

1995 No. 1625 (N.I. 9)

Historic Monuments and Archaeological Objects - Northern Ireland - Order 1995

Made
Coming into operation

28th June 1995
29th August 1995

At the Court at Buckingham Palace, the 28th day of June 1995

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995.

(2) This Order shall come into operation on the expiration of 2 months from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"archaeological object" includes any object, being a chattel (whether in a manufactured or unmanufactured state), which is, or appears to be, of archaeological or historical interest and which has, by reason of such interest, a value substantially greater than its intrinsic value or the value of the materials of which it is composed;

"the Department" means the Department of the Environment;

"flooding operations" means covering land with water or any other liquid or partially liquid substance;

"guardianship deed" has the meaning given by Article 15(4);

"historic monument" means—

(a) any scheduled monument; and

(b) any other monument the protection of which is in the opinion of the Department of public interest by reason of the archaeological, historical, architectural, traditional or artistic interest attaching to it;

"maintenance", in relation to a monument, includes fencing, repairing, and covering in, of the monument and the doing of any other act or thing which may be required for the purpose of repairing the monument or protecting it from decay or injury, and "maintain" shall be construed accordingly;

"monument" has the meaning given by paragraph (6);

"owner", in relation to any land, means (except for the purposes of paragraph 2 of Schedule 1 and any regulations under that paragraph) 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;

"prescribed" means prescribed by regulations made by the Department;

"protection" includes preservation;

"the Schedule" has the meaning given by Article 3(2);

"scheduled monument" has the meaning given by Article 3(2) and references to "scheduled monument consent" shall be construed in accordance with Articles 4(3) and 5(5);

"statutory provision" has the meaning given to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

"tipping operations" means tipping soil or spoil or depositing building or other materials or matter (including waste materials or refuse) on any land; and

"works" includes operations of any description and, in particular (but without prejudice to the generality of the preceding provision) flooding or tipping operations and any operations undertaken for purposes of agriculture (within the meaning of the Planning (Northern Ireland) Order 1991) or forestry (including afforestation).

(3) For the purposes of this Order "archaeological investigation" means any investigation of any land, objects or other material for the purpose of obtaining and recording any information of archaeological or historical interest and (without prejudice to the generality of the preceding provision) includes in the case of an archaeological investigation of any land—

(a) any investigation for the purpose of discovering and revealing and (where appropriate) recovering and removing any objects or other material of archaeological or historical interest situated in, on or under the land; and

(b) examining, testing, treating, recording and preserving any such objects or material discovered during the course of any excavations or inspections carried out for the purposes of any such investigation.

(4) For the purposes of this Order, an archaeological examination of any land means any examination or inspection of the land for the purpose of obtaining and recording any information of archaeological or historical interest.

(5) In this Order references to land associated with any monument (or to associated land) shall be construed in accordance with Article 18(7).

(6) "Monument" means (subject to paragraph (7))—

(a) any building, structure or works, whether above or below the surface of the land, and any cave or excavation;

(b) any site comprising the remains of any such building, structure or works or of any cave or excavation; and

(c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part thereof which neither constitutes nor forms part of anything which is a monument within subparagraph (a);

and any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled.

(7) Paragraph (6)(a) does not apply to any ecclesiastical building for the time being used for ecclesiastical purposes, and paragraph (6)(c) does not apply—

(a) to a site comprising any object or its remains unless the situation of that object or its remains in that particular site is a matter of public interest;

(b) to a site comprising, or comprising the remains of, any vessel which is protected by an order under section 1 of the Protection of Wrecks Act 1973 designating an area round the site as a restricted area.

(8) For the purposes of this Order, the site of a monument includes not only the land in or on which it is situated but also any land comprising or adjoining it which appears to the Department, in the exercise in relation to that monument of any of its functions under this Order, to be essential for the monument's support and preservation.

(9) References in this Order to a monument include references—

(a) to the site of the monument in question; and

(b) to a group of monuments or any part of a monument or group of monuments.

(10) References in this Order to the site of a monument—

- (a) are references to the monument itself where it consists of a site; and
- (b) in any other case include references to the monument itself.

(11) In this Article "remains" includes any trace or sign of the previous existence of the thing in question.

PART II

HISTORIC MONUMENTS

Protection of scheduled monuments

Schedule of monuments

3.—(1) The Department shall for the purposes of this Order compile and maintain in such form as it thinks fit a schedule specifying such monuments as it thinks fit.

(2) In this Order—

"the Schedule" means the schedule compiled and maintained under paragraph (1);

"scheduled monument" means a monument which is for the time being specified in the Schedule.

(3) Subject to paragraph (5), the Department shall on first compiling the Schedule include therein—

(a) any monument which, immediately before the coming into operation of this Order, is included in a schedule prepared under section 7(1) of the Historic Monuments Act (Northern Ireland) 1971; and

(b) any monument in respect of which the Department has before the coming into operation of this Order served notice on any person in accordance with section 7(2) of that Act of its intention to include it in such a schedule.

(4) Subject to paragraphs (5) and (6), at any time thereafter the Department may—

(a) include any monument in the Schedule;

(b) remove any monument from the Schedule;

(c) amend any entry in the Schedule relating to a monument (whether by removing anything previously included as part of the monument or adding anything not previously so included, or otherwise).

(5) The Department shall not at any time include in the Schedule any structure which is occupied as a dwelling house by any person other than a person employed as a caretaker thereof or his family.

(6) Before taking any action under paragraph (4)(a) or (b) the Department shall consult the Historic Monuments Council.

(7) As soon as may be after taking any action under paragraph (4) (a), (b) or (c) in relation to a monument, the Department shall inform the owner and (if the owner is not the occupier) the occupier of the monument of the action taken and, in the case of action under paragraph (4)(a) or (c), shall also send to him or them a copy of the entry or (as the case may be) of the amended entry.

