

Enforcement

Practice Note 4

PRACTICE NOTE

04

Enforcement Procedures

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An Roinn

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Preamble

This Enforcement Practice Note looks at the enforcement procedures in relation to planning enforcement in Northern Ireland. It forms part of a series of new practice notes stemming from **the Planning Act (Northern Ireland) 2011 [the 2011 Act]** and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

- relevant legislation;
- procedural guidance;
- definitions; and
- best practice examples / relevant case law.

This practice note is not intended to replace the need for judgement by planning officers and those involved in planning enforcement. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between this Enforcement Practice Note and legislation, the provisions of the legislation will prevail.

It is important to note that councils have the primary responsibility for exercising the function of planning enforcement in their given administrative area.

Please ensure you are considering the most up to date version of this Enforcement Practice Note.

1.0 Introduction

1.1 Under the 2011 Act, enforcement powers within the Planning (Northern Ireland) Order 1991 have been largely revoked, re-enacted and transferred to district councils. The councils are the planning authorities with the primary responsibility for enforcement for all breaches of planning control. All enforcement functions transferred to councils are restricted to their individual council district.

1.2 All complaints alleging a breach of planning control must be raised with the appropriate council (http://intranet.epic.local/index/my_council.htm). There is an expectation that each council should develop their own enforcement strategy which sets out their council's enforcement approach and procedures for their given administrative area.

1.3 This guidance details some of the key powers and procedural requirements available to a council, under the 2011 Act, where there appears to have been a breach of planning control. These options include the following:

- | | | |
|-----|---|-------------------------------|
| (a) | Notice requiring planning application to be made ¹ | section 43 |
| (b) | Breach of Condition Notice | section 152 |
| (c) | Enforcement Notice | section 138 |
| (d) | Fixed Penalty Notice | sections 153 & 154 |
| (e) | Stop Notice | section 150 |
| (f) | Temporary Stop Notice | section 135 |

¹ Commonly referred to as a "submission notice". Enforcement Practice Notes also use term submission notice.

- (g) Seek an Injunction **section 156**

2.0 Serving a notice

- 2.1 As there is no provision in the 2011 Act with respect to the service of documents, **section 24 of the Interpretation Act (NI) 1954** therefore applies. Where the council initiates enforcement action it is important to ensure that the notice is served in accordance with section 24 of the 1954 Act.

3.0 Planning and Statutory Charges Register

- 3.1 **Section 242** of the 2011 Act requires a council to keep a Planning Register containing copies of the items listed (see full list in the 2011 Act), which includes enforcement notices or listed building enforcement notices, stop notices, hazardous substances contravention notices, breach of condition notices, temporary stop notices and all applications for planning permission.
- 3.2 **Section 245** of the 2011 Act requires the registration, in the Statutory Charges Register, of enforcement notices when they have taken effect in relation to any land². An enforcement notice takes effect on the date on which the period for compliance with the requirements of the notice starts to run i.e. the notice should be registered once it takes effect not when it is issued. The purpose of the registration of an enforcement notice in the statutory charges register is so that anyone having dealings with the land will have notice that there has been a breach of planning control in respect of that land.
- 3.3 **Section 149** of the 2011 Act provides that compliance with an enforcement notice does not discharge the notice. Once an enforcement notice has been complied with, the requirements within it continue to stand for future use of the land to which it relates. Discontinuance of use must be permanent as must

² Further information on Planning Registers and Statutory Charges Register can be found in Development Management Practice Note 29.

alteration or removal of buildings. It is recommended that the notice stays on the Statutory Charges Register in the event that if the same breach of planning control arises again then the notice will still be valid and may be relied upon by a council.

4.0 Submission Notice

What is a submission notice?

- 4.1 A council may issue a notice under **section 43(1)** of the 2011 Act requiring that a planning application be submitted where it appears that a development has been carried out without the required planning permission. This is known as a submission notice and must be served within 5 years of the date upon which the development was begun. It is an offence not to comply with this notice in the time specified.
- 4.2 The title 'submission notice' does not have a legislative basis but is a useful term to describe the intent of the notice. Service of a submission notice does not constitute enforcement action as per the 2011 Act.

When is a submission notice used?

- 4.3 A submission notice is likely to be used when a council, after investigation, is of the opinion that a development may be acceptable in principle, without prejudice to the application process³. The submission notice can ensure that the offender complies with the requirement to obtain planning permission in retrospect. When an application has been submitted, a council could impose planning conditions to control the development (where appropriate) as well as ensuring that the offender pays the appropriate fee.

³ Councils must ensure they also comply with the requirements of EU Directives and their transposition into Northern Ireland law (The Planning (Environmental Assessment) Regulations (Northern Ireland) 2015 and the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995).

4.4 It is important to note that while a submission notice requires the offender to submit an application for planning permission in retrospect; this does not bind a council to approve the application. A definitive decision can be given only following the determination of a planning application.

