any obligation to do so.

(5) If the Governor in exercise of his powers under subsection (1) has approved the draft structure plan, the Planning Officer shall after making any modifications the Governor may then have required to be made in the draft structure plan-

(a) notify the approval of the structure plan by notice published in the Gazette;

(b) publish the approved structure plan in such manner as the Governor may direct.

18 Alteration of structure plan

(1) At any time after the approval of the structure plan, the Planning Officer may submit to the Governor and shall, if so directed by the Governor, submit to him within a period specified in the direction, such proposals for alterations to the structure plan as it appears to the Planning Officer after consultation with the Committee that it would be expedient to make or as the Governor may direct, as the case may be, and any such proposals may relate to the whole or part of the Falkland Islands.

(2) Any proposal under subsection (1) shall be accompanied by an explanatory memorandum summarizing the reasons which, in the opinion of the Planning Officer, justify the alterations which he is proposing. The explanatory memorandum shall also state the relationship of the proposals to general proposals for the development and other use of land in the Falkland Islands and-

(a) shall also contain or refer to any information on which the proposals are based; and

(b) may contain such illustrative material as the Planning Officer thinks appropriate.

(3) The provisions of section 16 shall apply with all necessary modifications in relation to draft alterations to the structure plan as they apply in relation to a draft structure plan and section 17 shall apply, with all necessary modifications, to the approval of draft alterations to the structure plan.

Local Plans

19 Preparation of local plans

(1) The Planning Officer shall, if the Governor so directs him in relation to any part of the Falkland Islands, as soon as practicable prepare for that part a preliminary draft local plan of such nature as may be specified in the direction.

(2) Without prejudice to any direction under subsection (1), the Planning Officer may, if he thinks it desirable, prepare a preliminary draft local plan for any part of the Falkland Islands and,

when the structure plan has been approved by the Governor shall, in any case, as soon as practicable, consider and thereafter keep under review, the desirability of preparing a local plan for any part of the Falkland Islands.

(3) A preliminary draft local plan shall consist of a written statement illustrated by such maps, plans and diagrams as may be necessary or convenient and shall-

- (a) formulate in such detail as the Planning Officer thinks appropriate the Planning Officer's proposals for the development and other use of land in that part of the Falkland Islands or for any description of development or other use of such land (including in either case such measures as the Planning Officer thinks fit for the improvement of the physical environment) and;
- (b) contain such matters as may be prescribed or as the Governor may in any particular case direct;

and in this subsection "proposals" includes proposed policies.

(4) Different preliminary local plans may be prepared for different purposes for the same part of the Falkland Islands.

(5) A preliminary draft local plan for any area shall contain, or shall be accompanied by, such diagrams, illustrations and descriptive matter as the Planning Officer may think appropriate for the purpose of explaining or illustrating the proposals in the preliminary draft plan, or as may be prescribed, or as may in any particular case be specified in directions given by the Governor; and any such diagrams, illustrations and descriptive matter shall be treated as forming part of the preliminary draft plan.

(6) In formulating his proposals in a preliminary draft local plan the Planning Officer shall secure that the proposals conform generally with the structure plan (or, as the case may be, the draft structure plan) as it stands for the time being and shall have regard to any information and other considerations which appear to him to be relevant, or which may be prescribed, or which the Governor may in any particular case direct him to take into account.

20 Approval of preliminary draft local plan

(1) As soon as possible after he has completed the preparation of the preliminary draft local plan, the Planning Officer shall submit it to the Committee for its consideration.

(2) The Committee on considering a preliminary draft local plan may-

- (a) recommend that it be approved or that it be approved subject to such modifications or reservations as it may recommend; or
- (b) recommend that it be rejected.

(3) The preliminary draft local plan shall as soon as possible after the Committee has completed its consideration of it be submitted by the Planning Officer to the Governor together with the Committee's recommendations in relation to it.

(4) The Governor on receiving a preliminary draft local plan together with the Committee's recommendations in relation to it may -

- (a) approve the preliminary draft local plan with or without modifications or reservations (and whether or not they are the same as those recommended by the Committee); or
- (b) reject the preliminary draft local plan.

(5) If the Governor under subsection (2) rejects the preliminary draft local plan he may either at the same time or at any future time direct the Planning Officer to prepare a new preliminary draft local plan in accordance with such directions as the Governor then gives to him.

(6) When a preliminary draft local plan has been approved by the Governor under subsection (4) (and after any modifications required by the Governor have been made thereto) the preliminary draft local plan shall constitute a draft local plan.

21 Publication of draft local plan

(1) As soon as possible after a preliminary draft local plan has become a draft local plan under section 20(4), the Planning Officer shall take such steps as will in his opinion secure-

- (a) that adequate publicity is given to the draft local plan and to the matters included in it;
- (b) that persons who may be expected to desire an opportunity of making representations with respect to those matters are made aware that they are entitled to an opportunity of doing so; and
- (c) that such persons are given an adequate opportunity of making such representations.

(2) Notification of the draft local plan shall be published in the Gazette. For a period of at least two months following such publication, a copy of the draft local plan shall be available for inspection at the office of the Planning Officer and at such other places as may be directed by the Governor or as the Planning Officer, in the absence of such directions, may think fit. The notification in the Gazette shall include a statement of the time within which objections to the draft local plan may be made.

(3) The time limited by a notification under subsection (2) shall not be less than two months from the date of that notification and the notification shall require that all objections to the draft local plan shall be in writing and shall be delivered to the Planning Officer.

(4) As soon as possible after the expiration of the time within which objections to the draft local plan may be made, the Committee shall consider those objections together with the observations of the Planning Officer thereon. The Committee shall then make its own comments and observations on those objections and shall forward the same, together with the objections and the Planning Officer's observations and comments on the objections to the Governor.

(5) The Governor shall, as soon as possible after receiving the documents referred to in subsection (4), consult the Executive Council in relation thereto.

(6) In the event that no objections are made to a draft local plan in accordance with this section, the Committee shall notify the Governor of that fact.

22 Adoption and approval of local plan

(1) On receiving the documents submitted to him by the Planning Officer under section 21(5) or, as the case may be, on receiving a report from the Committee under section 21(6), the Governor may adopt the draft local plan, either as originally published or as modified to take account of any objections or matters arising out of objections or as otherwise modified as the Governor determines. The draft local plan shall then constitute a local plan.

(2) Until a draft local plan has been approved by the Governor under this section, it shall not have effect but, without prejudice to the foregoing, and pending such approval, the Committee may, if it thinks fit, take the proposals and matters embodied in the draft local plan into consideration when determining or considering any application for planning permission or any other permission or consent under the provisions of this Ordinance.

(3) Notification of the approval of the local plan shall be published as soon as possible in the Gazette.

23 Alteration of local plans

(1) The Planning Officer may at any time with the consent of the Governor make proposals for the alteration, repeal or replacement of a local plan.

(2) Without prejudice to subsection (1), the Planning Officer shall, if the Governor so directs him in that behalf, as soon as practicable prepare proposals of a kind specified in the direction, being proposals for the alteration, repeal or replacement of a local plan. Such provisions of the antecedent sections of this Ordinance as relate to the preparation of a preliminary draft local plan, the publication of the draft local plan and consideration of objections thereto, as apply in relation to the preparation of a preliminary draft local plan and the approval of a draft local plan shall also apply (with all necessary modifications) in relation to the alteration, repeal or replacement of a local plan.

Subject Plans

24 Subject plans

(1) The Planning Officer may, if he thinks fit, and shall if the Governor so directs him, prepare a draft subject plan.

(2) Without prejudice to any other circumstances in which a draft subject plan may be prepared by the Planning Officer, or directed by the Governor to be prepared by the Planning Officer, a draft subject plan may be prepared or directed to be prepared if-

- (a) an application for planning consent has been received in relation to any proposed development which, if it were implemented, would be likely to have a major impact upon the environment; or
- (b) any application for planning consent has been received which, if it were granted, would constitute a major departure from the provisions of the structure plan or local plan.

(3) A preliminary draft subject plan, when prepared, shall be submitted by the Planning Officer as soon as possible to the Committee for its comments and observations upon it.

(4) As soon as a preliminary draft subject plan has been considered by the Committee the Committee shall submit the same, together with the Committee's observations and comments thereon, to the Governor who shall consult the Executive Council thereon, after, if he thinks fit, an opportunity has been offered to the public to make written representations to him in relation to it.

(5) The Governor may approve a draft subject plan, with or without modifications or reservations, or reject it. If the subject plan is approved by the Governor it shall have effect notwithstanding any inconsistency between it and the structure plan or any local plan and the structure plan or local plan shall then have effect subject, so far as may be necessary, to the subject plan.

(6) Approval of a subject plan shall be notified by the Planning Officer in the Gazette.

(7) Section 23 applies, with all necessary modifications, in relation to subject plans as it does in relation to local plans.

24A Oral representations

(1) Any person who makes-

- (a) a written representation under section 16; or
- (b) a representation or an objection under section 21,

is entitled to verbalise that written representation, representation or objection, as the case may be (in this section collectively referred to as making an "oral representation"), at the meeting of the Committee and the Planning Officer at which the Planning Officer will consult with the Committee on, as the case may be, the written representations, representations or objections received.

(2) Subject to subsection (3), a person referred to in subsection (1) is entitled to attend the said meeting of the Committee and the Planning Officer only for the purpose of making an oral representation and is therefore not entitled to resist any request made by the person chairing the meeting that the person leave the meeting after having made the oral representation.

(3) Subsection (1) does not affect any right that a person may have to attend the said meeting in accordance with the Committees (Public Access) Ordinance 2012.

[S. 10/Ord. 9/14/w.e.f. 13/11/14 and Revision w.e.f. 31/07/2017.]

Supplementary Provisions

25 Supplementary provisions as to structure, local and subject plans

(1) Without prejudice to the preceding provisions of this Part, the Governor may make regulations with respect to the form and contents of structure plans, local plans and subject plans

and with respect to the procedure to be followed in connection with their preparation, alteration, repeal and replacement.

(2) Regulations under subsection (1) may make different provisions for different parts of the Falkland Islands and may provide for the publication of structure plans, local plans and subject plans in computer-readable form (provided that a printed form of any of them shall be supplied to any person requesting one on payment of the prescribed cost, but any plans, diagrams and illustrations forming part thereof so supplied may be supplied in reduced size).

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

PART IV GENERAL PLANNING CONTROL

Primacy of development plan

[S. 4/Ord. 11/05/w.e.f. 31/8/05.]

25A Status of development plan

Where, in making any determination under this Ordinance, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

[S. 4/Ord. 11/05/w.e.f. 31/8/05.]

Meaning of development and requirement for planning permission

26 Meaning of "development"

(1) In this Ordinance, except where the context otherwise requires, "development" subject to the following provisions of this section, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(2) Subject to subsection (2A) and to the provisions of this Ordinance in relation to relevant buildings, the following operations or use of land shall not be taken for the purposes of this Ordinance to involve development of the land, that is to say-

- (a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building;
- (b) the carrying out by the Government of any works for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road;

- (c) the carrying out by the Government of any works for the purposes of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
- (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;
- (e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;
- (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Governor under this section, the use thereof for any other purposes of the same class;
- (g) the demolition of any description of building specified in a Development Order as not requiring planning permission

[S. 5(a)(ii)/Ord. 11/05/w.e.f. 31/8/05.]

[S. 5(a)(i)/Ord. 11/05/w.e.f. 31/8/05.]

(2A) notwithstanding subsection (2)(a) and the provisions of any development order, the carrying out of building, engineering, mining or other operations in on or over land other than those mentioned in subsection (2)(b) and (c) within five metres of the boundary of any road shall be taken to constitute development of land for which planning permission granted by the Committee or the Governor is required.

[S. 5(b)/Ord. 11/05/w.e.f. 31/8/05.]

(3) For the avoidance of doubt it is hereby declared that for the purposes of this section-

- (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part thereof which is so used;
- (b) the deposit of refuse or waste materials on land involves a material change in the use thereof, notwithstanding that the land is comprised in a site already used for that purpose, if either the superficial area of the deposit is thereby extended, or the height of the deposit is thereby extended and exceeds the level of the land adjoining the site;
- (c) the siting on any land for any purposes of any caravan, mobile home, container or any other building or structure of a kind originally designed and constructed so as to be readily movable from site to site constitutes development of the land;
- (d) the use of the curtilage of or any building or structure within the curtilage of a dwellinghouse for any trade or business purpose other than agriculture constitutes a material change in the use of the land;
- (e) the storage in the open air on any land (including any road) for a period exceeding one month of any of the following:
 - (i) any motor vehicle not reasonably capable of being driven under its own power (and whether registered for the time being under the Road Traffic Ordinance or not);
 - (ii) any parts of a motor vehicle or former motor vehicle;

- (iii) any plant, machinery or materials whatsoever not reasonably incidental to the use of the land for a purpose for which planning permission has been granted or for which planning permission is not required; and

[S. 5(b)ⁱⁱ(i)/Ord. 11/05/w.e.f. 31/8/05.]*

- (f) the collection, otherwise than of that stranded upon the shore by the action of the elements, or harvesting of kelp,

[S. 5(b)ⁱⁱⁱ(ii)/Ord. 11/05/w.e.f. 31/8/05.]*

each constitutes a material change in the use of the land.

(4) Subject to section 82 and without prejudice to any regulations made under that section relating to the control of advertisements, the use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this section as involving a material change in the use of that part of the building.

(5) For the purposes of this section, and without prejudice to any other situation in which any of the same constitute development, development of land for the purposes of breeding or rearing fish, shellfish or molluscs and development of land for the purposes of breeding or rearing animals or birds (not being cats or dogs), which in their wild state are predators, is not development for the purposes of agriculture.

(6) Where the placing or assembly of any tank, cage, frame, rope, spatting line, float, buoy or other apparatus or structure of any kind whatsoever in any part of the sea or in any part of the inland waters for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Ordinance shall have effect as if the tank, cage, frame, rope, spatting line, float, buoy or other apparatus or structure resulted from carrying out engineering operations over that land; and in this subsection-

"fish farming" means the breeding, rearing, or keeping of fish or shellfish (which includes any kind of crustacean or mollusc);

"inland waters" means waters which do not form part of the sea or of any creek, bay or estuary of any river as far as the tide flows;

"sea" means the territorial sea, any creek, bay or estuary of any river as far as the tide flows and any other part of the sea lying to landward of the baselines from which the territorial sea is measured.

[S. 5(c)^{iv}/Ord. 11/05/w.e.f. 31/8/05.]*

27 Development requiring planning permission

(1) Subject to the provisions of this section, planning permission is required for the carrying out of any development of land.

(2) Where on the date on which this Ordinance comes into operation (hereinafter in this section called "the commencement date") land was being used temporarily for a purpose other than the purpose for which it was normally used, planning permission is not required in respect for the resumption of the use of the land for the last-mentioned purpose.

- (3) Where on the commencement date land was normally used for one purpose and was also used on occasions, whether at regular intervals or not, for another purpose, planning permission is not required in respect of the use of the land for that purpose on other occasions.
- (4) Where land was unoccupied on the commencement date, but had at any previous time within the ten years preceding that date been occupied, planning permission is not required in respect of any use of the land for the purpose for which it was last used before the commencement date.
- (5) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of the use of the land for the purpose for which it was normally used before that permission was granted.
- (6) Notwithstanding anything in subsections (2) to (4), the use of land as a caravan site or as the site of a portable building or structure shall not, by virtue of those subsections, be treated as a use for which planning permission is not required unless-
- (a) the land was so used on one occasion at least during the period of two years ending with the commencement date, and the land was so used in respect of the same caravan, portable building or structure; and
 - (b) at the time the land was so used, the caravan, portable building or structure was reasonably fit for occupation and use for some purpose for which but for the provisions of subsections (2) to (4) would have required the grant of planning permission.

Development orders

28 Development orders

- (1) The Governor shall by order (in this Ordinance referred to as a "development order") provide for the granting of planning permission.
- (2) A development order may either-
- (a) itself grant planning permission for development specified in the order, or for development of any class so specified; or
 - (b) in respect of development for which planning permission is not granted by the order itself provide for the granting of planning permission by the Committee (or, in the cases hereafter provided, by the Governor on an application in that behalf made to the Committee in accordance with the provisions of the order).
- (3) A development order may be made either as a general order applicable (subject to such exceptions as may be specified therein) to all land, or as a special order applicable only to such land as may be so specified.
- (4) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.
- (5) Without prejudice to the generality of subsection (4)-
- (a) where planning permission is granted by a development order for the erection, extension or alteration of any buildings, the order may require approval of the Committee or of the

Planning Officer to be obtained with respect to the design or external appearance of the buildings;

- (b) where planning permission is granted by a development order for development of a specified class, the order may enable the Governor or the Committee to direct that the permission shall not apply either in relation to the development in a particular area or in relation to any particular development.

(6) Any provision of a development order whereby permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of references in this Ordinance to limitations) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that provision on more than that number of days in that period.

(7) For the purpose of enabling development to be carried out in accordance with planning permission, or otherwise for the purpose of promoting proper development in accordance with the development plan, a development order may direct that any enactment to which this subsection applies, or any regulations, orders or bylaws made at any time under such enactment, shall not apply to any development specified in the order, or shall apply thereto subject to such modifications as may be so specified.

(8) Subsection (7) applies to any enactment passed before the commencement of this Ordinance.^y

Applications for planning permission

29 Form and content of applications

Every application for planning permission shall be made in such manner as may be prescribed by regulations under this Ordinance, and shall include such particulars, and verified by such evidence, as may be required by the regulations or by directions given by the Committee or by the Governor thereunder.

30 Publicity for planning applications

(1) At least 10 days before an application is considered for the first time, the Planning Officer must ensure that-

- (a) every person who occupies land that falls within the parameters set out in subsection (4) is notified about the application; and
- (b) such notice is in writing in such form as may be prescribed.

(2) Subsection (1) applies equally to applications that are to be determined by the Committee as it applies to applications that are to be determined by the Planning Officer in exercise of power conferred on the Planning Officer by regulations made under section 36(2).

(3) Until notification of it has been given in accordance with this section, an application for planning permission must not be determined by either the Committee or the Planning Officer.

(4) The parameters referred to in subsection (1) are that, in relation to the land which is the subject of the application, any part of the land in question is within-

- (a) 100 metres, in the case of an application relating to land in Stanley; or
- (b) 1 kilometre, in the case of an application relating to land in Camp.

(5) The Planning Officer is not obliged to provide, or to ensure the provision of, notification of an application for planning permission to an occupier of land if that land does not fall within the parameters set out in subsection (4).

(6) The Planning Officer must ensure that one of the prescribed methods of service is adhered to when notice is being served in accordance with this section.

(7) The Planning Officer must, in advance of each meeting of the Committee or the making of a determination by the Planning Officer in accordance with regulations made under section 36(2), ensure adequate publicity regarding the applications for planning permission that will, as the case may be, be considered by-

- (a) the Committee for the first time at that meeting; or
- (b) the Planning Officer in accordance with regulations made under section 36(2),

and such publicity must be in accordance with such stipulations as may be prescribed subject to subsection (8).