(8) The Department shall from time to time publish a list of all the monuments which are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list published in sections, all sections of the list need not be published simultaneously.

(9) The Department may from time to time publish amendments of any list published under paragraph (8) and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being—

(a) of the monuments listed; and

(b) of any matters purporting to be reproduced in the list from the entries in the Schedule relating to the monuments listed.

Control of works affecting scheduled monuments

4.—(1) If any person executes or causes or permits to be executed any works to which this Article applies he shall be guilty of an offence unless the works are authorised under this Part.

(2) This Article applies to any of the following works, that is to say—

(a) any works resulting in the demolition, destruction or disturbance of, or any damage to, a scheduled monument;

(b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto; and

(c) any flooding or tipping operations on land in, on or under which there is a scheduled monument.

(3) Without prejudice to any other authority to execute works conferred under this Part, works to which this Article applies are authorised under this Part if—

(a) the Department has granted written consent (referred to in this Order as “scheduled monument consent”) for the execution of the works; and

(b) the works are executed in accordance with the terms of the consent and of any conditions attached to the consent.

(4) Scheduled monument consent may be granted either unconditionally or subject to conditions (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).

(5) Without prejudice to the generality of paragraph (4), a condition attached to a scheduled monument consent may require that the Department or a person authorised by the Department be afforded an opportunity, before any works to which the consent relates are begun, to examine the monument and its site and carry out such excavations therein as appear to the Department to be desirable for the purpose of archaeological investigation.

(6) Without prejudice to paragraph (1), if a person executing or causing or permitting to be executed any works to which a scheduled monument consent relates fails to comply with any condition attached to the consent he shall be guilty of an offence, unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.

(7) In any proceedings for an offence under this Article in relation to works within paragraph (2)(a) it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to or disturbance of the monument.

(8) In any proceedings for an offence under this Article it shall be a defence to prove the following matters—

(a) that the works were urgently necessary in the interests of safety and health or for the preservation of the scheduled monument;

(b) that the works carried out were limited to the minimum measures immediately necessary; and

(c) that notice in writing justifying in detail the carrying out of the works was given to the Department as soon as reasonably practicable.

(9) A person guilty of an offence under this Article shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment to a fine.

(10) Part I of Schedule 1 shall have effect with respect to applications for, and the effect of, scheduled monument consent.

Grant of scheduled monument consent by order of the Department

5.—(1) The Department may by order grant scheduled monument consent for the execution of works of any class or description specified in the order, and any such consent may apply to scheduled monuments of any class or description so specified.

(2) Any conditions attached by virtue of Article 4 to a scheduled monument consent granted by an order under this Article shall apply in such class or description of cases as may be specified in the order.

(3) The Department may direct that scheduled monument consent granted by an order under this Article shall not apply to any scheduled monument specified in the direction, and may withdraw any direction given under this paragraph.

(4) A direction under paragraph (3) shall not take effect until notice of it has been served on the occupier or (if there is no occupier) on the owner of the monument in question.

(5) References in this Order to a scheduled monument consent do not include references to a scheduled monument consent granted by an order under this Article, unless the contrary intention is expressed.

Duration, modification and revocation of scheduled monument consent

6.—(1) Subject to paragraph (2), if no works to which a scheduled monument consent relates are executed or started within the period of five years beginning with the date on which the consent was granted or such longer or shorter period as may be specified for the purposes of this paragraph in the consent, the consent shall cease to have effect at the end of that period (unless previously revoked in accordance with the following provisions of this Article).

(2) Paragraph (1) does not apply to a scheduled monument consent which provides that it shall cease to have effect at the end of a period specified therein.

(3) If it appears to the Department to be expedient to do so, it may by a direction given under this Article modify or revoke a scheduled monument consent to any extent it considers expedient.

(4) Without prejudice to the generality of the power conferred by paragraph (3) to modify a scheduled monument consent, it extends to specifying a period, or altering any period specified, for the purposes of paragraph (1), and to including a provision to the effect mentioned in paragraph (2), or altering any period specified for the purposes of any such provision.

(5) Part II of Schedule 1 shall have effect with respect to directions under this Article modifying or revoking a scheduled monument consent.

Execution of works for protection of a scheduled monument by Department in cases of urgency

7.—(1) If it appears to the Department that any works are urgently necessary for the protection of a scheduled monument, it may enter the site of the monument and execute those works, after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than 48 hours notice in writing of its intention to do so.

(2) Where the Department executes works under this Article for repairing any damage to a scheduled monument—

(a) any compensation order previously made in respect of that damage under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders against convicted persons) in favour of any other person shall be enforceable (so far as not already complied with) as if it had been made in favour of the Department; and

(b) any such order subsequently made in respect of that damage shall be made in favour of the Department.

Powers of entry for inspection of scheduled monuments, etc.

8.—(1) Any person duly authorised in writing by the Department may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining its condition and—

(a) whether any works affecting the monument are being carried out in contravention of Article 4(1); or

(b) whether it has been or is likely to be damaged (by any such works or otherwise).

(2) Any person duly authorised in writing by the Department may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land in connection with—

(a) any application for scheduled monument consent for works affecting that monument; or

(b) any proposal by the Department to modify or revoke a scheduled monument consent for any such works.

(3) Any person duly authorised in writing by the Department may at any reasonable time enter any land for the purpose of—

(a) observing the execution on the land of any works to which a scheduled monument consent relates; and

(b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works,

so as to ensure that the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the consent.