Content of the submission notice

4.5 A submission notice must specify:

- the matters alleged to constitute development to which the notice relates (**section 43(3)** of the 2011 Act); and
- the time for compliance with the notice **section 43(1)** of the 2011 Act states that a council may require an application to be made to the council with 28 days from the service of the notice).

4.6 It is recommended that the precise boundaries of the land to which the submission notice relates are clearly indicated. This is best done by means of an Ordnance Survey map attached to the submission notice with the relevant land outlined in red to accurately identify the site.

4.7 Unlike an enforcement notice, breach of condition notice, temporary stop notice and stop notice, there is no requirement to place a submission notice on the Planning Register or the Statutory Charges Register⁴.

Service of a submission notice

4.8 **Section 43(2)** of the 2011 Act stipulates that a notice can only be issued within 5 years from the date the development it relates to was begun (see **section 63(2)** of the 2011 Act for what constitutes 'development begun').

⁴ See Development Management Practice Note 29 for further details.

- 4.9 A copy of the notice under **section 43(4)** of the 2011 Act shall be served on the owner and on the occupier of the land to which it relates.
- 4.10 **Section 43(9)** of the 2011 Act, allows a council to withdraw a submission notice at any time before the end of the period allowed for compliance with the notice, but must notify all parties that were served with a copy of the notice (**section 43(10)** of the 2011 Act) .

Appeals against a submission notice

- 4.11 When a submission notice has been served, the person on whom it has been served has the option under **section 44(1)** of the 2011 Act of appealing the notice in writing to the Planning Appeals Commission (PAC) before the end of the period allowed for compliance with the notice.
- 4.12 There are three grounds on which such an appeal can be made (**section 44(2)** of the 2011 Act):
- (1) that the matters alleged in the notice do not constitute development;
 - (2) that the development alleged in the notice has not taken place;
 - (3) that the period of 5 years referred to in **section 43(2)** of the 2011 Act has elapsed at the date when the notice was issued.
- 4.13 In determining an appeal, **section 44(6)** of the 2011 Act states that the PAC:
- 1) must quash the notice, vary its terms or uphold the notice;
 - 2) may correct any informalities, defect or error in the notice, or vary its terms, if it is satisfied that the correction or variation will not result in any injustice to the appellant or the council.
- 4.14 Both the appellant and the council have the option of appearing before and being heard by the PAC (**section 44(4)** of the 2011 Act) before an appeal is determined.

Offences and penalties

- 4.15 Where a planning application is not submitted to a council by the specified date, a council should consider whether enforcement action should be initiated. Enforcement action may be appropriate where a council is of the view that a retrospective application would have been granted only if it were subject to conditions or limitations. In these circumstances consideration should be given to the issuing of an enforcement notice imposing the council's necessary restrictions on the use of the land or on the activities being carried out on the land.
- 4.16 Under **section 43(5)** of the 2011 Act if an application for planning permission has not been submitted by the end of the period stated in the submission notice, or no appeal has been lodged, then the person who was served the notice is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000, which is level 3 on the standard scale⁵ (Annex A).
- 4.17 If that person fails to submit an application following conviction then that person is guilty of a further offence and liable to a fine not exceeding one tenth of level 3 on the standard scale for each day following a first conviction on which the offence continues (**section 43(8)** of the 2011 Act).
- 4.18 If ownership of the land changes between the service of the submission notice and the expiry of the period for compliance, the original owner of the land is entitled to bring the new owner before the court in the event of any criminal proceedings (**section 43(6)** of the 2011 Act). If the original owner can show that the failure to make the application was attributable (in whole or part) to the new owner, then the new owner could face conviction (**section 43(7)** of the 2011 Act).

⁵ The Fines and Fixed Penalties (Northern Ireland) Order 1984.

5.0 Breach of condition notice

What is a breach of condition notice?

5.1 **Section 152** of the 2011 Act allows a council to serve a notice where planning permission has been granted including by a development order, subject to conditions or limitations but one or more of these conditions or limitations has not been complied with, requiring the recipient of the notice to secure compliance with the conditions specified in the notice.

When is a breach of condition notice used?

5.2 The breach of condition notice can be particularly effective where a condition has clearly been breached and the possibility of prosecution is likely to compel the recipient to comply with the condition. The breach of condition notice is an alternative to an enforcement notice for remedying this type of breach of planning control but it does not preclude the use of an enforcement notice.

5.3 When deciding whether to serve a breach of condition notice, a council should ensure that the condition in question is legally valid, i.e. that it is:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

5.4 The council should be satisfied that the condition has been breached.

5.5 A breach of condition notice may only be served within 5 years of the breach of planning control to which it relates having occurred. Thereafter, a breach of condition is 'immune' from enforcement action. However, these immunity provisions are qualified by **section 132(4)** of the

2011 Act, which provides that, even when the standard time limits have expired, it does 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 5 years ending with that action being taken, the council has taken or purported to take enforcement action in respect of that breach.