(8) Despite subsection (7), the adequate publicity must commence no later than 10 days in advance of each meeting of the Committee, or of the date on which the Planning Officer will make a decision on the application, as the case may be.

[S. 11/Ord. 9/14/w.e.f. 13/11/14.]

31 Written representations

(1) Any person may make representations in writing to the Planning Officer in relation to any application for planning permission.

(2) Where a person intends to make written representations in relation to an application for planning permission that is to be determined by the Planning Officer in accordance with regulations made under section 36(2), the person must make those written representations in accordance with the procedure, prescribed in those regulations, for doing so.

(3) Subsection (4) or (5) applies whenever-

- (a) one or more written representations are made in relation to an application before it has been determined; and
- (b) the application will not be determined by the Planning Officer.

(4) If the application is to be determined by the Committee, the Planning Officer must ensure that the representations are brought to the attention of the Committee.

(5) If the application is to be determined by the Governor, the Planning Officer must ensure that the representations are brought to the attention of both the Committee and the Governor.

31A Oral representations regarding applications for planning permission

(1) This section does not apply to any application for planning permission that is to be determined by the Planning Officer in accordance with regulations made under section 36(2).

(2) Despite subsection (1), this section will apply to any such application as from the point at which it is referred to the Committee in accordance with section 3A(1)(d) (and any other relevant provision of regulations made under section 36(2)) with a recommendation that it be refused.

(3) Before the Committee considers an application, the following will have the right to make oral representations to the Committee or to have oral representations made to the Committee on their behalf-

(a) the applicant; and

(b) members of the public who have made written representations to the Planning Officer.

(4) If the Governor is to consider an application, the same persons will also have the right to make oral representations to Executive Council before it advises the Governor in relation to the application.

(5) The Committee and Executive Council must each adopt and publish arrangements for oral representations to be made to them under this section.

31B Duty to take representations into account

(1) Each of the persons listed in subsection (2) must, when determining or otherwise dealing with an application for planning permission, take into account the representations made in accordance with the relevant provisions.

(2) The persons referred to in subsection (2) are-

(a) the Planning Officer, who must take into account representations made in accordance with subsections (1) and (2) of section 31;

(b) the Committee, which must take into account representations made in accordance with sections 31 and 31A;

(c) Executive Council (when advising the Governor in relation to an application), which must take into account representations made in accordance with sections 31 and 31A; and

(d) the Governor, who must take into account representations made in accordance with sections 31 and 31 A.

(3) For the purposes of determining any application for planning permission, subsection (2) does not allow the taking into account of any consideration that is not a material consideration under section 34.

32 Notification of applications to owners and agricultural tenants

(1) Without prejudice to section 30 the Committee or, as the case may be, the Governor, shall not entertain any application for planning permission unless it is accompanied by one or other of the following certificates signed by or on behalf of the applicant, that is to say:

- (a) a certificate stating that, in respect of every part of the land to which the application relates, the applicant is either the estate owner in respect of the fee simple or is entitled to a tenancy thereof;
- (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons (other than the applicant) who, at the beginning of the period of twenty-one days ending with the date of the application, were owners of any of the land to which the application relates, and setting out the names of those persons, the addresses at which notice of the application was given to them respectively, and the date of service of each such notice;
- (c) a certificate stating that the applicant is unable to issue a certificate in accordance with either of the preceding paragraphs, that he has given the requisite notice of the application to such one or more of the persons mentioned in the last preceding paragraph as are specified in the certificate (setting out their names, the addresses at which notice of the application was given to them respectively, and the date of the service of each such notice), that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the remainder of those persons and that he has been unable to do so;
- (d) a certificate stating that the applicant is unable to issue a certificate in accordance with paragraph (a) of this subsection, that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the persons mentioned in paragraph (b) of this subsection and that he has been unable to do so.

(2) Any such certificate as is mentioned in paragraph (c) or paragraph (d) of subsection (1) shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate (being a date not earlier than the beginning of the period mentioned in paragraph (b) of that subsection) been published in the Gazette.

(3) In addition to any other matters required to be contained in a certificate issued for the purposes of this section, every such certificate shall contain one or other of the following statements, that is to say:

- (a) a statement that none of the land to which the application relates constitutes or forms part of an agricultural holding;
- (b) a statement that the applicant has given the requisite notice of the application to every person (other than the applicant) who, at the beginning of the period of twenty-one days ending with the date of the application, was a tenant of any agricultural holding any part of which was comprised in the land to which the application relates, and setting out the name of each such person, the address at which notice of the application was given to him, and the date of service of that notice.

(4) Where an application for planning permission is accompanied by such a certificate as is mentioned in subsection (1)(b), (c) or (d) or by a certificate containing a statement in accordance

with subsection (3)(b), the application shall not be determined before the end of the period of twenty-one days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate, or the date of publication of a notice as therein mentioned, whichever is the later.

(5) If any person issues any certificate which purports to comply with the requirements of this section and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he commits an offence and is liable on conviction to a fine not exceeding the maximum of level 4 on the standard scale.

(6) Any certificate issued for the purposes of this section shall be in such form as may be prescribed by a development order; and any reference in any provision of this section to the requisite notice, where a form of notice is prescribed by a development order for the purposes of that provision, is a reference to a notice in that form.

(7) In this section "owner", in relation to any land, means a person who is for the time being the estate owner in respect of the fee simple thereof or is entitled to a tenancy thereof granted or extended for a term of years certain of which not less than ten years remain unexpired.

(8) In this section "agricultural holding" means the aggregate of the land (whether agricultural land or not) comprised in a contract of tenancy which is a contract for an agricultural tenancy, not being a contract under which that land is let to the tenant during his continuance in any office, appointment or employment held under the landlord and for the purposes of this subsection, a contract of tenancy relating to any land is a contract for an agricultural tenancy if, having regard to-

- (a) the terms of the tenancy;
- (b) the actual or contemplated use of the land at the time of conclusion of the contract and subsequently; and
- (c) any other relevant circumstances,

the whole of the land comprised in the contract, subject to such exceptions only as do not substantially affect the character of the tenancy, is let for use as agricultural land.

(9) For the purposes of subsection (8), "agricultural land" means land used for agriculture if by way of trade or business it is used for any one or more of the following purposes:

- (a) horticulture;
- (b) fruit growing;
- (c) seed growing;
- (d) dairy farming;
- (e) livestock breeding;
- (f) livestock keeping;
- (g) grazing land;

- (h) meadow land;
- (i) osier land;
- (j) market gardens;
- (k) nursery grounds; or
- (l) woodlands where that use is ancillary to the farming of land for other agricultural purposes,

but land enjoyed and used as part of the curtilage of one or more dwellinghouses is not agricultural land unless that dwellinghouse or at least one of those dwellinghouses is used for the purposes of the trade or business of a person engaged in agriculture who uses other land by way of trade or business for agriculture and that dwellinghouse is occupied (but not necessarily by the owner of that trade or business) for the purposes of that trade or business.

33 Environmental Impact Assessments

(1) The Governor may make regulations imposing a requirement for the conduct of environmental impact assessments-

- (a) at any stage of the consideration of an application for planning permission relating to any type of development referred to in this Ordinance; or
- (b) in relation to any development which, by virtue of an order made under section 28 of this Ordinance, is the subject of general planning permission and is thereby excluded from the requirement to be the subject of an application for planning permission.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may-

- (a) impose the requirement for the conduct of an environmental impact assessment in relation to any type of development specified in section 26 of this Ordinance while, expressly or by implication, excluding other types of development from the requirement;
- (b) prescribe more or less extensive environmental impact assessments for different classes of development, or in relation to specific applications or specific proposed developments, as the case may be;
- (c) impose on an applicant or a proposed developer, as the case may be, fees for the conduct of any environmental impact assessment or any part of it;
- (d) make such other reasonable provision in respect of environmental impact assessments that the Governor considers appropriate; or
- (e) categorise developments based on their proposed scale or extent, and stipulate, depending on the specified category into which a particular development is classified, that the commencement of certain developments-
 - (i) must be preceded by planning permission that resulted from an application process that at some stage included an environmental impact assessment carried out on such scale or to such extent as may be specified in the regulations;

- (ii) must be contingent on the factors set out in subsection (3); or
 - (iii) is free to take place without there having to be any screening or any environmental impact assessment carried out.
- (3) The factors mentioned in subsection (2)(e)(ii) are-
- (a) the written result of a screening process, administered by such person or authority as may be specified in the regulations, for the possible imposition of a requirement that an environmental impact assessment be carried out; and
 - (b) if such a requirement is imposed-
 - (i) the determination of an application for planning permission which includes consideration of an environmental impact statement submitted either along with or after the application for planning permission; and
 - (ii) compliance with any determination made and directive given to the prospective developer by the appropriate authority consequent on the results of such assessment conducted in accordance with subsection (2)(e)(i).
- (4) The provisions of Parts 6A and 7 of this Ordinance apply to the enforcement of the provisions of regulations made under this section.

[S. 6/Ord. 11/05/w.e.f. 31/8/05 and s. 13/Ord. 9/14/w.e.f. 13/11/14.]

34 Material considerations

- (1) The following matters are material considerations (but are not determining factors, contrary to the public interest) for the purposes of determination of any application for planning permission:
- (a) the provisions of the structure plan, any local plan and any subject plan so far as material to the application;
 - (b) any matter of public amenity;
 - (c) any other consideration, whether public or private in nature which relates to the development and use of land and is relevant in relation to-
 - (i) in relation to the land the subject of the application; or
 - (ii) any other land which might be affected either by the carrying out of the development proposed in the application or by the development proposed in the application not being carried out;
 - (d) any environmental impact statement received under section 33.
- (2) Any consideration related solely to the circumstances of the applicant is not ordinarily a material consideration.

35 Supplementary to section 34

- (1) For the purposes of section 34(1)(c) circulars, notes and guidance issued by any authority having under any corresponding law responsibility for national policy or national administration

in relation to functions similar to those of the Committee or those of the Governor under this Ordinance are matters which may properly be taken into account on the determination of any application for planning permission, including the duration of and conditions of any planning permission and reasons for refusal of planning permission.

(2) The Governor may issue or authorize the issue of circulars, notes or guidance in relation to the determination of applications for planning permission, including the duration of and conditions of any planning permission, and the Committee shall on determining any application for planning permission take into account any relevant circular, notes or guidance to which this subsection relates.

Determination of planning applications

36 Determination of applications

(1) Subject to subsection (2), applications for planning permission shall be determined by the Committee, except where sections 37, 38 and 39 or a development order requires that the application be referred to the Governor for determination, when the application shall be determined by the Governor.

[S. 12/Ord. 11/05/w.e.f. 31/8/05, s. 14(a)/Ord. 9/14/w.e.f. 13/11/14 and s. 14/Ord. 14/15/w.e.f. 24/12/15.]

(2) Regulations made under this subsection may authorise applications for planning permission of any class or description specified in those regulations to be approved, whether or not subject to conditions, by the Planning Officer, but shall not authorise him-

- (a) to refuse any such application;
- (b) to grant any application if, in his opinion, the application is in conflict with the development plan.

(3) For the purposes of-

- (a) section 28(2)(b) (provisions of development order providing for the granting of planning permission by the Committee); and
- (b) the subsequent provisions of this Ordinance relating to appeals from decisions to impose conditions on the grant of planning applications,

any planning permission granted by the Planning Officer shall be deemed to have been granted by the Committee.

(4) The Planning Officer must ensure that notice of the decision on an application for planning permission is given to every person who made representations in relation to it under either section 31(1) or 31A.

[S. 7/Ord. 11/05/w.e.f. 31/8/05 and s. 14(b)/Ord. 9/14/w.e.f. 13/11/14.]

(5) Subsection (4) applies whether the decision was made by the Governor, the Committee or the Planning Officer.

[S. 14(c)/Ord. 9/14/w.e.f. 13/11/14.]

36A Power of Committee to decline to determine applications

(1) The Committee may decline to determine an application for planning permission for the development of any land if-

- (a) within the period of two years ending with the date on which the application is received, the Governor has refused a similar application referred to him under section 37 or has dismissed an appeal against the refusal of a similar application; and
- (b) in the opinion of the Committee there has been no significant change since the refusal or, as the case may be, dismissal mentioned in paragraph (a) in the development plan, so far as is material to the application, or in any material considerations.

(2) For the purposes of this section an application for planning permission for the development of any land shall only be taken to be similar to a later application if the development and the land to which the applications relate are in the opinion of the Committee the same or substantially the same.

(3) The reference in subsection (1)(a) to an appeal against the refusal of an application includes an appeal under section 48(1).

[S. 8/Ord. 11/05/w.e.f. 31/8/05.]

37 Applications conflicting with development plan

(1) Where an application for planning permission, if granted, would in the opinion of the Committee, conflict with the development plan, the Committee shall not grant the application but shall refer it to the Governor for determination.

(2) On referring an application under subsection (1), the Committee shall at the same time transmit to the Governor the views of the Committee and of the Planning Officer on the application and such views shall include views as to any conditions subject to which the application should be granted, if the Governor determines to grant it.

(3) The Governor shall have, in relation to any application referred to him under subsection (1) of this section the powers of the Committee under section 36(1) and section 40.

(4) No appeal otherwise than as provided by Part VIII of this Ordinance, shall lie to any court or authority in respect of the decision of the Governor on any application for planning permission referred to him under this section.

38 Applications by the Crown

(1) An application by the Crown for planning permission shall not be refused by the Committee and if the Committee would, if it had power to do so, refuse it, the Committee shall refer it to the Governor for determination.

(2) The Committee shall, on referring an application to the Governor pursuant to subsection (1), inform the Governor of the reasons for which it believes the application should be refused, and the views of the Planning Officer in relation to the application.

(3) Section 43 applies if the Committee grants an application by the Crown for planning permission subject to conditions.

(4) The Governor, on a referral under subsection (1) of this section has the same powers as he has under section 37(3) in relation to a referral under section 37(1).

39 Applications for planning permission in respect of minerals and marine farming

(1) Subject to the following subsections, an application for planning permission for exploration for or winning and working of minerals or an application for planning permission for fish farming must be determined by the Governor.

(2) Before transmitting an application under subsection (1) to the Governor for determination the Committee must make written recommendations to the Governor giving reasons for those recommendations.

(3) Where an application under subsection (1) is made by the Crown and the Governor grants it, section 43 applies subject to conditions.

(4) This section does not apply in respect of an application relating to winning and working peat.

(5) In subsection (1) "fish farming" has the same meaning as in section 26(6).

[S. 15/Ord. 14/15/w.e.f. 24/12/15.]

40 Conditional grant of planning permission

(1) Without prejudice to the generality of section 36(1), conditions may be imposed on the grant of planning permission thereunder-

- (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the Committee to be expedient for the purpose of or in connection with the development authorized by the permission;
- (b) for requiring the removal of any buildings or works authorized by the permission, or the discontinuance of any use of land so authorized, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period;
- (c) requiring the design or external appearance of the building or any matter of detail to be approved by the Planning Officer;
- (d) requiring that steps be taken for the protection of the environment;

[S. 16(a)(i)/Ord. 9/14/w.e.f. 13/11/14.]

- (e) requiring the successful applicant to take or (where appropriate) facilitate the taking of steps, and specifying the steps so required, to-
 - (i) provide or deliver infrastructure required for or as a result of the development for which permission is granted; or

- (ii) avoid or mitigate the potential negative social or economic impacts of the development,

but conditions may only be imposed under paragraph (d) or (e) in accordance with regulations made under this section setting out details regarding those conditions.

[S. 16(a)(ii)/Ord. 9/14/w.e.f. 13/11/14.]

(1A) For the purposes of this section, "infrastructure" includes transport, utilities, social housing, education and public open space.

[S. 16(b)/Ord. 9/14/w.e.f. 13/11/14.]

(1B) The Government may commit to making a financial contribution to any steps to be taken by a successful applicant in accordance with paragraph (d) or (e) of subsection (1).

[S. 16(b)/Ord. 9/14/w.e.f. 13/11/14.]

(2) Subject to section 53(5), any planning permission granted subject to such a condition as is mentioned in subsection (1)(b) of this section is in this Ordinance referred to as "planning permission granted for a limited period", but this subsection does not apply to a planning permission for development to which section 40A(5) applies.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

(3) Where-

- (a) planning permission is granted for development consisting of or including the carrying out of building or other operations subject to a condition that the operations shall be commenced not later than a time specified in the condition (not being a condition attached to the planning permission by or under section 49 or 50); and
- (b) any building or other operations are commenced after the time so specified,

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

the commencement and carrying out of those operations do not constitute development for which that permission was granted.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

41 Aftercare conditions on permissions for working and winning minerals

(1) Where planning permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials is granted subject to a restoration condition, it may be granted subject also to any such aftercare condition as the Governor thinks fit.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

(2) In this Ordinance-

"restoration condition" means a condition requiring that after operations for the winning and working of minerals have been completed, the site shall be restored by the use of any or all of the following, namely, subsoil, topsoil and soil-making material; and

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

"aftercare condition" means a condition requiring that such steps shall be taken as may be necessary to bring land to the required standard for whichever of the following uses is specified in the condition, namely-

- (a) use for agriculture;
- (b) use for forestry; or
- (c) use for amenity.

(3) An aftercare condition may either-

- (a) specify the steps to be taken; or
- (b) require that the steps be taken in accordance with a scheme (in this section referred to as an "aftercare scheme") approved by the Governor.

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

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

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

(7) In subsection (6) "the aftercare period" means a period of five years from compliance with the restoration condition or such other maximum period after compliance with that condition as may be prescribed; and in respect of any part of a site, the aftercare period shall commence on compliance with the restoration condition in respect of that part.

(8) The power to prescribe maximum periods conferred by subsection (7) includes power to prescribe maximum periods differing according to the use specified.

(9) In a case where-

- (a) the use specified is a use for agriculture; and
- (b) the land was in use for agriculture at the time of the grant of the planning permission or had previously been used for that purpose and had not at the time of the grant been used for any authorized purpose since its use for agriculture ceased; and
- (c) the Director of Agriculture has notified the Governor of the physical characteristics of the land when it was last used for agriculture,

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

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

(11) Where the use specified is a use for forestry, the land is brought to the required standard when it is reasonably fit for that use.

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

(13) Before imposing an aftercare condition, the Governor shall consult-

- (a) the Director of Agriculture, where the Governor proposes that the use specified in the condition shall be a use for agriculture; and
- (b) shall also consult the Director of Agriculture where the Governor proposes that the use so specified shall be a use for forestry,

as to whether it is appropriate to specify that use.

(14) The Governor shall also consult the Director of Agriculture-

- (a) as to the steps to be specified in an aftercare condition which specifies a use for agriculture or for forestry; and
- (b) before approving an aftercare scheme submitted in accordance with an aftercare condition which specifies such a use.

(15) The Governor shall also from time to time as he considers expedient, consult the Director of Agriculture as to whether the steps specified in an aftercare condition or an aftercare scheme are being taken.

(16) On the application of any person with an interest in land in respect of which an aftercare condition has been imposed the Governor, if he is satisfied that the condition has been complied with, shall issue a certificate to that effect.