(4) Any person duly authorised in writing by the Department may at any reasonable time enter any land on which any works to which a scheduled monument consent relates are being carried out for the purpose of—

(a) inspecting the land with a view to recording any matters of archaeological or historical interest; and

(b) observing the execution of those works with a view to examining and recording any objects or other material of archaeological or historical interest, and recording any matters of archaeological or historical interest, discovered during the course of those works.

(5) Any person duly authorised in writing by the Department may enter any land in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such

notice boards and marker posts as appear to the Department to be desirable with a view to preserving the monument from accidental or deliberate damage.

(6) References in this Article to scheduled monument consent include references to consent granted by order under Article 5.

Compensation for refusal of scheduled monument consent

9.—(1) Subject to the following provisions of this Article, where a person who has an estate in the whole or any part of a monument incurs expenditure or otherwise sustains any loss or damage in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to any works of a description mentioned in paragraph (2), the Department shall pay to that person compensation in respect of that expenditure, loss or damage.

References in this Article and in Article 10 to compensation being paid in respect of any works are references to compensation being paid in respect of any expenditure incurred or other loss or damage sustained in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to those works.

(2) The following are works in respect of which compensation is payable under this Article—

(a) works which are reasonably necessary for carrying out any development for which planning permission had been granted (otherwise than by a general development order) before the time when the monument in question became a scheduled monument and was still effective at the date of the application for scheduled monument consent;

(b) works which do not constitute development, or constitute development such that planning permission is granted therefor by a general development order; and

(c) works which are reasonably necessary for the continuation of any use of the monument for any purpose for which it was in use immediately before the date of the application for scheduled monument consent.

For the purposes of sub-paragraph (c), any use in contravention of any legal restrictions for the time being applying to the use of the monument shall be disregarded.

(3) The compensation payable under this Article in respect of any works within paragraph (2)(a) shall be limited to compensation in respect of any expenditure incurred or other loss or damage sustained by virtue of the fact that, in consequence of the Department's decision, any development for which the planning permission in question was granted could not be carried out without contravening Article 4(1).

(4) A person shall not be entitled to compensation under this Article by virtue of paragraph (2)(b) if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument.

(5) In a case where scheduled monument consent is granted subject to conditions, a person shall not be entitled to compensation under this Article by

virtue of paragraph (2)(c) unless compliance with those conditions would in effect make it impossible to use the monument for the purpose there mentioned.

(6) In calculating, for the purposes of this Article, the amount of any loss or damage consisting of depreciation of the value of an estate in land—

(a) it shall be assumed that any subsequent application for scheduled monument consent in relation to works of a like description would be determined in the same way; but

(b) if, in the case of a refusal of scheduled monument consent, the Department, on refusing that consent, undertook to grant such consent for some other works affecting the monument in the event of an application being made in that behalf, regard shall be had to that undertaking.

(7) Section 33 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 shall, subject to any necessary modifications, have effect in relation to any compensation payable under this Article in respect of any loss or damage consisting of depreciation of the value of an estate in land as it has effect in relation to compensation payable under Part III of that Act.

(8) In this Article “development” and “planning permission” have the same meanings as in the Planning (Northern Ireland) Order 1991 and “general development order” means an order made as mentioned in Article 13(3)(a) of that Order.

Recovery of compensation under Article 9 on subsequent grant of consent

10.—(1) Subject to the following provisions of this Article, this Article applies—

(a) in a case where compensation under Article 9 was paid in consequence of the refusal of a scheduled monument consent, if the Department subsequently grants scheduled monument consent for the execution of all or any of the works in respect of which the compensation was paid; and

(b) in the case where compensation under that Article was paid in consequence of the granting of a scheduled monument consent subject to conditions, if the Department subsequently so modifies that consent that those conditions, or any of them, cease to apply to the execution of all or any of the works in respect of which the compensation was paid or grants a new consent in respect of all or any of those works free from those conditions, or any of them.

(2) This Article does not apply in any case unless—

(a) the compensation paid exceeded £200; and

(b) at or before the time when compensation is paid to any person, notice is served on him by the Department specifying the decision which gave rise to the right to compensation, the monument affected by the decision and the amount of the compensation and stating that this Article applies.

(3) In granting or modifying a scheduled monument consent in a case to which this Article applies the Department may do so on terms that no works in respect of which the compensation was paid are to be executed in pursuance of the consent until the recoverable amount has been repaid to the Department or secured to its satisfaction.

(4) Subject to paragraph (5), in paragraph (3) "the recoverable amount" means such amount (being an amount representing the whole of the compensation previously paid or such part thereof as the Department thinks fit) as the Department may specify in giving notice of its decision on the application for scheduled monument consent or (as the case may be) in the direction modifying the consent.

(5) Where a person who has an estate in the whole or any part of a monument is aggrieved by the amount specified by the Department as the recoverable amount for the purposes of paragraph (3), he may require the determination of that amount to be referred to the Lands Tribunal; and in any such case the recoverable amount for the purposes of that paragraph shall be such amount (being an amount representing the whole or any part of the compensation previously paid) as that Tribunal may determine to be just in the circumstances of the case.

Compensation where works affecting a scheduled monument cease to be authorised

11.—(1) Subject to the following provisions of this Article, where any works affecting a scheduled monument which were previously authorised under this Part cease to be so, then, if any person who has an estate in the whole or any part of the monument—

(a) has incurred expenditure in carrying out works which are rendered abortive by the fact that any further works have ceased to be so authorised; or

(b) has otherwise sustained loss or damage which is directly attributable to that fact,

the Department shall pay to that person compensation in respect of that expenditure, loss or damage.