5.6 A council should also consider whether it would be more appropriate, in the particular circumstances of any case, to issue an enforcement notice instead of, or in addition to, a breach of condition notice. For example, where it is necessary to secure immediate compliance with a condition, a temporary stop notice may be issued, in appropriate circumstances. Moreover, an enforcement notice enables a council to take action under **section 146** of the 2011 Act if the recipient of the notice fails to comply with its requirements.

Content of a breach of condition notice

5.7 The breach of condition notice shall specify:

- the planning permission to which it relates;
- the condition(s) which has or have been contravened in order to establish the reasons for its service;
- under **section 152(5)** of the 2011 Act, the steps required to be taken or activities which must cease to secure compliance with the conditions specified in the notice. The steps may be either mandatory (e.g. to require a landscaping scheme to be carried out and completed in accordance with a landscaping condition imposed) or prohibitory (e.g.

requiring a restaurant or take away to stop opening to customers after a closing time specified in a permission); and

- under **section 152(7)** of the 2011 Act, the period for compliance must be at least 28 days from the date of service of the notice. This period may be extended by a further notice by the council.

5.8 The breach of condition notice can cover several conditions but if the council is of the opinion that different compliance periods should be specified in respect of the conditions a separate breach of condition notice can be served for each condition.

5.9 Although not a legislative provision, it is considered good practice that an Ordnance Survey map, with the relevant land outlined in red accurately identifying the site, accompanies all enforcement notices and breach of condition notices.

Serving a breach of condition notice

5.10 Under **section 152(2)** of the 2011 Act a council may, if any of the conditions are not complied with, serve a breach of condition notice on any person who is carrying out or has carried out the development or any person having control of the land requiring them to secure compliance with such of the conditions as are specified in the notice.

5.11 Every breach of condition notice should be recorded in the Planning Register as soon as possible after it is served.

5.12 The recipient of a breach of condition notice is responsible for securing compliance with the conditions specified in it. Therefore, it is essential that the notice is served on the appropriate person. However, when a notice is served on a person who has carried out development but no longer controls the land, it is advisable for the council to take reasonable steps to inform the current owners and occupiers of the action being taken.

Appeals against a breach of condition notice

- 5.13 There is no right of appeal against a breach of condition notice. However, the recipient may make representations to a council if they believe the notice to be unreasonable, although they should be clear that such representations and discussions do not postpone the running of the compliance period. Councils have the discretionary power to withdraw a notice, by serving a withdrawal notice on recipients of the original breach of condition notice, at anytime (including after the expiry of the compliance period). The withdrawal of a notice does not affect a council's power to serve a further notice.
- 5.14 Although the recipient of a breach of condition notice has no right of appeal, **section 244** of the 2011 Act states that a magistrates' court has jurisdiction to hear and determine a complaint in relation to offences under **section 152** of the 2011 Act (breach of condition notices)⁶.

Offences and penalties

- 5.15 The recipient of the breach of condition notice is in contravention of the notice if, following the expiry of the compliance period:
- the conditions specified in the notice have not been complied with; and,
 - the specified steps have not been taken or the specified activities have not ceased.
- 5.16 Anyone in contravention of a breach of condition notice is guilty of an offence under **section 152(9)** of the 2011 Act. Where the recipient fails to comply with the notice even after they have been prosecuted, further prosecutions can be brought under **section 152(10)** of the 2011 Act.

⁶ A complaint is required to be made to the magistrate's court within 3 years.

5.17 Under **section 152(11)** of the 2011 Act it is a defence against prosecution for a person charged with such an offence to prove:

- that all reasonable measures to secure compliance with the condition specified in the notice were taken; or
- where the notice was served on a person having control of the land, that that person no longer had control of it when the notice was served.

5.18 Under **section 152(12)** of the 2011 Act those found guilty of the offence set out above and any subsequent offence may be liable on summary conviction to a fine not exceeding £1,000, which is level 3 on the standard scale (Annex A).

6.0 Enforcement notice

What is an enforcement notice?

6.1 An enforcement notice requires a breach of planning control to be remedied and is the principal method for a council to take action against unlawful development (**section 138** of the 2011 Act).

When is an enforcement notice used?

6.2 Under **section 138** of the 2011 Act a council may issue an enforcement notice where it appears to it:

- (a) that there has been a breach of planning control in relation to any land in the district; 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.⁷

6.3 Private individuals cannot initiate planning enforcement action but may advise the council of a breach of planning control that they believe has occurred.

Content of an enforcement notice

6.4 **Section 140** of the 2011 Act requires that an enforcement notice must clearly state the following:

- identification of the breach - the matters, which appear to the council to constitute the breach of planning control; and
- the sub paragraph of **section 131(1)** of the 2011 Act within which in the opinion of the council the breach falls (i.e. whether the breach was caused by development being carried out without planning permission, or by a failure to comply with any condition or limitation to which planning permission has been granted). The 2011 Act provides that if the notice enables any person on whom it is served to know what matters constitute the breach of planning control, then the notice complies with this requirement.