(17) A person who has complied with an aftercare condition but who has not himself carried out any operations for the winning and working of minerals in, on or under the land or deposited refuse or waste materials shall be entitled, subject to any condition to the contrary contained in a contract which is enforceable against him by the person who last carried out such operations, to recover from that person any expenses reasonably incurred in complying with the aftercare condition.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

(18) In this section-

"authorized" means authorized by planning permission; and

"forestry" means the growing of a utilizable crop of timber.

42 Directions, etc., as to method of dealing with applications

Subject to the provisions of sections 34 to 40, provision may be made by a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by the Committee and in particular-

- (a) for enabling the Governor to give directions restricting the grant of planning permission by the Committee either indefinitely or during such period as may be specified in the

directions, in respect of any such development, or in respect of development of any such class, as may be so specified;

- (b) for requiring that, before planning permission for any development is granted or refused, the Committee shall consult with such authorities or persons as may be so prescribed;
- (c) for requiring the Committee to give to any applicant for planning permission, within such time as may be prescribed by the order, such notice as may be so prescribed as to the manner in which his application has been dealt with;
- (d) for requiring the Committee to give any applicant for consent, agreement or approval required by a condition imposed on a grant of planning permission notice of its decision on his application, within such time as may be so prescribed;
- (e) for requiring the Committee to give to the Governor and such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to applications for planning permission made to the Committee, including information as to the manner in which any such application has been dealt with.

43 Permission to develop land without compliance with conditions previously attached

(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

(2) Special provision may be made with respect to such applications-

- (a) by regulations as regards the form and content of the application; and
- (b) by a development order as regards the procedure to be followed in connection with the application.

(3) On such an application the Committee shall consider only the question of the conditions subject to which planning permission should be granted, and-

- (a) if it decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, it shall grant planning permission accordingly; and
- (b) if it decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, it shall refuse the application.

(4) This section does not apply where the application is made after the previous planning permission has become time-expired, that is to say, the previous permission having been granted subject to a condition as to time within which the development to which it related was to be begun, that time has expired without the development having been begun.

(5) If an application to which subsection (1) applies is made by the Crown, it shall not be determined by the Committee but shall be referred to the Governor, with the advice of the Committee and of the Planning Officer in relation to it.

(6) In respect of an application referred to him under subsection (5) the Governor shall have in relation to it all the powers of the Committee under subsection (3).

44 Permission to retain buildings or works or continue use of land

(1) An application for planning permission may relate to buildings or works constructed or carried out, or a use of land instituted, before the date of the application, whether-

- (a) the buildings or works were constructed or carried out, or the use instituted, without planning permission or in accordance with planning permission granted for a limited period; or
- (b) the application is for permission to retain the buildings or works, or continue the use of the land, without complying with some condition subject to which a previous planning permission was granted.

(2) Any power to grant planning permission to develop land under this Ordinance shall include power to grant planning permission for the retention on land of buildings or works constructed or carried out, or for the continuance of a use of land instituted, as mentioned in subsection (1) of this section; and references in this Ordinance to planning permission to develop land or to carry out any development of land, and to applications for such permission, shall be construed accordingly:

Provided that this subsection shall not affect the construction of sections 30, 31(2) or (3) or section 73.

(3) Any planning permission granted in accordance with subsection (2) may be granted so as to take effect from the date on which the buildings or works were constructed or carried out, or the use was instituted, or (in the case of buildings or works constructed or a use instituted in accordance with planning permission granted for a limited period) so as to take effect from the end of that period, as the case may be.

45 Provisions as to effect of planning permission

(1) Without prejudice to the provisions of this Part of this Ordinance as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested therein.

(2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used; and if no purposes are so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.

46 Planning register

- (1) The Planning Officer shall keep, in such manner as may be prescribed by a development order, a register containing such information as may be so prescribed with respect to applications for planning permission made to the Committee including information as to the manner in which such applications have been dealt with.
- (2) A development order may make provision for the register to be kept in two or more parts, each containing such information relating to applications for planning permission made to the Committee as may be prescribed by the order, and may also make provision-
 - (a) for a specified part of the register to contain copies of applications and of any plans or drawings submitted therewith; and
 - (b) for the entry relating to any application, and every thing relating thereto, to be removed from that part of the register when the application (including any appeal arising out of it) has been finally disposed of, without prejudice to the inclusion of any different entry relating thereto in another part of the register.
- (3) The register kept under this section shall be available for inspection by the public at all reasonable hours.

Appeals

47 Appeals against planning decisions

- (1) An applicant may appeal to the Governor under section 47A where-
 - (a) the conditions of either of subsections (2) and (3) are met; and
 - (b) the Crown is not the applicant.
- (2) Subsection (1) applies whenever-
 - (a) the Committee determines an application-
 - (i) for planning permission;
 - (ii) for a consent, agreement or approval required by a condition imposed on a grant of planning permission; or
 - (iii) for an approval required under a development order;
 - (b) that permission, consent, agreement or approval is either-
 - (i) refused by the Committee; or
 - (ii) granted by it subject to conditions; and
 - (c) the applicant is aggrieved by that decision.
- (3) Subsection (1) also applies whenever-
 - (a) the Planning Officer determines an application for-

- (i) planning permission;
- (ii) a consent, agreement or approval required by a condition imposed on a grant of planning permission; or
- (iii) an approval required under a development order;
- (b) that permission, consent, agreement or approval is granted subject to conditions; and
- (c) the applicant is aggrieved by that decision.

(4) If an application is referred to and determined by the Governor instead of being determined by the Committee, no appeal lies against the decision of the Governor in relation to the application.

[S. 17/Ord. 9/14/w.e.f. 13/11/14.]

47A Appeals against planning decisions: procedure

(1) An appeal to the Governor under section 47 can be commenced only by the appellant submitting notice of appeal to such person and in such manner as may be prescribed by regulations.

[S.R. & O. 7/15/w.e.f. 13/11/14.]

(2) Where Executive Council is required to advise the Governor in relation to the appeal, the following will, before Executive Council advises the Governor, have the right to make written and oral representations to Executive Council or to have oral representations made to it on their behalf-

- (a) the Planning Officer;
- (b) the applicant; and
- (c) members of the public who had made written representations to the Committee.

[S.R. & O. 7/15/w.e.f. 13/11/14.]

(3) Executive Council must adopt and publish arrangements for written and oral representations to be made to it under this section.

(4) When advising the Governor in relation to an appeal, Executive Council must take into account all of the representations made to it under this section, insofar as those representations are material in accordance with section 34.

(5) If an appeal is made under this section, the Governor-

- (a) must take into account all of the representations that have been made in relation to the application and the appeal, insofar as those representations are material in accordance with section 34;
- (b) may deal with the application as if it had been made to the Governor in the first instance; and
- (c) may-
 - (i) allow the appeal in full;

- (ii) dismiss it entirely; or
- (iii) reverse or vary one or more parts of the decision made by the Committee, regardless of the extent to which the appeal relates to that part of the decision (or those parts of it).

(6) The Planning Officer must ensure that notice of the decision on an application for planning permission is given to every person who made representations under either or both of the following-

- (a) section (2); or
- (b) subsection 31(1).

(7) The decision of the Governor in relation to an appeal is final.

(8) In all other respects, planning permission granted by the Governor on appeal is to be treated for the purposes of this Ordinance as if it had been granted by the Committee.

[S. 18/Ord. 9/14/w.e.f. 13/11/14.]

48 Appeal in default of planning decision

(1) Subject to subsections (3) and (4), the provisions of section 47 will apply in relation to an application referred to in subsection (2) as if-

- (a) the permission or approval to which the application relates had been refused by the Committee or the Planning Officer (depending on which of them considered the application); and
- (b) notification of the decision had been received by the applicant at the end of the period of two months, or at the end of the extended period, as the case may be.

(2) Subsection (1) applies to an application as is mentioned in section 47, where such an application is considered by-

- (a) the Committee; or
- (b) the Planning Officer in accordance with regulations made under section 36(2).

(3) Subsection (1) does not apply where, within two months of the submission of the application or within such extended period as the applicant and the Planning Officer may at any time agree upon in writing, the Committee or the Planning Officer (as the case may be) gives notice to the applicant either-

- (a) of the decision on the application; or
- (b) that the application has been referred to the Governor in accordance with the preceding provisions of this Ordinance.

(4) Where an applicant has, within the period of two months or such extended period referred to in subsection (3), been notified that the application has been referred to the Governor, the notice has the effect of extending the period for a further period of two months from the date of the notification; but the Planning Officer and the applicant may in writing agree to a longer extended period.

(5) If the Governor does not, within the extended period provided for in subsection (4), notify his decision on the application-

- (a) the application shall be deemed to have been refused by the Committee or the Planning Officer (depending on which of them considered the application), notwithstanding any lack of power on the part of either to refuse the application; and
- (b) subsection (1) shall then apply with all necessary modifications.

[S. 19/Ord. 9/14/w.e.f. 13/11/14.]

Duration of planning permission

49 Limit of duration of planning permission

(1) Subject to the provisions of this section, every planning permission granted or deemed to be granted shall be granted or, as the case may be, be deemed to be granted, subject to the condition that the development to which it relates must be begun not later than the expiration of-

- (a) five years beginning with the date on which the permission is granted, or as the case may be, deemed to be granted; or
- (b) such other period (whether longer or shorter) as the authority granting the planning permission determines after taking into account the development plan and any other material consideration.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

(2) If planning permission is granted without the condition required by subsection (1), it shall be deemed to have been granted subject to the condition that the development to which it relates must be begun not later than the expiration of five years beginning with the date of the grant.

(3) Nothing in this section applies-

- (a) to any planning permission granted by a development order;
- (b) to any planning permission for a limited period;
- (c) to any planning permission for development consisting of the winning and working of minerals or the deposit of refuse or waste materials which is granted (or deemed to be granted) subject to a condition that the development to which it relates must be begun before the expiration of a specified period after the completion of other development consisting of the winning and working of minerals or the deposit of refuse or waste materials which is already being carried out by the applicant for the planning permission;

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

- (d) to any planning permission granted under section 44 on an application relating to buildings or works completed, or a use of land instituted, before the date of the application; or
- (e) to any outline planning permission, as defined by section 50.

50 Outline planning permission

(1) In this section and section 49 "outline planning permission" means planning permission granted, in accordance with the provisions of a development order with the reservation for subsequent approval by the Committee or by the Governor of matters (referred to in this section as "reserved matters") not particularized in the application.

(2) Subject to the provisions of this section, where outline planning permission is granted for development consisting in or including the carrying out of building or other operations, it shall be granted subject to conditions to the following effect:

- (a) that, in the case of any reserved matter, application for approval must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission; and
- (b) that the development to which the permission relates must be begun not later than whichever is the later of the following dates-
 - (i) the expiration of five years from the date of the grant of outline planning permission; or
 - (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

(3) If outline planning permission is granted without the conditions required by subsection (2), it shall be deemed to have been granted subject to those conditions.

(4) The authority concerned with the terms of an outline planning permission may, in applying subsection (2), substitute, or direct that there be substituted, for the periods of three years, five years or two years referred to in that subsection such other periods respectively (whether longer or shorter) as it considers appropriate.

(5) The said authority may, in applying subsection (2), specify, or direct that there be specified, separate periods under paragraph (a) of the subsection in relation to separate parts of the development to which the planning permission relates; and, if it does so, the condition required by paragraph (b) of the subsection shall then be framed correspondingly by reference to those parts, instead of by reference to the development as a whole.

(6) In considering whether to exercise their powers under subsections (4) and (5) of this section, the said authority shall have regard to the provisions of the development plan and to any other material considerations.

51 Provisions supplementary to sections 49 and 50

(1) For the purposes of sections 49 and 50, development shall be taken to be begun on the earliest date on which any specified operation comprised in the development begins to be carried out.

(2) In subsection (1) "specified operation" means any of the following:

- (a) any work of construction in the course of the erection of a building;

- (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
 - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in the last preceding paragraph;
 - (d) any operation in the course of laying out or constructing a road or part of a road;
 - (e) any change in the use of any land, where that change constitutes material development.
- (3) In subsection (2)(e) "material development" means any development other than-
- (a) development for which planning permission is granted by a general development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted; and
 - (b) development of any class prescribed for the purposes of this subsection;

and in this subsection "general development order" means a development order made as a general order applicable (subject to such exceptions as may be specified therein) to all land in the Falkland Islands.

(4) The authority referred to in section 50 is the Committee or the Governor, in the case of planning permission granted by either of them.

(5) For the purposes of section 50, a reserved matter shall be treated as finally approved when an application for approval is granted or, in a case where the application is made to the Committee and there is an appeal to the Governor against the Committee's decision on the application and the Governor grants the approval, on the date of the determination of the appeal.

(6) Where the Committee grants planning permission, the fact that any of the conditions of the permission are required by the provisions of sections 49 or 50 to be imposed, or are deemed by those provisions to be imposed, shall not prevent the conditions being the subject of an appeal under section 47 against the decision of the Committee.

(7) In the case of planning permission (whether outline or other) having conditions attached to it by or under section 49 or 50-

- (a) development carried out after the date by which the conditions of the permission require it to be carried out shall be treated as not authorized by the permission; and
- (b) an application for approval of a reserved matter, if it is made after the date by which the conditions require it to be made, shall be treated as not made in accordance with the terms of the permission.

52 Termination of planning permission by reference to a time limit

(1) The following provisions of this section shall have effect where, by virtue of section 49 and 50, a planning permission is subject to a condition that the development to which the permission relates must be begun before the expiration of a particular period and that development has been begun within that period but the period has elapsed without the development having been completed.

(2) If the Committee is of opinion that the development will be completed within a reasonable period, the Planning Officer may serve a notice (in this section referred to as a "completion notice") stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice, being a period of not less than twelve months after the notice takes effect.

(3) A completion notice-

- (a) shall be served on the owner and on the occupier of the land and on any other person who in the opinion of the Committee will be affected by the notice; and
- (b) shall take effect only if and when it is confirmed by the Governor, who may in confirming it substitute some longer period for that specified in the notice as the period at the expiration of which the planning permission is to cease to have effect.

(4) If, within such period as may be specified in a completion notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Governor, before confirming the notice, shall afford to that person and to the Planning Officer an opportunity of making written representations to him.

(5) If a completion notice takes effect, the planning permission therein referred to shall at the expiration of the period specified in the notice, whether the original period specified under subsection (2) or a longer period substituted by the Governor under subsection (3), be invalid except so far as it authorizes any development carried out thereunder up to the end of that period.

(6) The Committee may withdraw a completion notice at any time before the expiration of the period specified therein as the period at the expiration of which the planning permission is to cease to have effect; and if it does so it shall forthwith give notice of the withdrawal to every person who was served with the completion notice.

53 Limit of duration of planning permission for winning and working of minerals

(1) Every planning permission for development consisting of the winning and working of minerals or the deposit of refuse or waste materials shall be subject to a condition as to the duration of the development.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

(2) Except where a condition is specified under subsection (3) the condition is that the development must cease not later than the expiration of the period of sixty years beginning with the date of the permission.

(3) The Governor may specify a longer or shorter period than sixty years, and if he does so, the condition is that the development must cease not later than the expiration of a period of the specified length beginning with the date of the permission.

(4) A longer or shorter period than sixty years may be prescribed for the purposes of subsections (2) and (3).

(5) A condition to which planning permission for development consisting of the winning and working of minerals is subject by virtue of this section is not to be regarded for the purposes of this Ordinance as a condition such as is mentioned in section 40(1)(b).

Revocation or modification of planning permission

54 Power to revoke or modify planning permission

(1) If it appears to the Governor, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part of this Ordinance, the Governor, subject to the following provisions of this section, may by order revoke or modify the permission to such extent as (having regard to those matters) he considers expedient.

(2) The power conferred by this section to revoke or modify permission to develop land may be exercised-

- (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) where the permission relates to a change of the use of any land, at any time before the change has taken place:

Provided that the revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(3) Where the permission relates to the winning or working of minerals an order under this section may contain any such aftercare condition as the Governor thinks fit if-

- (a) the permission also includes a restoration condition; or
- (b) a restoration condition has previously been imposed in relation to the land by virtue of any provision of this Ordinance.

(4) Subsections (3) to (18) of section 41 shall apply in relation to an aftercare condition so imposed as they apply in relation to such a condition imposed under that section.

(5) Schedule 1 shall apply to compensation in respect of revocation or modification of planning permission.

Additional powers of control

55 Orders requiring discontinuance of use or alteration or removal of buildings or works

(1) Subject to subsection (3), if it appears to the Committee that it is expedient in the interests of proper planning (including the interests of amenity), regard being had to the development plan and to any other material considerations-

- (a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance of a use of land; or
- (b) that any buildings or works should be altered or removed,

the Committee may by order require the discontinuance of that use, or impose such conditions as may be specified in the order on the continuance thereof, or require such steps as may be so specified to be taken for the alteration or removal of the building or works, as the case may be.

(2) For the purposes of this section development consisting of the winning and working of minerals in, on or under any land is to be treated as a use of that land.

(3) Where the use of the land in question is, or includes, the winning or working of minerals-

(a) the Committee shall have no powers under subsection (1) and the Governor shall have those powers and the subsection shall have effect as if the words "the Governor" appeared therein wherever the words "the Committee" appear therein;

(b) subject to paragraph (a), subsection (1) shall have effect as if-

(i) the words "or (c) that any plant or machinery used for the winning or working of minerals should be altered or removed," were added at the end of paragraph (b) of that subsection;

(ii) the words "or plant and machinery" were inserted after the words "buildings or works" in the second place where those words occur.

(4) Where development consisting of the winning and working of minerals or the deposit of refuse or waste materials is being carried out in, on or under any land, the conditions which an order under this section may impose include a restoration condition.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

(5) An order under this section may include any such aftercare condition as the Governor thinks fit if-

(a) it also includes a restoration condition; or

(b) a restoration condition has previously been imposed in relation to the land by virtue of any provision of this Ordinance.

(6) Subsections (3) to (8) and (11) to (18) of section 41 shall apply in relation to an aftercare condition imposed under this section as they apply in relation to such a condition imposed under that section.

(7) In a case where-

(a) the use specified is a use for agriculture; and

(b) the land was in use for agriculture immediately before development consisting of the winning and working of minerals began to be carried out in, on or under it or had previously been used for agriculture and had not been used for any authorized purpose since its use for agriculture ceased; and

(c) the Director of Agriculture has notified the Governor of the physical characteristics of the land when it was last used for agriculture,

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

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

(9) Any order under this section may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order; and the provisions of section 54 shall apply in relation to any planning permission granted by an order under this section as they apply in relation to planning permission granted on an application made under this Part of this Ordinance.

(10) The power conferred by subsection (9) of this section shall include power, by an order under this section, to grant planning permission, subject to such conditions as may be specified in the order-

- (a) for the retention, on the land to which the order relates, of buildings or works constructed or carried out before the date on which the order was made;
- (b) for the continuance of a use of that land instituted before that date;

and section 44(3) shall apply to planning permission granted by virtue of this subsection as it applies to planning permission granted in accordance with section 44(2).

(11) An order under this section made by the Committee shall not take effect unless it is confirmed by the Governor, either without modification or subject to such modifications as he considers expedient.