(2) Paragraph (1) only applies where the works cease to be authorised under this Part—

(a) by virtue of the fact that a scheduled monument consent granted by order under Article 5 ceases to apply to any scheduled monument (whether by virtue of variation or revocation of the order or by virtue of a direction under paragraph (3) of that Article); or

(b) by virtue of the modification or revocation of a scheduled monument consent by a direction given under Article 6; or

(c) in accordance with paragraph 7 of Schedule 1, by virtue of the service of a notice of proposed modification or revocation of a scheduled monument consent under paragraph 4 of that Schedule.

(3) A person shall not be entitled to compensation under this Article in a case falling within paragraph (2)(a) unless, on an application for scheduled monument consent for the works in question, consent is refused, or is granted subject to conditions other than those which previously applied under the order.

(4) For the purposes of this Article, any expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out those works.

(5) Subject to paragraph (4), no compensation shall be paid under this Article in respect of any works carried out before the grant of the scheduled monument consent in question, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an estate in land) arising out of anything done or omitted to be done before the grant of that consent.

(6) Section 33 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 shall, subject to any necessary modifications, have effect in relation to any compensation payable under this Article in respect of any loss or damage consisting of depreciation of the value of an estate in land as it has effect in relation to compensation payable under Part III of that Act.

Proceedings for questioning validity of certain actions of Department

12.—(1) If any person is aggrieved by any action on the part of the Department to which this Article applies and desires to question the validity of that action on the grounds that it is not within the powers of this Part, or that any of the relevant requirements have not been complied with in relation to it, he may within 6 weeks from the date on which that action is taken, make an application under this Article to the High Court.

(2) This Article applies to action on the part of the Department of either of the following descriptions, that is to say—

(a) any decision of the Department on an application for scheduled monument consent; and

(b) the giving by the Department of any direction under Article 6 modifying or revoking a scheduled monument consent.

(3) On any application under this Article the High Court—

(a) may by interim order suspend the operation of the action, the validity whereof is questioned by the application, until the final determination of the proceedings;

(b) if satisfied that the action in question is not within the powers of this Part, 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 action in whole or in part.

(4) In this Article “the relevant requirements”, in relation to any action to which this Article applies, means any requirements of this Part or of any regulations made under this Part which are applicable to that action.

(5) Except as provided by this Article, the validity of any action to which this Article applies shall not be questioned in any legal proceedings whatsoever; but nothing in this Article shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Department to take a decision on an application for scheduled monument consent.

Acquisition of historic monuments

Acquisition of historic monuments by agreement or compulsorily

13.—(1) The Department may, by agreement or compulsorily, acquire any historic monument for the purpose of securing its protection.

(2) Where the Department in exercise of the power conferred by paragraph (1) desires to acquire an historic monument otherwise than by agreement, the Department may make an order (in this Article referred to as a “vesting order”) vesting the monument in the Department.

(3) Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall, subject to the modifications specified in Schedule 2 to this Order, apply for the purposes of the acquisition of an historic monument by means of a vesting order made under this Article in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act.

(4) The power to make a vesting order in respect of land—

(a) which is the property of any body established by or under a statutory provision which has power under any statutory provision to acquire land compulsorily; or

(b) which is declared by or under any statutory provision to be inalienable,

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Assembly.

(5) For the purpose of assessing compensation in respect of any compulsory acquisition under this Article of a monument which, immediately before the date of the vesting order, was scheduled, it shall be assumed that scheduled monument consent would not be granted for any works which would or might result in the demolition, destruction or removal of the monument or any part of it.

Acquisition of historic monuments by way of gift

14.—(1) The Department may accept a gift (whether by deed or will) of any historic monument.

(2) The Department may defray or contribute towards the costs incurred by any person in making a gift by deed to the Department under paragraph (1).

Guardianship of historic monuments

Appointment of Department as guardian of historic monuments

15.—(1) Subject to paragraph (2), the owner of any historic monument may, with the consent of the Department, by deed appoint the Department guardian of the monument.

(2) Where the owner of an historic monument is not the occupier of that monument he may not appoint the Department guardian of the monument unless the occupier is also a party to the deed executed for the purposes of paragraph (1).

(3) Any person who has an estate in an historic monument may be a party to any such deed in addition to the owner of the monument and (where the owner is not the occupier) the occupier.

(4) In relation to any monument of which the Department has been appointed guardian, references in this Order to the guardianship deed are references to the deed executed for the purposes of paragraph (1).

(5) A guardianship deed shall bind every person deriving title from any person executing it, and, where a monument is the subject of a settlement and a person executing the deed is a person having a power of sale of the settled land, the deed shall bind every person entitled to an estate subsisting or which may arise under the settlement, except—

(a) an estate having priority to the settlement;

(b) any estate which has been conveyed or created for securing money actually raised at the date of the deed;

(c) all leases, grants of easements or other rights or privileges granted or made before the date of the deed by the person executing the deed, or by any of his predecessors in title, or by any trustees for him or them under the settlement or under any statutory power, or being otherwise binding on the successors of the person executing the deed.

(6) The Department shall not consent to become guardian of any structure which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family.

(7) Except as provided by this Order, any person who has any estate in a monument under guardianship shall have the same right and title to, and estate in, the monument in all respects as if the Department had not become guardian of the monument.

(8) The Department may defray or contribute towards the costs incurred by the owner of any historic monument in appointing the Department as guardian of the monument.

Effect of guardianship

16.—(1) The Department shall maintain any monument which is under its guardianship.

(2) The Department shall have full control and management of any monument which is under its guardianship.

(3) With a view to fulfilling its duty under paragraph (1) to maintain a monument of which it is guardian, the Department may do all such things as may be necessary or expedient for the maintenance of the monument and for the exercise by it of proper control and management with respect to the monument.

(4) Without prejudice to the generality of the preceding provisions of this Article the Department may—

(a) make any examination of a monument which is under its guardianship by virtue of this Order; and

(b) open up any such monument or make excavations therein for the purpose of examination or otherwise.