6.5 **Section 140** of the 2011 Act requires that an enforcement notice must also clearly state the remedial action and its purpose. An enforcement notice shall specify steps which the council requires to be taken, or the activities which the council requires to be ceased in order to achieve wholly or partly any of the purposes set out in **section 140(4)** of the 2011 Act.

⁷ Councils must comply with the requirements of EU Directives and their transposition into Northern Ireland law, e.g. The Planning (Environmental Assessment) Regulations (Northern Ireland) 2015 and the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995.

6.6 Those purposes set out in **section 140(4)** the 2011 Act are:

- remedying the breach by making the 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 previous condition; or
- remedying any injury to amenity which has been caused by the breach.

6.7 **Section 140(5)** of the 2011 Act states that 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 (provided it does not have further detrimental effect);
- (c) the cessation on the land of an activity (except to the extent specified); and/or
- (d) modifications of a contour of refuse or waste material on land, by the alteration of its gradient or gradients of its sides⁸.

6.8 The enforcement notice may also require the construction of a replacement building, where the breach of planning control consisted of the demolition of a building (**section 140(6)** of the 2011 Act). In this instance the replacement building should be as similar as possible to the demolished building subject to compliance with any statutory provision applicable to the construction of buildings and any regulations made for the purpose of **section 140(7)** of the 2011 Act. It may also 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.

⁸ This list is not exhaustive.

Timescales

- 6.9 The time for compliance with an enforcement notice is the period of time at the end of which the steps specified by the notice should have been taken or the activities specified have ceased. The time allowed for compliance commences on the day the notice takes effect and different times may be specified for different requirements. The time for compliance may be extended by a council under **section 141(1) (b)** of the 2011 Act.
- 6.10 The enforcement notice must specify the date on which it is to take effect. Subject to the appeal provisions of the 2011 Act, the notice will take effect on that specified date. The date must be at least 28 days from the date of service of the enforcement notice.
- 6.11 When specifying the steps to be taken or the activities required to cease, care must be taken to ensure that the enforcement notice covers all unauthorised works/activities stated as breaches in the notice.

Serving of an enforcement notice

- 6.12 The enforcement notice must be served as set out under **section 24 of The Interpretation Act (Northern Ireland) 1954** and detailed below:
- a copy of the enforcement notice must be served on the owner and on the occupier of the land to which it relates; and on any other person having an estate in the land, being an estate which, in the opinion of a council, is materially affected by the notice (**section 138(2)** of the 2011 Act); and
 - the service of the enforcement notice must take place not more than 28 days after its date of issue; and not less than 28 days before the date specified in it as the date on which it is to take effect (**section 138(3)** of the 2011 Act).

- 6.13 It is important to ensure that all appropriate people have been served and to ensure that the alleged breach of control is not beyond enforcement action.
- 6.14 Every enforcement notice should be recorded in a council's Planning Register as soon as possible after it is served and registered in the Statutory Charges Register when it takes effect.

Appeals against an enforcement notice

- 6.15 A person having an estate in the land that is the subject of an enforcement notice (or a person to whom **section 143(2)** of the 2011 Act applies) may appeal to the PAC prior to the date of the notice becoming effective whether or not a copy of the notice has been served on him. The appeal must be made in writing to the PAC and should indicate the grounds of appeal and the facts on which it is based.
- 6.16 An appeal may be made on any one or more of the seven grounds set out under **section 143(3)** of the 2011 Act, and set out below:
- (a) that, in respect of any breach of planning control which may be constituted by the matters 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 the breach of planning control because the time limit for such action has expired;

- (e) that copies of the enforcement notice were not served properly as required by **section 138 or 139** of the 2011 Act.
- (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 or alleviate any injury to amenity which has been caused by the breach; and,
- (g) that the period specified in the notice in accordance with **section 140(9)** of the 2011 Act falls short of what should reasonably be allowed.

6.17 Where an appeal is made against an enforcement notice the appellant is deemed to have made an application for planning permission under **section 145(5)** of the 2011 Act provided the appropriate fee has been paid to the PAC. The decision therefore rests with the PAC (**section 145(1)** of the 2011 Act).

Effect of an appeal

6.18 The making of an appeal has the effect of suspending the requirements of a notice until the appeal is determined or withdrawn. The time for compliance then runs from the date of the appeal decision (if upheld) or such other date as may be determined by the PAC where the notice is challenged under of **section 143(3) (g)** of the 2011 Act.

Offences and penalties

6.19 **Section 147(1)** of the 2011 Act provides that after the period for compliance with the notice has expired, if any step required to be taken has not been taken or any activity required to be ceased is still being carried out then the person who is the owner of the land is in breach of the enforcement notice.

6.20 In relation to enforcement notices, there are two separate offences as set out below.

(1) The 'Owner' Offence

6.21 Where the owner of the land to which an enforcement notice relates is in breach of the notice, he or she shall be guilty of an offence (**section 147(2)** of the 2011 Act).

