

# Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation

The Planning Act (NI) 2011

Phase 1 Public Consultation



Department of the  
**Environment**

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## **CONTENTS**

Responding to this consultation document .....	1
1 - Introduction .....	3
2 - Local Government & Planning Reform - A New Two-tier Planning System	9
3 - Local Development Plans - An Effective Plan-led System.....	11
4 - The Council's Statement of Community Involvement .....	45
5 - A New Approach to Development Management.....	50
6 - A New Hierarchy of Development.....	51
7 - Pre-application Community Consultation.....	55
8 - Pre-determination Hearings .....	61
9 - Schemes of Delegation.....	62
10 - Call-in of Certain Applications to the Department.....	64
11 - Notification Direction - Potential Call-in of Applications by the Department .....	65
12 - New Development Management Procedures .....	67
13 - Revised Publicity Arrangements for Applications for Planning Permission .....	69
14 - Duty to Respond to Consultation .....	74
15 - Design and Access Statements.....	81
16 - Power to Make Non-material Changes to Existing Grants of Planning Permission .....	85
17 – Councils' Own Applications for Planning Permission.....	88
18 - Listed Buildings.....	90
19 - Associated Subordinate Legislation Not Subject to Public Consultation.	95
20 - Assessments and Freedom of Information .....	102
21 - Overview of Consultation Questions.....	104
Annex A - The Local Development Plan Process .....	108
Annex B - Soundness Tests for Development Plan Documents.....	109
Annex C - Schedule to the Development Management Regulations .....	110
Annex D - Statutory Consultees Tables 1 and 2 .....	114
Annex E - Freedom of Information Act 2000 - Confidentiality of Responses	119
Annex F - Consultee List.....	120
Abbreviations .....	126



## Responding to this consultation document

### How to Respond

You are invited to send your views on this consultation document.

Comments should reflect the structure of the document as far as possible with references to question numbers and paragraph numbers where relevant.

All responses should be made in writing and submitted to the Department no later than 20<sup>th</sup> August 2014 in one of the following ways:

1. **By post** to:  
Planning Reform & Transfer to Local Government Consultation –  
Phase 1  
Planning Policy Division  
Department of the Environment  
Level 6 Causeway Exchange  
1-7 Bedford Street  
Town Parks  
Belfast  
BT2 7EG
2. **By e-mail** to: [ppdconsultations@doeni.gov.uk](mailto:ppdconsultations@doeni.gov.uk)

In keeping with our policy on openness, the Department will make responses to this consultation document publicly available. When publishing responses received on behalf of organisations, the Department will also publish the organisation's name and address. When publishing responses received on behalf of individuals, the Department will not publish details of the individual's name and address.

We look forward to receiving responses to the proposals and issues raised within this consultation document. Additional copies of the consultation document can be downloaded from the Department's website at [www.planningni.gov.uk](http://www.planningni.gov.uk) or requested via the postal address, e-mail as above, by telephone on (028) 90823498 or by Text phone (028) 90540642.

This document is available in alternative formats, please contact us to discuss your requirements.

If you have any comments or complaints about the consultation process itself (rather than the content of this document), these should be directed to the postal or e-mail addresses above.



# 1 - Introduction

## Purpose of the consultation

- 1.1 This consultation document is the first phase of a two phased public consultation exercise being undertaken by the Department of the Environment. The Department is seeking your views on a range of proposals for subordinate legislation in exercise of powers already established in the Planning Act (Northern Ireland) 2011 (the 2011 Act). It is intended to seek views on detailed proposals for subordinate legislation necessary to introduce reforms to the planning system and transfer responsibility for the majority of planning functions to the new district councils in April 2015.
- 1.2 The proposals in this document set out how the Department proposes to introduce improvements in the planning process and establish a new two-tier planning system in Northern Ireland. They are part of the wider reforms to the planning system intended to deliver:
- improved access to and increased participation in the planning process;
  - faster and more predictable outcomes;
  - fairer and faster appeals; and
  - stronger and more effective enforcement.
- The proposals also provide the detailed mechanisms to support the transfer of responsibility for the majority of planning functions to the new district councils to take effect from 1<sup>st</sup> April 2015.
- 1.3 The reform and transfer of planning involves enacting more than 20 pieces of subordinate legislation within a relatively short time period. In order to manage this workload and to provide a co-ordinated picture of how the changes proposed in legislation link together, the Department is consulting in two phases.

- 1.4 This first phase of consultation essentially deals with those issues which are necessary to ensure that the new district councils inherit a functioning planning system immediately following the transfer of planning functions from central to local government. These “*day one essentials*” should ensure that there are no interruptions to the management of applications, enforcement cases etc. already in the system and that work initiated by the Department can be continued by the relevant new councils through to conclusion. The aim of planning reform is to transfer a fit for purpose planning system effective from the outset of the new councils operating as the local planning authorities.
- 1.5 The key phase 1 proposals relate to the following elements of the planning process:
- local development plans;
  - statements of community involvement;
  - the new three-tier hierarchy of development applications i.e. local, major and regionally significant;
  - the new and revised procedures for managing applications through the system;
  - listed buildings; and
  - the management of applications relating to land of interested parties e.g. council-owned land.
- 1.6 These new proposals will be set out in the following pieces of subordinate legislation:
- The Planning (Local Development Plan) Regulations (NI) 2015;
  - The Planning (Statement of Community Involvement) Regulations (NI) 2015;
  - The Planning (Development Management) Regulations (NI) 2015;
  - The Planning (General Development Procedure) Order (NI) 2015;
  - The Planning (Listed Buildings) Regulations (NI) 2015; and
  - The Planning (General) Regulations (NI) 2015.

- 1.7 The Department recognises that applications submitted before the transfer of powers may not yet be determined when the new legislation comes into operation. While the key focus of planning reform is on ensuring that councils are able to make properly informed determinations, the Department is also keen to avoid duplication of effort. In relation to those applications already in the system the Department will seek to provide that work which was properly done by the Department, either on a statutory or non-statutory basis, will not have to be repeated by the new councils to meet the new statutory requirements if the council is content that the aims of the new statutory provisions have been properly met. For example, if an application has been properly consulted on by the Department and all consultation responses have been received the council will not be required to repeat that consultation exercise.
- 1.8 This approach is intended to address only those undetermined applications already in the system over the period of transition to the new two-tier planning system. Councils will have to satisfy themselves that each application has been appropriately consulted upon, publicised and notified and that their decision has been properly informed. All new applications coming into the system after the point of transfer will be subject to the full statutory requirements.
- 1.9 The second phase of consultation will take place in the Autumn of 2014 and will deal with issues which, while important for the implementation of the broad range of reforms to the planning system, are not essential for the continued operation of the system following the point of transfer of planning responsibilities to the new councils. The Department will nevertheless aim to have these reforms introduced for April 2015.
- 1.10 In addition to proposals relating to changes in the planning system resulting from, or dependent upon, the new powers in the 2011 Act, there is also a broad range of current provisions which will need to continue but which require alterations in the current relevant legislation

to take account of the move to the new two-tier planning system. Whereas under the current system the Department acts as the single unitary planning authority, under the two-tier system there is a need to provide for changes in processes to support the roles of both central and local government.

- 1.11 Where currently legislation provides that only the Department may determine an application for planning permission the legislation needs to be changed so that both the local council and the Department have the authority to make a planning decision, depending upon which one is operating as the planning authority for a particular application type.
- 1.12 Changes to subordinate legislation which do not involve the introduction of a new policy or a change in existing policy may be regarded as **technical** and may not require public consultation. In relation to planning reform and transfer there are a number of pieces of subordinate legislation which the Department considers would fall into this technical category. As such the Department is not consulting on this legislation although it will still be subject to the normal legislative process and the full scrutiny of the Assembly.
- 1.13 The technical pieces of legislation needed to support the continued operation of the planning system immediately following transfer of planning functions include the following pieces of subordinate legislation, known as statutory rules (SRs):
- The Planning (General Permitted Development) Order (NI) 2015;
  - The Planning (Use Classes) Order (NI) 2015;
  - The Planning (Environmental Impact Assessment) Regulations (NI) 2015;
  - The Planning (Hazardous Substances) Regulations (NI) 2015;
  - The Planning (Management of Waste from the Extractive Industries) Regulations (NI) 2015;
  - The Planning (Fees) Regulations (NI) 2015;

- The Planning (Trees) Regulations (NI) 2015;
- The Planning (Conservation Areas) (Demolition) Regulations (NI) 2015;
- The Planning (Control of Advertisements) Regulations (NI) 2015;  
and
- The Planning (Claims for Compensation) Regulations (NI) 2015.

Chapter 19 sets out further information on each piece of legislation in order to provide a comprehensive overview of the legislative provisions which will be in place for the transfer of planning powers in April 2015.

- 1.14 All legislation required to be in place for day one of the transfer of planning powers to local government will be made available on the Department's website. This will include new legislative provisions which are the subject of this consultation as well as the technical SRs referred to above.
- 1.15 The practical impacts of the proposed subordinate legislation are set out in the following chapters and include relevant questions per section. The questions are repeated at Chapter 21 for ease of reference.
- 1.16 While responses cannot be accepted by telephone, as this consultation deals with a range of reforms, the following persons will be able to answer queries in relation to the proposals if required:

<b>Legislative Proposals</b>	<b>Contacts</b>	<b>Telephone</b>	<b>e-mail</b>
1. Development Plan 2. Statement of Community Involvement	Irene Kennedy 1. Tom Mathews 2. Tom Mathews	(028) 90823537 (028) 90823514 As above	Irene.Kennedy@doeni.gov.uk Thomas.Mathews@doeni.gov.uk As above
<u>A New Approach to Development Management</u> 3. Development Hierarchy 4. Pre-application Community Consultation 5. Councils' Schemes of Delegation	Irene Kennedy 3. David Doherty 4. Michelle Bamford 5. David Doherty	(028) 90823537 (028) 90823105 (028) 90823513 (028) 90823105	Irene.Kennedy@doeni.gov.uk David.Doherty@doeni.gov.uk Michelle.Bamford@doeni.gov.uk David.Doherty@doeni.gov.uk
<u>Development Management Procedures</u> 6. Revised publicity arrangements 7. Duty to respond to statutory consultation request 8. Design and Access Statements 9. Non-material changes to planning permission	Brian Gorman 6. Stephen Gallagher 7. Stephen Gallagher  8. Michelle Bamford 9. David Doherty	(028) 90823536 (028) 90823515 As above  (028) 90823513 (028) 90823105	Brian.Gorman@doeni.gov.uk Stephen.Gallagher@doeni.gov.uk As above  Michelle.Bamford@doeni.gov.uk David.Doherty@doeni.gov.uk
10. Managing applications relating to land of interested parties	Joe Torney 10. Jackie Lambe	(028) 90823535 (028) 90823501	Joe.Torney@doeni.gov.uk Jackie.Lambe@doeni.gov.uk
11. Listed Buildings	Joe Torney 11. Francis Martin	(028) 90823535 (028) 90823499	Joe.Torney@doeni.gov.uk Francis.Martin@doeni.gov.uk

## **2 - Local Government & Planning Reform - A New Two-tier Planning System**

- 2.1 A major reform programme for the planning system in Northern Ireland was originally announced in November 2007. This incorporated a range of medium to long-term measures designed to address all the key management elements of the planning system. The Department published a consultation paper *Reform of the Planning System in Northern Ireland: Your chance to influence change* in July 2009 and undertook a comprehensive programme of engagement including hosting a range of stakeholder events. The Northern Ireland Executive agreed to the final policy proposals for reform of the planning system in February 2010, including measures necessary to transfer responsibility for the majority of planning functions to the new councils. These were set out in the Department's response published in March 2010 and provided the basis for the Planning Bill introduced into the Assembly in December 2010.
- 2.2 This Bill progressed through the Assembly to become the 2011 Act which received Royal Assent in May 2011 and established the broad range of enabling powers for the reform of the planning system and the transfer of responsibility for the majority of planning functions from central government to the new councils scheduled for 1<sup>st</sup> April 2015.
- 2.3 A range of subordinate legislation is required to bring the 2011 Act fully into operation and establish the new two-tier planning system from the date of transfer. Under this new model the Department will determine only a very limited number of regionally significant applications and have a general oversight role. Councils, through their elected representatives, will be responsible and accountable for the vast majority of planning decisions and the formulation of a new local development plan for their council area.

2.4 In April 2013 the Executive agreed the full package of functions that will transfer from central to local government. In addition to planning, off-street parking, urban regeneration and community development, local economic development and local tourism will transfer. Councils are also being given the new power of community planning. The Local Government Act (Northern Ireland) 2014, which gives effect to the Executive's decisions on the future shape of local government, received Royal Assent on 12<sup>th</sup> May 2014.

2.5 From 1<sup>st</sup> April 2015, councils will be the planning authorities responsible for:

- local development planning – creating a clear vision of how the council area should look in the future by establishing what type and scale of development should be encouraged in the council area and where it should be located;
- development management – determining the vast majority of planning applications; and
- planning enforcement – investigating alleged breaches of planning control and determining what action should be taken.

2.6 The Department will retain responsibility for:

- regional planning policy;
- determination of regionally significant/called-in applications;
- planning legislation;
- oversight and guidance for councils;
- audit; and
- performance management.



### **3 - Local Development Plans - An Effective Plan-led System**

3.1 In future the local development plan (LDP) for an area will be prepared by the council rather than the Department. This chapter sets out the proposed arrangements for councils to prepare and adopt their own LDP under a new two-stage process.

3.2 Part 2 of the 2011 Act places a statutory requirement on each council to prepare an LDP for its district. The LDP will consist of two separate development plan documents (DPD), covering the whole of the council district:

- (i) a Plan Strategy (PS) which will set out the council's vision, objectives and growth strategy for the area along with strategic policies; and
- (ii) a Local Policies Plan (LPP) which will set out the council's detailed policies in relation to the development and use of land in its district.

The PS will be produced first, scrutinised at the independent examination stage and then adopted. Subsequently, the LPP will be prepared in line with the PS, examined at independent examination and then adopted. The Department considers that this approach would allow the PS to be adopted quickly, within approximately two years, to ensure early strategic direction is in place and provide certainty for future development decisions in the area. It should be noted that before the council prepares its DPD it must prepare and publish a Preferred Options Paper (POP). The POP will set out for consultation purposes:

- a series of options for dealing with the key issues in the plan;
- evidence to appraise the different issues and options; and
- the council's preferred options and its justification for selecting/recommending its preferred approach.

- 3.3 The council LDP will apply regional policies at the appropriate local level and inform the general public, statutory authorities, developers and other interested bodies of the policy framework and land use proposals that will guide development decisions within a specified area. Councils must also carry out a sustainability appraisal of LDPs to ensure that the PS and LPP are assessed against economic and social objectives in addition to environmental considerations.
- 3.4 The Department considers that the LDP should fulfil the following functions:
- provide a 15-year plan framework to support the economic and social needs of the council's district in line with regional strategies and policies, while providing for the delivery of sustainable development;
  - facilitate sustainable growth by co-ordinating public and private investment to encourage development where it can be of most benefit to the well-being of the community;
  - allocate sufficient land to meet society's needs;
  - provide an opportunity for all stakeholders, including the public, to have a say about where and how development within their local area should take place;
  - provide a plan-led framework for rational and consistent decision-making by the public, private and community sectors and those affected by development proposals; and
  - deliver the spatial aspects of the council's current community plan.
- 3.5 Public participation in formulating the LDP and progress through to adoption will be facilitated through the council's Statement of Community Involvement and an LDP timetable to be agreed between the council and the Department. Part 2 of the 2011 Act also makes general provision for the preparation, withdrawal, adoption and approval of LDPs (including joint plans) and their independent examination. The Department will also have powers of intervention

and may prepare, revise or give direction to modify a LDP where appropriate.

3.6 The proposed Planning (Local Development Plan) Regulations (Northern Ireland) 2015 will set out:

- the sequence of LDP preparation from the creation of the timetable through to the adoption of the LDP by the council;
- the roles of the council, the Department and the independent examiner; and
- the functions post adoption including annual monitoring, review and revision of the plan (see Annex A - The LDP Process).

3.7 The intention is to provide a minimum set of requirements to ensure the efficient, transparent and accountable operation of the LDP system. The aim has been to provide a light regulatory touch whilst ensuring minimum standards are met and specific requirements in the preparation of LDP are addressed by the council. The Department also intends to issue detailed guidance on the LDP process.