(5) A person authorised by the Department may at any reasonable time enter the site of a monument which is under the Department's guardianship for the purpose of exercising on behalf of the Department any of its powers under this Article in relation to the monument.

(6) Paragraphs (2) to (4) are subject to any provision to the contrary in the guardianship deed.

Termination of guardianship

17.—(1) Subject to the following provisions of this Article, where the Department is guardian of any monument, it may by agreement made with the owner of the monument—

(a) exclude any part of the monument from guardianship; or

(b) renounce guardianship of the monument;

but except as provided above the monument shall remain under guardianship (unless it is acquired by the Department) until guardianship is terminated under paragraph (4).

(2) The Department shall not enter into an agreement under paragraph (1) unless it is satisfied with respect to the part of the monument or (as the case may be) with respect to the whole of the monument in question—

(a) that satisfactory arrangements have been made for ensuring its protection after termination of the guardianship; or

(b) that it is no longer practicable to protect it (whether because of the cost of protecting it or otherwise).

(3) An agreement under paragraph (1) shall be made under seal.

(4) If a person who is not bound by the guardianship deed becomes owner of the monument, he may terminate the Department's guardianship of the monument by a notice in writing to that effect served on the Department.

(5) A notice served under paragraph (4) in respect of a monument has effect to terminate the Department's guardianship of the monument as from the date of service thereof.

Acquisition and guardianship of land in the vicinity of an historic monument

Acquisition and guardianship of land in the vicinity of an historic monument

18.—(1) References in Articles 13 to 15 to an historic monument shall include references to any land adjoining or in the vicinity of an historic monument which appears to the Department to be reasonably required for any of the following purposes, that is to say—

- (a) the maintenance of the monument or its amenities;
- (b) providing or facilitating access to the monument;
- (c) the exercise of proper control or management with respect to the monument;
- (d) the storage of equipment or materials for the purpose mentioned in sub-paragraph (a); and
- (e) the provision of facilities and services for the public for or in connection with affording public access to the monument;

(and one of those purposes shall accordingly be sufficient to support the compulsory acquisition of any such land under Article 13(1), instead of the purpose there mentioned).

(2) Land may be acquired or taken into guardianship by virtue of this Article for any of the purposes relating to an historic monument mentioned in paragraph (1) either at the same time as the monument or subsequently.

(3) The Department shall have full control and management of any land which is under its guardianship after being taken into guardianship by virtue of this Article for a purpose relating to any historic monument, and shall have power to do all such things as may be necessary or expedient—

- (a) for the exercise by it of proper control and management with respect to the land; and
- (b) for the use of the land for any of the purposes relating to the monument mentioned in paragraph (1).

(4) A person authorised by the Department may at any reasonable time enter any land which is under the Department's guardianship for the purpose of exercising on behalf of the Department its power under paragraph (3).

(5) Article 17(1) and (3) to (5) shall apply in relation to any land taken into guardianship by virtue of this Article for any purpose relating to an historic monument as they apply in relation to a monument, but, apart from any termination of guardianship by virtue of Article 17, any such land shall also cease to be under guardianship if the monument in question ceases to be under

guardianship otherwise than by virtue of being acquired by the Department or ceases to exist.

(6) The power to acquire land under this Article includes power to acquire, by the creation of a new right, any easement over land; and any such right may be enforced by the Department as if it were the absolute owner in possession of the monument for whose benefit the right was acquired.

(7) References in this Order, in relation to any monument of which the Department is the owner or guardian, to land associated with that monument (or to associated land) are references to any land acquired or taken into guardianship by virtue of this Article for a purpose relating to that monument, or appropriated for any such purpose under a power conferred by any other statutory provision.

Agreements concerning historic monuments, etc.

Agreements concerning historic monuments and land in their vicinity

19.—(1) The Department may enter into an agreement under this Article with the occupier of an historic monument or of any land adjoining or in the vicinity of an historic monument.

(2) Any person who has an estate in an historic monument or in any land adjoining or in the vicinity of an historic monument may be a party to an agreement under this Article in addition to the occupier.

(3) An agreement under this Article may make provision for all or any of the following matters with respect to the monument or land in question, that is to say—

- (a) the maintenance and protection of the monument and its amenities;
- (b) the carrying out of any such work, or the doing of any such other thing, in relation to the monument or land as may be specified in the agreement;
- (c) public access to the monument or land and the provision of facilities and information or other services for the use of the public in that connection;
- (d) restricting the use of the monument or land;
- (e) prohibiting in relation to the monument or land the doing of any such thing as may be specified in the agreement; and
- (f) the making by the Department of payments in such manner, of such amounts and on such terms as may be so specified (and whether for or towards the cost of any work provided for under the agreement or in consideration of any restriction, prohibition or obligation accepted by any other party thereto);

and may contain such incidental and consequential provisions as appear to the Department to be necessary or expedient.

(4) Where an agreement under this Article expressly provides that the agreement as a whole or any restriction, prohibition or obligation arising thereunder is to be binding on the successors of any party to the agreement (but not otherwise), then every person deriving title to the monument or land in question from, through or under that party shall be bound by the agreement, or (as the case may be) by that restriction, prohibition or obligation, unless he derives title by virtue of any disposition made by that party before the date of the agreement.

(5) Article 5 of the Property (Northern Ireland) Order 1978 (power of Lands Tribunal to modify or extinguish impediments) shall not apply to an agreement under this Article.

(6) Nothing in any agreement under this Article shall be construed as operating as a scheduled monument consent.

(7) Any agreement in force under section 8 of the Historic Monuments Act (Northern Ireland) 1971 on the coming into operation of this Order shall have effect as if made under this Article.