6.22 Where any person has been charged with a **section 147(2)** offence it is a defence for that person to show that he or she did everything they could be expected to do to secure compliance with the notice (**section 147(3)** of the 2011 Act).

(2) The 'Person in Control' Offence

6.23 **Section 147(4)** of the 2011 Act states that any person who has control of, or an estate in the land to which the notice relates (other than the owner) must not carry on any activity which is required to cease, or cause to permit that activity to carry on. If he or she does so, he or she is in breach of the notice and guilty of an offence (**section 147(5)** of the 2011 Act).

6.24 Under **section 147(7)** of the 2011 Act where a person has been charged with either a **section 147(2)** offence or a **section 147(5)** offence and has not been served with a copy of the enforcement notice and the notice is not contained in the public Planning Register (as required under **section 242** of the 2011 Act), it is a defence for him or her to show that they were not aware of the existence of the document.

6.25 **Section 147(8)** of the 2011 Act provides that the maximum level of fine on summary conviction is £100,000. A person can be prosecuted on indictment for this type of offence. The courts when determining the level of fine shall in particular have regard to any financial benefit, which has accrued or is likely to accrue in consequence to the offence (**section 147(9)** of the 2011 Act). An

offence may be charged by reference to any day or longer period and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction under **section 147(6)** of the 2011 Act.

Effect of compliance with an enforcement notice

- 6.26 Compliance with the terms of an enforcement notice does not discharge the notice⁹. Any attempt to resume the use after the initial use has been discontinued in compliance with a notice will constitute a further contravention. Similarly, any attempt to reinstate buildings removed or altered in compliance with a notice is also a further contravention.

Withdrawal of an enforcement notice

- 6.27 **Section 141** of the 2011 Act provides that whether or not an enforcement notice has taken effect, a council may either withdraw it entirely or waive or relax any particular requirement specified in it. The period specified for compliance may also be extended.
- 6.28 In either case, a council must give notice to every person who has been served with a copy of the Notice or would if it were re-issued, be served with a copy of it.
- 6.29 The withdrawal of the notice does not affect the power of a council to issue a further enforcement notice.

Environmental Assessment

- 6.30 It is important before any enforcement notice is issued, that the council considers if the matters constituting the breach of planning control comprise

⁹ Section 3.0 of DMPN 29 Planning Registers and Statutory Charges Register provides further guidance.

Schedule 1 or Schedule 2 development under the **Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015**.

6.31 If it appears to a council that the breach comprises or includes EIA development, then **Regulation 31(2)** of the 2015 EIA Regulations sets out that the council shall serve a copy of the enforcement notice together with a Regulation 31 notice, which shall:-

- include a copy of the EIA determination and a written statement giving full reasons for its conclusion; and
- require a person who gives notice of an appeal under **section 143** of the 2011 Act, to submit to the PAC with the notice, sufficient copies of an environmental statement, relating to the unauthorised development, to enable the PAC to comply with **Regulation 34** of the 2015 EIA Regulations (Procedure where the Planning Appeals Commission receives an environmental statement).

6.32 Copies of the Regulation 31 notice should be sent to:

- the Planning Appeals Commission;
- any other council for the area in which the unauthorised development is situated;
- any other authorities likely to be concerned by reason of their specific environmental responsibilities; and
- any particular person effected by or who has an interest in the Regulation 31 notice.

7.0 Fixed penalty notice

Legislative Context

- 7.1 **Sections 153, 154 and 155** of the 2011 Act introduced fixed penalty notices which may be issued, at the discretion of councils, as an alternative to prosecution in certain circumstances. This additional enforcement measure aims to assist councils and strengthen their planning enforcement function.
- 7.2 A fixed penalty notice offers a person the opportunity of discharging any liability for prosecution in respect of a breach of enforcement notice or breach of condition notice, by paying the council a penalty of an amount specified in the notice within 28 days. The 28 day period starts the day the notice is served.
- 7.3 The provisions of fixed penalty notices within **the 2011 Act** are:
- **section 153** which covers the issuing of a fixed penalty notice when an enforcement notice is not complied with;
 - **section 154** which covers the issuing of a fixed penalty notice when a breach of condition notice is not complied with; and
 - **section 155** which details how a council may use receipts from fixed penalty notices.
- 7.4 Councils will be responsible for developing their own enforcement strategy which should include the use or otherwise of fixed penalty notices. It is recommended that fixed penalty notices be applied where it is considered that they will be both effective in addressing the breach and proportionate to the nature of the breach.

Issuing and serving a fixed penalty notice

- 7.5 **Sections 153(1) and 154(1)** of the 2011 Act state that where an authorised officer of a council has reason to believe a person has committed an offence under **section 147 or 152** of the 2011 Act within a council's district, a council may issue a notice offering that person the opportunity of discharging any liability of conviction for that offence by payment of a fixed penalty to the council.
- 7.6 Where a fixed penalty notice is issued under **section 153 or 154** of the 2011 Act a council must ensure that:
- no proceedings are instituted for the offence before the expiration of 28 days following the date of the notice; and
 - the person shall not be convicted of that offence if the person pays the fixed penalty notice before the expiration of that period.
- 7.7 It is important to ensure that the fixed penalty notice is served in accordance with **section 24 of the Interpretation Act (NI) 1954**.