(12) The power of the Governor under this section to confirm an order subject to modifications shall include power-

- (a) to modify any provision of the order granting planning permission, as mentioned in subsection (9) or subsection (10);
- (b) to include in the order any grant of planning permission which might have been included in the order as submitted to the Governor.

(13) Where the Committee submits an order to the Governor for his confirmation under this section, the Planning Officer shall serve notice on the owner and on the occupier of the land affected, and on any other person who in his opinion will be affected by the order; and if within the period specified in that behalf in the notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Governor before confirming the order, shall afford to that person and to the Planning Officer an opportunity to make written representations to the Governor.

(14) Where the Governor himself proposes to make an order under this section, other than in relation to an order made by the Committee, subsection (13) shall apply with such modifications as are necessary.

(15) Where an order under this section made by the Committee has been confirmed by the Governor or an order has been made under this section by the Governor other than by way of confirmation of an order made by the Committee, the Planning Officer shall serve a copy of the order on the owner and occupier of the land to which the order relates.

(16) Schedule 2 shall apply to compensation in respect of orders under this section.

56 Prohibition of resumption of winning and working minerals

(1) Where it appears to the Governor-

- (a) that development consisting of the winning and working of minerals or the deposit of refuse or waste materials has been carried out in, on or under any land; but

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

- (b) that it has permanently ceased,

the Governor may by order-

- (i) prohibit the resumption of such development; and
- (ii) impose, in relation to the site, any such requirement as is specified in subsection (3) of this section.

(2) The Governor may assume that development consisting of the winning and working of minerals or the deposit of refuse or waste materials has permanently ceased only when-

- (a) no such development has been carried out to any substantial extent anywhere in, on or under the site of which the land forms part for a period of at least two years; and
- (b) it appears to the Governor, on the evidence available to him at the time when he makes the order, that resumption of such development in, on or under the land is unlikely.

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

(3) The requirements mentioned in subsection (1) are:

- (a) a requirement to alter or remove plant or machinery which was used for the purpose of the winning and working of minerals or for any purpose ancillary to that purpose;
- (b) a requirement to take such steps as may be specified in the order, within such period as may be so specified, for the purpose of removing or alleviating any injury to amenity which has been caused by the winning and working of minerals, other than injury due to subsidence caused by underground mining operations;
- (c) a requirement that any condition subject to which planning permission for development consisting of the winning and working of minerals was granted or which has been imposed by virtue of any provision of this Ordinance shall be complied with; and
- (d) a restoration condition.

(4) An order under this section may include any such aftercare condition as the Governor thinks fit if-

- (a) it also includes a restoration condition; or
- (b) a restoration condition has previously been imposed in relation to the site by virtue of any provision of this Ordinance.

(5) Subsections (3) to (8) and (11) to (18) of section 41 shall apply in relation to an aftercare condition imposed under this section as they apply in relation to such a condition imposed under that section.

(6) In a case where-

- (a) the use specified is a use for agriculture; and

- (b) the land was in use for agriculture immediately before development consisting of the winning and working of minerals or the deposit of refuse or waste materials began to be carried out in, on or under it or had previously been used for agriculture and had not been used for any authorized purpose since its use for agriculture ceased; and

[S. 12/Ord. 11/05/w.e.f. 31/8/05.]

- (c) the Director of Agriculture has notified the Governor of the physical characteristics of the land when it was last used for agriculture

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

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

(8) Before making an order under this section the Governor shall give to any person who is the owner or occupier of any land to which the order (if made) may relate, to an opportunity of making written representations to him about the proposed order and shall also afford such an opportunity to any person who, in his opinion, may be affected by the order.

(9) A copy of any order made under this section shall be served by the Planning Officer on every person who was given the opportunity of making written representations under subsection (8).

(10) On an order under this section taking effect any planning permission for the development to which the order relates shall cease to have effect but without prejudice to the power of the Governor, on revoking the order, to make a further grant of planning permission for development consisting of the winning and working of minerals.

57 Orders after suspension of winning and working of minerals

(1) Where it appears to the Governor-

- (a) that development consisting of the winning and working of minerals has been carried out in, on or under any land; but
- (b) that it has been temporarily suspended,

the Governor may by order (in this Ordinance referred to as a "suspension order") require that steps shall be taken for the protection of the environment.

(2) The Governor may assume that development consisting of the winning and working of minerals has been temporarily suspended only when-

- (a) no such development has been carried out to any substantial extent anywhere in, on or under the site of which the land forms part for a period of at least twelve months; but
- (b) it appears to the Governor, on the evidence available to him at the time when he makes the order, that a resumption of such development in, on or under the land is likely.

(3) In this section "steps for the protection of the environment" means steps for the purpose-

- (a) of preserving the amenities of the area in which the land in, on or under which the development was carried out is situated during the period while operations for the winning and working of minerals in, on or under it are suspended;

- (b) of protecting that area from damage during that period; or
- (c) of preventing any deterioration in the condition of the land during that period.

(4) A suspension order shall specify a period, commencing with the date on which it is to take effect, within which any required step for the protection of the environment is to be taken and may specify different periods for the taking of different steps.

(5) At any time when a suspension order is in operation the mineral planning authority may by order (in this Ordinance referred to as a "supplementary suspension order") direct-

- (a) that steps for the protection of the environment shall be taken in addition to or in substitution for any of the steps which the suspension order or a previous supplementary suspension order specified as required to be taken; or
- (b) that the suspension order or any supplementary suspension order shall cease to have effect.

58 Reviews of suspension orders

(1) It shall be the duty of the Governor-

- (a) to undertake in accordance with the following provisions of this section reviews of suspension orders and supplementary suspension orders which are in operation; and
- (b) to determine whether he should make, in relation to any land to which a suspension order or supplementary suspension order applies-
 - (i) an order under section 56; or
 - (ii) a supplementary suspension order.

(2) The first review of a suspension order shall be undertaken not more than five years from the date on which the order takes effect and each subsequent review shall be undertaken not more than five years after the previous review.

(3) If a supplementary suspension order is in operation in relation to any land for which a suspension order is in operation, they shall be reviewed together.

(4) If the Governor has made a supplementary suspension order which requires the taking of steps for the protection of the environment in substitution for all the steps required to be taken by a previous order under section 57, the Governor shall undertake reviews of the supplementary suspension order in accordance with subsection (5).

(5) The first review shall be undertaken not more than five years from the date on which the order takes effect and each subsequent review shall be undertaken not more than five years after the previous review.

59 Resumption of winning and working of minerals after suspension order

(1) Nothing in a suspension order or a supplementary suspension order shall prevent the recommencement of development consisting of the winning and working of minerals in, on, or under the land in relation to which the order is in effect; but no person shall recommence such development without first giving the Governor notice of his intention to do so.

(2) A notice under subsection (1) shall specify the date on which the person giving the notice intends to recommence development consisting of the winning and working of minerals.

(3) The Governor shall revoke the order if development consisting of the winning and working of minerals has recommenced to a substantial extent in, on or under the land in relation to which the order is in effect.

(4) If the Governor does not revoke the order before the end of the period of two months from the date specified in the notice under subsection (1), the person who gave that notice may apply to him for the revocation of the order.

(5) Notice of an application under subsection (4) shall be given by the applicant to the Planning Officer.

(6) If he is required to do so by the person who gave the notice or by the Planning Officer, the Governor before deciding whether to revoke the order, shall afford to that person and to the Planning Officer an opportunity of making written representations to him.

(7) If the Governor is satisfied that development consisting of the winning and working of minerals in, on or under the land has recommenced to a substantial extent, he shall revoke the order.

(8) If the Governor revokes an order by virtue of subsection (7), he shall give notice of its revocation to the person who applied to him for the revocation and to the Planning Officer.

60 Agreements regulating development or use of land

(1) The Crown may enter into an agreement with any person interested in land in the Falkland Islands for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement; and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the Governor to be necessary or expedient for the purposes of the agreement.

(2) An agreement made under this section with any person interested in land may be enforced by the Crown against persons deriving title under that person in respect of that land, as if the Crown were possessed of adjacent land and as if the agreement had been expressed to be made for the benefit of such land.

(3) Nothing in this section or in any agreement made thereunder shall be construed-

- (a) as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by the Governor or the Committee or other authority under this Ordinance so long as those powers are exercised in accordance with the provisions of the development plan; or
- (b) as requiring the exercise of any such powers otherwise than as mentioned in paragraph (a).

Determination whether planning permission required

61 [Repealed]

[S. 13(2)/Ord. 11/05/w.e.f. 31/8/05.]

**PART V
ADDITIONAL CONTROL IN RESPECT OF BUILDINGS OF ARCHITECTURAL OR
HISTORIC INTEREST**

Introductory

62 Interpretation of this Part

In this Part, unless the context otherwise requires-

"**building**" includes any structure or erection and includes plant or machinery whether within a building or not and includes a group of buildings and where a building (as previously defined) is a relevant building includes the curtilage of that building if and to the extent that that curtilage is included in an order under section 65 or in a prohibition notice under section 66;

"**Committee**" in sections 64 to 72 means the Committee composed as required by section 63(2);

"**designated building**" means a building designated by the Governor by order under section 65; and

"**relevant building**" has the meaning assigned by section 69(4).

63 Composition and quorum of Committee for the purposes of this Part

(1) The functions of the Committee under sections 64 to 72 may be exercised only if the Committee, at any time it decides to exercise that function, is composed of-

- (a) such persons as constitute the Committee for the purposes of the antecedent provisions of this Ordinance; and
- (b) at least three persons appointed under subsection (2)

and there are present during consideration of the matter by the Committee-

- (i) those persons as apart from this section would under section 8 be sufficient to constitute a quorum of the Committee; and
- (ii) at least two of the persons appointed under subsection (2).

(2) The Governor may appoint not fewer than three and not more than five persons appearing to him to have a special knowledge of or interest in buildings of architectural or historic interest to be additional members of the Committee for the purposes of its functions under sections 64 to 72 and of sections 93, 94, 97(1) and 99. A public officer is not disqualified from appointment under this subsection.

(3) The provisions of sections 5(5) to 5(9), 6, 7, 8, 9, 11 and 12 shall apply with all necessary modifications to the Committee composed as required by this section, to the members of the Committee and to its procedure when exercising any functions under this Part.

Building designation

64 Recommendation to the Governor to designate a building under section 65

(1) The Committee may recommend to the Governor that a building be designated under section 65(1) and may do so-

- (a) of its own motion; or
- (b) on referral by the Governor to it of the question for its consideration.

(2) The Committee may, before making any recommendation under subsection (1), consult with such other persons or bodies of persons as appear to it to be appropriate as having a special interest in buildings of architectural or historic interest.

65 Designation of buildings of architectural or historic interest

(1) Subject to subsection (2), the Governor may by order made under this subsection designate any building as being of special architectural or historic interest.

(2) The Governor shall not make an order under subsection (1) unless-

- (a) he has first given an opportunity to the owner and any occupier of the building to make written representations to him in the matter; and
- (b) he acts on the recommendation of or after consultation with the Committee.

(3) Subsection (2) of section 64 applies with all necessary modifications, in respect of the Governor's exercise of his powers under subsection (1) of this section as it does in respect of the Committee's exercise of its functions under subsection (1) of that section.

(4) When an order is made in respect of a building under subsection (1) of this section any planning permission previously granted for the demolition, alteration or extension of or execution of works to the building is thereby revoked and Schedule 3 shall apply to compensation in respect of such revocation.

(5) Subject to section 66(3), when a designation order under this section applies, or a prohibition notice is in force under section 66, in respect of a building, no provision of any development order shall have effect so far as concerns that building, which would otherwise permit works of any kind to be carried out without the specific grant of planning permission in respect of those works.

66 Prohibition notice

(1) The Governor may, if he believes that a building may be of special architectural or historic interest and that it may be appropriate for that building to be designated by order under section 65(1), but it has not already been designated under that provision, by notice ("a prohibition

notice") to the owners and occupiers of that building prohibit the carrying out of any works of demolition, alteration, repair or maintenance to that building without the consent in writing of the Governor.

(2) A prohibition notice shall ordinarily be served upon the owners and occupiers of the building but is sufficiently served upon them if it is affixed to a prominent part of the building the subject of the notice.

(3) A prohibition notice shall have the effect of suspending while it continues in force any planning permission previously granted under any preceding provision of this Ordinance or deemed to be granted under a development order save insofar as the Governor, pursuant to subsection (4), permits to be carried out any works or options permitted thereby which are necessary to render the building safe or wind and water tight.

(4) The Governor by writing under his hand may permit to be carried out any works or operations reasonably necessary to render the building safe or wind and water tight but any such consent shall not operate so as to render unnecessary any planning permission which would otherwise be required under Part IV of this Ordinance.

(5) A prohibition notice ceases to have effect-

- (a) when it is revoked by notice by the Governor served upon the persons on whom the prohibition notice was served; or
- (b) if a designation order is made in respect of the building; or
- (c) on the expiration of six months from the date on which it was made,

whichever shall first occur.

(6) In this section "owner" and "occupier" have the same meaning as they have under section 32.

67 Supplementary to sections 65 and 66

(1) In considering whether to exercise any power he has under section 65(1) or section 66(1), the Governor may take into account not only the building itself but also-

- (a) any way in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms a part;
- (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure or forming part of the land comprised within the curtilage of the building.

(2) In considering any recommendation to the Governor under section 64(1) the Committee shall have regard to the same matters as are mentioned in paragraphs (a) and (b) of subsection (1) of this section.

Consents for works

68 Consent for works to relevant buildings

(1) Subject to this Part of this Ordinance, if a person executes or causes to be executed any works for the demolition of a designated building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, and the works are not authorized in accordance with section 66(4) or subsection (2) or (4) of this section, he commits an offence.

(2) Works for the demolition of a designated building or for its alteration or extension (including alteration or extension of its curtilage insofar as that curtilage is included in an order under section 65) are authorized if they are permitted under the terms of a planning permission granted under this Ordinance after the designation of the building and are carried out in accordance with all conditions, restrictions and limitations subject to which that permission was granted.

(3) Subsections (1) and (2) apply to a building the subject of a prohibition notice and its curtilage with the substitution for the words "designated building" of the words "building the subject of a prohibition notice" and for the words "after the designation of the building" of the words "after the making of the prohibition order" wherever occurring in those subsections.

(4) The Planning Officer may, on the application of any person appearing to him to have a sufficient interest in the building to which subsection (1) or (3) applies, grant consent for the carrying out of any works not requiring planning permission and not likely, in his opinion-

(a) to affect the exterior of the building; or

(b) to affect any man-made feature of the building having architectural or historic interest,

and may impose such conditions on the grant of any such consent as appear to him to be necessary and works carried out under and in accordance with the conditions of any such consent are authorized for the purposes of subsection (1).

(5) Notwithstanding the terms of any development order nothing in any such order authorizes the carrying out of any works to or demolition of a building to which this section relates contrary to the provisions of subsection (1).

(6) Without prejudice to subsection (1) and subject to subsection (8), a person commits an offence who carries out or causes to be carried out works to a building the subject of a designation order or prohibition notice-

(a) without planning permission in that behalf granted after the date of the designation order or prohibition notice or consent granted under section 66(4) or under subsection (2) or (4) of this section; or

(b) otherwise than in compliance with any conditions imposed on the grant of any such permission or consent.

(7) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding the maximum of level 6 on the standard scale or to both such imprisonment and fine.

(8) In proceedings for an offence under this section it is a defence to prove the following matters-

- (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building; and
- (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building, by works of repair or works for affording temporary support or shelter;
- (c) that the works carried out were limited to the minimum measures immediately necessary; and
- (d) that notice in writing justifying in detail the carrying out of works was given to the Committee as soon as reasonably practicable.

(9) Demolition of a relevant building shall be deemed for the purposes of Part IV of this Ordinance to constitute development conflicting with the development plan and section 37 (planning permission only to be granted by the Governor) shall apply accordingly to an application for planning permission for such demolition and without prejudice to the foregoing the Governor shall and may exercise in relation to such an application all the powers of the Committee under section 69.

69 Conditions which may be attached to consents

(1) In relation to a relevant building the conditions subject to which planning permission or consent may be granted under section 66(4) or section 68(2) or (4) (for the purposes of this section called, in every case, "consent") include conditions with respect to-

- (a) the preservation of particular features of the building, either as part of it or after severance therefrom;
- (b) the making good, after the works are completed, of any damage caused to the building by the works;
- (c) the reconstruction of the building or any part of it following the execution of any works, with the use of original materials so far as practicable and with such alterations of the interior of the building as may be specified in the conditions.

(2) Consent may be granted subject to a condition reserving specified details of the works (whether or not set out in the application) for subsequent approval by the Committee or, in the case of consent granted by the Governor, specifying whether the reserved details are to be approved by the Committee or by him.

(3) Consent for the demolition of a relevant building may be granted.

(4) In this section-

"relevant building" means a building which is a designated building or the subject of a prohibition notice.

Miscellaneous

70 Dangerous structure orders in respect of relevant buildings

Before taking any steps under any applicable enactment with a view to the making of a dangerous structure order in respect of a relevant building the Committee shall consider whether they should instead recommend the Governor to exercise his powers under section 103 (power to carry out urgent works for preservation of building).

71 Damage to relevant buildings

(1) If any person who, but for this section, would be entitled to do so, does or permits the doing of any act which causes or is likely to result in damage to a relevant building or building (other than an act for the execution of excepted works) and he does or permits it with the intention of causing such damage, he commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) In subsection (1) of this section "excepted works" means works authorized pursuant to a consent.

(3) Where a person convicted of an offence under this section fails to take reasonable steps as may be necessary to prevent any further damage resulting from the offence, he commits a further offence and is liable on summary conviction to a fine not exceeding £100 for each day on which the failure continues.

(4) In this section "consent" has the same meaning as it has under section 69(4).

72 Application for variation or discharge of conditions and appeals

(1) Any person interested in a relevant building in respect of which a consent (within the meaning given by section 69(4)) has been granted subject to conditions may apply to the Committee for variation or discharge of those conditions, where the consent was granted by the Committee or by the Planning Officer, or to the Governor, where the consent was granted by him.

(2) On such an application the Committee or, as the case may be, the Governor (in the case of a consent granted by him) may vary or discharge the conditions attached to the consent, and may add new conditions consequential upon such variation or discharge, as it or he thinks fit.

(3) Sections 47 and 47A apply in relation to decisions of the Committee that relate to relevant buildings.

[S. 20/Ord. 9/14/w.e.f. 13/11/14.]

PART VI LANDSCAPING, ADVERTISEMENTS AND AMENITY

Landscaping

73 Duties: landscaping

(1) It shall be the duty of the Committee and of the Governor to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the landscaping of any land comprised in the development.

(2) In subsection (1) "landscaping" includes-

- (a) carrying out works so as improve the appearance of land by grading, levelling, or contouring, application of top soil, application of fertiliser, the sowing of grass, application of turf, the planting of plants or shrubs and the aftercare for a reasonable period of any grass, shrubs or plants the subject of a condition imposed in accordance with section (1) and the replacement of any grass, plants or shrubs seriously damaged, diseased or dead and initially provided under such a condition;
- (b) the treatment of the curtilage of the development in any other way not provided for in paragraph (a) in such manner as to be likely to improve the environment of the development concerned.