Public access to monuments under ownership or guardianship of Department

Public access to monuments under ownership or guardianship of Department

20.—(1) Subject to the following provisions of this Article, the public shall have access to any monument under the ownership or guardianship of the Department.

(2) The Department may nevertheless control the times of normal public access to any monument under its ownership or guardianship and may also, if it considers it necessary or expedient to do so in the interests of safety or for the maintenance or protection of the monument, entirely exclude the public from access to any such monument or to any part of it, for such period as it thinks fit.

(3) The Department may make such charges as it may from time to time determine for the admission of the public to any monument under its ownership or guardianship.

(4) The Department may, by notice clearly displayed in the vicinity of a monument under its ownership or guardianship, impose such other conditions on the admission of the public to the monument as appear to the Department to be necessary for—

(a) the protection of the monument and its amenities or of any property of the Department; and

(b) prohibiting or regulating any act or thing which would tend to injure or disfigure the monument or its amenities or to disturb the public in their enjoyment of it.

(5) Notwithstanding paragraph (1), any person authorised in that behalf by the Department may refuse admission to any monument under the ownership or guardianship of the Department to any person he has reasonable cause to believe

is likely to do anything which would tend to injure or disfigure the monument or its amenities or to disturb the public in their enjoyment of it.

(6) If any person contravenes any condition imposed under paragraph (4) on the admission of the public to a monument under the ownership or guardianship of the Department, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Paragraph (1) shall not apply to any monument of which the Department is guardian by virtue of a deed executed before 1st June 1926, except in cases where—

(a) the owner has by that deed consented to the public having access to the monument; or

(b) a public right of access has arisen through the acquiescence of the owner or otherwise.

(8) In relation to any other monument under the guardianship of the Department, paragraph (1) is subject to any provision to the contrary in the guardianship deed.

Provision of facilities for the public in connection with historic monuments

21.—(1) The Department may provide such facilities and information or other services for the public for or in connection with affording public access to any monument under its ownership or guardianship as appear to it to be necessary or desirable.

(2) Facilities and information or other services for the public may be provided under this Article in or on the monument itself or on any land associated with the monument.

(3) The Department may make such charges as it may from time to time determine for the use of any facility or service provided by it for the public under this Article.

(4) A person authorised in writing by the Department may at any reasonable time enter any land on or in the vicinity of a road (within the meaning of the Roads (Northern Ireland) Order 1993) for the purpose of erecting and maintaining a sign giving such particulars of, and information with respect to, an historic monument to which the public have access, as the Department thinks fit.

The Historic Monuments Council

The Historic Monuments Council

22.—(1) There shall continue to be a Council, known as “the Historic Monuments Council”, for the purpose of advising the Department on the exercise of its powers under this Order and of exercising such other functions as are conferred on the Council by this Part.

(2) The Council shall consist of a chairman appointed by the Department and such number of other members so appointed as the Department, with the

consent of the Department of Finance and Personnel, may determine, and the chairman and other members of the Council shall hold and vacate office in accordance with the terms of their appointments.

(3) The Council may, with the approval of the Department,—

(a) appoint committees; and

(b) appoint to any such committee persons who are not members of the Council.

(4) The Department may pay—

(a) to the chairman of the Council and the members of the Council and its committees, such allowances in respect of travelling and subsistence expenses and in respect of such other expenses, if any, as it is satisfied have been necessarily incurred by them for the purpose of enabling them to perform their duties;

(b) to the Council, such expenses of the Council,

as the Department may, with the consent of the Department of Finance and Personnel, determine.

(5) Subject to any directions of the Department as to quorum or other matters, the procedure of the Council and of its committees shall be such as the Council may determine.

Miscellaneous powers of the Department in relation to historic monuments

Expenditure by Department on removal or preservation of historic monuments

23.—(1) The Department may undertake, or assist in, or defray or contribute towards the cost of, the removal of any historic monument or of any part of any such monument to another place for the purpose of preserving it.

(2) The Department may at the request of the owner of an historic monument undertake, or assist in, or defray or contribute towards the cost of, the preservation, maintenance and management of the monument.

(3) No expenses shall be incurred by the Department under this Article in connection with any monument which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family.

Expenditure by Department on archaeological investigation

24.—(1) The Department may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation of any land on, in or under which there is, or is reasonably believed to be, an historic monument or anything else of archaeological or historical interest.

(2) The Department may, by agreement, take on lease any land for the purpose of carrying out an archaeological investigation of the land.

(3) The Department may publish the results of any archaeological investigation undertaken, assisted, or wholly or partly financed by it under this Article in such manner and form as it thinks fit.

Advice and superintendence by the Department

25.—(1) The Department may give advice with reference to the treatment of any historic monument.

(2) The Department may superintend any work in connection with any historic monument if invited to do so by the owner, and shall superintend any such work, whether required to do so by the owner or not, in connection with any scheduled monument.

(3) The Department may make a charge for giving advice and superintendence under this Article or may give it free of charge, as it thinks fit.

Power to provide general advice, information, etc.

26.—(1) The Department may—

(a) provide advice and disseminate knowledge about historic monuments and the protection and enhancement of historic monuments; and

(b) provide, or assist in the provision of, publicity, mapping and information services relating to historic monuments.

(2) The Department may make a charge for anything provided by it under this Article or may provide it free of charge, as it thinks fit.

Power to receive voluntary contributions

27. The Department may receive voluntary contributions towards the cost of any expenditure incurred by it under this Order (whether in relation to any particular monument or land or otherwise).

Power to dispose of land acquired under this Part

28.—(1) Subject to the following provisions of this Article, the Department may, after consultation with the Historic Monuments Council, dispose of any land acquired by it under Article 13, 14 or 18.