Level of fines and their application

- 7.8 The level of fine for a fixed penalty notice is set out in the **Planning (Amount of Fixed Penalty) Regulations (Northern Ireland) 2015**.
- **Article 2(a)** states that the amount payable in respect of a breach of an enforcement notice is £2000.
 - **Article 2(b)** states that the amount payable in respect of a breach of condition notice is £300.

- 7.9 Councils should carefully consider whether the issuing of a fixed penalty notice would be the most effective course of enforcement action.

Contents of a fixed penalty notice

- 7.10 **Section 153(3) & (4)** and **section 154(3) & (4)** of the 2011 Act requires that a fixed penalty notice must specify or state the following:

- the steps specified within the enforcement notice or breach of condition notice which have not been taken;
- the activity specified within the enforcement notice or breach of condition notice which has not ceased;
- the period during which proceedings will not be taken for the offence;
- the amount of the fixed penalty; and
- the person to whom and the address at which the fixed penalty may be paid.

Payment of a fixed penalty notice

- 7.11 **Sections 153(6) and 154(6)** of the 2011 Act state that payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the appropriate authority. Where a letter is issued in accordance with subsection **section 153(6) or 154(6)** of the 2011 Act a council should regard payment as having been made at the time at which that letter would be delivered in the ordinary course of postal deliveries.
- 7.12 If payment is made within the first 14 days of the period mentioned in **section 153(2), section 153(10) and 154(10)** of the 2011 Act allows the amount payable to be reduced by 25%.

Appeals against a fixed penalty notice

- 7.13 There is no right of appeal against a fixed penalty notice. It would be open to a person to make representations to their local council that the breach to which the notice relates had in fact been corrected and they should not therefore be required to pay the fixed penalty.

8.0 Stop notice

What is a stop notice?

- 8.1 **Section 150** of the 2011 Act enables a council to serve a stop notice, which can prohibit, almost immediately, any activity to which the accompanying enforcement notice relates. A stop notice can only be served at the same time or after an enforcement notice. It must refer to the enforcement notice to which it relates and must have a copy of that notice attached to it. The stop notice cannot be served independently. It is an offence to contravene a stop notice after it has been served.

When is a stop notice used?

- 8.2 Whilst an enforcement notice may ultimately prove effective in remedying a breach of planning control it cannot require immediate action. The combined effect of legislative provisions may mean a considerable delay between the date of issue of an enforcement notice and the date on which non-compliance becomes a criminal offence. During this period the unauthorised development may continue without penalty and to the benefit of the contravener.
- 8.3 A stop notice is essentially a supplement to an enforcement notice and unlike a temporary stop notice cannot be served independently. It must refer to the enforcement notice to which it relates and must have a copy of that notice attached to it. It cannot be served once the enforcement notice has taken effect (**section 150(3)** of the 2011 Act). However, because an appeal against

an enforcement notice suspends that notice, as if it had not taken effect, a stop notice can still be served after the appeal has been made. The stop notice provisions enable a council to deal with the interim position.

- 8.4 It is essential that careful consideration be given to the positive and negative consequences of serving a stop notice. The costs of service of a stop notice, while usually confined to the firm, landowner or operator, may also impact on the local economy.
- 8.5 The stop notice provisions are legally constructed so that what is prohibited by the notice must derive entirely from the related enforcement notice.
- 8.6 A council should, therefore, consider the scope of any possible stop notice when formulating an enforcement notice.
- 8.7 A stop notice need not apply to the entire site covered by the enforcement notice, but if it is restricted it would be prudent for the council to be sure the activity to be prohibited could not easily be moved to another part of the site.
- 8.8 A stop notice is prohibitory and can only compel an activity to cease. Therefore, where an enforcement notice alleges a material change of use of land, a stop notice may prohibit an activity which is ancillary or incidental to the change of use even though the enforcement notice itself could not be so directed.
- 8.9 A stop notice cannot, however, prohibit the use of any building, caravan or other structure as a person's permanent residence or the carrying out of any activity if the activity has been carried out for a period of more than 5 years ending with the date of the service of the notice other than any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.
- 8.10 There is no right of appeal against a stop notice but given that stop notices may be legally challenged and the potential compensation issues involved it is important that they are clearly and accurately drafted.

Content of a stop notice

8.11 **Section 150** of the 2011 Act states that a stop notice must:-

- specify the relevant activity which is required to cease;
- specify the date the notice takes effect (which is the date it is served unless otherwise stated by the council. In any case, this date should not be later than 28 days from the date the first notice is served);
- refer to and attach a copy of the enforcement notice to which it relates; and
- not be served where the enforcement notice has taken effect.