### **General requirements for local development plan preparation**

3.8 Part 2 of the 2011 Act sets out the process and requirements with which any person or body involved in the preparation of a LDP must comply.

### **Statement of community involvement**

3.9 Sections 8(4)(b) and 9(4)(b) of the 2011 Act require that the council must prepare its PS or LPP in accordance with its Statement of Community Involvement (SCI). The SCI is a statement of the council's policy for involving interested parties in matters relating to development in its district. For a detailed overview of the SCI and the Department's proposed regulations see Chapter 4 below.

## **The local development plan process**

### **Advertisement of the LDP**

- 3.10 At various stages in the LDP process the council will be required to advertise the steps it is taking in the preparation of the LDP. For example, the council will be required to advertise the fact that it is publishing for consultation its POP, PS and LPP.
- 3.11 At present the Department is required to place an advertisement for two successive weeks in at least one newspaper circulating in the area affected by the development plan. The Department considers that this minimum requirement should be retained and should apply to councils after the transfer of planning powers. Therefore where a reference is made to “local advertisement” in this document it means that the council must place an advertisement for two successive weeks in at least one local newspaper circulating in its district. This will be a minimum requirement, however, the council may wish to go beyond this requirement and use more than one newspaper or, it may even wish to use social media networking services such as Facebook or Twitter. In such an event this will be reflected in the council’s SCI discussed above.

**Question 1: Do you agree that local advertisement should mean that a council must place an advertisement for two consecutive weeks in at least one local newspaper circulating in its district?**

### **Statutory consultees**

- 3.12 When the Department prepared its recent development plans such as the Belfast Metropolitan Area Plan 2015, Northern Area Plan 2016 and the Banbridge, Newry and Mourne Area Plan 2015, it consulted a wide range of bodies and other agencies on an administrative basis. This included Roads Service, the Northern Ireland Environment Agency (NIEA) and NI Water, whose expertise and input was integral in

preparing the plans. It will be essential for a council, in preparing its LDP, to consult all relevant bodies in the LDP preparation process and these will be identified as “statutory consultees” in the development plan process. It is also considered essential that councils consult neighbouring councils as decisions on land zonings and policies may have an impact on a neighbouring area.

3.13 Involving statutory consultees in the development plan process will enable councils to make informed decisions on LDP zonings and policies, and the information supplied by the consultation bodies, together with their expertise, are necessary for plan preparation.

3.14 The Department proposes that councils must consult the following bodies in the preparation of their LDP:

- all Northern Ireland government departments;
- the council for any district which adjoins that of the council undertaking the consultation exercise;
- any water or sewerage undertaker;
- the Northern Ireland Housing Executive;
- the Civil Aviation Authority;
- any person to whom the electronic communications code applies by virtue of a direction given under section 106(3) of the Communications Act 2003;
- any person to whom a licence has been granted under Article 10(1) of the Electricity (Northern Ireland) Order 1992; and
- any person to whom a licence has been granted under Article 8 of the Gas (Northern Ireland) Order 1996.

It should be noted that these statutory consultees in the LDP process differ from other statutory consultees consulted as part of the development management process discussed further at Chapter 14.

**Question 2: Do you agree with the list of statutory consultees for LDP preparation and are there any bodies/persons we have missed?**

**Timetable**

3.15 Section 7 of the 2011 Act places a statutory requirement on a council to prepare and keep under review a timetable for the preparation and adoption of its LDP. The council must attempt to agree the timetable with the Department, however, if the timetable cannot be agreed then the Department may direct that the timetable is in the terms specified in the direction.

3.16 The timetable will specify the indicative dates from the commencement of the LDP process up to its conclusion at the adoption of the LPP. It must set out the timings of the public consultations for the POP and the DPD as this will make the public aware of the public consultation programme well in advance of the events. The preparation of the timetable will help ensure that the plan process is efficiently managed and that the key stakeholders such as the statutory consultees and the Planning Appeals Commission (PAC) are kept informed and can manage their own resources to facilitate their involvement in the LDP process.

3.17 The draft regulations set out proposed procedures for the: preparation of the timetable; content of the timetable; agreement of the timetable with the Department; and publication and availability of the timetable.

**(i) Preparation of the timetable**

3.18 It is important that the statutory consultation bodies are consulted as their input is required in the preparation of the LDP and they may also be required to attend the independent examination. Therefore the draft regulations propose that councils must consult the statutory consultation bodies when preparing the timetable.

**(ii) Content of the timetable**

3.19 The timetable should identify key documents in the preparation of the LDP including the POP and the sustainability appraisal report (SAR). The timetable will identify indicative dates and the key stages in the preparation and adoption of the DPDs.

3.20 The rationale for using indicative dates is based on the fact that it would be impossible for the council to accurately predict an exact date for the commencement and conclusion of any stage of any individual part of the process. These dates will be dependent on a number of factors including the input of statutory consultees, the number of representations received during consultation, the time taken to assess those representations and the work load of the PAC, to mention a few. However, the council will be able to make an informed estimate that the public consultation for the POP, the PS or the LPP may take place within a given period of say three months. The Department's guidance will set out further details of how the council should prepare the timetable and how it can estimate the indicative dates for each step of the LDP preparation process.

3.21 Therefore it is proposed the draft regulations will require the timetable to contain:

- the indicative dates for the publication of the POP, the PS, the LPP and the SAR; and
- indicative dates for the independent examinations and adoption of the PS and the LPP.

**(iii) Agreement of the timetable**

3.22 The Department considers that it is important that councils liaise with the Department to agree the timetable. The Department's role will be to ensure it is robust, realistic and covers the main plan preparation requirements and that it has been prepared in accordance with the

requirements of the proposed regulations. It will also allow the Department to liaise with the PAC, on the indicative time for independent examination, to establish whether it will have the capacity to carry out the examination, or whether it might prove necessary to make arrangements to appoint an independent person other than the PAC.

3.23 There may be instances where a revision to a timetable is required, for example, where there are circumstances outside the council's control that would mean the timetable could no longer be met. In this case, a revision to the timetable must be prepared and should follow the same procedure for preparation and agreement as that of a full timetable. The council must then incorporate any revision into the timetable.

3.24 Therefore draft regulations will require that:

- the timetable must be approved by resolution of the council prior to submission to the Department for its agreement;
- that the Department must respond within four weeks of receipt of the timetable or notify the council that it requires more time; and
- if the Department does not respond within four weeks then the timetable is deemed to be agreed.

Section 7(1) of the 2011 Act requires the council to keep the timetable under review. If a revision is required any revision must be prepared and re-submitted to the Department for agreement.

**(iv) Publication and availability of the timetable**

3.25 After the timetable has been agreed the council must publicise that it has been agreed and make it available for public inspection. This will help to ensure that the public, stakeholders and consultation bodies are aware of key milestones in the LDP preparation process.



- 3.26 To that end it is proposed the regulations will require that the council must:
- make their agreed timetable available for inspection during normal office hours at their principal office and such other places as the council considers appropriate;
  - publish the agreed timetable on its website; and
  - give notice of the above by local advertisement.

**Question 3: Do you agree with the preparation, content, agreement and publicity arrangements for the development plan timetable? If not, can you identify amendments which would offer greater benefits?**

### **The Preferred Options Paper**

- 3.27 A key new feature of the LDP system is consultation at an early stage on 'preferred options' for growth and development of the council area. Strengthening early involvement in planning is a key principle underlying any plan system as there are widespread benefits in involving communities and stakeholders as early as possible in the preparation of plans. It should lead to a better informed LDP and a higher level of community ownership, which in turn should mean fewer representations to the LDP as it progresses to adoption.
- 3.28 The preferred options paper (POP) will contain:
- a series of options for dealing with the key issues in the LDP area;
  - evidence to appraise the different issues and options; and
  - the council's preferred options and their justification.
- 3.29 The POP will be used as the basis for consulting with the public and it is envisaged that this will help them to become involved in a more meaningful way at this earlier stage of plan preparation and provide them with an opportunity to put forward views and influence the LDP.

## **Preparation of the Preferred Options Paper**

- 3.30 The statutory consultees' participation at the start of the process of preparing a new LDP is crucial in identifying relevant issues and views on the plan from the outset. In order to generate alternative options for growth and development, it is important that the statutory consultees are able to input at this early stage of the plan preparation process.
- 3.31 It is proposed that regulations will require councils, for the purpose of generating strategies and options, to engage with the LDP statutory consultees (see paragraph 3.14 above for list). In Wales the local planning authority (LPA) is only required to engage the statutory consultees, whereas in England the LPA is required to engage the statutory consultees and take account of any representation that they make to the LPA. The Department believes that the subsequent elements of the development plan process in Northern Ireland will provide sufficient opportunity for a council to demonstrate how it has considered representations without a statutory requirement to demonstrate how they have been considered at this early stage of the process.

**Question 4: Do you agree with this approach in relation to the involvement of statutory consultees in the preparation of a POP?**

## **Availability of the Preferred Options Paper**

- 3.32 It is intended that the POP will stimulate public comment and views that will inform the content of the council's LDP. It is therefore important that all those who may wish to comment on the POP are made aware that they can do so and are given such an opportunity. Before the council commences preparation of its LDP it must publicise and make its POP available for public consultation.

- 3.33 It is proposed that the council should do the following:
- make available for inspection during normal working hours a copy of the POP and associated documents at its principal office and such other places as the council considers appropriate;
  - make a statement that representations can be made on the POP and the address to which the representations can be sent;
  - send this information to the statutory consultees which were engaged in the preparation of the POP;
  - give notice by local advertisement and on its website setting out:
    - that the POP has been prepared and the places and times at which it can be inspected;
    - a brief description of the content and purpose of the POP; and
    - details of how further information may be obtained.

### **Public consultation on the Preferred Options Paper**

3.34 As stated above, the POP will be used as the basis for consultation with the public on the council's preferred options for the future development of its area. The Department recommends that the public consultation should be a period of not less than eight weeks or more than 12 weeks, and anyone wishing to make a representation must do so within the period that the council prescribes.

- 3.35 It is proposed that:
- any person who wishes to make a representation must do so within the period specified by the council;
  - the representation must be sent to the address specified by the council;
  - the consultation period must be a period of not less than eight weeks or more than 12 weeks; and
  - the council must take account of representations received before it prepares its DPD.

3.36 The proposed publicity requirements are a statutory minimum and councils are free to do more to publicise the availability of their POP if they so choose. Such an approach should be set out in the SCI. It is important to note that if the council gives a commitment to go beyond these minimum requirements in its SCI it must comply with that commitment or the DPD may be found not to be sound at independent examination.

**Question 5: Do you think that the proposed publicity and consultation arrangements for the POP are appropriate / adequate?**

### **Development Plan Documents**

3.37 As explained in paragraph 3.2 above the LDP consists of two DPDs, the PS and the LPP which taken together will form the LDP. Section 8 of the 2011 Act imposes a statutory duty on the council to prepare a PS for its district. In preparing the PS the council must take account of the Regional Development Strategy (RDS) and any policy and advice contained in guidance issued by the Department, and it may have regard to such other information and considerations as appear to the council to be relevant. The PS must set out the council's objectives in relation to the development and use of land in its district together with its strategic policies for the implementation of these objectives.

3.38 Similarly, section 9 of the 2011 Act imposes a statutory duty on the council to prepare a LPP for its district. In preparing the LPP, the council must take account of the RDS, any policy or advice contained in guidance issued by the Department, and it may have regard to such other information and considerations as appear to the council to be relevant. The LPP must set out the council's policies in relation to the development and use of land in its district.

3.39 The above procedures and requirements for the PS and the LPP are for the most part identical. The PS is prepared first and subjected to public consultation and independent examination before adoption by the council. Only after the council has adopted its PS can it begin preparation of its LPP which will also be subject to public consultation and independent examination before adoption by the council.

### **Form and content of a development plan document**

3.40 It is proposed that a DPD's title must give the name of the council and indicate whether it is a PS or an LPP and if the DPD is adopted, then a sub-title which must indicate the date of the adoption of the DPD.

3.41 The Department also considers that a DPD must contain a reasoned justification of the policies contained in it and that those parts of a DPD which comprise the policies of the DPD and those parts which comprise the associated reasoned justification, must be readily distinguishable.

### **Proposals map**

3.42 To assist users of the planning system development plans in all of the United Kingdom and Republic of Ireland contain maps which give clarity to the local planning authorities' proposals where the proposals for the development of land can be expressed spatially.

3.43 The Department wishes to ensure that the council LDP includes proposal maps that contain enough detail to enable users of the planning system to identify the locations and proposals for the development and use of land in its district.

3.44 The DPD may also contain or be accompanied by any other maps, diagrams, illustrations or other descriptive matter that the council thinks appropriate and the Department's guidance will assist the council in this respect.

- 3.45 Although unlikely, if a council fails to accurately transpose written policies and proposals from the DPD into its accompanying maps, it will be the written statement which prevails for the purposes of making a determination on any proposal for development.
- 3.46 The regulations therefore propose that the DPD must contain proposals maps describing the policies and proposals set out in the DPD so far as it is practicable to illustrate such policies or proposals spatially. The proposals maps should be sufficiently detailed to enable the location of proposals for the development of land to be identified and in the case of any contradiction between the written statement and the maps the written statement will prevail.

#### **Additional matters to be taken into account**

- 3.47 In preparing the DPD under sections 8 and 9 of the 2011 Act the council must, in addition to taking account of the RDS etc. must take account of any policy or advice contained in guidance issued by the Department, and any such matters as the Department may prescribe, or in a particular case, direct.
- 3.48 The guidance issued by the Department may set out other matters that the council must take account of. For example, the Regional Transportation Strategy and any other associated transport plan that appears to the council to be relevant to its area, the Waste Strategy and any other associated waste plan that appears to the council to be relevant to its area.
- 3.49 It should be noted that the Department also envisages a strong link between the proposed Council Community Plans and LDP. Section 77 of the Local Government Act (Northern Ireland) 2014 amends sections 8 and 9 of the 2011 Act, placing a statutory requirement on councils to take account of a council's current community plan.

3.50 The additional matters that the Department wishes to ensure that the council must take account of in preparing its DPD includes the control of major accident hazards in compliance with EU Council Directive 96/82/EC (the Seveso Directive). This Directive introduced new requirements relating to safety management systems, emergency planning and land-use planning, and a reinforcement of the provisions on inspections to be carried out by Member States.

3.51 The draft regulations therefore require that the council must have regard to this directive in preparing its DPD.

### **Availability of development plan documents**

3.52 As with availability requirements for the POP discussed earlier in this document, the Department for similar reasons wishes to place certain requirements on the council when it makes its DPD available for public consultation.

3.53 The Department proposes that the council should:

- make available for inspection during normal working hours a copy of the DPD and associated documents at its principal office and such other places as the council considers appropriate;
- make a statement that representations can be made on the DPD and the address to which the representations can be sent;
- send this information to the statutory consultees which were engaged in the preparation of the DPD; and
- give notice in the Belfast Gazette and by local advertisement and on its website setting out:
  - that the DPD has been prepared and the places and times at which it can be inspected,
  - a brief description of the content and purpose of the DPD,
  - details of how further information may be obtained.

## **Public consultation on a development plan document**

- 3.54 As stated above, the DPD will be used as the basis for consultation with the public on the council's options for the future development of its area. The Department recommends that the public consultation should be a period of eight weeks and anyone wishing to make a representation must do so within the prescribed eight week period.
- 3.55 The regulations will therefore require that:
- the consultation period must be a period of eight weeks;
  - any person who wishes to make a representation must do so within the eight week period;
  - the representation must be sent to the address and person, if any, specified above; and
  - the council must take account of representations received before it submits its DPD for independent examination.
- 3.56 The proposed publicity requirements are a statutory minimum and a council is free to do more to publicise the availability of its DPD if it so chooses. Such an approach should be set out in its SCI. It is important to note that if the council gives a commitment to go beyond these minimum requirements in its SCI it must comply with that commitment or the DPD may be found not to be sound at the independent examination.

## **Handling and availability of representations**

- 3.57 The council must make the representations received during the public consultations available for inspection by the public as soon as practically possible after the close of the consultation.
- 3.58 As any issue raised in a representation may relate to input received from the statutory consultees and are matters which may be raised at the independent examination, it is important that the statutory consultees can also inspect the representations as soon as practically



possible, therefore the council must also make them aware that the representations are available.