74 Landscaping schemes

(1) The Committee or Governor, in granting planning permission may as a condition of that permission prohibit the carrying out of the development permitted thereby until such time as the applicant has furnished to it or him, and it or he has approved, a landscaping scheme in relation to the land comprised in the development.

(2) A landscaping scheme submitted in compliance with a requirement imposed under subsection (1) shall set out the applicant's proposals as to the landscaping (within the meaning given by section 73(2)) of the land affected by the requirement.

(3) On submission to it or him of a landscaping scheme, the Committee or the Governor, as the case may be, may-

- (a) approve it with or without modifications (when the landscaping scheme shall constitute "an approved landscaping scheme"); or
- (b) reject it and require the applicant to submit a fresh landscaping scheme to it or him for approval (when the provisions of subsection (2) and of this subsection shall apply in respect of any fresh landscaping scheme submitted in response to that requirement as if the requirement had been made under subsection (1)).

This subsection also applies in respect of a landscaping scheme submitted voluntarily (that is to say, without a requirement under subsection (1) having been made).

(4) The provisions of Part IV of this Ordinance as to appeals to the Governor against refusal of planning permission by the Committee, save such of those provisions as require the giving of notice to any other person, apply with all necessary modifications to-

- (a) the modification by the Committee of a landscaping scheme submitted by the applicant; and
- (b) the rejection of such a scheme and a requirement to submit afresh such scheme for approval.

Waste land

75 Waste land notices

(1) Subject to subsection (3) of this section and to section 76, if it appears to the Committee that the amenity of any part of the Falkland Islands is seriously injured by reason of-

- (a) the ruinous or dilapidated condition of any building; or
- (b) the derelict, waste or neglected condition of any land,

the Committee may serve on the owner and occupier of the land a notice (in this section and in sections 76 and 77 called "a waste land notice") requiring such steps for abating the nuisance as may be specified in the notice to be taken within such period as may be so specified.

(2) Subject to section 76, a waste land notice shall take effect on such date as is specified in the notice, being a date not less than twenty-eight days after the service of the notice.

(3) No notice may be served under subsection (1) in relation to a building which is a designated building or the subject of a prohibition notice.

(4) The Committee may withdraw a waste land notice (without prejudice to its powers to serve another) at any time before it takes effect; and if it so withdraws it, it shall forthwith give notice of the withdrawal to every person on whom the notice was served.

76 Crown land

(1) No notice may be served under section 75(1) in respect of any land which is in the ownership of the Crown and not in the occupation of any tenant or licensee.

(2) Where, but for subsection (1), the Committee would have had power to serve a waste land notice, the Committee shall notify the Governor in writing of that fact setting out the circumstances which would, in its opinion, have justified the service of such a notice and the Governor shall, if he considers that the Committee is justified and reasonable in its view, cause such steps to be taken as will abate the nuisance.

77 Appeals against waste land notices

(1) A person on whom a waste land notice is served, or any other person having an interest in the land to which the notice relates, may at any time within the period specified in the notice at the end of which it is to take effect, appeal to the Governor against the notice, on any of the following grounds:

- (a) that there is no serious injury to amenity; or
- (b) that the steps required by the notice to be taken exceed what is necessary to remedy any such injury; or
- (c) that the specified period for compliance with the notice falls short of what should reasonably be allowed; or

- (d) that the condition of the land is attributable to, and such as results in the ordinary course of events from, a continuing lawful use of the land or from continuing lawful operations carried out thereon; or
 - (e) that the notice was served other than in accordance with section 75.
- (2) An appeal under this section shall be made by notice in writing to the Governor.
- (3) The following provisions apply to appeals under this section in the same way (apart from necessary modifications) as they do to appeals under section 85-
- (a) section 85(3) to (5);
 - (b) section 86; and
 - (c) section 87.
- [S. 21/Ord. 9/14/w.e.f. 13/11/14.]*
- (4) On an appeal under this section the Governor-
- (a) may correct any informality, defect or technical error in the notice if he is satisfied that it is not material; and
 - (b) may disregard the failure of the Committee to serve the notice upon a person upon whom it should have been served, if it appears to him that neither that person nor the appellant has been substantially prejudiced by that failure.
- (5) Where an appeal is brought under this section the waste land notice shall be of no effect pending the final determination, or the withdrawal of the appeal.
- (6) On determining an appeal under this section the Governor shall give such directions as seem to him appropriate; and these may include directions for quashing the notice or for varying its terms in favour of the appellant.

Advertisements

78 Control of advertisements

- (1) The Governor may, by regulations made under this subsection, provide that the display of advertisements in such circumstances or manner as is prescribed in those regulations shall constitute development requiring planning permission.
- (2) Subject to any regulations for the time being in force made under subsection (1), the display of any advertisement on any land owned by or in the occupation of the person displaying the advertisement, and notwithstanding section 26 (definition of "development") does not require planning permission unless-
- (a) the advertisement is-
 - (i) designed and constructed so as to be illuminated, either internally or externally; and
 - (ii) so positioned as to be visible from any road, street or other public place; or

(b) the advertisement-

- (i) exceeds 1½ square metres^{vi} in area; and
- (ii) is not solely an announcement of the name or nature of a profession, business or trade being carried on in the building or upon the land on which the advertisement is displayed and is an advertisement of a commercial nature and not of a social, charitable or political nature.

(3) Regulations made under subsection (1) may amend subsection (2) so as to extend the advertisements in respect of which planning permission is not required.

(4) For the purposes of this section and section 79 "advertisement" means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the preceding provisions of this definition) includes any hoarding or similar structure used, or adapted for use for the display of advertisements. Notwithstanding the foregoing provisions of this definition, a traffic sign or road direction sign erected or provided by the Crown is not an advertisement.

79 Advertisements on land belonging to another

(1) Any person who places or erects or causes to be placed or erected any advertisement on land belonging to another person without that other person's consent commits an offence.

(2) A person convicted of an offence under subsection (1) is liable on conviction to a fine not exceeding the maximum of level 3 on the standard scale and to a further fine not exceeding that maximum in respect of every day on which the offence continues after the date of conviction of the offence under subsection (1).

PART VIA PLANNING CONTRAVENTION NOTICES

[S. 9/Ord. 11/05/w.e.f. 31/8/05.]

79A Power to require information about activities on land

(1) Where it appears to the Planning Officer that there may have been a breach of planning control in respect of any land, he may serve notice to that effect (in this Ordinance called a "planning contravention notice") on any person who-

- (a) is the owner or occupier of the land or has any other interest in it;
- (b) is carrying out operations on the land or is using it for any purpose.

(2) 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 subsection (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 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 interest (if any) in the land and the name and address of any other person known to him to have an interest 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 Committee, and the Committee 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 section 91F(5).

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

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

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

[S. 9/Ord. 11/05/w.e.f. 31/8/05.]

79B Penalties for non-compliance with planning contravention notice

(1) A person commits an offence 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 him, he has not complied with any requirement of the notice.

(2) An offence under subsection (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 subsection 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 subsection (1) to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) A person convicted of an offence under subsection (1) is liable to a fine not exceeding the maximum of level 3 on the standard scale.

(5) If any person-

(a) makes any statement purporting to comply with the 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 commits an offence.

(6) A person convicted of an offence under subsection (5) is liable to a fine not exceeding the maximum of level 5 on the standard scale.

[S. 9/Ord. 11/05/w.e.f. 31/8/05.]

PART VII ENFORCEMENT OF CONTROL UNDER PARTS IV, V AND VI

Development requiring planning permission

80 Expressions used in connection with enforcement

(1) For the purposes of this Ordinance-

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

(a) the issue of an enforcement notice (defined in section 82(1)); or

(b) the service of a breach of condition notice (defined in section 91H),

constitutes taking enforcement action.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

Time limits for enforcement

81 Enforcement notices: time limits

(1) Where there has been a breach of planning control consisting of 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 four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent-

- (a) the service of a breach of condition notice if an enforcement notice in respect of the breach is in effect; or
- (b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the Committee have taken or have purported to take enforcement action in respect of that breach.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

Enforcement notices

82 Issue of enforcement notice

(1) The Committee may issue a notice (in this Ordinance referred to as an "enforcement notice") where it appears to the Committee-

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the provisions of the Development Plan and to any other material considerations.

(2) A copy of an enforcement notice shall be served-

- (a) on the owner and on the occupier of the land to which it relates; and
- (b) on any other person having an interest in the land being an interest which, in the opinion of the Committee, is materially affected by the notice.

(3) The service of the notice shall take place-

- (a) not more than 28 days after its date of issue; and

- (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

83 Contents and effect of notice

(1) An enforcement notice shall state-

- (a) the matters which appear to the Committee to constitute the breach of planning control; and
- (b) the paragraph of section 80(1) within which, in the opinion of the Committee, the breach falls.

(2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.

(3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.

(4) Those purposes are-

- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
- (b) remedying any injury to amenity which has been caused by the breach.

(5) An enforcement notice may, for example, require-

- (a) the alteration or removal of any buildings or works;
- (b) the carrying out of any building or other operations;
- (c) any activity on the land not to be carried on except to the extent specified in the notice; or
- (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.

(6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this section referred to as a "replacement building") which, subject to subsection (7), is as similar as possible to the demolished building.

(7) A replacement building-

- (a) must comply with any requirements imposed by any enactment applicable to the construction of buildings;
- (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;

- (c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b)).

(8) An enforcement notice shall specify the date on which it is to take effect and, subject to section 86(2) and 107(3), shall take effect on that date.

(9) An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities and where different periods apply to different steps or activities references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are the period at the end of which the step is required to have been taken or the activity is required to have ceased.

(10) An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 80 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 85.

(11) Where-

- (a) an enforcement notice in respect of any breach of planning control could have required any building or works to be removed or any activity to cease, but does not do so; and
- (b) all the requirements of the notice have been complied with,

then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 44 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

(12) Where-

- (a) an enforcement notice requires the construction of a replacement building; and
- (b) all the requirements of the notice with respect to that construction have been complied with,

planning permission shall be treated as having been granted by virtue of section 44 in respect of development consisting of that construction.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

84 Variation and withdrawal of enforcement notices

(1) The Committee may-

- (a) withdraw an enforcement notice issued by the Committee; or
- (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 83(9).

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The Committee shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the power of the Committee to issue the further enforcement notice.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

85 Appeal against enforcement notice

(1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Governor against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds-

- (a) that, in respect of any breach of planning control which may be constituted by the matter stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the enforcement notice were not served as required by section 80;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with section 83(9) falls short of what should reasonably be allowed.

and where the period during which an activity has been carried out on land (whether continuously or otherwise) began more than twelve months earlier, a stop notice shall not prohibit the carrying out of that activity on that land unless it is, or is incidental to, building, engineering, mining, or other operations or the deposit of refuse or waste materials.

(3) An appeal under this section shall be made either-

- (a) by giving written notice of the appeal to the Governor before the date specified in the enforcement notice as the date on which it is to take effect; or
- (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.

(4) A person who gives notice under subsection (3) shall submit to the Governor, either when giving the notice or within the prescribed time, a statement in writing-

- (a) specifying the grounds on which he is appealing against the enforcement notice; and

(b) giving such further information as may be prescribed.

(5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Governor may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.

(6) In this section "relevant occupier" means a person who-

(a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence; and

(b) continues so to occupy the land when the appeal is brought.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

86 Appeals against enforcement notices: general supplementary provisions

(1) The Governor may by regulations prescribe the procedure which is to be followed on appeals under section 85, and in particular, but without prejudice to the generality of this subsection-

(a) may prescribe the time within which an appellant is to submit a statement under section 85(4) and the matters on which information is to be given in such a statement;

(b) may require the Planning Officer to submit, within such time as may be prescribed, a statement indicating the submissions which he proposes to put forward on behalf of the Committee on the appeal;

(c) may specify the matters to be included in such a statement;

(d) may require the Planning Officer or the appellant to give such notice of an appeal under section 85 as may be prescribed, being notice which in the opinion of the Governor is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated;

(e) may require the Planning Officer to send to the Governor, within such time from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) Where a appeal is brought under section 85 the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(3) Where any person has appealed to the Governor against an enforcement notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(4) The Governor-

(a) may dismiss an appeal if the appellant fails to comply with section 85(4) within the time prescribed by regulations under subsection (1) of this section; and

(b) may allow an appeal and quash the enforcement notice if the Planning Officer fails to comply with any requirement of regulations made by virtue of subsection (1)(b), (c), (d) or (e) of this section within the period prescribed by the regulations.

- (5) If-
- (a) a statement under section 85(4) specifies more than one ground on which the appellant is appealing against an enforcement notice; but
 - (b) the appellant does not give information required under paragraph (b) of that provision in relation to each of the specified grounds within the time prescribed by regulations under subsection (1) of this section,

the Governor may determine the appeal without considering any of the specified grounds as to which the appellant has failed to give such information within that time.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

87 General provisions relating to the determination of appeals

(1) The Governor shall permit the Planning Officer on behalf of the Committee, the appellant and any other person wishing to do so to make representations to him in relation to the appeal and, if notice has been given under section 86(1)(d), shall not determine the appeal, except in accordance with section 86(4)(a), until at least 28 days have expired.

(2) On the determination of an appeal under section 85 the Governor may-

- (a) correct any defect, error or misdescription in the enforcement notice; or
- (b) vary the terms of the enforcement notice,

if he is satisfied that the correction or variation will not cause injustice to the appellant or to the Committee.

(3) Where the Governor determines to allow the appeal, he may quash the notice.

(4) The Governor shall give any directions necessary to give effect to his determination on the appeal.

(5) The Governor-

- (a) may dismiss an appeal if the appellant fails to comply with section 85(4) within the prescribed time; and
- (b) may allow an appeal and quash the enforcement notice if the Planning Officer fails to comply with any requirement of regulations made by virtue of paragraph (b), (d) or (e) of section 86(1) within the prescribed period.

(6) Where it would otherwise be a ground for determining an appeal under section 85 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Governor may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

88 Grant or modification of planning permission on appeals against enforcement notices

(1) On the determination of an appeal under section 85, the Governor may-

- (a) grant planning permission in respect of the matter stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;
 - (b) discharge any condition or limitation subject to which planning permission was granted;
 - (c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 91M.
- (2) The provisions of sections 91M to 91P mentioned in subsection (3) apply for the purposes of subsection (1)(c) as they apply for the purposes of section 91M, but as if-
- (a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
 - (b) references to the Committee were references to the Governor.
- (3) Those provisions are sections 91M(5) and (6), 91O(4), (so far as it relates to the form of the certificate), (6) and (7) and 91P.
- (4) In considering whether to grant planning permission under subsection (1), the Governor shall have regard to the provisions of the Development Plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.
- (5) The planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part IV.
- (6) Where under subsection (1) the Governor discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.
- (7) Where an appeal against an enforcement notice is brought under section 85, the appellant shall be deemed to have made an application for planning permission in respect of the matter stated in the enforcement notice as constituting a breach of planning control.
- (8) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.
- (9) In relation to a grant of planning permission or a determination under subsection (1) the Governor's decision shall be final.
- (10) For the purposes of section 46 the Governor's decision shall be treated as having been given by him in dealing with an application for planning permission made to the Committee.

[S. 10/Ord. 11/05/w.e.f. 31/8/05 and s. 22/Ord. 9/14/w.e.f. 13/11/14.]

89 Execution and cost of works required by enforcement notice

(1) Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the Crown may-

- (a) enter the land and take the steps; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by the Crown in doing so.

(2) Where a copy of an enforcement notice has been served in respect of any breach of planning control-

- (a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice, and
- (b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the Crown in taking steps required by such a notice to be taken,

shall be deemed to be incurred or paid for the use and at the request of the person by whom the breach of planning control was committed.

(3) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) commits an offence and is liable to a fine not exceeding the maximum of level 3 on the standard scale.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

90 Offence where enforcement notice not complied with

(1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

(2) Where the owner of the land is in breach of an enforcement notice he commits an offence.

(3) In proceedings against any person for an offence under subsection (2), it is a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.

(4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such activity to be carried on.

(5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) commits an offence.

(6) An offence under subsection (2) or (5) 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 the subsection in question by reference to any period of time following the preceding conviction for such an offence.

(7) Where a person charged with an offence under this section has not been served with a copy of the enforcement notice it is a defence for him to show that he was not aware of the existence of the notice.

(8) A person convicted of an offence under this section is liable to a fine not exceeding the maximum of level 9 on the standard scale.

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91 Effect of planning permission etc on enforcement or breach of condition notice

(1) Where, after the service of-

- (a) a copy of an enforcement notice; or
- (b) a breach of condition notice,

planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

(2) Where after a breach of condition notice has been served any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.

(3) The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91A Enforcement notice to have effect against subsequent development

(1) Compliance with an enforcement notice, whether in respect of-

- (a) the completion, removal or alteration of any buildings or works;
- (b) the discontinuance of any use of land; or
- (c) any other requirements contained in the notice,

shall not discharge the notice.

(2) Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part IV; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.

(3) Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the

purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered; and, subject to subsection (4) the provisions of section 89(1) and (2) shall apply accordingly.

(4) Where, at any time after an enforcement notice takes effect-

- (a) any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with the notice; and
- (b) the Crown proposes, under section 89(1), to take any steps required by the enforcement notice for the removal or alteration of the buildings or works in consequence of the reinstatement or restoration,

the Crown shall, through the Committee, not less than 28 days before taking any such steps, serve on the owner and occupier of the land a notice of its intention to do so.

(5) Where without planning permission a person carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice-

- (a) he commits an offence and is liable to a fine not exceeding the maximum of level 7 on the standard scale; and
- (b) no person shall be liable under section 90(2) for failure to take any steps required to be taken by an enforcement notice by way of removal or alteration of what has been reinstated or restored.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91B Enforcement by the Governor

(1) If it appears to the Governor to be expedient that an enforcement notice should be issued in respect of any land, he may issue such a notice.

(2) An enforcement notice issued by the Governor shall have the same effect as a notice issued by the Committee.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

Stop notices

91C Stop notices

(1) Where the Committee consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, the Committee may when the copy of the enforcement notice is served or afterwards, serve a notice (in this Ordinance referred to as a "stop notice") prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of the land specified in the stop notice.

(2) In this section and sections 91D and 91F "relevant activity" means any activity specified in the enforcement notice as an activity which the Committee requires to cease and any activity carried out as part of that activity or associated with that activity.