8.12 It is standard practice that an Ordnance Survey map with the relevant land outlined in red accurately identifying the site, accompanies all stop notices.

Limitations of a stop notice

8.13 There are certain activities that a stop notice shall not prohibit:-

- the use of any building, caravan or other structure situated on the land as a dwelling house (**section 150(4)** of the 2011 Act);
- any activity which has been carried out for more than 5 years ending with the service of the Notice (whether continuously or not); but not taking account of any period it was authorised by planning permission (**section 150(7)** of the 2011 Act).

8.14 However, this 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 (**section 150(8)** of the 2011 Act).

8.15 A stop notice shall not take effect until the date specified in the notice (**section 150(5)** of the 2011 Act).

Service of a stop notice

8.16 Under **section 150(10)** of the 2011 Act, a stop notice may be served on any person who appears to have an estate in the land or be engaged in any activity prohibited by the notice. A stop notice must specify the 'relevant activity' which is required to cease. Under **section 150(2)** of the 2011 Act a 'relevant activity' means any activity specified in the enforcement notice as an activity which a council requires to cease and any activity carried out as part of that activity or associated with that activity.

8.17 A stop notice must specify the date when it is to take effect. **Section 150(6)** of the 2011 Act states that the date shall not be later than 28 days from the date when the notice is first served on any person. Where a stop notice has been served in respect of any land, the council may display a site notice (**section 150(10)** of the 2011 Act) stating:-

- that a stop notice has been served; and
- that any person contravening the stop notice may be prosecuted.

8.18 The stop notice should be recorded in the Planning Register as soon as possible after it is served.

Appeals against a stop notice

8.19 There is no right of appeal against a stop notice. However, the validity of the stop notice can be challenged on the ground that it has not been served on someone who ought to be served with it, either by way of an application to the High Court for a Judicial Review, or can be raised as a defence in the event of any prosecution by a council for contravention of the notice.

Offences and penalties

8.20 Any person who contravenes, or causes or permits the contravention of the provisions of a stop notice after it has been served on him or a site notice displayed, is guilty of an offence under **section 150(15)** of the 2011 Act. Under **section 150(15)** anyone guilty of contravening the stop notice is liable to a fine of up to £100,000 on summary conviction and on conviction on indictment to an unlimited fine. As with an enforcement notice, in determining the amount of any fine to be imposed, the Court will have regard to any financial benefit that accrued or appeared to accrue in consequence to the offence.

8.21 Under **section 150(17)** of the 2011 Act, it is a defence for the accused to prove that:-

- the stop notice was not served on him or her; and
- he or she did not know, and could not reasonably have been expected to know, of its existence.

8.22 Under **section 150(18)** of the 2011 Act a stop notice is not necessarily invalid if a copy of the enforcement notice to which it relates was not served, as required by **section 138** of the 2011 Act, if it can be shown that the council took all such reasonable steps to effect proper service.

When a stop notice ceases to have effect

8.23 **Section 150(9)** of the 2011 Act states that a stop notice ceases to have effect when:

- the enforcement notice referred to is withdrawn or quashed; or
- the period for compliance with the enforcement notice expires; or
- notice of withdrawal of the stop notice is first served; or
- the enforcement notice is varied to the extent that activities prohibited by it cease to be a 'relevant activity'.

8.24 If the variation of the enforcement notice covers some of the matters prohibited by the notice, then the stop notice ceases to have effect to that extent only (**section 150(9)** of the 2011 Act).

Withdrawal of stop notice

8.25 A stop notice may be withdrawn at any time, without prejudice to the power to issue another. Withdrawal is effected by giving notification to everyone who was served a copy of the notice. If a site notice was displayed on the land a notice of withdrawal must also be displayed in place of the site notice (**section 150(11)** of the 2011 Act).

Compensation

8.26 **Section 185(2)** of the 2011 Act denotes when a person is entitled to compensation when a stop notice has been served:

- Enforcement notice is quashed
- Enforcement notice is varied

- Enforcement notice is withdrawn
- Stop notice is withdrawn

8.27 Any loss shall include any sum payable for a breach of contract caused by taking the necessary action to comply with the stop notice. **Section 185(5)** of the 2011 Act outlines when compensation is not payable and **section 185(6)** of the 2011 Act refers cases of disputed compensation shall be considered and determined by the Lands Tribunal. **Section 185(7)** of the 2011 Act denotes that all claims shall be made to and paid by the relevant council, including circumstances where the Department has issued a stop notice¹⁰.

9.0 Temporary Stop notice

What is a temporary stop notice?

9.1 **Section 135** of the 2011 Act enables a council to serve a temporary stop notice if the council considers that there has been a breach of planning control and it is expedient that the activity is stopped immediately. It is an offence to contravene a temporary stop notice after it has been served.

When is a temporary stop notice used?