- 3.59 The Department therefore proposes that councils should:
- make the representations available for inspection at the same places it made the DPD available for inspection;
  - publish the representations on its website;
  - give notice by local advertisement and in the Belfast Gazette that the representations are available for inspection and the time and places they can be viewed; and
  - notify its statutory consultees of the above.

**Question 6: Do you agree with the form, content, publicity and consultation arrangements for the DPDs?**

### **Counter representations on site specific policy representations**

3.60 Site specific policies are those that identify a site or sites for a particular use or development. These will primarily be contained in the LPP, however, there may be occasions where site specific policies are also contained in the PS. The Department considers that it is important that the public is able to make counter representations on any representation to a site specific policy (including new zoning proposals) received during the public consultation period for the DPDs as discussed above.

3.61 The site specific policy representations received during the public consultation period will be made available for inspection as discussed above.

3.62 The council must then make the site specific policy representations available for public consultation and invite counter representations. The period for making counter representations will be eight weeks.

- 3.63 This is **not** a further opportunity to make representations on site specific policies within the DPDs which should have been received during the initial consultation period. Only counter representations may be made at this stage. Representations supporting a site specific policy representation will not be considered, nor will counter-representations proposing alternative sites or proposing any other changes to the DPD. Any proposal to make a change to a DPD should have been made during the initial consultation period (see paragraph 3.55 above).
- 3.64 The draft regulations will require that the council must take account of representations received on a site specific policy representation before submitting its DPD for independent examination.
- 3.65 It is proposed that the regulations will provide that:
- the consultation period must be eight weeks;
  - any person may make a counter representation on a site specific policy representation;
  - any person who wishes to make a counter representation must do so within eight weeks;
  - counter representations must not propose any changes to the DPD;
  - the council must give notice by local advertisement and in the Belfast Gazette that the representations are available for inspection;
  - the council must state the address to which the counter representations can be sent;
  - the council must also publish the notice on its website; and
  - the council must take account of any representations before submitting the DPD for independent examination.

**Question 7: Do you agree with the arrangements for making representations and counter representations?**

## **Independent examination**

- 3.66 Section 10 of the 2011 Act requires the council to submit every DPD to the Department for independent examination and makes provision for the Department to cause an independent examination to be carried out by the PAC or a person appointed by the Department. The purpose of the examination will be to determine whether the DPD is sound and whether it satisfies the requirements relating to its preparation. Any person who makes representations seeking a change to a DPD must be given the opportunity to appear before and be heard by the person carrying out the examination.
- 3.67 After completion of the independent examination, the person appointed to carry out the examination must make recommendations and give reasons for those recommendations.

## **Submission of documents for independent examination**

- 3.68 In addition to the DPD, councils must also submit to the Department any representations received during the public consultations and such other documents, or copies of documents and information as are prescribed. This is to ensure that there is the necessary information for proper scrutiny of the DPD at independent examination.
- 3.69 It is proposed that the draft regulations will therefore set out the following additional documents which the council must submit to the Department as part of the process for independent examination:
- the DPD Sustainability Appraisal Report;
  - the council's SCI;
  - the council's timetable;
  - a statement setting out:
    - a summary of the main issues raised in the consultation on the POP and how these have been taken into account in the proposed DPD;

- the number of representations and a summary of the main issues raised in the representations submitted on the proposed DPD; or
- that no representations were made on the DPD;
- copies of all representations made to the proposed DPD;
- such supporting documents that in the opinion of the council are relevant to the preparation of the DPD; and
- in the case of an independent examination of the LPP, the adopted PS.

### **Publicity and availability of the submission documents**

3.70 The Department wishes to ensure that anyone with an interest in the LDP is kept up to date with the progress on the preparation of the LDP. This will afford anyone who has made a representation the opportunity to appear at the examination and put their case to the examiner. The statutory consultees who have been involved in the preparation of the DPD may be required to provide evidence at the independent examination. The Department would therefore require that they are notified by the council of the submission of the documents for independent examination. Similarly, the public and in particular anyone who has made a representation should also be made aware of the submission of the documents for independent examination.

3.71 It is proposed that the draft regulations will require that as soon as practically possible after submitting the documents for independent examination the council must:

- make the documents submitted available for inspection during normal office hours at the same places it made the DPD available for inspection;
- notify the statutory consultees that the documents have been submitted to the Department for independent examination and of the availability of the documents;

- publish a notice by local advertisement and in the Belfast Gazette of the fact that the documents have been submitted to the Department for independent examination and of the availability of the documents; and
- publish the above statement on its website.

### **Publicity of the independent examination**

3.72 After the DPD has been submitted to the Department it will arrange for the PAC to carry out the independent examination. While the Department would envisage the PAC being the main body providing examiners to carry out the examination of LDPs, it believes there are benefits in being able to appoint other examiners, if necessary. However, the PAC will always be the first and preferred body to carry out the independent examination.

3.73 As discussed above, for the submission of documents it is important that the statutory consultees, the public and anyone who has submitted a representation are made fully aware that the independent examination has been arranged and when it will open, as well as who will be conducting the examination. The Department believes that the council should give these parties at least four weeks' notice that the independent examination is about to open. This will allow all interested parties and the council time to prepare for the independent examination. At this point in the proceedings the Department considers that any person who has made a representation on the DPD should be notified that the independent examination will be commencing.

3.74 Regulations will, therefore, require that the council, at least four weeks before the opening of the independent examination, must:

- notify the statutory consultees that the independent examination will be opening;
- publish a notice by local advertisement and in the Belfast Gazette that the independent examination will be opening and the venue of

the examination and the name of the person who will be conducting the examination;

- publish the above notice on its website; and
- notify any person who made a representation of the above matters.

**Question 8: Do you agree with the publicity requirements and other arrangements for independent examination?**

**The independent examination**

- 3.75 To speed up and improve the independent examination process, the new LDP system will move away from the objection-based examination process towards one which tests the soundness of the PS and LPP. The Department considers that the introduction of a soundness based approach will permit a greater concentration on strategic issues and lead to a speedier delivery of LDPs, a more effective basis for testing plans and ultimately better and more robust plans.
- 3.76 As discussed earlier the council must submit its DPDs (i.e. its PS and its LPP) to the Department for independent examination. The Department will cause an independent examination to be carried out by the PAC or by a person appointed by the Department.
- 3.77 Section 10 of the 2011 Act provides that the purpose of the independent examination is to:
- determine if the DPD was prepared in accordance with statutory requirements in the 2011 Act and in the proposed regulations; and
  - determine if the DPD is 'sound'.
- 3.78 The Department **does not** intend to make regulations in respect of these tests but is taking this opportunity to seek public opinion on the principles of the independent examination and what the soundness tests should be.

3.79 The proposed soundness tests are set out in Annex B and these will be elaborated upon in the Department's guidance.

**Question 9: Do you agree with the proposed soundness tests which will be elaborated upon in guidance? Are there other tests that you feel should be applied to the examination of the DPD?**

### **Withdrawal of a development plan document**

3.80 Under section 11 of the 2011 Act, a council may withdraw a DPD at any time before it is submitted to the Department for independent examination. Once the DPD is submitted, it can only be withdrawn if either the examiner carrying out the examination recommends that it is withdrawn (and the Department does not overrule that recommendation) or, the Department directs that the DPD must be withdrawn. As soon as reasonably practicable after a DPD is withdrawn the council must advertise the fact and remove all documents made available for inspection.

3.81 The council may wish to withdraw its DPD if an issue arises during the public consultation that may give the council reason to consider that if the DPD was submitted for independent examination the examiner would find that it was not sound. This power will allow the council to exercise its discretion to withdraw the DPD thereby saving the time and resources involved if the DPD were to go to independent examination.

3.82 The Department has the power to direct the council to withdraw a DPD before it causes an independent examination if it considers that the DPD is not sound because the preparation requirements have not been met by the council or the council has failed to take account of the Department's policy and guidance.

- 3.83 If a DPD is withdrawn, the council will then prepare a new DPD and incorporate the proposed changes that it considers will make it ready for independent examination. The new DPD must go through the entire consultation processes again.
- 3.84 The Department considers it is important that all those with an interest in the preparation of a DPD are made aware of instances whereby a council decides to withdraw its DPD.
- 3.85 The proposed regulations will therefore require that as soon as reasonably practicable following withdrawal of its DPD the council must do the following:
- publish a notice in the Belfast Gazette and by local advertisement and in the Belfast Gazette that the DPD has been withdrawn;
  - publish a statement of that fact on its website;
  - notify the statutory consultees;
  - notify any persons who made representations on the DPD; and
  - remove any copies, documents, representations, matters and statements that were made available for inspection.

**Question 10: Do you agree with the withdrawal arrangements for a DPD?**

### **Adoption of a development plan document**

- 3.86 After the conclusion of the independent examination, section 12 of the 2011 Act requires the examiner to submit recommendations to the Department which it will consider, and in doing so will undertake one of three options at this stage:
- i. direct the council to adopt the DPD as originally prepared;
  - ii. adopt the DPD with such modifications as may be specified in the direction; or
  - iii. direct the council to withdraw the DPD (see above).



- 3.87 If the DPD is sound and can be adopted by the council then the regulations will require:
- i. the council to adopt the DPD as soon as reasonably practicable after the receipt of the Department's direction;
  - ii. on the date on which the council adopts the DPD, it must make available for inspection during normal office hours at its principal offices and the places at which the DPD was made available for consultation:
    - the DPD;
    - a statement prepared by the council specifying the date on which the DPD was adopted;
    - the sustainability appraisal report (SAR);
    - the recommendations of the person appointed and the reasons for those recommendations; and
    - the Department's direction.
  - iii. the council to publish the documents and statements mentioned in paragraph (ii) above on its website;
  - iv. the council to notify any person who has asked to be notified of the adoption of the DPD; and
  - v. the council to give notice in the Belfast Gazette and by local advertisement of:
    - the statement prepared by the council specifying the date on which the DPD was adopted;
    - the fact that the DPD is available for inspection and the places and times at which it can be inspected; and
    - send to the Department a copy of the DPD, the statement prepared by the council specifying the date on which the DPD was adopted and the SAR.

**Question 11: Do you agree with the adoption arrangements for a DPD?**

## **Annual Monitoring Report**

- 3.88 Section 21 of the 2011 Act requires councils to report annually to the Department on whether the objectives set out in the LDP are being achieved. The section also provides powers for the Department to make regulations prescribing the time at which the Annual Monitoring Report (AMR) must be made, the form it must take, and what information it must contain.
- 3.89 The annual monitoring of LDPs is seen as an essential element in establishing how the LDP is being implemented and whether any revisions are required. The AMR will be crucial to the successful delivery of the objectives of the LDP. By identifying outputs and trends through annual monitoring, councils will be able to build a comprehensive evidence base against which the implementation of the LDP policies can be assessed. Submission of the AMR will also assist the Department in ensuring that regional policies and objectives are being achieved through the LDP.
- 3.90 The proposed regulations require that:
- the AMR must cover the period from 1<sup>st</sup> April to 31<sup>st</sup> March;
  - the report must specify:
    - the housing land supply at the beginning and end of the AMR period;
    - the number of net additional housing units built in the council's area during the AMR;
    - the number of net additional housing units built in the council's area since the LPP was adopted;
    - the supply of land for economic development purposes; and
    - other issues which appear to the council to be relevant to the implementation of the LDP;
  - the report must be submitted to the Department on or before a date set out in guidance or within a timeframe agreed with the Department; and

- If a policy specified in a LDP is not being implemented then the council must identify that policy and include a statement of:
  - the reasons why the policy is not being implemented;
  - the steps (if any) that the council intends to take to secure the implementation of that policy; and
  - whether the council intends to prepare a revision of the LDP or DPD to replace or amend the policy.

### **Review of the Local Development Plan**

3.91 Section 13 of the 2011 Act requires the council to carry out a review of its LDP at such times as the Department may prescribe and to report to the Department on the findings of the review.

3.92 As stated above, the monitoring and review of plans are seen as essential elements in establishing how plans are being implemented and whether any revisions are required. Section 14 of the 2011 Act allows the council to make a revision of the PS or LPP if it thinks that, following a review, the PS or LPP should be revised or the Department directs it to carry out such a revision. The Department wishes to ensure that the LDP is reviewed regularly therefore it wishes to impose a statutory duty on the council to carry out a review of the LDP no later than 5 years from the date of adoption of the LPP. The results of the annual monitoring processes will feed into the ongoing review and adjustment of the LDP. A major review of the LDP must be undertaken every five years and no later than five years following the adoption of the LPP. The review should include reconsideration of the sustainability appraisal, including the Strategic Environmental Assessment (SEA) and the soundness of the plan. The SEA should provide information as to how environmental considerations have been addressed in the early stages of the LDP.

- 3.93 Several factors could trigger the need for a review before five years, including:
- a significant change in external conditions;
  - a significant change in national policy or legislation;
  - a significant change in local context e.g. closure of a significant employment site that undermines the local economy;
  - a significant change in development pressures/needs or investment strategies of major public and private investors; and
  - significant concerns from the findings of the AMR in terms of policy effectiveness, progress rates, and any problems with implementation.
- 3.94 The review will be used as the basis for making any revisions necessary to the PS and/or LPP. This will enable councils to bring forward any revisions to the plan as circumstances require which will facilitate a more up to date LDP.
- 3.95 A revision could take two forms:
- i. the alteration of the existing adopted PS or LPP or both where:
    - forecasts and assumptions have changed;
    - policy needs to be changed; or
    - additional policies need to be added to deal with areas of change or conservation; or
  - ii. the replacement of the LDP where a complete new PS and LPP are required in instances where the existing LDP is found to be substantially in need of alteration or out of date.
- 3.96 The regulations therefore propose that the council must carry out a full review of their LDP at least once every five years and it must send the Department a report on the findings of the review.

### **Availability of the Annual Monitoring Report and the review**

- 3.97 It is important to ensure that all those with an interest in the monitoring and review of the LDP are made aware of the content of the AMR and the review.
- 3.98 Therefore, the regulations propose that as soon as reasonably practicable after the council sends its AMR or report of the review to the Department, the council must:
- make it available for inspection during normal office hours at its principal office and such other places as the council considers appropriate,
  - publish it on its website; and
  - give notice by local advertisement that the AMR or review is available for inspection and where it can be viewed.
- 3.99 If the council needs to make a revision to the LDP it must comply with the preparation requirements of the Act and regulations.

**Question 12: Do you agree with the arrangements for the monitoring, review and revision (if required) of the LDP?**

### **Intervention by the Department**

- 3.100 The Department may, in exceptional circumstances, consider it necessary to intervene in a council's plan preparation process.
- 3.101 For example, in the unlikely event that the Department considers that a draft PS or a draft LPP is unsatisfactory, it may wish to intervene and direct the council to modify the draft PS or draft LPP. If it decides upon this course of action the Department must state its reasons for doing so.

- 3.102 This intervention power may be used at any time before a DPD is adopted by the council. The situations<sup>1</sup> in which the Department may think that a DPD is unsatisfactory may include, where the DPD raises issues that are regional significance or cross over an adjoining council boundary and no joint working arrangement has been made with an adjoining council.
- 3.103 If the Department intervenes and issues a direction to the council then the council must comply with that direction.
- 3.104 If the direction to modify the DPD is issued by the Department after the PS or the LPP has been to public consultation then the Department may require the council to make the modification available for consultation and invite representations on the modification.
- 3.105 It is proposed that where the Department gives a direction under section 15 of the 2011 Act the council must:
- make the direction available for inspection during normal office hours at its principal office and such other places as the council considers appropriate;
  - publish the direction on its website;
  - at the time the council adopts its DPD, it must make available the Department's statement that it has withdrawn its direction or issued a notice that the council has complied with the direction; and
  - publish the above on its website.
- 3.106 In accordance with the Department's direction the council will be required to publicise and make available for inspection such modifications it has made to a DPD. The regulations will therefore require the council to make the modification available for inspection during normal office hours at its principal office and such other places as the council considers appropriate and publish this on its website.

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<sup>1</sup> This is not an exhaustive list there may be other occasions that arise post transfer which would lead the Department to consider that the draft PS or the draft LPP is unsatisfactory.

## **Department's default powers**

3.107 Section 16 of the 2011 Act contains default powers for the Department to prepare or revise a council's DPD if it thinks the council is failing to properly carry out these functions itself. The council must reimburse the Department for any expenditure it incurs in exercising these powers.