- (3) A stop notice may not be served where the enforcement notice has taken effect.
- (4) A stop notice shall not prohibit the use of any building as a dwelling house.
- (5) A stop notice shall not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than four years ending with the service of the notice; and for the purposes of this subsection no account is to be taken of any period during which the activity was authorised by planning permission.
- (6) Subsection (5) does not prevent a stop notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.
- (7) A stop notice may be served by the Committee on any person who appears to the Committee to have an interest in the land or to be engaged in any activity prohibited by the notice.
- (8) The Committee may at any time withdraw a stop notice (without prejudice to the Committee's power to serve another) by serving notice to that effect on persons served with the stop notice.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91D Stop notices: supplementary provisions

- (1) A stop notice must refer to the enforcement notice to which it relates and have a copy of that notice annexed to it.
- (2) A stop notice must specify the date on which it will take effect (and it cannot be contravened until that date).
- (3) That date-
 - (a) must not be earlier than three days after the date when the notice is served, unless the Committee considers that there are special reasons for specifying an earlier date and a statement of those reasons is served with the stop notice; and
 - (b) must not be later than 28 days from the date when the notice is first served on any person.
- (4) A stop notice ceases to have effect when-
 - (a) the enforcement notice to which it relates is withdrawn or quashed;
 - (b) the period for compliance with the enforcement notice expires; or
 - (c) notice of the withdrawal of the stop notice is first served under section 91C(8).
- (5) A stop notice shall also cease to have effect if or to the extent that the activities prohibited by it cease, on the variation of the enforcement notice, to be relevant activities.
- (6) Where a stop notice has been served in respect of any land, the Planning Officer may display there a notice (in this section and section 99 referred to as a "site notice")-
 - (a) stating that a stop notice has been served and that any person contravening it may be prosecuted for an offence under section 99;

- (b) giving the date when the stop notice takes effect; and
- (c) indicating its requirements.

(7) If under section 91C(8) the Committee withdraws a stop notice in respect of which a site notice was displayed the Planning Officer must display a notice of the withdrawal in place of the site notice.

(8) A stop notice shall not be invalid by reason that a copy of the enforcement notice to which it relates was not served as required by section 82 if it is shown that the Committee took all such steps as were reasonably practicable to effect proper service.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91E Service of stop notices by Governor

(1) If it appears to the Governor to be expedient that a stop notice should be served in respect of any land, he may himself serve such a notice.

(2) A notice served by the Governor under subsection (1) shall have the same effect as if it had been served by the Committee.

91F Compensation for loss due to stop notice

(1) Where a stop notice is served under section 91C compensation may be payable under this section in respect of a prohibition contained in the notice only if-

- (a) the enforcement notice is quashed on grounds other than those mentioned in paragraph (a) of section 85(2);
- (b) the enforcement notice is varied (otherwise than on the grounds mentioned in that paragraph) so that any activity the carrying out of which is prohibited by the stop notice ceases to be a relevant activity;
- (c) the enforcement notice is withdrawn by the Committee otherwise than in consequence of the grant by the Committee of planning permission for the development to which the notice relates; or
- (d) the stop notice is withdrawn.

(2) A person who, when the stop notice is first served, has an interest in or occupies the land to which the notice relates is entitled to be compensated by the Crown in respect of any loss or damage directly attributable to the prohibition contained in the notice or, in a case within subsection (1)(b) the prohibition of such of the activities prohibited by the stop notice have ceased to be relevant activities.

(3) A claim for compensation under this section shall be made to the Planning Officer within the prescribed time and in the prescribed manner.

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

(5) No compensation is payable under this section in respect of the prohibition in a stop notice of any activity which at any time when the notice is in force, constitutes or contributes to a breach of planning control.

(6) Except insofar as may be otherwise provided by any regulations made under this Ordinance, any question of disputed compensation under this Part shall be referred to and determined by the Supreme Court.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91G Penalties for contravention of stop notice

(1) If any person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on him he commits an offence.

(2) An offence under this section 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 this section by reference to any period of time following the preceding conviction for such an offence.

(3) Reference in this section to contravening a stop notice include causing or permitting its contravention.

(4) A person convicted of an offence under this section is liable on conviction to a fine not exceeding the maximum of level 9 on the standard scale.

(5) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

(6) In proceedings for an offence under this section it is a defence for the accused to prove-

(a) that the stop notice was not served on him; and

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

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

Breach of condition

91H Enforcement of conditions

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

(2) The Committee may, if any of the conditions is not complied with, serve a notice (in this Ordinance 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 section 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 subsection (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 Committee consider ought to be taken, or the activities which the Committee consider ought to cease, to secure compliance with the conditions specified in the notice.

(6) The Committee 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 condition 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 Committee 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 commits an offence.

(10) It is a defence for a person charged with an offence under subsection (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 subsection (2)(b) that he no longer had control of the land.

(11) A person who is convicted of an offence under subsection (9) is liable to a fine not exceeding the maximum of level 3 on the standard scale.

(12) In this section-

- (a) "conditions" includes limitations; and
- (b) references to carrying out any development include causing or permitting another to do so.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

Injunctions

91I Injunctions restraining breaches of planning control

(1) The Attorney General if he is advised by the Committee that the Committee considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, apply to the Supreme Court for an injunction, whether or not the Committee has exercised or proposes to exercise any of its other powers under this Part.

(2) On an application under subsection (1) the Supreme Court may grant such an injunction as it thinks appropriate for the purpose of restraining the breach.

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

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

Registers

91J Register of enforcement and stop notices

(1) The Planning Officer shall keep, in such manner as may be prescribed by a development order, a register containing such information as may be so prescribed with respect-

- (a) to enforcement notices;
- (b) to stop notices, and
- (c) to breach of condition notices.

(2) A development order may make provision for the entry relating to any enforcement notice, stop notice or breach of condition notice, and everything relating to any such notice, to be removed from the register in such circumstances as may be specified in the order.

(3) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

Enforcement of orders for discontinuance of use etc

91K Penalties for contravention of orders under section 55

(1) Any person who without planning permission-

- (a) uses land or causes or permits land to be used-
 - (i) for any purpose which an order under section 55 has required that its use shall be discontinued; or

- (ii) in contravention of any condition imposed by such an order by virtue of subsection (1) of that section; or
- (b) resumes, or causes or permits to be resumed development consisting of the winning and working of minerals or involving the depositing of mineral waste the resumption of which an order under section 56(1) has prohibited; or
- (c) contravenes, or causes or permits to be contravened, any requirement referred to in section 56(3) imposed by an order under section 56(1),

commits an offence.

(2) Any person who contravenes any requirement of an order under section 57(1) or (5) commits an offence.

(3) A person convicted of an offence under this section is liable to a fine not exceeding the maximum of level 12 on the standard scale.

(4) It is a defence for a person charged with an offence under this section to prove that he took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.

(5) If in any case the defence provided by subsection (4) involves an allegation that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91L Enforcement of orders under section 55

(1) This section applies where-

- (a) any step required by an order under section 55 to be taken for the alteration or removal of any buildings or works or any plant or machinery; or
- (b) any [step]-
 - (i) for the removal or alleviation of any injury to amenity; or
 - (ii) (by virtue of section 55(3)(b)) for the alteration or removal of plant or machinery; or
- (c) any requirement by an order under section 57(1) for any step to be taken for the protection of the environment,

has not been taken within the period specified in the order, or within such extended period as the Committee or, as the case may be, the Governor may allow.

(2) Where this section applies the Crown may enter the land and take the required step.

(3) Where the Crown has exercised its power under subsection (2) it may recover from the person who is then the owner of the land any expenses reasonably incurred by the Crown in doing so.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

Certificate of lawful use or development

91M Certificate of lawfulness of existing use or development

- (1) If any person wishes to ascertain whether-
- (a) any existing use of buildings or other land is lawful;
 - (b) any operations which have been carried out in, on, over or under land are lawful; or
 - (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the Committee specifying the land and describing the use, operations or other matter.

- (2) For the purposes of this Ordinance uses and operations are lawful at any time if-
- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Ordinance any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if-

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this section, the Committee is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the Committee or a description substituted by the Committee, the Planning Officer shall issue a certificate to that effect; and in any other case the Committee shall refuse the application.

(5) A certificate under this section shall-

- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 26(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which the certificate is in force under this section shall be conclusively presumed.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91N Certificate of lawfulness of proposed use or development

(1) If any person wishes to ascertain whether-

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land,

would be lawful, he may make an application for the purpose to the Committee specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the Committee is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, the Planning Officer shall issue a certificate to that effect; and in any other case the Committee shall refuse the application.

(3) A certificate under this section shall-

(a) specify the land to which it relates;

(b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 26(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use or operations to be lawful; and

(d) specify the date of application for the certificate.

(4) The lawfulness of any use or operations for which the certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91O Certificates under sections 91M and 91N: supplementary provisions

(1) An application for a certificate under section 91M or 91N shall be made in such manner as may be prescribed by a development order and shall include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the Committee.

(2) Provision may be made by a development order for regulating the manner in which application for certificates under those sections are to be dealt with by the Committee.

(3) In particular, such an order may provide for requiring the Committee-

(a) to give to any applicant within such time as may be prescribed by the order such notice as may be so prescribed as to the manner in which his application has been dealt with; and

- (b) to give to the Governor and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to such applications made to the Committee, including information as to the manner in which any application has been dealt with.
- (4) A certificate under either of those sections may be issued-
- (a) for the whole or part of the land specified in the application; and
 - (b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and shall be in such form as may be prescribed by a development order.

(5) A certificate under section 91M or 91N shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.

(6) In section 46 references to applications for planning permission shall include references to applications for certificates under section 91M or 91N.

(7) The Committee may revoke a certificate under either of those sections if, on the application for the certificate-

- (a) a statement was made or document used which was false in a material particular; or
- (b) any material information was withheld.

(8) Provision may be made by a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91P Offences

(1) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under section 91M or 91N-

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
- (c) with intent to deceive, withholds any material information,

he commits an offence.

(2) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding two years or a fine not exceeding the maximum of level 7 on the standard scale.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91Q Appeals against refusal or failure to give decision on application

(1) Where an application is made to the Committee for a certificate under section 91M or 91N and-

- (a) the application is refused or is refused in part, or
- (b) the Committee does not give notice to the applicant of its decision on the application within such period as may be prescribed by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the Committee,

the applicant may by notice appeal to the Governor.

(2) On any such appeal, if and so far as the Governor is satisfied-

- (a) in the case of an appeal under subsection (1)(a), that the Committee's refusal is not well-founded, or
- (b) in the case of an appeal under subsection (1)(b), that if the Committee had refused the application its refusal would not have been well-founded,

he shall grant the applicant a certificate under section 91M or, as the case may be, 91N accordingly or, in the case of a refusal in part, modify the certificate granted by the Committee on the application.

(3) If and so far as the Governor is satisfied that the Committee's refusal is or, as the case may be, would have been well-founded, he shall dismiss the appeal.

(4) References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91R Further provisions as to references and appeals to the Governor

(1) Before determining an appeal to him under section 91Q(1), the Governor shall permit the appellant and the Planning Officer if they so wish to make written representations to him in connection with the appeal and shall not determine such an appeal until at least 28 days after he has given notice in writing to them of such opportunity.

(2) Where the Governor grants a certificate under section 91M or 91N on such an appeal, he shall give notice to the Committee of that fact.

(3) The decision of the Governor on such an appeal shall be final.

(4) The information which may be prescribed as being required to be contained in a register kept under section 46 shall include information with respect to certificates under section 91M or 91N granted by the Governor.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

Rights of entry for enforcement purposes

91S Rights to enter without warrant

(1) Any public officer duly authorised in writing by the Governor may, after having given seven days previous notice addressed to the owner or occupier of the land and left upon the land, enter that land at any reasonable hour during the seven days immediately following the expiration of that notice-

- (a) to ascertain whether there is or has been any breach of planning control on the land or any other land;
- (b) to determine whether any of the powers conferred on the Committee by this Part should be exercised in relation to the land or any other land;
- (c) to determine how any such power should be exercised in relation to the land or any other land;
- (d) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land, if there are reasonable grounds for entering for the purpose in question.

(2) Admission to any building used as a dwelling house shall not be demanded as of right by virtue of subsection (1) unless, in addition to the notice under subsection (1), 24 hours notice at least of the date and time of the intended entry has been given to the occupier of the building.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91T Right to enter under warrant

(1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing-

- (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 91S(1); and
- (b) that-
 - (i) admission to the land has been refused, or a refusal is reasonably apprehended; or
 - (ii) the case is one of urgency,

the justice may issue a warrant authorising the Planning Officer or any other public officer duly authorised in writing by the Governor to enter the land.

(2) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.

(3) A warrant authorises entry on one occasion only and that entry must be-

- (a) within one month from the date of the issue of the warrant; and
- (b) at a reasonable hour, unless the case is one of urgency.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

91U Rights of entry: supplementary provisions

(1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 91S or 91T (referred to in this section as "a right of entry")-

- (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
- (b) may take with him such other persons as may be necessary; and
- (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.

(2) Any person who wilfully obstructs a person acting in the exercise of a right of entry commits an offence and is liable on conviction to a fine not exceeding the maximum of level 3 on the standard scale.

(3) If any damage is caused to land or chattels in the exercise of a right entry, compensation may be recovered by any person suffering the damage from the Crown.

(4) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he commits an offence.

(5) Subsection (4) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.

(6) A person who commits an offence under subsection (4) is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding the maximum of level 7 on the standard scale.

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

92 ...

[S. 10/Ord. 11/05/w.e.f. 31/8/05.]

Designated buildings and buildings the subject of a prohibition notice

93 Power to issue relevant building enforcement notice

(1) Where it appears to the Committee that any works have been or are being executed to a relevant building and are such as to involve a contravention of section 68(1) or (3), it may if it considers expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice-

- (a) specifying the alleged contravention; and
- (b) requiring such steps as may be specified in the notice to be taken within such period as may be so specified-
 - (i) for restoring the building to its former state; or

- (ii) where the Committee considers that such restoration would not be reasonably practicable, or would be undesirable, for executing such further works specified in the notice as it considers necessary to alleviate the effect of the works which were carried out without consent as defined by section 69(1); or
- (iii) for bringing the building to the state in which it would have been if the terms and conditions of any such consent which has been granted for the works had been complied with.

(2) A notice under this section is referred to in this Ordinance as a "relevant building enforcement notice".

(3) A copy of a relevant building enforcement notice shall be served, not later than twenty-eight days after the date of its issue and not later than twenty-eight days before the date specified in the notice as the date on which it is to take effect-

- (a) on the owner and on the occupier of the building to which it relates; and
- (b) on any other person having an interest in that building, being an interest which in the opinion of the Committee is materially affected by the notice.

(4) Subject to section 94, a relevant building enforcement notice shall take effect on the date specified in it.

(5) The Committee may withdraw a relevant building enforcement notice (without prejudice to its power to issue another) at any time before it takes effect.

(6) If it does so, it shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.

(7) Where a relevant building enforcement notice imposes any such requirement as is mentioned in subsection (1)(b)(ii) of this section, planning permission shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

(8) In this section "relevant building" has the same meaning as it has under section 69(4).

94 Appeal against relevant buildings enforcement notice

(1) A person having an interest in the building to which a relevant building enforcement notice relates may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Governor against the notice on any of the following grounds-

- (a) that the matters alleged to constitute a contravention of section 68(1) or (3) do not involve such a contravention;
- (b) that the contravention of that section alleged in the notice has not taken place;
- (c) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;

- (d) that planning permission ought to be granted for the works, that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- (e) that copies of the notice were not served as required by section 93(3);
- (f) except in relation to such a requirement as is mentioned in section 93(1)(b)(ii) or (iii), the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- (g) that the period in the notice as the period within which any step required thereby is to be taken falls short of what should reasonably be allowed;
- (h) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
- (i) that steps required to be taken by virtue of section 93(1)(b)(ii) exceed what is necessary to alleviate the effect of the works executed to the building;
- (j) that steps required to be taken by virtue of section 93(1)(b)(iii) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the consent under section 66(4) or 68(2) or (4) (as the case may be) had been complied with.

(2) An appeal under this section shall be made by notice in writing to the Governor.

(3) A person who gives notice under subsection (2) shall submit to the Governor, either when giving the notice or within such time as may be prescribed under subsection (4), a statement in writing-

- (a) specifying the grounds on which he is appealing against the relevant building enforcement notice; and
- (b) giving such further information as the regulations may prescribe.

(4) The Governor may by regulations prescribe the procedure which is to be followed on appeals under this section, and in particular, but without prejudice to the generality of this subsection, may make any such provision in relation to appeals under this section as may be made in relation to appeals under section 85 by regulations under section 86(1).

[S. 23(a)(i) and (ii)/Ord. 9/14/w.e.f. 13/11/14.]

(5) The Governor-

- (a) may dismiss an appeal if the appellant fails to comply with subsection (3) within the time prescribed by regulations under subsection (4); and
- (b) may allow an appeal and quash the relevant building enforcement notice if the Committee or, as the case may be, the Planning Officer fails to comply with any requirement of regulations under this section corresponding to regulations made by virtue of section 85(5)(b), (c) or (e) within the period prescribed by the regulations.

[S. 23(b)/Ord. 9/14/w.e.f. 13/11/14.]

(6) Subject to subsection (7) of this section, the Governor shall, if either the appellant or the Committee so desire, afford to each of them an opportunity of making written representations to him in relation to the matter.

(7) The Governor shall not be required to afford such an opportunity if he proposes to dismiss an appeal under subsection (5)(a) or to allow an appeal and quash the relevant building enforcement notice under subsection (5)(b).

(8) If-

- (a) a statement under subsection (3) specifies more than one ground on which the appellant is appealing against a relevant building enforcement notice; but
- (b) the appellant does not give information required under paragraph (b) of that subsection in relation to each of the specified grounds within the time prescribed by regulations under subsection (4), the Governor may determine the appeal without considering any of the specified grounds as to which the appellant has failed to give such information within that time.

(9) Where an appeal is brought under this section, the relevant building enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

95 Relevant building enforcement notice appeals supplementary provision

(1) On the determination of an appeal under section 94, the Governor shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the relevant building enforcement notice or for varying its terms.

(2) On such an appeal the Governor may correct any informality, defect or error in the relevant building enforcement notice, or give directions for varying its terms, if he is satisfied that the correction or variation can be made without injustice to the appellant or to the Committee.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the relevant building enforcement notice was not served, the Governor may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

(4) On the determination of such an appeal the Governor may-

- (a) grant planning permission for the works to which the relevant building enforcement notice relates or for part only of those works;
- (b) discharge any condition or limitation subject to which planning permission was granted and substitute any other condition, whether more or less onerous;
- (c) revoke the designation order or prohibition notice relating to the building in question.

(5) Any planning permission granted by the Governor under subsection (4) shall be treated as granted on an application for planning permission, and the Governor's decision in relation to the grant shall be final.

96 Penalties for non-compliance with a relevant building enforcement notice

(1) Subject to the provisions of this section, where a relevant building enforcement notice has been served on the person who, at the time when the notice was served on him, was the owner of the building to which it relates, then, if any steps required by the notice to be taken have not been taken within the period allowed for compliance with the notice, that person commits an offence and is liable on conviction to a fine not exceeding the maximum of level 6 on the standard scale.

(2) If a person against whom proceedings have been brought under subsection (1) has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of the building, he shall, upon information duly laid by him, and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have the person who then became the owner of the building (in this section referred to as "the subsequent owner") brought before the court in the proceedings.

(3) If, after it has been proved that any steps required by the notice have not been taken within the period allowed for compliance with the notice, the original defendant proves that the failure to take those steps was attributable, in whole or in part, to the default of the subsequent owner-

(a) the subsequent owner may be convicted of the offence; and

(b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with notice, shall be acquitted of the offence.