9.2 A temporary stop notice is unlike a stop notice in that it can be served independently from an enforcement notice. A council has 28 days to decide whether further enforcement action is appropriate and what the action should be, without the breach intensifying by being allowed to continue. A temporary stop notice enables a council to prevent unauthorised development at an early stage without first having to issue an enforcement notice. Only one temporary stop notice can be issued unless further enforcement action (e.g. obtaining the grant of an injunction) is taken (**section 136(5) & (6)** of the 2011 Act).

¹⁰ Section 227 of the 2011 Act does not apply to Part 6 of the 2011 Act.

9.3 Temporary stop notices issued under **section 135** of the 2011 Act, does not prohibit a person from continuing to use any building, caravan or other structure situated on land to which the temporary stop notice relates as that person's permanent residence. A temporary stop notice does not prohibit other activities which the Department can specify in regulations. They cannot be issued for development or activities where the time limits for enforcement have passed (**section 136(2)** of the 2011 Act). However, section 136(2) does not prevent a temporary stop notice prohibiting activity consisting of or incidental to buildings, engineering, mining or other operations or the deposit of refuse or waste materials (**section 136(3)**).

Content of a temporary stop notice

9.4 **Section 135(3)** of the 2011 Act states that a temporary stop notice must be in writing and must:-

- specify the relevant activity which the council considers amounts to the breach;
- prohibit the carrying on of the activity (or part of the activity as is specified in the notice);
- set out the council's reasons for issuing the notice.

Service of a temporary stop notice

9.5 Under **section 135(4)** of the 2011 Act, a temporary stop notice may be served on:

- a person who the council thinks is carrying on the activity;
- a person who the council thinks is an occupier of the land;
- a person who the council thinks has an estate in the land.

9.6 In accordance with **section 135(5)** of the 2011 Act, a copy of the temporary stop notice must be displayed on the land along with a statement of the effect of the notice and of the effect of contravening the notice and thereby committing an offence (**section 137** of the 2011 Act).

9.7 The stop notice should be recorded in the Planning Register as soon as possible after it is served.

Limitations of a temporary stop notice

9.8 There are certain activities that a stop notice shall not prohibit:-

- the use of any building, caravan or other structure situated on the land as a dwelling house (**Article 136(1)** of the 2011 Act);
- any activity which has been carried out for more than 5 years ending with the service of the Notice (whether continuously or not) (**Article 136(2)** of the 2011 Act).

9.9 However, this does not prevent a temporary stop notice prohibiting any activity consisting of or incidental to building, engineering, mining or other operations or the deposit of refuse or waste materials (**section 136(3)** of the 2011 Act).

9.10 A temporary stop notice has effect from the time a copy of it is displayed on the land (**section 135(6)** of the 2011 Act) and ceases to have effect at the end of the 28 day period, starting on the day the copy notice is displayed or at the end of a shorter period specified in the notice (**section 135(7) (a) & (7) (b)** of the 2011 Act). The council has the power to withdraw a temporary stop notice under **section 135(7) (c)** of the 2011 Act.

Offences and penalties

9.11 Any person who contravenes, or causes or permits the contravention of the provisions of a temporary stop notice after it has been served on him or a site notice displayed, is guilty of an offence under **section 137(1) & (2)** of the 2011 Act. Under **section 137(6)** of the 2011 Act anyone guilty of contravening the stop notice is liable to a fine of up to £100,000 on summary conviction and on conviction on indictment to an unlimited fine.

9.12 Under **section 137(5)** of the 2011 Act, it is a defence for the accused to prove that:-

- the temporary stop notice was not served on him or her; and
- he or she did not know, and could not reasonably have been expected to know, of its existence.

9.13 An offence under **section 137** of the 2011 Act can be charged referring to a particular day or a longer period of time. Under **section 137(4)**, a person may be convicted of more than one offence in relation to the same temporary stop notice by reference to different days or periods of time.

Compensation

9.14 In certain circumstances (**section 187(1)** of the 2011 Act), the council may be liable to pay compensation to any person who had an estate in the land at the time the temporary stop notice was served. Compensation may be paid if a temporary stop notice is issued and at least one of the following applies:-

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

- a certificate of lawfulness of existing use or development in respect of the activity is issued or granted by virtue of **section 173** of the 2011 Act (appeals against refusal or failure to give decision on application);
- the council withdraws the notice.

9.15 The loss or damage sustained by a claimant includes any sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the temporary stop notice.

10.0 Injunction

10.1 Under **section 156** of the 2011 Act, where the council considers it necessary or expedient for:

- any actual or apprehended breach of planning control;
- any actual or apprehended contravention of **sections 85(1) or (5), 126 or 127** (of the 2011 Act); or
- any actual or apprehended contravention of hazardous substances control

to be restrained by injunction, it may apply to the court for an injunction.

Annex A**Levels of fines for offences punishable on summary conviction:
-The standard scale**

Level 1	£200
Level 2	£500
Level 3	£1000
Level 4	£2500
Level 5	£5000



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