(2) Subject to paragraph (3), where the land in question is or includes a monument, the Department may only dispose of it on such terms as will in its opinion ensure the protection of the monument.

(3) Paragraph (2) does not apply in any case where the Department is satisfied that it is no longer practicable to protect the monument (whether because of the cost of protecting it or otherwise).

Offences

Restrictions on possession and use of detecting devices

29.—(1) If a person has a detecting device in his possession in a protected place without the written consent of the Department he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) In this Article—

"detecting device" means any device designed or adapted for detecting or locating any metal or mineral on or in the ground; and

"protected place" means any place which is the site of a scheduled monument or of any monument under the ownership or guardianship of the Department.

(3) If a person without the written consent of the Department removes any archaeological object which he has discovered by the use of a detecting device in a protected place he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.

(4) A consent granted by the Department for the purposes of this Article may be granted either unconditionally or subject to conditions.

(5) If any person—

(a) in using a detecting device in a protected place in accordance with any consent granted by the Department for the purposes of this Article; or

(b) in removing or otherwise dealing with any object which he has discovered by the use of a detecting device in a protected place in accordance with any such consent,

fails to comply with any condition attached to the consent, he shall be guilty of an offence and liable, in a case falling within sub-paragraph (a), to the penalty provided by paragraph (1), and in a case falling within sub-paragraph (b), to the penalty provided by paragraph (3).

(6) In any proceedings for an offence under paragraph (1) or (3), it shall be a defence for the accused to prove that he had taken all reasonable precautions to find out whether the place where he had the detecting device in his possession or (as the case may be) used it was a protected place and did not believe that it was.

Damaging certain historic monuments

30.—(1) A person who without lawful excuse destroys or damages any protected monument—

(a) knowing that it is a protected monument; and

(b) intending to destroy or damage the monument or being reckless as to whether the monument would be destroyed or damaged,

shall be guilty of an offence.

(2) This Article applies to anything done by or under the authority of the owner of the monument, other than an act for the execution of excepted works, as it applies to anything done by any other person.

In this paragraph “excepted works” means works for which scheduled monument consent has been given under this Order (including any consent granted by order under Article 5).

(3) In this Article “protected monument” means any scheduled monument and any monument under the ownership or guardianship of the Department.

(4) A person guilty of an offence under this Article shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or both; or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

Compensation orders for damage to monuments under guardianship

31. Where the owner or any other person is convicted of an offence involving damage to a monument which was at the time of the offence under the guardianship of the Department any compensation order made under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders against convicted persons) in respect of that damage shall be made in favour of the Department.

Powers of entry

Powers of entry

32.—(1) Any person authorised in writing by the Department may at any reasonable time enter any land—

(a) in, on or under which the Department knows or has reason to believe there is an historic monument, for the purpose of inspecting the land with a view to recording any matters of archaeological or historical interest;

(b) in, on or under which there is an historic monument which the Department is satisfied is likely to be destroyed or substantially damaged, for the purpose of carrying out such inspection or excavation as the Department considers necessary or expedient in order to obtain and record particulars of the monument;

(c) for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that or any other land under this Part or in connection with any claim for compensation under this Part in respect of any such acquisition or for any damage to that or any other land.

(2) Subject to paragraph (3), a person entering any land in exercise of the power conferred by paragraph (1)(a) may carry out excavations in the land for the purpose of archaeological investigation.

(3) No excavation shall be made in exercise of the power conferred by paragraph (2) except with the consent of every person whose consent to the making of the excavation would be required apart from this Article.

Supplementary provisions with respect to powers of entry

33.—(1) A person may not in the exercise of any power of entry under this Part, other than that conferred by Article 32(1)(c), enter any building or part of a building occupied as a dwelling house without the consent of the occupier.

(2) Subject to the following provisions of this Article, a person may not in the exercise of any power of entry under this Part, other than that conferred by Article 7 or 16, demand admission as of right to any land which is occupied unless prior notice of the intended entry has been given to the occupier—

(a) where the purpose of the entry is to carry out any works on the land (other than excavations in exercise of the power under Article 32(2)) not less than 14 days before the day on which admission is demanded; or

(b) in any other case, not less than 24 hours before admission is demanded.

(3) A person seeking to enter any land in exercise of any power of entry under this Part shall, if so required by or on behalf of the owner or occupier thereof, produce evidence of his authority before entering.

(4) Any power of entry under this Part shall be construed as including power for any person entering any land in exercise of the power of entry to take with him any assistance or equipment reasonably required for the purpose to which this entry relates and to do there anything reasonably necessary for carrying out that purpose.

(5) Without prejudice to paragraph (4), where a person enters any land in exercise of any power of entry under this Part for the purpose of carrying out any archaeological investigation or examination of the land, he may take and remove such samples of any description as appear to him to be reasonably required for the purpose of archaeological analysis.

(6) Subject to paragraph (7), where any works are being carried out on any land in relation to which any power of entry under this Part is exercisable, a person acting in the exercise of that power shall comply with any reasonable requirements or conditions imposed by the person by whom the works are being carried out for the purpose of preventing interference with or delay to the works.

(7) Any requirements or conditions imposed by a person by whom any works are being carried out shall not be regarded as reasonable for the purposes of paragraph (6) if compliance therewith would in effect frustrate the exercise of the power of entry or the purpose of the entry; and that paragraph does not apply where the works in question are being carried out in contravention of Article 4(1) or (6).