3.108 It is important that the council and Department adhere to the same preparation requirements for a DPD. In the unlikely circumstances that the Department did take over the preparation of a council's LDP then the Department must comply with the preparation requirements of Part 2 of the 2011 Act as if it was the council.

3.109 This provision is replicated in the other United Kingdom jurisdictions and in Northern Ireland the Department does not expect to use this power unless there were very extenuating circumstances. The Department understands that this power has never been used in any other jurisdiction.

3.110 The regulations propose that in the event of the Department taking over the preparation of a DPD it must comply with the requirements placed on the council under Part 2 of the 2011 Act as if it was the council in question.

**Question 13: Do you agree with the Department's intervention/default powers?**

## **Joint plans**

3.111 Section 17 of the 2011 Act enables two or more councils to prepare (i) a joint PS or (ii) a joint PS and joint LPP. It also sets out the arrangements which are to apply in such a case. The procedures for

the preparation of a joint LDP are the same as those for a single LDP. If any council withdraws from an agreement to prepare a joint PS or a joint PS and a joint LPP, it will still be possible for the remaining councils to continue with the preparation of a corresponding PS or corresponding LPP and any work undertaken will still be valid. If, however, a council withdraws from joint working and an independent examination has been scheduled to take place, or has indeed begun, then the independent examination must be suspended.

3.112 The Department is keen to ensure that even in the event that an independent examination has been suspended then the work undertaken up to that point is not lost. Therefore the remaining councils should be allowed a suitable period of time to review its PS or LPP to determine if it still considers that the PS or LPP is satisfactory and can proceed to independent examination.

3.113 The regulations propose that if a council withdraws from the preparation of a joint plan then the other council or councils must make a request that the suspended independent examination is recommenced within a period of three months from the date the other council withdrew from the agreement. It is also proposed to provide definitions of the joint PS or joint LPP, retained after the withdrawal, to be tested at the independent examination. These will not include any part of the district of the council that has withdrawn from the agreement. The retained joint PS or joint LPP will have substantially the same effect on development in the remaining council areas as the original joint PS or joint LPP would have had before the council withdrawal.

**Question 14: Do you agree with the provisions relating to joint plans?**



### **Power of the Department to direct councils to prepare joint plans**

3.114 Section 18 of the 2011 Act enables the Department to direct two or more councils to prepare either (i) a joint PS or (ii) a joint PS and joint LPP. Any such direction given by the Department may relate to the whole or part of the councils' districts.

3.115 The public and interested parties should be made aware of the Department's direction for councils to work jointly and the direction should therefore be made available for inspection. The regulations will therefore require that if the Department issues a direction then the councils must make that direction available at its principal offices and such other places it considers appropriate and also publish the direction on its website.

**Question 15: Do you agree with the provisions relating to the Department's power in relation to joint LDPs?**

### **Transitional arrangements**

3.116 Currently in Northern Ireland all development plans are prepared by the Department under Article 4 of the Planning (Northern Ireland) Order 1991 (1991 Order). After the transfer of the majority of planning functions to councils, section 6(4) of the 2011 Act requires that in making any determination under the Act, where regard is to be had to the LDP, the determination must be made in accordance with the LDP unless material considerations indicate otherwise. Section 45 of the 2011 Act requires that in determining a planning application regard must be had to the LDP so far as it material to the application. This is known as a plan-led system.

3.117 As discussed earlier, a LDP is an adopted PS and an adopted LPP however, the LDP will not be formally in place until such time as the council has prepared and adopted both the DPDs in accordance with the

2011 Act and the proposed regulations. The Department therefore requires transitional arrangements to be put in place to ensure that the policies contained in an extant development plans prepared or adopted under Part 3 of the 1991 Order are retained until such time as they are replaced by a new policy contained in an adopted PS and an adopted LPP. This is particularly important given the introduction of the plan-led system.

3.118 During the transitional period, before the council has adopted both its PS and its LPP, the LDP for the purpose of the 2011 Act will be taken to be the following documents:

- (i) the Department's existing development plans previously adopted by the Department under the 1991 Order; and then
- (ii) the Department's existing development plans previously adopted by the Department under the 1991 Order and the council's PS which was adopted under section 12 of the 2011 Act.

3.119 It is proposed regulations will provide that during the transitional period any reference to a LDP in the 2011 Act will be construed as a reference to:

- (i) the Department's development plan for the district made under Part 3 of the 1991 Order; or
- (ii) where a PS has been adopted or approved, that PS together with any policies forming part of the development plan for that area made under Part 3 of the 1991 Order which have not been expressly replaced by a policy in the PS.

**Question 16: Do you agree with the transitional arrangements for a LDP. If not, can you identify amendments which would offer better arrangements?**

## 4 - The Council's Statement of Community Involvement

- 4.1 Engaging communities is an essential part of an effective and inclusive planning system. It is also an important element of an open and participatory local democracy.
- 4.2 Section 4 of the 2011 Act requires a council to prepare a Statement of Community Involvement (SCI) setting out its policy for actively involving the community from the outset in the making of LDPs and in the carrying out of its development management functions. The SCI is a key tool in increasing awareness of the scope for community participation and involvement. The Department must also prepare and publish an SCI in respect of its planning functions. Councils should ensure that the process by which communities engage with the planning system is clear and transparent so that people understand when and how they can have a say in planning decisions which affect them. Councils should adopt an inclusive approach to engagement to ensure that different groups within a community are given the opportunity to participate and are not disadvantaged by the process.
- 4.3 Section 4(3) of the 2011 Act places a requirement on the council and the Department to attempt to agree the terms of the SCI, however, under section 4(4) if agreement cannot be reached the Department may direct the terms of the statement.
- 4.4 Section 4(6) provides the Department with a **discretionary power** to explicitly make regulations in respect of:
- the procedure for the preparation of the SCI;
  - the form and content of the statement;
  - publicity about the statement;
  - making the statement available for inspection by the public;

- the manner in which:
  - representations may be made in relation to any matter to be included in the statement; and
  - those representations are to be considered;
- circumstances in which the requirements of the statement need not be complied with.

4.5 The proposed Planning (Statement of Community Involvement) Regulations (Northern Ireland) 2015 will apply only to SCIs to be prepared by councils and will attempt to ensure a common and consistent approach across councils and provide detail on the required content and the procedures for preparing a council's SCI.

4.6 The purpose of a SCI is to set out the council's procedures for involving the local community in:

- the council's LDP functions from the early stages of plan preparation through to adoption. It should indicate how the council intends to involve its stakeholders and the public in the various stages of LDP preparation; and
- the determination of applications for planning permission by enabling the community to make representations on the application and other planning control functions.

### **Definition of community**

4.7 For the purposes of drafting the regulations the term community should be taken in the widest sense to include: the general public; the business community; public bodies; voluntary groups; environmental and amenity groups; government departments; groups identified under section 75 of the Northern Ireland Act 1998; and all those with an interest in development in an area.

## **Content of the SCI**

- 4.8 The regulations are intended to provide a light regulatory touch and will cover both LDP and planning control functions. They will therefore provide that the SCI should include the following matters:
- how the council will involve the public in the preparation of its LDP and how it will handle representations to the LDP;
  - how the council will handle representations on planning applications;
  - how the community can become involved in the new pre-application community consultation process; and
  - the principles of the process for involving the public in its planning control functions including the method by which the community may comment on and input to the determination of planning applications.

**Question 17: Do you agree with the proposed content of the SCI?**

## **Public consultation in the preparation of the SCI**

- 4.9 The Department considers it is appropriate to allow a council to decide if it wishes to consult with the public on the preparation of an SCI. If the council decides to consult the public then it would also be required to take into account any representations received in the preparation of the SCI.
- 4.10 It is therefore proposed the regulations will provide that the council may, if it considers it appropriate:
- consult anyone who the council considers to have an interest in development in the council's area and invite representations on the content of the SCI;
  - in inviting such representations make such arrangements as it considers appropriate; and
  - consider the representations in preparing its SCI.

## **Agreement of the SCI**

- 4.11 Section 4(3) of the 2011 Act requires that the Department and the council should attempt to agree the SCI. The Department's role will be to ensure it is robust, realistic and covers the main LDP and planning control functions of the council. To facilitate this, the council must submit its SCI to the Department for agreement.
- 4.12 There may be instances where a revision to a SCI is required, for example, the SCI does not cover all the statutory public consultation requirements that the council must comply with. In this case, a revision to the SCI must be prepared and should follow the same procedure for preparation and agreement as that of a full SCI.
- 4.13 The 2011 Act states that where agreement cannot be reached, then the Department can direct the council to prepare the SCI in accordance with its direction. The regulations therefore propose that:
- the SCI must be adopted by resolution of the council prior to submission to the Department for its agreement;
  - the Department must respond within 4 weeks of receipt of the SCI unless it has, before the expiry of the 4 weeks, notified the council in writing that it requires more time to consider the SCI;
  - if the Department fails to respond within the 4 weeks the SCI will be deemed to be agreed;
  - until such time as the Department approves the SCI the council must not take any steps to advertise the SCI; and
  - the council must keep its SCI under regular review and any revision must comply with the regulations.

## **Publicity and availability of the SCI**

4.14 The flexible approach to the public consultation will allow the councils to make their own arrangements for the necessary publicity for the consultation process they decide to undertake. The Department, however, wishes to ensure that once the SCI has been agreed with the Department that the council makes it available for inspection and that it gives adequate publicity to that fact. After the agreement of the SCI, it is proposed the council must make it available for inspection by the public.

4.15 The regulations therefore propose that the council must make the agreed SCI available for public inspection at its principal offices and on its website. When making the SCI available for inspection the council must advertise that fact on at least one occasion in a local newspaper circulating in all of the council's area and on its website.

## **Departmental guidance**

4.16 Guidance will be prepared to assist councils in the preparation of an SCI, addressing such matters as its purpose, the content of the document and the preparation process. This will include guidance for the councils if they wish to issue a draft SCI for public consultation. It is proposed that the final SCI prepared by councils will be agreed with the Department before it is published. The councils would also be expected to periodically review the SCI in accordance with the new guidance.

**Question 18: Do you agree with the publicity, consultation and agreement requirements for the SCI?**

## 5 - A New Approach to Development Management

- 5.1 The 2011 Act provides the primary legislative framework for a new development management system. Development management should support the Executive's central purpose of growing a dynamic, innovative economy alongside efforts to improve our society, and protect and enhance our environment. It should be responsive, reliable, transparent and efficient, providing greater certainty and speed of decision making as a means of creating good quality sustainable places. The reforms in the 2011 Act therefore aim to improve efficiency in developing and determining planning applications and enhance community involvement at the appropriate points in the planning process.
- 5.2 The proposed Planning (Development Management) Regulations (NI) 2015 will set out the details in relation to:
- **hierarchy of development:** establishing a 3-tier hierarchy classification of developments (consisting of regionally significant, major and local);
  - **pre-application community consultation:** placing an obligation on the prospective developer to consult the community in advance of submitting an application if the development falls within the major category;
  - **pre-determination hearings:** requiring a council to provide the opportunity for the applicant to have a hearing before a council, as part of the application process, for certain types of applications; and
  - **schemes of delegation:** requiring each council to prepare a scheme of delegation, stating the application types where a decision may be taken by an appointed officer rather than the council.



## **6 - A New Hierarchy of Development**

- 6.1 Apart from major planning applications as defined under Article 31 of the 1991 Order, or where development requires an environmental impact assessment (EIA), the steps currently involved in processing all planning applications are largely the same. In other words, a predominantly 'one size fits all' approach prevails, regardless of the scale and complexity of the application when compared to the impact of the proposed development.
- 6.2 Consequently, low impact applications (i.e. those of lowest public interest or impact on amenity) may get a disproportionate amount of attention compared to higher impact developments which need greater levels of resources, professional skill and public engagement to determine.
- 6.3 The 2011 Act provides the Department with the legislative powers to prescribe in regulations, classes of development and assign each class to either major development or local development. The Planning (Development Management) Regulations (NI) 2015 will establish a hierarchy of development based on a 3-tier classification of developments consisting of regionally significant, major and local. The hierarchy approach encourages a more proportionate and responsive approach to processing applications. In turn this will allow resources to be focused on the management of those applications with economic and social significance through more proportionate decision-making mechanisms, tailored according to the scale and complexity of the proposed development.
- 6.4 The regulations will provide greater detail in differentiating between the major and local categories of development by establishing clear thresholds. In addition, the major category will also be sub-divided on the basis of thresholds to identify potentially regionally significant major

applications which will be submitted to and determined by the Department. Applications which are of regional significance in effect form the 'top slice' of the major development category and procedures for dealing with these applications are set out under section 26 of the 2011 Act (see paragraph 6.11 below).

- 6.5 An application which is deemed to be of regional significance must be made to, and will be determined by, the Department. Councils will be responsible for determining major and local development applications which will account for the vast majority of application numbers.

### **Major developments**

- 6.6 Major developments have important economic, social and environmental implications for a council area. With potential to deliver important benefits for the local community, these applications will be given priority to avoid undue delay and risk investment decisions. The thresholds for major developments are contained within the Schedule to the Development Management regulations (see Annex C). The thresholds will help ensure clarity for prospective applicants and councils about which process a proposed development should follow, and provide a proportionate response to applications depending on their scale and complexity.
- 6.7 All major developments will be dealt with by councils under the new planning system and will be subject to pre-application consultation with the community. In defining the classes and thresholds for major development, a balanced approach has been taken to include the types of application that would affect the community the most without over-burdening users of the system or the public by over consultation.
- 6.8 As confirmed in the Department's March 2010 response to the 2009 Planning Reform consultation proposals, the statutory timeframe for the determination of major applications will be extended to 16 weeks,

allowing a longer default period in case of appeal and a more realistic processing time for these usually detailed or complex applications. This timeframe will be included in a new Planning (General Development Procedure) Order (NI) 2015.

**Question 19: Do you agree with the proposed classes and thresholds for major developments indicated in the Schedule at Annex C?**

### **Local developments**

- 6.9 Local developments will comprise of all other developments (other than permitted development) that do not fall within the classes described for major or for regionally significant developments (see paragraph 6.11 below). They are likely to comprise the vast majority of residential and minor commercial applications likely to be received and determined by a council. The schemes of delegation which will apply to them are discussed in Chapter 9 of this document.
- 6.10 The time period for the determination of local developments is currently 2 months for a decision. The Department is taking this opportunity to express the time period for determination of local developments in terms of weeks (i.e. 8 weeks) to provide consistency with the time period for determination of major developments (see paragraph 6.8 above).

**Question 20: Do you agree with the definition for determining local developments?**

### **Developments of regional significance**

- 6.11 Under section 26 of the 2011 Act major developments will also include a top tier of developments to be known as regionally significant developments. These developments have a critical contribution to make to the economic and social success of Northern Ireland as a

whole, or a substantial part of the region. They also include developments which have significant effects beyond Northern Ireland or involve a substantial departure from a LDP. As highlighted above, these development proposals will be submitted to, and determined by, the Department.

6.12 If a proposed development falls above the proposed threshold (see Annex C) then the prospective applicant must consult with the Department to establish if the Department considers the development to be regionally significant. Regionally significant development applications will be similar to existing Article 31 applications under the 1991 Order, in that, if the Department is of the opinion that the proposed development if carried out would:

- (a) be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland; or
- (b) involve a substantial departure from the LDP for the area to which it relates;

then the Department will confirm that the proposed development is of regional significance and be determined by it. If the Department does not consider the development to be regionally significant it will serve a notice on the prospective applicant to that effect and indicate that the application must be made to the appropriate council.

6.13 Like major applications, regionally significant development proposals will be subject to pre-application consultation with the community as set out under Chapter 7 of this document. In relation to timeframes there is a current commitment outlined in the Programme for Government which states that all 'large scale investment planning proposals' should be decided within 6 months.

**Question 21: Do you agree with the proposed classes and thresholds for regionally significant developments indicated in the Schedule at Annex C?**

## **7 - Pre-application Community Consultation**

- 7.1 Section 27 of the 2011 Act will place a statutory duty upon applicants for planning permission to consult the community in advance of submitting an application, if the development falls within the major category as prescribed in the Planning (Development Management) Regulations (NI) 2015. This includes those major developments which the Department will determine because they are of regional significance.
- 7.2 The objective of requiring an applicant to engage in the pre-application consultation process is for local communities to be better informed about certain development proposals and to have an opportunity to contribute their views before a formal planning application is submitted. Pre-application consultation aims to bring about meaningful public engagement upfront and in so doing:
- improve the quality of planning applications coming into the system;
  - mitigate negative impacts where possible;
  - address community issues or misunderstandings; and
  - provide smoother and faster decision making.