(4) If, after a person has been convicted under the preceding provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the notice, he commits a further offence and is liable on conviction to a fine not exceeding £500 for each day following his first conviction on which any of the requirements of the notice remain unfulfilled.

(5) Any reference in this section to the period allowed for compliance with a relevant building enforcement notice is a reference to the period specified in the notice as that within which steps specified in the notice are required thereby to be taken, or such extended period as the Committee may allow for taking them.

97 Execution and cost of works required by relevant building enforcement notices

(1) If, within the period specified in a relevant building enforcement notice as that within which the steps specified in the notice are required thereby to be taken, or within such extended period as the Committee may allow, any steps required by the notice to be taken have not been taken, the Crown may enter the land and take those steps, and may recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so.

(2) Any expenses incurred by the owner or occupier of a building for the purpose of complying with a relevant building enforcement notice, and any sums paid by the owner of a building under subsection (1) in respect of expenses incurred by the Crown in taking steps required by such a notice to be taken, shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.

(3) The provisions of section 86(3) shall apply in relation to a relevant building enforcement notice as they apply in relation to an enforcement notice; and any regulations made by virtue of

this subsection may provide for the charging on the land on which the building stands of any expenses recoverable by the Crown under subsection (1) of this section.

98 Effect of planning permission on relevant building enforcement notice

(1) If, after the issue of a relevant building enforcement notice, planning permission is granted under section 44 for the retention of any work to which the relevant building enforcement notice relates, the relevant building enforcement notice shall cease to have effect in so far as it requires steps to be taken which would involve the works not being retained in accordance with the planning permission.

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

(3) The preceding provisions of this section shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the relevant enforcement notice before the relevant provisions of that notice ceased to have effect.

99 Enforcement by the Governor

(1) If it appears to the Governor, after consultation with the Committee, to be expedient that a relevant building enforcement notice should be issued in respect of any land, he may issue such a notice; and any notice so issued by the Governor shall have the like effect as a notice issued by the Committee.

(2) In relation to a relevant building enforcement notice issued by the Governor, the provisions of section 97 shall apply as if for any reference in that section to the Committee there were substituted a reference to the Governor.

100 Execution of works by the Crown

(1) Where it appears to the Governor that works are urgently necessary for preservation of a relevant building, the Crown may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.

(2) If the building is occupied works may be carried out only to those parts which are not in use.

(3) The owner of the building shall be given not less than seven days' notice in writing of the intention to carry out the works and the notice shall describe the works proposed to be carried out.

101 Recovery of expenses of works under section 100

(1) This section has effect for enabling the expenses of works executed under section 100 to be recovered by the Crown.

(2) The Governor may give notice to the owner of the building requiring him to pay the expenses of the works.

(3) Where the works consist of or include works for affording temporary support or shelter for the building-

- (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used; and
- (b) notices under subsection (2) in respect of any such continuing expenses may be given from time to time.

(4) The owner may within twenty-eight days of the service of the notice represent to the Governor-

- (a) that some or all of the works were unnecessary for the preservation of the building;
- (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time; or
- (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause him hardship,

and the Governor shall determine to what extent the representations are justified.

(5) The Governor shall give notice of his determination, the reasons for it and the amount recoverable to the owner of the building.

102 Composition of Committee for purposes of certain functions

(1) For the purposes of exercising or considering the exercise of any of its functions under the provisions of this Part mentioned in subsection (2), section 63 shall apply as it does for the purposes of the exercise by the Committee of its functions under sections 64 to 72.

(2) The provisions referred to in subsection (1) are sections 93, 94 and 97(1) and 99.

Waste land

103 Penalties for non-compliance with notice as to waste land

(1) The provisions of this section shall have effect where a notice has been served under section 75.

(2) Subject to the following provisions of this section, if any owner or occupier of the land on whom the notice was served fails to take any steps required by the notice within the period specified in it for compliance with it, he commits an offence and is liable on summary conviction to a fine not exceeding the maximum of level 3 on the standard scale.

(3) If a person against whom proceedings are brought under subsection (2) as the owner of the land has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner, he shall, upon information duly laid by him, and on giving to the

prosecution not less than three clear days' notice of his intention, be entitled to have the person who then became the owner brought before the court in the proceedings.

(4) If a person against whom proceedings are brought under subsection (2) as the occupier of the land has, at some time before the end of the period allowed for compliance with the notice, ceased to be the occupier, he shall, upon information duly laid by him, and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have any person who then became the occupier brought before the court in the proceedings.

(5) If-

(a) a person against whom proceedings are brought under subsection (2) as the occupier of the land has, at some time before the end of the period allowed for compliance with the notice ceased to be the occupier; and

(b) nobody then became the occupier,

he shall, upon information duly laid by him, and giving to the prosecution not less than three clear days' notice of his intention, be entitled to have the person who is the owner at the date of the notice brought before the court in the proceedings.

(6) If, after it has been proved that any steps required by the notice under section 75, have not been taken within the period allowed for compliance with that notice, the original defendant proves that the failure to take those steps was attributable, in whole or in part, to the default of a person specified in a notice under this section-

(a) that person may be convicted of the offence; and

(b) the original defendant shall be acquitted of the offence if he further proves that he took all reasonable steps to ensure compliance with the notice.

(7) If, after a person has been convicted under the preceding provisions of this section he does not as soon as practicable do everything in his power to secure compliance with the notice, he commits a further offence and is liable on summary conviction to a fine not exceeding £100 for each day following his first conviction on which any of the requirements of the notice remain unfulfilled.

(8) Any reference in this section to the period allowed for compliance with a notice is a reference to the period specified in the notice for compliance with it or to such extended period as the Committee may allow for compliance with it.

PART VIII

VALIDITY OF PLANNING INSTRUMENTS AND DECISIONS AND PROCEEDINGS RELATING THERETO

104 Validity of development plans and certain orders, decisions and directions

(1) Except as provided by the following provisions of this Part of this Ordinance, the validity of-

(a) a structure plan, a local plan, a subject plan or any alteration, repeal or replacement of any such plan, whether before or after the plan, alteration, repeal or replacement has been approved or adopted; or

- (b) any such order as is mentioned in subsection (2); or
- (c) any such action on the part of the Governor, the Committee or the Planning Officer mentioned in subsections (3), (4) and (5) of this section,

shall not be questioned in any legal proceedings whatsoever.

(2) The orders of the Governor referred to in subsection 1(b) are orders by the Governor of any of the following descriptions:

- (a) any order under section 54 (revocation or modification of planning permission) or under the provisions of that section as applied by or under any other provision of this Ordinance;
- (b) any order under section 55 (requirement to discontinue use or of alteration or removal of buildings or works);
- (c) any order under section 56 (prohibition of resumption of winning and working of minerals);
- (d) any order under section 57 (order after suspension of winning and working of minerals);
- (e) any order under section 65(1) (designation of buildings of architectural or historic interest).

(3) The action by the Governor referred to in subsection (1)(c) of this section is action on the part of the Governor of any of the following descriptions:

- (a) any decision of the Governor on any application for planning permission referred to him, made to him or deemed to be made to him under any provision of this Ordinance;
- (b) any decision by the Governor on any appeal made to him under any provision of this Ordinance;
- (c) the giving by the Governor of any direction under any provision of this Ordinance;
- (d) any decision by the Governor to confirm a completion notice under section 52;
- (e) any decision of the Governor relating to any application for consent or planning permission under any regulations as to control of advertisements, or relating to any certificate or direction under any such regulations and whether it is a decision of the Governor on appeal or an application referred to him for determination in the first instance;
- (f) any decision of the Governor to designate any building as a building of architectural or historic interest or not to revoke a prohibition notice;
- (g) any decision of the Governor to attach, or not to attach, any condition, limitation or restriction under any provision of this Ordinance on the granting of any planning permission, or consent granted by him under any provision of this Ordinance, including any reason given for the attachment or non-attachment of any such condition, limitation or restriction;
- (h) any decision of the Governor not to grant or to refuse any planning permission, consent or certificate he has power to grant any provision of this Ordinance;

- (i) any decision of the Governor to make or not to make any order he has power to make under any provision of this Ordinance;
- (j) any decision of the Governor to confirm or act upon or not to confirm or act upon any recommendation of the Committee or of the Planning Officer made to him under any provision of this Ordinance; and
- (k) any decision of the Governor under any provision of this Ordinance enabling him so to do, to vary, waive, alter or modify any condition, limitation or restriction imposed by the Committee and whether or not any new substituted or different condition limitation or restriction is then imposed by the Governor.

(4) The action of the Committee referred to in subsection (1)(c) is action on the part of the Committee of any of the following descriptions:

- (a) a decision on any application for planning permission, whether to refuse or grant it, and whether to grant it subject to any condition, limitation or restriction, or any decision to impose a condition, limitation or restriction on that grant of planning permission;
- (b) any recommendation by the Committee to the Governor under any provision of this Ordinance;
- (c) any decision to serve or make or issue any waste land notice or enforcement notice;
- (d) any decision to serve or make or issue a discontinuance notice;
- (e) a decision whether or not a certificate of lawfulness should be issued under section 91M or 91N;

[S. 24(a)/Ord. 9/14/w.e.f. 13/11/14.]

- (f) any decision to serve a completion notice under section 52; and
- (g) any decision to extend or not to extend time for doing any thing.

(5) The action by the Planning Officer referred to in subsection (1)(c) is action by the Planning Officer of any of the following descriptions:

- (a) any recommendation made or advice given by the Planning Officer to the Committee or the Governor as to the exercise or non-exercise of any of its or his powers under any provision of this Ordinance;
- (b) any consent or refusal to grant consent under any provision of this Ordinance enabling him to grant or withhold consent for any matter, thing or action.

[S. 24(b)(i)/Ord. 9/14/w.e.f. 13/11/14.]

- (c) ...

[S. 24(b)(ii)/Ord. 9/14/w.e.f. 13/11/14.]

(6) Notwithstanding subsections (3), (4) and (5) nothing in them shall affect the exercise of the jurisdiction of any court in respect of any refusal or failure of the Governor, the Committee or the Planning Officer (as the case may be) to decide or determine any matter he or it is required or enabled to decide or determine under any provision of this Ordinance.

105 Validity of enforcement notices and similar notice

(1) Subject to the provisions of this section-

- (a) the validity of a waste land notice shall not, except by way of an appeal under Part VI of this Ordinance, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought;
- (b) the validity of an enforcement notice shall not, except by way of an appeal under Part VII of this Ordinance, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought; and
- (c) the validity of a relevant building enforcement notice shall not, except by way of an appeal under Part VII of this Ordinance, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(2) Subsection (1)(b) of this section shall not apply to proceedings brought under section 84(5) against a person who-

- (a) has held an interest in the land since before the enforcement notice was issued under Part VII of this Ordinance;
- (b) did not have a copy of the enforcement notice served on him under that Part of this Ordinance;
- (c) satisfies the court-
 - (i) that he did not know and could not reasonably have been expected to know that the enforcement notice had been issued; and
 - (ii) that his interests have been substantially prejudiced by the failure to serve him with a copy of it.

(3) Subsection (1)(a) of this section shall not apply to proceedings brought under section 103 against a person on whom the notice referred to in that subsection was not served, but who has held an interest in the land since before that notice was served on the owner and occupier of the land, if he did not appeal against that notice under Part VI of this Ordinance.

(4) The validity of a notice purporting to be an enforcement notice shall not depend on whether any non-compliance to which the notice relates was a non-compliance with conditions, or with limitations, or with both; and any reference in such a notice to a non-compliance with conditions or limitations (whether both such expressions are used in the notice or only one of them) shall be construed as a reference to non-compliance with conditions or limitations or both with conditions and limitations, as the case may require.

106 Proceedings for questioning validity of development plans

(1) If any person aggrieved by a development plan, local plan or subject plan or by an alteration, repeal or replacement on the ground that it is not within the powers conferred by Part III of this Ordinance, or that any requirement of the said Part III or of any regulations made thereunder has not been complied with in relation to the approval or adoption of the plan, alteration, repeal or replacement, he may, within six weeks from the first publication in the Gazette of notice of the

approval or adoption of the plan, alteration, repeal or replacement, make an application to the Supreme Court under this section.

(2) On any application under this section the Supreme Court-

- (a) may by interim order wholly or in part suspend the operation of the plan, alteration, repeal or replacement, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings;
- (b) if satisfied that the plan, alteration, repeal or replacement, is wholly or to any extent outside the powers conferred by Part III of this Ordinance, or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of the said Part III or of any regulations made thereunder, may wholly or in part quash the plan, alteration, repeal or replacement, as the case may be, either generally or in so far as it affects any property of the applicant.

107 Proceedings for questioning validity of other orders, decisions and directions

(1) If any person-

- (a) is aggrieved by any order to which this section applies and desires to question the validity of that order, on the grounds that the order is not within the powers of this Ordinance, or that any relevant requirements have not been complied with in relation to that order; or
- (b) is aggrieved by any action by the Governor, the Committee or the Planning Officer (as the case may be) on the grounds that the action is not within the powers of this Ordinance, or that any of the relevant requirements have not been complied with in relation to that action,

he may, within six weeks from the date on which the order is made or the action is taken, as the case may be, make an application to the Supreme Court under this section.

(2) This section applies to any such order as is mentioned in section 104(2) and to any such action on the part of the Governor, the Committee or the Planning Officer (as the case may be) as is mentioned in section 104(3), (4) or (5).

(3) On any application under this section the Supreme Court-

- (a) may by interim order suspend the operation of the order or action, the validity of which is questioned in the application, until the final determination of the proceedings;
- (b) if satisfied that the order or action in question is not within the powers of this Ordinance, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation thereto, may quash that order or action:

Provided that paragraph (a) shall not apply to-

- (i) orders designating a building as being of special architectural or historic interest; or
- (ii) prohibition notices.

108 Appeals to Supreme Court relating to enforcement notices and similar notices

(1) Where the Governor gives a decision in proceedings on an appeal under Part VII of this Ordinance against-

- (a) an enforcement notice; or
- (b) a relevant building enforcement notice,

the appellant or any other person having an interest in the land to which the notice relates may appeal to the Supreme Court against the decision on a point of law.

(2) In this section "decision" includes a direction or order and references to the giving of a decision shall be construed accordingly.

109 ...

[S. 25/Ord. 9/14/w.e.f. 13/11/14.]

PART IX SUPPLEMENTAL TO PARTS II TO VIII

110 Duty to consider written representations

(1) Where, under any foregoing provision of this Ordinance, any person has a right to make any written representations in relation to any matter to the Governor or, as the case may be, the Committee, and has exercised that right in accordance with any applicable provision of this Ordinance or of regulations made under any applicable provision of this Ordinance as to-

- (a) the time within such written representations are to be made;
- (b) the person, body or authority to whom those written representations are to be delivered;

the Governor or, as the case may be, the Committee, shall consider those representations before deciding the matter in relation to which the person making the representations had the right to make them.

(2) Where, under any provision of this Ordinance, the Committee is required to afford to any person other than an applicant for planning permission, a certificate or a consent under this Ordinance ("a third party") an opportunity to make written representations to it in relation to the applicant's application it shall-

- (a) permit the applicant or any agent of the applicant to inspect at any reasonable time on a business day at the office of the Planning Officer all written representations received from any third party;
- (b) at the request of the applicant, supply to the applicant at a reasonable cost copies of any written representations from any third party;
- (c) consider, in conjunction with any written representations from any third party, any written response by the applicant thereto delivered to the Planning Officer before the commencement of the meeting of the Committee at which the applicant's application is to be considered by the Committee.

(3) The provisions of subsection (2) shall apply, with all necessary modifications whenever the applicant's application under any provision of this Ordinance falls to be determined by the Governor and not by the Committee.

(4) Whenever in connection with any appeal and before determination of it the Governor receives any written communication from the appellant, the Committee, the Planning Officer or a third party in relation to or in connection with the appeal (and without prejudice to the generality of the foregoing, including written representations in relation to an appeal) he shall send a copy of the written communication-

- (a) to the appellant, in the case of a written communication received from the Committee or the Planning Officer;
- (b) to the Planning Officer, in the case of a written communication received from the appellant; and
- (c) to the appellant and to the Planning Officer, in the case of a written communication received from a third party.

(5) The Governor shall afford to the appellant and to the Committee (or to the Planning Officer on behalf of the Committee) a reasonable opportunity of submitting to him, before the Governor determines the appeal, a response in writing to any written communication a copy of which has been supplied by the Governor under subsection (4), and shall consider any such response submitted to him before determining the appeal. This subsection does not, however, extend so as to afford to any person an opportunity of submitting, or so as to require the Governor to consider, any response in writing to a document which itself constitutes a response submitted to the Governor under this subsection.

(6) No action or proceedings whatsoever may be founded upon the publication of any document constituted by permitting a person to inspect it or by the furnishing of copies of it in accordance with any provision of this section.

111 . . .

[S. 26/Ord. 9/14/w.e.f. 13/11/14.]

112 Members of Committee, etc., not to take part in certain Executive Council deliberations

(1) Whenever a member of the Executive Council has, as a member of the Committee, participated in deliberations of the Committee leading to a decision which is the subject of an appeal to the Governor under any of the foregoing provisions of this Ordinance, that member shall absent himself from the proceedings of the Executive Council at any time that that Council is considering what advice to give to the Governor in connection with that appeal.

(2) . . .

[S. 2/Ord. 2/08/w.e.f. 29/2/08.]

(3) Subject to subsection (1) and to the Constitution, a member of the Committee may be present during any proceedings of the Executive Council when it is considering what advice to give to the Governor as to the exercise of any function he has under this Ordinance.

113 Rights of entry

(1) The Planning Officer and any other person authorized in writing by the Chief Executive may at any reasonable time enter any land for the purpose of surveying it in connection with-

- (a) the preparation, approval, adoption, making or amendment of a structure plan, local plan or subject plan;
- (b) any application under Part IV of this Ordinance, or in relation to a designation order, prohibition notice or under any regulations made under this Ordinance relating to such an application, for any permission, consent or determination to be given or made in connection with that land or any other land;
- (c) any proposal by the Committee or by the Governor to make, issue or serve any order or notice under any foregoing provision of this Ordinance.

(2) The Planning Officer or any other person authorized in writing by the Chief Executive may at any reasonable time enter any land for the purpose of surveying any building thereon in connection with a proposal to make a designation order or serve a prohibition notice.

(3) The Planning Officer or any other person authorized in writing by the Governor may at any reasonable time enter any land for the purpose of ascertaining whether, in respect to any building on the land, an offence has been or is being committed under section 68(1) or section 96 or whether the building is being maintained in a proper state of repair.

(4) The Planning Officer or any other person duly authorized by the Governor may at any reasonable time enter any land for the purpose of ascertaining whether-

- (a) an offence appears to have been committed under section 71;
- (b) any of the functions conferred by section 100 should be exercised in connection with the land,

or for the purpose of exercising any of those functions in connection with the land.

(5) The Planning Officer or any other public officer authorized by him may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that land for planning purposes.