(8) Any person who intentionally obstructs a person acting in the exercise of any power of entry under this Part shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Treatment and preservation of archaeological objects found

34.—(1) Where a person enters any land in exercise of any power of entry under this Part for any of the following purposes, that is to say—

(a) to carry out any excavations in the land or any operations affecting any historic monument situated in, on or under the land;

(b) to observe any operations on the land in exercise of the power under Article 8(3)(a) or (4)(b); or

(c) to carry out any archaeological examination of the land;

he may take temporary custody of any archaeological object discovered during the course of those excavations or operations or (as the case may be) during the course of that examination, and remove it from its site for the purpose of examining, testing, treating, recording or preserving it.

(2) The Department may not retain the object without the consent of the owner beyond such period as may be reasonably required for the purpose of examining and recording it and carrying out any test or treatment which appears to the Department to be desirable for the purpose of archaeological investigation or analysis or with a view to restoring or preserving the object.

(3) Nothing in this Article shall affect any right of the Crown in relation to treasure trove.

Compensation

Compensation for damage caused by exercise of certain powers under this Part

35.—(1) Where, in the exercise in relation to any land of any power to which this Article applies, any damage has been caused to that land or to any chattels on that land, any person interested in that land or those chattels may recover compensation in respect of that damage from the Department.

(2) This Article applies to any power to enter, or to do anything on, any land under any of the following Articles of this Order that is to say, Articles 8, 21(4) and 32.

(3) In determining any compensation under this Article regard shall be had to any sums which may be payable under an agreement under Article 19.

General provisions with respect to claims for compensation under this Part

36.—(1) Any claim for compensation under this Part shall be made within the time and in the manner prescribed.

(2) Any question of disputed compensation under this Part shall be referred to and determined by the Lands Tribunal.

Application to special cases

Application to Crown land

37.—(1) Notwithstanding any estate of the Crown in Crown land, but subject to the following provisions of this Article—

(a) a monument which for the time being is Crown land may be included in the Schedule; and

(b) any restrictions or powers imposed or conferred by any of the provisions of this Part shall apply and be exercisable in relation to Crown land and in relation to anything done on Crown land otherwise than by or on behalf of the Crown, but not so as to affect any estate of the Crown therein.

(2) Except with the consent of the appropriate authority—

(a) no power under this Part to enter, or to do anything, on any land shall be exercisable in relation to land which for the time being is Crown land; and

(b) no estate in land which for the time being is Crown land shall be acquired compulsorily under this Part.

(3) In this Article—

"the appropriate authority", in relation to any land, means—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;

(b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;

(c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

"Crown estate" means an estate belonging to Her Majesty in right of the Crown, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

"Crown land" means land in which there is a Crown estate;

"government department" means a department of the Government of the United Kingdom or a Northern Ireland department.

Monuments in territorial waters

38.—(1) A monument situated in, on or under the sea bed within the seaward limits of United Kingdom territorial waters adjacent to the coast of Northern Ireland (referred to in this Article as a monument in territorial waters) may be included in the Schedule under Article 3(1) and the remaining provisions of this Part shall apply accordingly to any such monument which is a scheduled monument (but, subject to paragraph (5), not otherwise).

(2) In relation to any monument in territorial waters which is under the ownership or guardianship of the Department, references in this Part to land associated with the monument (or to associated land) include references to any part of the sea bed occupied by the Department for any such purpose relating to the monument as is mentioned in Article 18(1).

(3) Without prejudice to any jurisdiction exercisable apart from this paragraph, proceedings for any offence under this Part committed in United Kingdom territorial waters adjacent to the coast of Northern Ireland may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Northern Ireland.

(4) It is hereby declared that, notwithstanding that by virtue of this Article this Part may affect individuals or bodies corporate outside the United Kingdom, it applies to any individual whether or not he is a British subject, and to any body corporate whether or not incorporated under the law of any part of the United Kingdom.

(5) The powers conferred by Article 24 shall be exercisable in relation to any land forming part of the sea bed within the seaward limits of United Kingdom territorial waters adjacent to the coast of Northern Ireland.

(6) References in this Article to the sea bed are references to land permanently covered by the sea.

Supplementary

Power to require information as to estates in land

39.—(1) For the purpose of enabling the Department to exercise any function under this Order, the Department may require the occupier of any land and any person who, either directly or indirectly, receives rent in respect of any land to state in writing the nature of his estate therein, and the name and address of any other person known to him as having an estate therein.

(2) Any person who, having been required under this Article to give any information, fails without reasonable excuse to give that information, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Any person who, having been so required to give any information, knowingly makes any mis-statement in respect of it, shall be guilty of an offence and liable—

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment to a fine.

Registration of matters in Statutory Charges Register

40. In Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (matters required to be registered in the Statutory Charges Register) for entry 22 there shall be substituted the following entry—

"22. Any of the following matters under the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995—

(a) an entry in the schedule compiled and maintained under Article 3(1);

(b) a notice served under Article 10(2)(b).".

PART III

ARCHAEOLOGICAL OBJECTS

Restriction on searching for archaeological objects, etc.

41.—(1) Any person who, except under and in accordance with any conditions attached to a licence issued by the Department under this Article, excavates in or under any land (whether or not such excavation involves the removal of the surface of the land) for the purpose of searching generally for archaeological objects or of searching for, exposing or examining any particular structure or thing of archaeological interest shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A licence granted by the Department for the purposes of this Article—

(a) shall specify the land in relation to which and the archaeological purpose for which the licence has effect;

(b) may be granted subject to such conditions as the Department thinks fit; and

(c) shall not render lawful the doing of anything which would be unlawful apart from this Article.

(3) A person shall not, under the authority of a licence issued under this Article, enter on the land to which the licence relates except—

(a) with the consent of the occupier of the land and the owner (if the owner is known); or

(b) in exercise of a power of entry under Part II.

Reporting of archaeological objects found

42.—(1) Any person who finds an archaeological object (in this Article referred to as "the finder") shall, within 14 days of finding the object—

(a) report to a relevant authority—