### **The proposal of application notice**

- 7.3 Section 27(3) of the 2011 Act states applicants must give the council or Department 12 weeks' notice of their intention to submit a planning application for determination. Section 27(4) makes provision that the notice must be in such form and have such content as may be prescribed, but must in any event contain:
- a description in general terms of the development to be carried out;
  - the postal address of the site if it has one;
  - a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site; and
  - details of how the prospective applicant may be contacted and corresponded with.

- 7.4 It is proposed to prescribe in regulations that the application notice must also contain the following:
- details of what consultation the applicant intends to undertake, when such consultation is to take place, with whom and what form it will take;
  - confirmation of the council's or the Department's determination on the need for an environmental statement; and
  - a copy of any notice served by the Department under section 26(4) or (6) of the 2011 Act i.e. confirmation (or not) of the Department's jurisdiction on regionally significant developments.

### **Public consultation and associated publicity**

- 7.5 The Department has the power under section 27(5) of the 2011 Act to prescribe that:
- (i) the proposal of application notice should be given to persons specified in regulations;
  - (ii) the persons who are to be consulted in respect of the proposed application; and
  - (iii) the form that consultation is to take.
- 7.6 The proposed regulations will only prescribe the minimum requirements to be placed on the prospective applicant in relation to consultation with the public. These will require that the applicant holds at least one public event to discuss the proposed application. The applicant is free to go beyond the minimum statutory requirements. Guidance will be produced by the Department as to the best practice for such community engagement.
- 7.7 The regulations propose that the applicant will have to place at least one advertisement in the local press giving at least seven days' notice of the public event and which sets out:
- the description and location of the proposed development;

- details as to where further information may be obtained concerning the proposed development;
- the date and place of the public event;
- a statement explaining how, and by when, any person may make comments to the prospective applicant relating to the proposal;
- a statement that comments made to the prospective applicant are not representations to the planning authority (council or Department as the case may be); and
- if the prospective applicant submits an application to the planning authority that there will be an opportunity to make representations on that application to the planning authority.

### **Additional notification and consultation**

7.8 Section 27(6) of the 2011 Act allows for the council or Department to request the applicant to carry out additional notification and consultation within 21 days of receiving the proposal of application notice in order to provide flexibility for local circumstances. In doing so the council or Department must have regard to the nature, extent and location of the proposed development and the likely effects both at and in the vicinity of that location.

7.9 It is recognised that consultation requirements will vary depending on the nature and scale of the application and the area in which it is to be located. A range of consultation methods may be considered more appropriate for some development in a certain location than others.

7.10 The proposed regulations will prescribe the minimum requirements to be placed on the prospective applicant in relation to consultation with the public. The onus will lie with the prospective applicant to work in conjunction with their respective planning authority in establishing appropriate arrangements. This approach enables the council or Department to advise the applicant that for specific types of application these additional steps may assist in speeding up the determination of the application.

## **The pre-application consultation report**

- 7.11 Section 28 of the 2011 Act requires the applicant, after completing the community consultation and who proceeds to submit an application, to submit a 'pre-application community consultation report' to show what has been done to comply with the pre-application community consultation requirements.
- 7.12 The pre-application community consultation report should present a concise yet thorough assessment of the quality and extent of consultation activities that have taken place. The prospective applicant will be required to identify how consultation was carried out in accordance with statutory requirements and how comments received through consultation with the community have been considered, indicating if any changes or mitigating measures have been included to address issues raised in the responses to consultation with the community.
- 7.13 Section 28 of the 2011 Act provides an enabling power to prescribe the form of the pre-application community consultation report. It does not provide an enabling power to prescribe the content of the report in regulations, but it does provide that the pre-application community consultation report must state "*what has been done to effect compliance*" with the consultation requirements of section 27 of the 2011 Act. It is proposed that the content of the report will be specified in guidance.
- 7.14 It is recommended that the report, in summary should:
- specify the persons who have been consulted in respect of the proposed application;
  - include an account of what steps were taken in order to comply with the consultation requirements as set out in regulations and any requirements in accordance with section 27 of the 2011 Act;



- include an account of how comments received to it were responded to indicating if any changes or mitigating measures have been included to address issues raised in the responses to consultation with the community; and
- provide appropriate evidence that the various steps have been undertaken – including copies of the advertisements for the public events and reference to material made available at such events.

7.15 The report must accompany all major development applications, including regionally significant, for planning permission including applications for outline planning permission or applications for renewal of planning permission. The 2011 Act requires the report to be placed on the Planning Register along with the application, plans, drawings and other related documents.

7.16 It is important that pre-application consultation is seen as an additional measure and not something that takes away the right of individuals and communities to make formal views during the application process. This should be emphasised by the council or Department and by the prospective applicants during pre-application consultation.

### **Power to decline to determine an application**

7.17 Section 50 of the 2011 Act requires the council or, as the case may be, the Department, to decline to determine an application, if the pre-application community consultation requirements under section 27 have not been complied with. Before deciding whether an application must be declined, the council or the Department, can request additional information in order to decide whether to decline the application. Where the council or Department declines to determine an application they must give their reasons to the applicant. Section 50(2) allows the Department to prescribe a period within which the applicant must provide the additional information.

7.18 The regulations propose a period of 21 days to allow the applicant to gather and provide the additional information.

### **Transitional arrangements**

7.19 At the date of transfer of planning powers to councils, sections 27 and 50 of the 2011 Act will commence. However, as prospective applicants will not have had an opportunity to submit a proposal of application notice to the relevant council, or the Department in the case of regionally significant development, it is the Department's intention that this requirement will not apply to planning applications received before 1st July 2015. This will allow a period of bedding in, and the minimum amount of time for the applicant to start the pre-application community consultation process.

7.20 Therefore, any such application received between 1<sup>st</sup> April 2015 and 1<sup>st</sup> July 2015 will not have to comply with the statutory pre-application community consultation requirement, although applicants may wish to informally engage with the local community in developing their proposals and realise the benefits that may bring. However, from 1<sup>st</sup> July 2015, it will not be possible to submit an application for planning permission for a major development until at least 12 weeks have elapsed from the date that the applicant served the proposal of application notice on the relevant council or the Department and the applicant has complied with the requirements of the Act and regulations. If not, then the council, or the Department, can refuse to determine the application under section 50 of the 2011 Act.

**Question 22: Do you agree with the proposed consultation, publicity and information requirements for pre-application community consultation?**

## 8 - Pre-determination Hearings

- 8.1 Section 30 of the 2011 Act makes provision for hearings prior to the determination of certain types of planning application. Pre-determination hearings are aimed at making the planning system more inclusive, allowing the views of applicants and those who have made representations to be heard before a planning decision is taken. Councils will have discretion over how they wish pre-determination hearings to operate.
- 8.2 In line with the Department's March 2010 response to the 2009 Planning Reform consultation proposals, regulations<sup>2</sup> will set out a mandatory requirement for pre-determination hearings for those major developments which have been subject to notification i.e. referred to the Department for call-in consideration (see paragraph 11.1 below) but which have been returned to a council. In addition to the applicant, the persons to be given an opportunity of appearing before and being heard by the council are those who have submitted representations to the council in respect of the application.
- 8.3 Pre-determination hearings for all other applications will be at the discretion of each council as circumstances will vary from council to council.

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<sup>2</sup> The Planning (Development Management) Regulations (NI) 2015

## 9 - Schemes of Delegation

- 9.1 Building on the successful streamlining project, section 31 of the 2011 Act requires a council to prepare a scheme of delegation where decision-making for local, generally non-contentious, applications is delegated to an appointed officer rather than the council thereby enabling speedier decisions and improved efficiency. A scheme of delegation cannot include major or regionally significant applications.
- 9.2 In the interests of openness and transparency it is proposed that a scheme of delegation must include provision that prohibits an appointed officer from determining an application for planning permission in the following circumstances:
- the application is made by the council or an elected member of the council; or
  - the application relates to land in which the council has an interest.
- 9.3 Regulations<sup>3</sup> will provide that where a council proposes to adopt a scheme of delegation they must send a copy to the Department to be approved. Once approved by the Department and adopted by the council, the council must make a copy of the scheme of delegation available for inspection at an office of the council. The approved scheme must then be published on the relevant council's website.
- 9.4 A council will be required to prepare a scheme of delegation at intervals of no greater than every three years. The procedure for doing so will mirror that of preparing the original scheme.

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<sup>3</sup> The Planning (Development Management) Regulations (NI) 2015

**Question 23: Do you agree that applications made by the council or an elected member and applications relating to land in which the council has an interest should not be delegated to an appointed officer?**

**Question 24: Do you agree with the proposed approach to preparing and adopting a scheme of delegation?**

## **10 - Call-in of Certain Applications to the Department**

- 10.1 Section 29 of the 2011 Act allows the Department to direct that certain applications be referred to it instead of being dealt with by a council. This provision allows the Department to call-in any planning application for determination, including applications which would not be over the thresholds specified in section 26 of the 2011 Act (Department's jurisdiction in relation to developments of regional significance). No subordinate legislation is required for call-in, however, the Department intends to issue guidance on call-in arrangements.
- 10.2 In practice applications will be called in by exception, as the Department recognises the important role of councils in decision making on the future development of their areas. However, there may be circumstances where the proposed development raises issues of such importance that they could be considered to have significant impact, regardless of not meeting the threshold for regionally significant development.

## **11 - Notification Direction - Potential Call-in of Applications by the Department**

- 11.1 Under section 56(1)(a) and (g) of the 2011 Act the Department is empowered to give directions to councils restricting the grant of planning permission and requiring the council to send information to the Department in instances where it proposes to grant planning permission for certain types of development. This is in addition to the general power to call-in a planning application and will be set out in the new Planning (General Development Procedure) Order (NI) 2015 (GDPO).
- 11.2 It is proposed that councils will be required to notify the Department of certain applications they are intending to approve under a Notification Direction. The proposed details of such notification requirements are where:
- (a) a major development application which would significantly prejudice the implementation of the LDP's objectives and policies, including land in which councils have an interest;
  - (b) a major development application which would not be in accordance with any appropriate marine plan adopted under the Marine Act (Northern Ireland) 2013; or
  - (c) a government department or statutory consultee (see Chapter 14 and Annex D) has raised a significant objection to a major development application.
- 11.3 It should be noted that as the enabling powers to make the Notification Direction will be set out in the new GDPO, the Notification Direction cannot be made until the enabling provisions within the GDPO come into operation. However, it is appropriate to set out the anticipated detail of the Notification Direction within this consultation to give a complete picture of the intended process.

- 11.4 The legislation will set out when a council is required to notify the Department of an application, the council must not grant planning permission on the application until the expiry of 28 days from the date the Department received all the relevant information to determine whether to call-in an application.
- 11.5 In addition, where an application is not considered to be of such significance for the Department to deal with, it can be returned to the council with conditions to be applied if necessary. The Department will liaise with the relevant council regarding the use of conditions to ensure an agreement is reached.

**Question 25: Do you agree with the proposed call-in criteria for a Notification Direction? Should any other classes of development be included and, if so, why?**



## 12 - New Development Management Procedures

- 12.1 Current users of the planning system will be familiar with the current Planning (General Development) Order (Northern Ireland) 1993 (the GDO) which, among other things, provides the basis of the process of development management. Essentially, it provides the foundation of the administrative operating system for proposals regarded as constituting **development** as opposed to other **consent** regimes relating to advertising or listed building. This is a useful distinction to bear in mind as development requires an application for planning permission, unless it is regarded as development which is deemed to be granted permission without the need for a planning application e.g. permitted development (PD).
- 12.2 The vast majority of applications submitted into the system are for planning permission and the 1993 GDO provides the key rules and requirements as to how they should be submitted and managed within the system. These include:
- how, and to whom, an application is made;
  - how an application is publicised e.g. in newspapers or on a website;
  - what consultation is required on an application before it is determined; and
  - the time periods for determination.
- 12.3 The procedural aspects of the 1993 GDO need to be recast in the new 2015 GDPO to facilitate the new two-tier planning system. The GDPO is also the vehicle through which the Department will provide the detail on how a number of new provisions under the 2011 Act will be brought into operation. These include:
- setting out the particulars on publicity arrangements which had previously been established in primary legislation but which will in future be set out in subordinate legislation (thereby providing

greater flexibility in future to manage any necessary changes given the relatively speedier nature of the subordinate legislation process);

- establishing the time period within which a statutory consultee must meet its new duty to respond to a consultation request while at the same time expanding the number of consultees who will be placed under this new duty and required to report on their performance;
- introducing the requirement for certain types of application to be accompanied by a design and access statement setting out how the proposal meets planning requirements and good design principles and also provides for access for disabled persons; and
- empowering councils to make non-material changes to an existing grant of planning permission to remove the requirement to submit a new planning application.

12.4 As the Department needs to amend the procedural elements of the new planning system to accommodate the two-tier system and a number of reforms it is also taking the opportunity to separate the procedural elements of the 1993 GDO from the PD elements to provide greater clarity. The new Planning (General Permitted Development) Order (Northern Ireland) 2015 will not involve any significant changes to the existing system of PD and therefore the Department regards this new PD Order as technical and not subject to consultation requirements (see Chapter 19 below).

## **13 - Revised Publicity Arrangements for Applications for Planning Permission**

- 13.1 The Department receives thousands of applications for planning permission each year ranging from major retail developments and large scale housing proposals to more modest house extensions and single dwellings. The numbers of such applications have varied over recent years, from a high of 20,469 in 2008/09 to 11,943 in 2012/13. Article 21 of the 1991 Order requires that all these applications must be publicised so that anyone who could be affected by the proposed development might make representations to the Department before the application is determined.
- 13.2 The 1991 Order requires that an application for planning permission must be advertised in at least one local newspaper circulating in the area and in practice the Department goes beyond this requirement and advertises in a number of newspapers.
- 13.3 The Department is also required under the 1991 Order to publish notices of applications for planning permission on its website, the Northern Ireland Planning Portal ([www.planningni.gov.uk](http://www.planningni.gov.uk)). Section 41 of the 2011 Act provides that arrangements for publicising and giving notice of applications for planning permission will in future be set out in subordinate legislation, namely a development order, rather than primary legislation.

### **Neighbour notification**

- 13.4 Since 1985, in addition to meeting its statutory requirements, the Department has also carried out a non-statutory policy of sending neighbour notification letters to occupiers of premises who are most likely to be affected by a proposed development. This is in keeping with policy outlined in paragraph 9 of planning policy statement (PPS) 1

*“In addition to advertising applications as required by law, the Planning Service will continue to implement a neighbour notification scheme”.*

- 13.5 The Department regards neighbour notification as an important element of the planning system and believes that there is merit in the system of neighbour notification continuing after the transfer of powers to local councils.
- 13.6 If the system was to continue on a non-statutory basis there would be scope for confusion and variation in practice within and across council areas. The Department believes there are clear benefits to the planning system if the current process was to continue under the new two-tier system and that the best way to ensure clarity and consistency is to establish a clearly defined and unambiguous statutory requirement.
- 13.7 Currently the approach to neighbour notification is to notify those occupiers of premises situated on neighbouring land and who meet the criteria that qualifies them as affected occupiers. The consistent application of these criteria has been reinforced through operational guidance and staff training. The proposed legislation will provide clarity for the new councils by establishing these two definitions, “neighbouring land” and “affected occupier”, in statute.
- 13.8 The subordinate legislation proposes to define “neighbouring land” as *“land which directly adjoins the application site, or which would adjoin it but for an entry or road less than 20 metres in width”*. It is also proposed to define “affected occupier” as *“the occupier of premises within a 90 metre radius of the boundary of the proposed application site”*.