(6) The Committee and the Executive Council may at any reasonable time enter upon any land for the purpose of inspecting it in connection with the consideration of any application for planning permission, any application for consent or any appeal under this Ordinance (relating in any such case to that land) where the application or, as the case may be appeal, remains for the time being undetermined.

(7) Subject to section 114, any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein.

114 Supplemental to section 113

(1) A person authorized under section 113 to enter any land shall, if so required, produce evidence of his authority before so entering, and shall not demand admission as of right to any

land which is occupied unless twenty-four hours' notice of the intended entry has been given to the occupier.

(2) Any person who wilfully obstructs a person acting in the exercise of his powers under section 113 commits an offence and is liable on conviction to a fine not exceeding the maximum of level 2 on the standard scale.

(3) If any person who, in compliance with the provisions of section 113, is admitted into a factory, workshop or workplace discloses to any person any information obtained by him therein as to any manufacturing process or trade secret, unless the disclosure is made in the course of performing his duty in connection with the purpose for which he was authorized to enter the premises, he commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding the maximum of level 6 on the standard scale or both such imprisonment and fine.

(4) Where any land is damaged in the exercise of a right of entry conferred under section 118, or in the making of any survey for the purpose of which any such right of entry has been so conferred, compensation in respect of that damage may be recovered by any person interested in the land from the Crown.

(5) Where under section 113 a person proposes to carry out any works authorized by virtue of subsection (7) of that section he shall not carry out those works unless notice of his intention to do so was included in the notice required by subsection (7) of that section.

115 Notices

(1) Subject to the provisions of this section, any notice or other document required or authorized to be served or given under any provision of this Ordinance or section 116 may be served or given-

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
- (b) by leaving it at the usual or last known place of abode of that person, or, in a case where an address for service has been given by that person, at that address; or
- (c) by sending it in a prepaid registered letter, addressed to that person at his usual or last known place of abode, or, in a case where an address for service has been given by that person, at that address; or
- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office, or sending it in a prepaid registered letter, addressed to the secretary or clerk of the company or body at that office; or
- (e) by sending a copy of it by telegraphic transmission in writing or by facsimile telegraphic transmission to a telegraphic installation of which in either case, the person to whom the notice or other document is addressed or in the case of a body corporate of which the addressee is its clerk or secretary, that body corporate, is the subscriber.

(2) Where the notice or document is required or authorized to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable

inquiry, or where the notice or document is required or authorized to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if-

- (a) being addressed to him either by name or by the description of "the owner" or "the occupier", as the case may be, of the premises (describing them) it is delivered or sent in the manner specified in subsection (1)(a), (b) or (c); or
- (b) being so addressed, and marked in such manner as may be prescribed by regulations under this Ordinance for securing that it shall be plainly identifiable as a communication of importance, it is sent to the premises in a prepaid registered letter or by the recorded delivery to some person on those premises, or is affixed conspicuously to some object on those premises.

(3) Where the notice or other document is required to be served on or given to all persons having interests in, or being occupiers of, premises comprised in any land, and it appears to the person or body required or authorized to serve or give the notice or other document that any part of that land is unoccupied, the notice or document shall be taken to be duly served on all persons having interest in, and on any occupiers of, premises comprised in that part of the land (other than a person who has given to that authority an address for the service of the notice or document on him) if it is addressed to "the owners and any occupiers" of that part of the land (describing it) and is affixed conspicuously to some object on the land.

(4) Notwithstanding the preceding provisions of this section any notification under section 30(1) of an application for planning permission may be given in any manner in which, in the discretion of the Planning Officer, he considers it likely that it should reasonably come to the early attention of the occupier of the premises concerned.

[S. 16/Ord. 14/15/w.e.f. 24/12/15.]

116 Power to require information

(1) For the purpose of enabling the Governor, the Committee or the Planning Officer to make an order or issue or serve any notice or other document which, by any of the foregoing provisions of this Ordinance, he or it is authorized or required to make, issue or serve, that person or body may by notice in writing require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises to give in writing within twenty-one days after the date on which the notice is served, or such longer time as may be specified in the notice, or as that person or body may allow, such information as to the matters mentioned in subsection (2) as may be so specified.

(2) The matters referred to in subsection (1) are:

- (a) the nature of the interest in the premises of the person on whom the notice is served;
- (b) the name and address of any other person known to him as having an interest in the premises;
- (c) the purpose for which the premises are being used;
- (d) the time when that use began;
- (e) the name and address of any person known to the person on whom the notice is served as having used the premises for that purpose;

(f) the time when any activities being carried out on the premises began.

(3) Any person who, without reasonable excuse, fails to comply with a notice served on him under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding the maximum of level 3 on the standard scale.

(4) Any person who, having been required by a notice under subsection (1) to give any information knowingly makes a misstatement in respect thereof commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding the maximum of level 6 on the standard scale or both such imprisonment and fine.

117 Regulations and orders

(1) The Governor may make regulations under this Ordinance-

- (a) for prescribing the form of any notice, order or other document authorised or required by any of the provisions of this Ordinance to be served, made or issued by him, the Committee or the Planning Officer;
- (b) for any purpose which regulations are authorised or required to be made under this Ordinance, not being a purpose for which regulations are authorised or required to be made by another person or authority;
- (c) as to-
 - (i) the exercise of any claim for compensation;
 - (ii) the person to whom such compensation or any part thereof is to be paid; and
 - (iii) the application of any such compensation or any part thereof in cases where, apart from such regulations, the right to claim compensation is exercisable by reference to an interest in land which-
 - (aa) is subject to a mortgage;
 - (bb) is subject to a rent charge;
 - (cc) is subject to the trusts of a settlement; or
 - (dd) at the time specified in the regulations, was subject to a mortgage, a rent charge, or the trusts of a settlement; or
- (d) imposing fees to be paid by the applicant on application for any service that may be provided or permission that may be given to applicants in accordance with this Ordinance.

(2) Any power conferred by any of the provisions of this Ordinance to make an order or regulations includes the power to vary or revoke any such order or regulations by a subsequent order or subsequent regulations, as the case may be.

(3) The Governor may by order exempt any applicant or category of applicants from the requirement to pay any fee prescribed in regulations in relation to the following matters-

- (a) works to improve a disabled person's access to a public building or improve access, safety, health or comfort at that person's dwelling house; but the power to exempt does

not apply to new dwelling houses or where there is a statutory obligation to provide access to such buildings;

- (b) applications by the Crown;
- (c) applications required because of the removal of permitted development rights by a condition imposed under section 40, or by a direction such as one in respect of conservation areas;
- (d) applications required because of the removal of a condition (imposed under section 40) of a right to make a change of use within the Use Classes Order or General Permitted Development Order;
- (e) applications made by non-profit making organisations (clubs, societies, trusts, etc.) for the object of providing sport or recreation facilities;
- (f) applications made by registered charities;
- (g) new applications, or revised and resubmitted applications, for development of the same character or description within the original site, which are submitted within 12 months of-
 - (i) receiving the original decision; or
 - (ii) the date of submission of an application which is withdrawn; or
- (h) applications, under either section 68(2) or section 68(4), in respect of a listed buildings (other than applications to demolish),

and any such exemption may be for a specified or an unspecified duration, subject in either case to revocation by the Governor.

(4) The power conferred on the Governor by subsection (3) applies equally in respect of fees imposed by regulation 6(4) of the Building Regulations (S. R. & O. No. 26 of 1999).

[S. 28/Ord. 5/15/w.e.f. 1/7/15.]

118 Offences by corporations

(1) Where an offence under this Ordinance (other than an offence under section 71) which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against accordingly.

(2) In subsection (1) the expression "director" in relation to any body corporate established by or under an enactment for the purpose of carrying out any business or activity, being a body corporate whose affairs are managed by the members of the body corporate, means a member of that body corporate.

119 Combined applications

(1) Regulations under this Ordinance may provide for the combination in a single document, made in such form and transmitted to such person or authority as may be prescribed by such regulations, of-

- (a) an application for planning permission in respect of any development; and
- (b) an application required, under any enactment specified in the regulations for any licence, permission or consent required under any such enactment.

(2) Subsection (1) shall have effect without prejudice to-

- (a) the validity of any application made in accordance with the enactment in question;
- (b) any provision of that enactment enabling the Committee, the Governor or any other person to require further particulars of the matters to which the application relates.

120 Ordinance not excluded by special enactment

For the avoidance of doubt it is declared that the provisions of this Ordinance, and any restrictions or powers thereby imposed or conferred in relation to land, apply and may be exercised in relation to any land notwithstanding that provision is made by any enactment in force at the date of commencement of this Ordinance^{vii} or by any re-enactment of any such enactment, for authorizing or regulating any development of the land.

121 Ordinance to bind the Crown

This Ordinance binds the Crown.

122 Presumption of validity for documents issued under Ordinance

(1) A document issued, made or given by the Planning Officer will be presumed to be valid if either-

- (a) it is signed by the Planning Officer; or
- (b) both of the following requirements are satisfied-
 - (i) it is signed by someone acting on behalf of the Planning Officer;
 - (ii) it states that it has been signed by authority of the Planning Officer.

(2) A document issued, made or given by the Committee will be presumed to be valid if both of the following requirements are satisfied-

- (a) it is signed by-
 - (i) the Planning Officer; or
 - (ii) the Secretary to the Committee; and
- (b) it states that it has been signed by authority of the Committee.

(3) A document issued, made or given by the Governor will be presumed to be validly issued, made or given if either-

- (a) it is signed by the Governor; or

(b) both of the following requirements are satisfied-

- (i) it is signed by the Chief Executive, the Attorney General or the Clerk of Assembly;
and
- (ii) it states that it has been signed at the direction of the Governor.

(4) This section applies to every document issued, made or given under this Ordinance or any subsidiary legislation made under it.

(5) For the purposes of this section, "document" includes a permission, consent, notice, authorisation, order, determination or certificate.

[S. 27/Ord. 9/14/w.e.f. 13/11/14.]

123 Appeals and references to Supreme Court in relation to compensation

(1) If any person claims that by virtue of any of the provisions of section 54(5), 55(16) 65(1), 90 or regulations under section 117(1)(c) he is entitled to compensation and-

- (a) he has duly made a claim for that compensation; and
- (b) that claim is not admitted by the Crown within six weeks of it being made or, if admitted by the Crown, the amount of the compensation is not within three months of the claim agreed between him and the Crown,

he may refer the matter to the Supreme Court for determination.

(2) On reference being made under subsection (1), the Supreme Court may-

- (a) if appropriate, admit or refuse to admit the claim for compensation; and
- (b) if the claim is admitted by the Crown or by the Supreme Court fix the amount of compensation to be paid in accordance with this Ordinance; and
- (c) make such other or further order as it thinks just.

124 Repeal and saving

(1) The Buildings of Architectural and Historic Interest Ordinance 1987 ("the repealed Ordinance") is repealed.

(2) The Governor may by regulations make provision giving continuing effect to any notice, order, consent, permission or document, given, made, issued or served under the repealed Ordinance as if it had been given, made, issued or served under the corresponding provision or provisions of this Ordinance and may by such regulations make such transitional, consequential or incidental provision as appears to him necessary or convenient to make so as to give continuing effect to the same as if so given, made, issued or served.

SCHEDULE 1 COMPENSATION FOR REVOCATION OR MODIFICATION OF PLANNING PERMISSION

PART I GENERAL

1. Subject to Part II, where planning permission is revoked by an order under section 54 of this Ordinance, then if, on a claim made to the Governor in the manner prescribed by regulations under this Ordinance, it is shown that a person who is without an interest in the land itself but has an interest in minerals in, on or under it-

- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or
- (b) subject to paragraphs 2 and 4 has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the Crown shall pay to that person compensation in respect of that expenditure, loss or damage.

2. Where a person would otherwise be entitled to payment of compensation under paragraph 1(b), he shall not be entitled thereto if one of the following conditions is not satisfied in relation to him:

- (a) his interest in the land, or as the case may be, the minerals, is shown to have been acquired from a person who himself acquired it by an arm's length transaction after the grant of the planning permission revoked or modified;
- (b) his interest in the land, or as the case may be, the minerals, is shown to have been acquired from a person who himself acquired it by an arm's length transaction after the grant of the planning permission revoked or modified.

For the purpose of this paragraph an "arm's length transaction" is a transaction whereby the person transferring the interest concerned intends that the full value of the interest transferred is reflected in the consideration paid or transferred to him as a result of the transaction and any transaction by way of gift or for a consideration which is manifestly not one which is intended to reflect the true value of the interest transferred is not an arm's length transaction.

3. For the purposes of this Schedule, any expenditure incurred after the grant of the planning permission revoked or modified in the preparation of plans for the purposes of any work, or upon any similar matters preparatory thereto shall be taken to be included in the expenditure incurred in carrying out that work.

4. No compensation shall be paid under this Schedule in respect of any work carried out before the grant of the planning permission revoked or modified, or in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of the permission.

5. In calculating, for the purposes of this Schedule, the amount of any loss or damage consisting of depreciation of the value of an interest in the land, it shall be assumed that planning permission would be granted for the carrying out of the following works:

- (a) the rebuilding, as often as occasion may require, of any building which was in existence on the commencement date^{viii} or any building which was in existence before that day but was destroyed or demolished after 1st April 1982 and before 15th June 1982 or demolished after 14th June 1982 as a consequence of damage sustained between the last-mentioned dates, and for the purpose of this sub-paragraph "rebuilding" includes the making good of war damage sustained by any such building;

- (b) the rebuilding, as often as occasion may require, of any building erected after the commencement date and which was erected in accordance with planning permission granted under this Ordinance or deemed to be granted by any development order;
- (c) unless the building is a relevant building, the carrying out of any works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building, or which do not materially affect the external appearance of the building and so long, in any case, as the cubic content of the original building is not exceeded-
 - (i) in the case of a dwellinghouse by more than one tenth or 150 cubic metres, whichever is the greater; and
 - (ii) in any other case, by more than one tenth.

PART II
SPECIAL PROVISIONS AS TO COMPENSATION FOR REVOCATION OR
MODIFICATION OF PLANNING PERMISSION FOR THE WINNING AND
WORKING OF MINERALS

6. Where a planning permission for the winning and working of minerals is revoked or modified under section 54, this Part of this Schedule has effect if the mineral compensation requirements are satisfied.

7. The mineral compensation requirements are satisfied if-

- (a) the order revokes or modifies planning permission for development consisting of the winning and working of minerals; and
- (b) the order in effect prohibits the working and winning of minerals or imposes restrictions on the winning or working of minerals greater than existed before the making of the order and such greater restrictions either directly or indirectly result in the annual rate of extraction of the minerals concerned being reduced.

8. The compensation payable is limited-

- (a) in the case of a modification of planning permission resulting in a reduced rate of annual extraction to-

$$C + \frac{(R(VY))}{X}$$

- (b) in the case of a revocation of planning permission to win and work minerals to-

$$C + \frac{(VY)}{X}$$

9. For the purposes of paragraph 7-

"V" equals (subject to paragraph 9) the actual cost of the buildings, plant and machinery employed in winning and working of the minerals so far as is reasonably attributable to the land to which the planning permission relates;

"X" equals the duration of any licence granted under the Mining Ordinance to extract the minerals in question, or if none, equals 60;

"Y" equals the number of years (to the nearest whole year) unexpired at the date of the revocation or modification of the planning permission to the date when the licence under the Mining Ordinance will expire or, if none, from the date on which such revocation or modification to the sixtieth anniversary of the commencement of winning and working of the minerals;

"C" equals the compensation (including redundancy payments) actually paid and reasonably paid by the person claiming compensation to any employee of his whose employment is reasonably brought to an end as a result of such revocation or modification, insofar as the person claiming has not been, or will not be, able to set such payments off against any liability to tax;

"R" equals the reduction in the rate of annual extraction permitted as a result of modification of planning permission expressed as a percentage of the rate of extraction previously permitted;

and for the purposes of this paragraph-

- (i) "actual cost" includes the cost of erecting or placing the same on site;
- (ii) where buildings, plant and machinery employed in winning and working minerals are also so used in relation to other land the values comprised in V shall be apportioned, by relation and in ratio to their use, and V shall be reduced in amount accordingly except where the claimant proves that the buildings, plant and machinery cannot reasonably economically be further used for that purpose by reason of the reduction in volume of minerals permitted to be extracted resulting from the modification or revocation of planning permission concerned.

10. Any compensation to which this Part of this Schedule relates shall be reduced by the value to the claimant of any building, machinery apparatus or materials he removes from the site in consequence of the order.

SCHEDULE 2

COMPENSATION IN RESPECT OF ORDERS REQUIRING DISCONTINUANCE OF USE OR ALTERATION OR REMOVAL OF BUILDINGS OR WORKS

1. Subject to paragraphs 2 and 4 the provisions of this Schedule as to compensation shall have effect where an order is made under section 55 requiring a use of land to be discontinued or imposing conditions on the continuance thereof, or requiring any buildings or works on land to be removed.

2. No compensation shall be payable-

- (a) where the use first commenced, or the buildings or works were constructed or erected (as the case may be) after the commencement of this Ordinance^{ix} and-

- (i) other than under a planning permission granted under this Ordinance or deemed to be granted under a development order; or
 - (ii) other than in circumstances in relation to which an established use certificate has been issued;
- (b) in respect of the discontinuance of, or imposition of conditions or the continuance of any use of land for the winning and working of minerals commenced before the commencement of this Ordinance unless the continuance of that use is permitted by the terms of a planning permission granted or deemed to be granted after the commencement of this Ordinance and so granted or deemed to be granted before the order in question is made under section 55.

3. If, subject to paragraph 2, on a claim made to the Governor within the time and in the manner prescribed by regulations under this Ordinance, it is shown that any person has suffered damage in consequence of the order by depreciation of the value of an interest to which he is entitled in the land or in minerals in, on or under it or by being disturbed in his enjoyment of the land or of minerals in, on or under it, the Crown shall pay to that person compensation in respect of that damage.

4. Without prejudice to paragraph 3, any person who carries out any works in compliance with the order shall be entitled, on a claim being made as mentioned in that subsection, to recover from the Crown compensation in respect of any expenses reasonably incurred by him in that behalf.

5. Any compensation payable to a person under this Schedule shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.

SCHEDULE 3

COMPENSATION WHERE PLANNING PERMISSION IS REVOKED BY VIRTUE OF AN ORDER UNDER SECTION 65(1)

Where planning permission for demolition, alteration or extension of a building is revoked by section 65(4), paragraphs 1, 3, 5(a) and (c) and 10 of Schedule 1 shall apply as if the planning permission had been revoked under section 54(5) of this Ordinance, but paragraphs 2, 4, 5(d) and 6 to 9 (inclusive) shall not apply.

SCHEDULE A1 ...

[S. 28/Ord. 9/14/w.e.f. 13/11/14.]

ⁱ S.R. & O. No. 5 of 1991

ⁱⁱ It appears that paragraph (b) should have been named paragraph (c).

ⁱⁱⁱ It appears that paragraph (b) should have been named paragraph (c).

^{iv} It appears that paragraph (c) should have been named paragraph (d).

^v 1st March 1991

^{vi} one and one half square metres

^{vii} 1st March 1991

^{viii} 1st March 1991

^{ix} 1st March 1991