## Newspaper advertising

- 13.9 The cost to government of classified advertising has been the subject of ongoing work led by the Office of the First Minister and Deputy First Minister (OFMDFM) and the Department has to date taken steps to reduce costs associated with the level of advertising it undertakes. That said, the proposed development order will maintain the existing requirement to publish notice of applications for planning permission in at least one local newspaper circulating in the local area. That is because the Department believes this is an important element in supporting the continued effective advertisement of planning applications at the point of transfer of planning powers to the new councils.
- 13.10 However, setting out requirements in subordinate, as opposed to primary, legislation provides greater scope for future amendment of statutory requirements. This will enable the Department to review the proposed level of newspaper advertising. It is therefore possible that in the future the requirement to advertise all planning applications in at least one newspaper may be amended, or potentially removed completely, on the basis of the experience of councils, stakeholders and users of the planning system.
- 13.11 The subordinate legislation will also maintain the current requirement to publish notice of applications on a website maintained for that purpose. It is intended that councils will be able to use the existing Northern Ireland Planning Portal beyond the point of transfer and this should support continuity of the current approach to electronic publishing.
- 13.12 As with other provisions being proposed the Department will set a minimum statutory requirement. Councils may then wish to examine their options for internet and other electronic methods for publicising applications. The Department is aware that a number of UK planning authorities are making use of such options including social networking

sites, digital TV, e-mail alerts and RSS feeds. However, the Department believes that a legislative requirement to push councils towards such forms of electronic communication may be premature. Internet usage is still limited amongst certain groupings and social media is continuing to evolve. Nevertheless, it is anticipated that councils will wish to explore a range of avenues to engage with citizens and the flexibility afforded by subordinate legislation will support future amendment to legislation if appropriate.

13.13 The Department has given consideration to expanding the methods for publicising planning applications to include the use of site notices whereby a notice describing the development proposal is physically posted on the development site. The Department's view is that the introduction of such an additional publicity process at the point of transfer of powers to councils, in addition to the proposed requirements of newspaper advertisement and statutory neighbour notification, would introduce significant operational challenges. Such a new process would also raise issues in relation to how non-compliance would be enforced. A completely new process would also require significant administration and training with no clear understanding of the likely benefits, if any, that would be delivered.

13.14 The Department is aware that site notices are used in the Republic of Ireland where their posting and maintenance is the responsibility of the applicant. While the system appears to work well, Irish planning authorities have the sanction that a planning application can be made invalid should the applicant not comply with its requirements and a new application has to be made. Such powers are not available in Northern Ireland under the 2011 Act and introducing such a power would require further primary legislation. The Department is not proposing to introduce a statutory requirement for the use of site notices, however, it will keep this further method of publicising applications under consideration.

**Question 26: Do you agree that the current neighbour notification process should be made statutory?**

**Question 27: Are you content with the proposed definitions of “neighbouring land” and “affected occupier”? If not, please suggest an alternative explaining what additional benefits this would bring by way of enhanced engagement in the planning system.**

**Question 28: Do you believe that councils should be required to advertise all applications for planning permission in at least one newspaper circulating in the local area?**

## 14 - Duty to Respond to Consultation

- 14.1 This chapter deals with the new arrangements that the Department proposes to put in place in relation to the consultation process which informs the determination of many planning applications. Some aspects of the revised system will be familiar to those people who have had experience of the planning system but there are a number of significant new provisions. These are intended to clarify roles and responsibilities and support faster consultation responses and consequently reduced processing times for applications.
- 14.2 Planning officers frequently need to obtain specialist advice to enable them to consider the potential impacts of a development proposal before determining a planning application. Thus they approach persons or bodies who have recognised expertise concerning, for example, roads, water and sewerage infrastructure or environmental issues for advice that is beyond the scope of a planning officer's own professional knowledge.
- 14.3 Currently, in determining an application for planning permission the Department is statutorily required to consult with the council in whose area the development is situated and, in certain circumstances, the Health and Safety Executive for Northern Ireland (HSENI). These two **statutory consultees** are not under a legal obligation to respond to such consultation requests from the Department.
- 14.4 In reality, the Department also consults with a much wider range of bodies which have particular expertise that can help in the consideration and determination of planning applications. The basis on which the Department and each of these bodies deliver services to each other is established in a series of individually negotiated agreements, but the process is conducted on an administrative basis. These bodies are **non-statutory consultees**.



- 14.5 Despite the generally effective operation of the planning system the consultation process can, on occasion, involve significant delays in the processing and determination of applications. Consultees can be blamed for delaying the process by taking too long to come back with their responses or providing “holding replies” pending a later, fuller response.
- 14.6 Equally there are occasions where there are delays in applicants providing or updating all necessary information to assist consultees in their consideration of consultation requests.
- 14.7 Section 229 of the 2011 Act establishes for the first time a statutory duty for consultees to provide a substantive response to a consultation request within a prescribed timescale. The detail of how the new duty will operate, and on whom the duty will be placed, will be set out in the GDPO which will:
- extend the list of statutory consultees;
  - specify the circumstances when they should be consulted on applications for planning permission;
  - set out the criteria for a substantive response;
  - specify the time period for providing a substantive response; and
  - set out the requirements for a consultee to publish a report on their performance in meeting their duty to respond.

### **Extending the list of statutory consultees**

- 14.8 The new legislative provisions propose to extend the current list of statutory consultees to include those bodies that historically have been identified as handling the bulk of consultation requests. The proposed new lists of statutory consultees are set out in two tables in Annex D dependent upon whether the council or the Department is acting as the planning authority. The tables in Annex D also set out the circumstances and/or the type or scale of development which would

require a statutory consultation request. There may be instances where additional consultation beyond this statutory minimum is required. However, it is envisaged that planning officers will discuss with relevant consultees whether such non-statutory consultation is necessary.

**Question 29: Are the proposed lists of new statutory consultees set out in Annex D appropriate?**

**Question 30: Are the types of development or circumstances listed in the Schedule at Annex D sufficient? Can you suggest any additions or omissions along with the reasons for your suggestions?**

14.9 It should be noted that NIEA has no legal identity separate from the Department. As a consequence of this, where a council is required to seek a consultation response in relation to environmental issues, the Department, rather than NIEA, is identified as the consultee. Equally, as the Department cannot legally be required to consult itself, where environmental expertise is required to inform the Department's determination of an application this will be managed on an administrative basis with NIEA.

### **Imposing a statutory duty for statutory consultees to make a substantive response within a specified timeframe**

14.10 The new legislation will require statutory consultees to make a 'substantive response' within a standard period of 21 calendar days of the consultation request issuing.

14.11 The GDPO will also include provision for an alternative time period to be agreed in writing where this is considered necessary. It is anticipated that the agreement of an extended period for response will be on an exception basis for a minority of cases where it is clear to

both parties that the complexity of the issues to be considered will prevent the consultee from making a substantive response within the standard 21 day timeframe. The final decision on whether or not a longer timeframe is acceptable will lie with the planning authority.

- 14.12 Where an agreement cannot be reached between the consultee and the planning authority then the standard timeframe of 21 days will be the period for response. In addition, the number of cases where an extended timeframe is employed will become a matter of public record as part of a consultee's report on its performance in meeting its duty to respond (see paragraph 14.19 below).
- 14.13 Imposing a timeframe on a consultee will also require the planning authority to ensure that it has supplied sufficient information to the consultee to allow a substantive response to be made. This dovetails with the 'front-loaded' ethos that is a major feature of the new reformed system. This is intended to drive a faster system by encouraging the submission of a better standard of application at the earliest stage of the process with all the information needed for its consideration and determination.
- 14.14 While consultees have been the subject of criticism in the past for not responding quickly enough to consultation requests it has also been argued that applicants who have failed to supply all relevant information with their application can also delay the process. Where necessary information is not provided, either at the time of submission or following subsequent requests from planning staff, this can limit a consultee's ability to provide a substantive response.

14.15 In the past applications have been refused where insufficient information has been supplied only to have the decision overturned at appeal when the requested information has then been supplied as part of the appeal process. New provisions under section 59 of the 2011 Act will restrict the information considered at appeal to that which was available to the planning authority at the time of its determination. The provision of new material will only be permitted in exceptional circumstances. This change is intended to reinforce that all necessary information should be provided at the outset of the application process in order to support more efficient and effective development management.

**Question 31: Do you believe that the proposed standard timeframe of 21 calendar days is appropriate in order to provide statutory consultees with enough time to make a substantive response?**

### **Requirement of a Substantive Response**

- 14.16 The legislation will propose that a substantive response is one which:
- States that the consultee has no response to make;
  - States that, on the basis of the information available, the consultee is content with the development as proposed;
  - Refers the planning authority to current standing advice by the consultee on the subject of the consultation; or
  - Provides advice to the planning authority to enable the determination of the application.
- 14.17 A holding reply requesting additional information will not be taken as a substantive response and the response time clock will continue to tick.

**Question 32: Do you believe that the above definitions of a substantive response are satisfactory or do you have other suggestions that the Department could consider?**

14.18 The proposed legislation does not prevent councils from determining applications for planning permissions when a consultee has not responded within the specified time limit. A decision to proceed to determination in such instances would require a council to exercise its judgement and consider the potential impact of proceeding without the views of a consultee.

**Duty on statutory consultees to report to the Department on their performance**

14.19 The proposed development order will also place each statutory consultee under an obligation to report to the Department on their performance in meeting their duty to respond during the previous year. It is proposed that the report shall contain:

- a statement as to the overall number of occasions on which the consultee was statutorily consulted;
- a statement as to the number of times a substantive response was given within the prescribed default timeframe;
- a statement as to the number of times a substantive response was given within a period agreed between the planning authority and the consultee; and
- a summary of the reasons as to why the consultee failed to respond within any of the specified or agreed timescales.

14.20 A consultee will also be able to provide information beyond the minimum required under the proposed legislation if they so wish.

14.21 The Department views this reporting process as a significant feature of the new provisions. Reporting data will help identify issues within the overall consultation process, for example, the number of occasions when response timeframes beyond the standard 21 days are used. It also has the potential to become a key driver in supporting process improvement by identifying areas which have experienced difficulties, and the underlying reasons, as well as identifying areas of strong performance and providing an opportunity to share good practice.

**Question 33: Do you consider that the proposed reporting requirements are appropriate or are there other requirements you believe would offer further benefits?**

## 15 - Design and Access Statements

15.1 A core planning principle of the reformed two-tier planning system is to support good design. The planning system has a significant role in making successful places through its influence on the type, scale, location and design of development, and the use of land. Design is an important material consideration and planning permission may be refused solely on design grounds.

15.2 Policy and guidance on good design is included in:

- Planning Policy Statement 3 – Access, Movement and Parking;
- Planning Policy Statement 7 - Quality Residential Environments;
- draft Development Control Advice Note 11 – Access for all – Designing for an Accessible Environment;
- the Department’s Living Places – An Urban Stewardship and Design Guide for Northern Ireland (Draft) (DOE 2013); and
- Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside (DOE 2012).

15.3 Sections 40(3) and 86(2) of the 2011 Act will require certain descriptions of applications for planning permission and all listed building consent applications to be accompanied by a design and access statement (DAS). Details of the applications for planning permission which must be accompanied by a DAS, and the form and content of such statements, is to be prescribed under the GDPO. The Planning (Listed Buildings) Regulations (Northern Ireland) 2015 will detail the form and content for listed building consent applications.

15.4 The Department is proposing that the following planning applications be accompanied by a DAS:

- development which is major development; or
- where any part of the development is in a designated area<sup>4</sup>, development consisting of the provision of one or more dwelling house or the provision of a building or buildings where the floor space created by the development is 100m<sup>2</sup> or more.

15.5 Planning applications that do not require to be accompanied by a DAS are:

- of the description contained in section 54 of the 2011 Act, i.e., applications to develop land without compliance with conditions previously attached, unless non-compliance specifically relates to a design or access issue;
- for engineering or mining operations;
- a material change in the use of land or buildings, provided that if the new use will necessitate access by an employee or involves the provision of services to the public or section of the public, with or without payment, then the article applies to the application for access only; or
- for development which is waste development.

15.6 The proposed legislation will provide that where a planning application is submitted in parallel with an application for listed building consent, a single combined statement should address the requirements of both. The only exception is listed buildings where there are interior works only and an access section is not required. If the access is amended then an 'access only' statement would be required to accompany the application.

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<sup>4</sup> A designated area is defined as a conservation area, an area of outstanding natural beauty, an area of special scientific interest, a National Park or a World Heritage Site.



15.7 The legislative requirement will only apply to planning applications for outline or full planning permission and will not extend to applications in relation to reserved matters.

### **Form and content of a Design and Access Statement**

15.8 Sections 40(4) and 86 (3) of the 2011 Act require the Department to prescribe the form and content of a DAS and include how issues relating to access are dealt with. It is proposed that a DAS must:

- explain the design principles and concepts that have been applied to the development;
- demonstrate the steps taken to appraise the context of the development and how the design of the development takes that context into account;
- explain the policy adopted regarding access to, from and within the development, and how policies relating to access in the relevant LDP have been taken into account. It should also state what, if any, consultation has been taken into account on issues relating to access to the development for disabled people and what account has been taken of the outcome of the consultation; and
- explain the design principles and concepts that have been applied to take environmental sustainability into account.

15.9 As well as the above, an application for listed building consent must also take account of:

- i. the special architectural or historic importance of the building;
- ii. the particular physical features of the building that justify its designation as a listed building; and
- iii. the building's setting.

15.10 Guidance will be produced by the Department to supplement the primary and subordinate legislation and to give advice to all users of the new system.

**Question 34: Do you agree with the application categories and types of applications which should, and should not, be accompanied by a Design and Access Statement?**

**Question 35: Do you agree with the proposals in relation to form and content and the requirement to take environmental sustainability into account in relation to design principles and concepts?**

## **16 - Power to Make Non-material Changes to Existing Grants of Planning Permission**

- 16.1 Section 67 of the 2011 Act introduces a mechanism which would enable councils to agree non-material changes to planning permissions which have been granted. In deciding whether a change is material the council must have regard to the effect of the change together with any previous changes which may have been made. The new power will also allow councils to:
- (a) impose new conditions; and
  - (b) remove or alter existing conditions.
- 16.2 There is no statutory definition of “non-material”. This is because it depends on a number of factors such as the context of the overall scheme, the amendments being sought to the original planning permission, the specific circumstances of the site and surrounding areas, which will vary from one application to another. What may be non-material in one context may be material in another.
- 16.3 The responsibility for determining whether a proposed change is non-material will lie with the council. It must be satisfied that the amendment sought is non-material in order to grant an application under this provision.
- 16.4 The subordinate legislation will set out the form and manner of an application and will simply require that an application shall be made in writing giving a description of the non-material changes sought and sufficient information to identify the previous planning permission.
- 16.5 In practice, an application can be made in writing on a standardised application form, although this will not be prescribed in legislation.

- 16.6 A standard application form will help ensure a consistent approach across the board, enable applicants to be clear about the extent of the information required and ensure that sufficient information is provided at the start of the process to ensure a prompt decision can be made.
- 16.7 The GDPO will set out that any application for a non-material change must be made in writing giving a description of the non-material changes sought and sufficient information to identify the previous planning permission. Future guidance will provide additional detail in relation to information requirements, for example:
- the postal address of the land to which the development relates, or if the land in question has no postal address, a description of the location of the land;
  - the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent;
  - a description of the approved development as shown on the decision notice, including application reference number and date of decision and original application type;
  - description of the non-material amendment sought;
  - if necessary, the reference number of the old and new plans and drawing;
  - 3 copies of a completed and dated application form; and
  - 3 copies of other plans, drawings or information necessary to describe the subject of the application.
- 16.8 As an application under section 67 of the 2011 Act will not be an application for planning permission, the existing provisions relating to statutory consultation and publicity will not apply. Given that the requirements for consultation and publicity will have already been applied and undertaken to the original planning application, and the fact that the amendment is **non-material** in nature, it is not proposed that further consultation or publicity will be required.

16.9 It is proposed that any decision must be issued in writing. The decision will only relate to the non-material amendments sought and the decision letter should describe these. It will not be a reissue of the original planning permission, which still stands. The two documents should be read together.

16.10 The Department proposes to issue guidance tests that councils may wish to consider in assessing and determining whether or not a proposed change would qualify as a non-material amendment. The following tests are proposed:

- is the proposed change significant in terms of its scale in relation to the original approved development scheme?;
- would the proposed change result in a detrimental impact either visually or in terms of amenity?;
- would the interests of any third party or body who participated in or were informed of the original decision be disadvantaged in any way?; and
- would the proposed change conflict with national or development plan policies?

16.11 Guidance will advise the applicant to contact the relevant council before submitting an application for a non-material change. This is to determine if the change is non-material or if it is in fact a material change and a new planning application should be submitted.

**Question 36: Do you agree with the proposals for handling applications for non-material changes to a previous planning permission?**

## **17 – Councils’ Own Applications for Planning Permission**

- 17.1 Section 79 of the 2011 Act sets out the procedural framework for dealing with councils’ own applications for planning permission.
- 17.2 The draft regulations (the Planning (General) Regulations (Northern Ireland) 2015) provide that an application for planning permission by a council itself or by a council jointly with another person shall be determined by that council unless the application is called in by the Department under a Direction made under section 29 of the 2011 Act for determination by it. To allow the Department sufficient time to reach a decision on whether or not to call in an application, a 28 day period shall apply from receipt of all the required information from the council, within which to reach that decision. This will provide both councils and the Department with the necessary safeguards and discretion to ensure adequate controls are put in place for dealing with councils’ own applications involving council owned land or land in which they have a financial interest.
- 17.3 The draft regulations provide that any grant of planning permission by a council shall have effect only for the benefit of that council itself and not with the land, except in the case of an application for planning permission jointly with another person. The draft regulations also provide that no application for planning permission can be determined by a committee or sub-committee or officer of the council if that committee, sub-committee or officer has any responsibilities which include any aspect of the management of any land to which the application relates.
- 17.4 Councils will be required to notify the Department of planning applications for development in which the council is: the applicant or landowner; has a financial or other interest; or in circumstances where:

- the proposal is significantly contrary to the LDP;
- the council intends to grant planning permission contrary to advice from a statutory consultee;
- the proposal involves the loss of outdoor sports facilities; or
- the proposals may have an adverse impact on a World Heritage Site.

**Question 37: Do you agree that councils' own applications, in the circumstances outlined above, should be subject to notification to the Department for consideration?**

## 18 - Listed Buildings

- 18.1 The Department is required, under section 80 of the 2011 Act, to compile and maintain lists of buildings of special architectural or historic interest. One of the consequences which follows from the inclusion of a building in the list is that the consent of the council, or the Department, is required to demolish the building or to undertake any works (either to the exterior or the interior) which would affect its character. This is referred to as "listed building consent" and it is a criminal offence to carry out such works without consent.
- 18.2 The Department proposes to set out the detail of the procedure for obtaining listed building consent from councils and other associated matters in the Planning (Listed Buildings) Regulations (Northern Ireland) 2015 (the 2015 Regulations).
- 18.3 The 2015 Regulations correspond substantially to the current Planning (Listed Buildings) Regulations (Northern Ireland) 1992 (the 1992 Regulations) except where it is proposed to address a number of specific issues as follows:
- the form and content of applications for listed building consent and subsequent applications;
  - consultation with the Department on applications for listed building consent;
  - publicity of applications for listed building consent and unopposed revocation or modification orders; and
  - transitional arrangements.

Requirements in relation to design and access statements, regarding applications for listed building consent, are dealt with in Chapter 15 above.



## **Form and content of applications for listed building consent**

18.4 Section 86(1) of the 2011 Act gives the Department the power to set out in regulations the procedure for making an application for listed building consent and the content of the application. It is proposed that the 2015 regulations will require that an application for listed building consent must contain:

- a description of the work which the applicant proposes to carry out;
- the postal address of the building or, if the building has no postal address, the location of the building; and
- the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent.

The regulations will also require that the application must be accompanied by plans and drawings sufficient to identify the building to which they relate and describe the works. Councils will be empowered to direct applicants to provide additional information necessary to consider the application.

## **Form and content of applications for approval required by a condition**

18.5 Section 91(5) of the 2011 Act provides a council with the power to grant listed building consent subject to a condition requiring a further submission and approval of details by the council. The power may be used, for example, where more information needs to be provided before particular parts of the works are undertaken.

18.6 Under section 86(1) and (5) of the 2011 Act the Department has powers to set out in regulations a procedure for making an application for approval required by a condition together with the content of the application. The Department proposes that the 2015 regulations will state that, as a minimum, the applicant must identify the previous grant of consent and must provide substantially the same information as that detailed at paragraph 18.4 above.

## **Form and content of applications for consent to execute works without compliance with conditions previously attached**

18.7 The provision of powers to grant listed building consent subject to conditions is provided at section 91(1) of the Act. Furthermore, section 95 of the 2011 Act allows for an application to be made to change conditions associated with a current listed building consent. Similar application arrangements will apply as detailed at paragraph 18.4 above.

## **Consultation with the Department on applications for listed building consent**

18.8 Section 86(4) of the Act provides the Department with powers to include in regulations a requirement as to consultation by councils on applications for listed building consent and requirements to take account of responses from those consulted.

18.9 NIEA has a detailed knowledge of Northern Ireland's buildings of special architectural or historic interest. It is proposed that councils will be required to consult the Department on all applications for listed building consent with such consultations being managed by NIEA. Councils must take account of the Department's response in forming their opinion on the application.

18.10 Section 89 of the 2011 Act requires councils to notify the Department of all applications where the council is minded to grant consent. The council cannot determine such applications until the expiry of at least 28 days from notification, or any extended period as may be agreed, unless notified by the Department that it does not propose to call in the application.

18.11 It follows that the Department may decide within such time period to call in the application and proceed to determine the application itself.

**Question 38: Do you agree that councils should be required to consult the Department on all applications for listed building consent?**

## **Publicity of applications for listed building consent and unopposed revocation or modification orders**

### **Publicity of applications**

18.12 Before determining any application for listed building consent or change of conditions associated with a current listed building consent the council must advertise details of the application in at least one newspaper circulating in the area in which the building is situated and on the council's website.

### **Publicity of unopposed revocation or modification orders**

18.13 Section 98 of the 2011 Act gives councils the power to make an order of revocation or modification which in essence provides councils with powers to remove or modify a consent which has previously been granted.

18.14 Section 100(2) of the Act requires the Department to set out in regulations how councils will publish such orders which are made with the consent of the owner. It is proposed that the regulations will require councils to publicise the details of any such order that has been made in at least one newspaper circulating in the area in which the building is situated and on the council's website.

### **Transitional arrangements**

18.15 At the date of transfer of planning powers to councils, there will be a number of applications for the range of listed building consents in the planning system, which were submitted to the Department under the 1992 Regulations, and remain undetermined. It is proposed that the

regulations will include transitional arrangements requiring councils to determine these applications under the 2011 Act.

## **Enforcement**

18.16 Under the 2011 Act primary responsibility for taking enforcement action in the public interest will rest with councils. However, section 158 provides the Department with a reserve power to issue a listed building enforcement notice with the same effect as a notice issued by a council. Before issuing an enforcement notice under section 158 the Department will consult the relevant council.

## **19 - Associated Subordinate Legislation Not Subject to Public Consultation**

19.1 As highlighted earlier in Chapter 1, in addition to proposals relating to new or significantly amended processes and requirements the Department will also take forward a range of technical SRs which are needed to take account of the new two-tier planning model. These SRs will all be subject to the full scrutiny of the Assembly as part of the legislative process but as they do not involve new policies or significant changes to existing policies they are not being made subject to public consultation.

19.2 However, in order to provide a comprehensive picture of the broader subordinate legislative programme supporting planning reform and transfer, details are provided in relation to the following technical SRs:

- The Planning (General Permitted Development) Order (NI) 2015;
- The Planning (Use Classes) Order (NI) 2015;
- The Planning (Environmental Impact Assessment) Regulations (NI) 2015;
- The Planning (Hazardous Substances) Regulations (NI) 2015;
- The Planning (Management of Waste from the Extractive Industries) Regulations (NI) 2015;
- The Planning (Fees) Regulations (NI) 2015;
- The Planning (Trees) Regulations (NI) 2015;
- The Planning (Conservation Areas) (Demolition) Regulations (NI) 2015;
- The Planning (Control of Advertisements) Regulations (NI) 2015;
- and
- The Planning (Claims for Compensation) Regulations (NI) 2015.

- 19.3 The Planning (General Permitted Development) Order (Northern Ireland) 2015 - PD rights grant a general planning permission for certain, often minor, non-contentious types of development thereby removing the need to apply for planning permission. Over the past three years the Department has comprehensively overhauled the system of PD rights in Northern Ireland to extend its scope for householders as well as business and industry. It has introduced a wide range of changes including small-scale domestic and commercial renewable energy projects, house extensions, caravan sites, industrial and warehouse buildings, shops, offices, schools, colleges, universities and hospitals, and for the demolition of buildings, for street trading, statutory undertakers and telecommunications development as well as agricultural buildings and small-scale anaerobic digestion plant. Most recently the Department brought into operation new PD for domestic air-source heat pumps and ancillary development within existing mine and quarry sites.
- 19.4 The approach to the extension of PD has been based on the likely amenity impact beyond the development concerned. Unnecessary controls have been removed from householders and businesses, whilst maintaining appropriate safeguards to protect local environmental quality and amenity.
- 19.5 The Department does not propose to further amend PD before the transfer of planning powers to councils as the recent changes need time to bed in.
- 19.6 However, it is important that the many amending SRs that give expression to the PD rights are consolidated into an easily read and referenced piece of legislation that restates the various types of PD and their associated limitations and conditions.

- 19.7 The Department therefore proposes to bring forward a new Planning (General Permitted Development) Order (NI) 2015 to come into operation on transfer of planning powers to councils. There will be some slight procedural change to facilitate a council's ability to restrict PD rights in the interests of local amenity. However, the new Order will not alter the policy principle of PD nor the individual descriptions, limitations or conditions of the PD rights currently set out in the 1993 GDO.
- 19.8 The Planning (Use Classes) Order (Northern Ireland) 2015 - the current Planning (Use Classes) Order (Northern Ireland) 2004 places a number of the most common land uses into 11 groups (classes) and stipulates that a change in use between activities within the same group is not 'development' and therefore planning permission is not required. It thus performs a deregulatory function similar but not identical to PD rights. There are no procedural amendments required to accommodate the new council role as local planning authority and the classes of development will remain unchanged. The 2015 Use Classes Order will technically reproduce existing provisions now made under the 2011 Act.
- 19.9 The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 – the current Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 apply EC Directive 2011/92/EU (the EIA Directive) to the planning process in Northern Ireland. The EIA Directive requires an assessment of the effects of certain public and private projects on the environment before development consent is granted. The Directive's requirements are procedurally based and must be followed by EU Member States for certain types of projects. Its main aim is to ensure that an authority giving development consent for a project makes its decision in the full knowledge of any likely significant effects on the environment. It helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the

relevant competent authority before it makes its decision. The 2015 EIA Regulations revoke and re-enact with savings and amendments the 2012 EIA Regulations to ensure that the requirements of the EIA Directive continue to be met under the new two-tier planning system.

- 19.10 The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 – set out how councils will deal with applications for hazardous substances consent; name hazardous substances and prescribe controlled quantities; make provision for taking enforcement action against breaches of hazardous substances consent and for appeals against such action. The procedures replicate those that currently apply to the Department.
- 19.11 The Planning (Management of Waste from the Extractive Industries) Regulations (Northern Ireland) 2015 – introduced in 2010 transposed EU Directive 2006/21/EC on the management of waste from extractive industries (“the mining waste directive”) into Northern Ireland law. Transposition was via the planning regime with a grant of planning permission acting as the permit required by the mining waste directive. This meant that actions to effectively manage waste from extractive industries, effectively quarries and mines in Northern Ireland, would be considered and addressed as part of development management function within the planning system. Where development produces waste there is a requirement to submit a waste management plan as part of a planning application for approval. If such development operates without an approved waste management plan this is a breach of planning control.
- 19.12 These regulations make the necessary adjustments enabling both councils and the Department, where necessary, to manage such applications. The regulations also retain the Department’s role in managing any issues which may have an effect on transboundary considerations with another EU member i.e. the Republic of Ireland.



- 19.13 The Planning (Fees) Regulations (Northern Ireland) 2015 - set out the amounts of fee to be submitted with an application for various types of development proposal. They provide that payment must be made to the appropriate planning authority to whom the application is submitted, the local council or the Department. The regulations will also be the vehicle through which the normal annual uplift to fee levels is applied.
- 19.14 The Planning (Trees) Regulations (Northern Ireland) 2015 –make provision for the new councils to make and confirm tree preservation orders (TPOs) in relation to trees which, in a council’s opinion, may be under threat and which should be protected. They also provide that previous TPOs made by the Department remain in place so that there is no ‘gap’ in protection.
- 19.15 The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 – section 104 of the 2011 Act gives councils and the Department the power to designate any area as a conservation area. A conservation area is an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. One of the consequences which follows from the designation of a conservation area is that the consent of the council, or the Department, will be required to demolish a building within the boundary of a conservation area. This is referred to as "conservation area consent" and it is a criminal offence to carry out such demolition without consent.
- 19.16 The regulations correspond substantially to the current regulations, the Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 1988, and will:
- introduce the necessary procedures for obtaining conservation area consent from the council;
  - set time limits for determining applications;

- set out the detail of forms of ownership certificates and other notices to accompany applications and appeals; and
- set out how claims for compensation may be made.

19.17 The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 – section 130 of the 2011 Act places a duty on the Department to make regulations for controlling the display of advertisements in the interests of amenity or public safety. The proposed regulations will largely replicate the current Planning (Control of Advertisements) Regulations 1992 with necessary amendments to take account of the new two-tier system. Accordingly they will specify certain classes of advertisement which may be displayed without the need to make an application for consent; this is referred to as “deemed consent”.

19.18 The 1992 Regulations currently permit the Department to restrict deemed consent for advertisements within any particular area or in any particular case by making a direction to that effect. The Department intends to make some minor procedural changes in relation to the procedure for making a direction removing deemed consent to reflect the new two-tier planning system.

19.19 Similarly, the 1992 Regulations permit the Department to make an order revoking or modifying consent which in essence provides the Department with powers to remove or modify a consent which has already been granted. There will be some minor procedural change in the new advertising regulations to facilitate a council’s ability to revoke or modify consent to display advertisements.

19.20 The Planning (Claims for Compensation) Regulations (Northern Ireland) 2015 – establish two necessary requirements for a person to make any claim for compensation to a council acting as the local planning authority. Specifically such a claim must be made in writing to the relevant council and must be made within six months of the action or decision which has given rise to the compensation claim. This replicates the existing requirements without amendment.

## **20 - Assessments and Freedom of Information**

### **Equality Impact Assessment Screening**

20.1 Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the proposed legislation will not lead to discriminatory or negative differential impact on any of the section 75 groups. The Department does believe that the introduction of design and access statements (set out in the Planning (General Development Procedure) Order (Northern Ireland) 2015) has the potential to have a positive impact on persons with a disability by considering their needs in the design stage of a development proposal.

### **Regulatory Impact Assessment**

20.2 The Department has conducted partial Regulatory Impact Assessments for each proposed piece of legislation. It believes that only the proposals in relation to design and access statements and pre-application community consultation (set out in the Planning (Development Management) Regulations (Northern Ireland) 2015) will impose any additional costs on business, charities, social economy enterprises or the voluntary sector but mainly where such organisations submit an application for a major development proposal.

20.3 The findings of each of these assessments are available on the Department's website.

### **Rural Proofing**

20.4 The Department believes that there would be no differential impact in rural areas or on rural communities from any of the proposed pieces of subordinate legislation.

## **Human Rights**

- 20.5 The Department considers that the proposals laid out in this document are compatible with the Human Rights Act 1998.
- 20.6 The Department welcomes views and comments on whether the conclusions contained in any of the above assessments are correct.

## **Freedom of Information Act 2000 – Confidentiality of responses**

- 20.7 The Department may publish a summary of responses following the completion of the consultation exercise. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response please read Annex E on the confidentiality of responses. It gives guidance on the legal position about any information given by you in response to this consultation.

## 21 - Overview of Consultation Questions

Question 1: Do you agree that local advertisement should mean that a council must place an advertisement for two consecutive weeks in at least one local newspaper circulating in its district?.....	14
Question 2: Do you agree with the list of statutory consultees for LDP preparation and are there any bodies/persons we have missed?.....	16
Question 3: Do you agree with the preparation, content, agreement and publicity arrangements for the development plan timetable? If not, can you identify amendments which would offer greater benefits? .....	19
Question 4: Do you agree with this approach in relation to the involvement of statutory consultees in the preparation of a POP?.....	20
Question 5: Do you think that the proposed publicity and consultation arrangements for the POP are appropriate / adequate? .....	22
Question 6: Do you agree with the form, content, publicity and consultation arrangements for the DPDs? .....	27
Question 7: Do you agree with the arrangements for making representations and counter representations? .....	28
Question 8: Do you agree with the publicity requirements and other arrangements for independent examination?.....	32
Question 9: Do you agree with the proposed soundness tests which will be elaborated upon in guidance? Are there other tests that you feel should be applied to the examination of the DPD?.....	33
Question 10: Do you agree with the withdrawal arrangements for a DPD? ...	34
Question 11: Do you agree with the adoption arrangements for a DPD? .....	35
Question 12: Do you agree with the arrangements for the monitoring, review and revision (if required) of the LDP? .....	39
Question 13: Do you agree with the Department's intervention/default powers? .....	41
Question 14: Do you agree with the provisions relating to joint plans? .....	42
Question 15: Do you agree with the provisions relating to the Department's power in relation to joint LDPs? .....	43
Question 16: Do you agree with the transitional arrangements for a LDP. If not, can you identify amendments which would offer better arrangements?..	44
Question 17: Do you agree with the proposed content of the SCI? .....	47
Question 18: Do you agree with the publicity, consultation and agreement requirements for the SCI? .....	49
Question 19: Do you agree with the proposed classes and thresholds for major developments indicated in the Schedule at Annex C? .....	53

Question 20: Do you agree with the definition for determining local developments?.....	53
Question 21: Do you agree with the proposed classes and thresholds for regionally significant developments indicated in the Schedule at Annex C?..	54
Question 22: Do you agree with the proposed consultation, publicity and information requirements for pre-application community consultation? .....	60
Question 23: Do you agree that applications made by the council or an elected member and applications relating to land in which the council has an interest should not be delegated to an appointed officer?.....	63
Question 24: Do you agree with the proposed approach to preparing and adopting a scheme of delegation? .....	63
Question 25: Do you agree with the proposed call-in criteria for a Notification Direction? Should any other classes of development be included and, if so, why? .....	66
Question 26: Do you agree that the current neighbour notification process should be made statutory?.....	73
Question 27: Are you content with the proposed definitions of “neighbouring land” and “affected occupier”? If not, please suggest an alternative explaining what additional benefits this would bring by way of enhanced engagement in the planning system. ....	73
Question 28: Do you believe that councils should be required to advertise all applications for planning permission in at least one newspaper circulating in the local area? .....	73
Question 29: Are the proposed lists of new statutory consultees set out in Annex D appropriate? .....	76
Question 30: Are the types of development or circumstances listed in the Schedule at Annex D sufficient? Can you suggest any additions or omissions along with the reasons for your suggestions?.....	76
Question 31: Do you believe that the proposed standard timeframe of 21 calendar days is appropriate in order to provide statutory consultees with enough time to make a substantive response?.....	78
Question 32: Do you believe that the above definitions of a substantive response are satisfactory or do you have other suggestions that the Department could consider? .....	79
Question 33: Do you consider that the proposed reporting requirements are appropriate or are there other requirements you believe would offer further benefits? .....	80
Question 34: Do you agree with the application categories and types of applications which should, and should not, be accompanied by a Design and Access Statement? .....	84

Question 35: Do you agree with the proposals in relation to form and content and the requirement to take environmental sustainability into account in relation to design principles and concepts? ..... 84

Question 36: Do you agree with the proposals for handling applications for non-material changes to a previous planning permission? ..... 87

Question 37: Do you agree that councils' own applications, in the circumstances outlined above, should be subject to notification to the Department for consideration? ..... 89

Question 38: Do you agree that councils should be required to consult the Department on all applications for listed building consent? ..... 93












All responses should be made in writing and submitted to the Department no later than 20<sup>th</sup> August 2014 in one of the following ways:

**By post to:**

Planning Reform & Transfer to Local Government Consultation –  
Phase 1  
Planning Policy Division  
Department of the Environment  
Level 6 Causeway Exchange  
1-7 Bedford Street  
Town Parks  
Belfast  
BT2 7EG

**By e-mail to:** [ppdconsultations@doeni.gov.uk](mailto:ppdconsultations@doeni.gov.uk)

## Annex A - The Local Development Plan Process

2011 Act		
section 7	<b>STAGE 1</b>	Programme Management - Timetable
		
section 22		POP
		
sections 8 & 22	<b>STAGE 2</b>	Plan Strategy
		
section 10 & 22		Independent Examination of Plan Strategy
		
section 12 & 22		Adoption of Plan Strategy
		
sections 9 & 22	<b>STAGE 3</b>	Local Policies Plan
		
section 10 & 22		Independent Examination of Local Policies Plan
		
section 12 & 22		Adoption of Local Policies Plan
		
section 21 & 22	<b>STAGE 4</b>	Annual Monitoring Report
		
section 13		Review of LDP

## **Annex B - Soundness Tests for Development Plan Documents**

### **Procedural tests**

- P1 Has the DPD been prepared in accordance with the council's timetable and the Statement of Community Involvement?
- P2 Has the council prepared its POP and taken into account any representations made?
- P2 Has the DPD been subject to sustainability appraisal including Strategic Environmental Assessment?

### **Consistency tests**

- C1 Did the council take account of the Regional Development Strategy?
- C2 Did the council take account of its Community Plan?
- C3 Did the council take account of policy and guidance issued by the Department?
- C4 Has the plan had regard to other relevant plans, policies and strategies relating to the council's district or to any adjoining councils' district?
- C5 Did the council comply with the regulations on the form and content of its DPD and procedure for preparing the DPD?

### **Coherence and effectiveness tests**

- CE1 The DPD sets out a coherent strategy from which its policies and allocations logically flow and where cross boundary issues are relevant it is not in conflict with the DPDs of neighbouring councils;
- CE2 The strategy, policies and allocations are realistic and appropriate having considered the relevant alternatives and are founded on a robust evidence base;
- CE3 There are clear mechanisms for implementation and monitoring; and
- CE4 It is reasonably flexible to enable it to deal with changing circumstances.

# Annex C - Schedule to the Development Management Regulations

## Schedule

Regulation 2 and 3

### Major Development Thresholds

1. In the Table below—

“airport” means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14);

“area of works” includes any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other facilities or stores required for construction or installation;

“floor space” means floor space in a building or buildings.

2. The Table below sets out the classes of development belonging to the category of major development.

Description of Development	Major Developments – Threshold or criteria	Major Developments prescribed for the purpose of Section 26(1) of the Planning Act (Northern Ireland) 2011 i.e. Regionally Significant Development.
<b>1. EIA Development:</b>	Development of a description in paragraphs; 1,3,4, 5, 6, 11, 12, 15, 17, 18, 19, 22, 23 and 24; mentioned in Schedule 1 to The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012	Development of a description in paragraph 1, 3, 23 and 24 mentioned in Schedule 1 to The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012
<b>2. Energy Infrastructure:</b>  <u>Generating stations:</u>    <u>Power Lines</u>	The construction or extension of an on-shore generating station (when constructed or extended) where its capacity is or more than 5 megawatts.   The installation of a power line above ground exceeds 33 kilovolts if the purpose of the line is the provision of a supply to more one customer.	The construction or extension of an on-shore generating station (when constructed or extended) where its capacity is or more than 30 megawatts.   The installation of a power line above ground is or more than 110 kilovolts and a length of more than 15 kilometres.



<p><b>4. Waste Infrastructure:</b> Construction of facilities for use for the purpose of waste management, disposal or treatment.</p> <p><u>Waste Management Facilities:</u></p>       <p><u>Waste Water :</u></p>	<p>An installation for the disposal, treatment or recovery of hazardous waste with a capacity for an annual intake of 25,000 tonnes or more.</p> <p>Waste disposal installations for the incineration or chemical treatment (as defined in Annex I to Directive 2008/98/EC under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day.</p> <p>Waste water treatment plants with a capacity exceeding 50,000 population equivalent.</p>	<p>An installation for the disposal, treatment or recovery of hazardous waste with a capacity for an annual intake is or more than 100,000 tonnes.</p> <p>Waste disposal installations for the incineration or chemical treatment (as defined in Annex I to Directive 2008/98/EC under heading D9) of non-hazardous waste with a capacity for an annual intake is or more than 100,000 tonnes.</p> <p>Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2 point (6) of Directive 91/271/EEC(5).</p>
<p><b>5. Housing:</b> Construction of buildings, structures or erections for use as residential accommodation; includes private schemes.</p>	<p>a) development that comprises 50 units or more; or</p> <p>b) the area of the site is or exceeds 2 hectares.</p>	<p>N/A</p>
<p><b>6. Retailing:</b> Includes comparison shopping and mixed retailing development; convenience shopping development; and commercial leisure development.</p>	<p>a) Development that comprises 1,000 sq metres or more gross floor space outside town centres; or</p> <p>b) The area of the site is or exceeds 1 hectare outside town centres.</p>	<p>N/A</p>
<p><b>7. Business, Industry (Light and General), Storage and Distribution:</b> (according to Part B of the Schedule to the Planning (Use Classes) Order (Northern Ireland) 2004).</p>	<p>a) Development that comprises 5,000 sq metres or more gross floorspace; or</p> <p>b) The area of the site is or exceeds 1 hectare.</p>	<p>N/A</p>

<p><b>8. Minerals:</b> Extraction of minerals.</p>	<p>The area of the site is or exceeds 2 hectares.</p>	<p>a) Development involving quarries or open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares.</p> <p>b) Development involving underground mining where the surface of the site exceeds 2 hectares</p>
<p><b>9. All other development:</b> Any development not falling wholly within any single class of development described in Parts 1 to 8 above.</p>	<p>a) Development that comprises 5,000 sq metres or more gross floorspace; or</p> <p>b)The area of the site is or exceeds 1 hectare.</p>	<p>N/A</p>

## Annex D - Statutory Consultees Tables 1 and 2

### SCHEDULE 3

Article 13

#### PART 1

Where an application for planning permission is to be determined by a council

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*para Consultation Requirements*

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The council shall consult—

- (a) the Department of the Environment where a development proposal;
  - (i) involves the demolition, in whole or part, or the material alteration of a listed building;
  - (ii) is likely to affect the site of a scheduled/unscheduled monument or an area which contains archaeological remains or the setting of a listed building or historic garden and demesne;
  - (iii) is likely to affect priority habitats or priority species<sup>(5)</sup>;
  - (iv) is likely to affect sites located within or adjacent to a designated area, a National Park, nature reserves, Natura 2000 sites or sites of community interest, as defined under the EC Directive on the Conservation of Natural Habitats and of Wild Flora and Fauna<sup>(6)</sup>, RAMSAR sites or sensitive areas, or that may threaten species of flora or fauna that are listed as being rare, vulnerable or species of conservation concern;
  - (v) involves fish farming (unless included in Schedule 2 of the EIA regulations<sup>(7)</sup>);
  - (vi) involves the refining or storing of mineral oils and their derivatives (unless included in Schedule 1 or 2 of the EIA regulations);
  - (vii) involves the use of land for the collection, storage, treatment and/or deposit of controlled waste materials and/or gaseous/solid outputs from the process (unless included in Schedule 1 or 2 of the EIA regulations);
  - (viii) relates to the use of land as a cemetery;
  - (ix) relates to mineral or hydrocarbon extraction;
  - (x) involves the development of land that may be affected by contamination and is causing or has potential to cause pollution of the water environment;
  - (xi) involves energy generation which is likely to have a significant effect on the environment;
  - (xii) relates to the use of land which may have a significant effect on the water environment including—
    - (aa) development adjacent to watercourses, lakes or estuaries;
    - (bb) development involving the deep drilling of boreholes or an abstraction of groundwater or surface-water; or
    - (cc) creates an impoundment, culvert, diversion or alteration of a waterway;

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<sup>(5)</sup> EC 92/43/EEC

<sup>(6)</sup> EC 92/43/EEC

<sup>(7)</sup> S.R. 2012 No. 59



- (xiii) involves the use of land where mains sewerage may not be available or have capacity to service the development proposal without having a significant effect upon the water environment;
  - (xiv) is likely to have a significant effect upon the availability or water quality of a private water supply;
  - (xv) involves the use of land for industrial processes including the processing, storing or distribution of hazardous substances; or
  - (xvi) involves the use of land likely to have a significant effect on the marine environment.
- (b) the Health and Safety Executive for Northern Ireland where a development proposal;
- (i) is within an area which has been notified to the Department by Health and Safety Executive for Northern Ireland for consultation because of the presence within the vicinity of toxic, highly reactive, explosive or inflammable substances and which are present and which involves the provision of—
    - (aa) residential accommodation;
    - (bb) more than 250 square metres of retail floor space;
    - (cc) more than 500 square metres of office space; or
    - (dd) more than 500 square metres to be used for an industrial process,
 or which is otherwise likely to result in a major increase in the number of persons working in or visiting the notified area; or
  - (ii) where the development—
    - (aa) involves the siting of a new establishment; or
    - (bb) consists of the modification of an existing establishment which could have significant repercussions on major accident hazards; or
    - (cc) includes transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or development is such as to increase the risk or consequence of a major accident<sup>(8)</sup>.
- (c) the Department for Regional Development where a development proposal;
- (i) involves the formation, laying out or alteration of any means of access, or is likely to create or attract traffic which may result in a material increase in the volume of traffic—
    - (aa) entering or leaving a road;
    - (bb) using a level crossing over a railway; or
    - (cc) which would result in an additional demand for car parking or loss of or alteration to existing car parking;
  - (ii) consists of or includes the laying out or construction of a new street;
  - (iii) is likely to prejudice the improvement or construction of a road or proposed road;
  - (iv) involves power lines which cross a road;
  - (v) involves the installation of a structure over or under a road; or
  - (vi) is a reserved matters application where an outline planning permission includes roads conditions.

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<sup>(8)</sup> The expressions used in paragraph (b)(ii) have the same meaning as in Council Directive 96/82/EC on the control of major accident hazards involving dangerous substances

- (d) the Department for Regional Development or water undertaker as defined under article 13 of the Water and Sewerage Services Order 2006<sup>(9)</sup>, shall be consulted where a development proposal;
  - (i) is likely to significantly impact upon the availability of suitable water and sewerage infrastructure to service development proposals.
- (e) licensed aerodromes where a development proposal;
  - (i) is within an area identified as a potential hazard on an airport safeguarding map submitted by a licensed aerodrome; or
  - (ii) is for wind turbine development within 30 kilometres of a licensed aerodrome.
- (f) the Department for Agriculture and Rural Development where a development proposal;
  - (i) is likely to impact upon drainage and/or flood defence provisions;
  - (ii) is—
    - (aa) on a riverine or coastal flood plain; or
    - (bb) beyond flood plains on land with a known history of flooding;
  - (iii) may affect a flood bank or other flood control structure;
  - (iv) is likely to involve the alteration or diversion of a watercourse;
  - (v) is of a size or nature that could significantly increase surface runoff; or
  - (vi) is where a reserved matters application which was made subject to an outline planning condition or informative applied following the consideration of a previous consultation response from the Department for Agriculture and Rural Development.
- (g) the Department of Enterprise, Trade & Investment on all energy infrastructure applications classed as major development under regulation 2 the Planning (Development Management) Regulations (Northern Ireland) 2015.

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<sup>(9)</sup> S.I.2006 No. 3336 (N.I.21)

## PART 2

Where an application for planning permission is to be determined by the Department

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*para Consultation Requirements*

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The Department shall consult—

- (a) the council in whose council area the proposed development is situated;
- (b) the Health and Safety Executive for Northern Ireland where a development proposal;
  - (i) is within an area which has been notified to the Department by the Health and Safety Executive for Northern Ireland for consultation because of the presence within the vicinity of toxic, highly reactive, explosive or inflammable substances and which are present and which involves the provision of—
    - (aa) residential accommodation;
    - (bb) more than 250 square metres of retail floor space;
    - (cc) more than 500 square metres of office space; or
    - (dd) more than 500 square metres to be used for an industrial process, or which is otherwise likely to result in a major increase in the number of persons working in or visiting the notified area; or
  - (ii) where the development—
    - (aa) involves the siting of a new establishment; or
    - (bb) consists of the modification of an existing establishment which could have significant repercussions on major accident hazards; or
    - (cc) includes transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or development is such as to increase the risk or consequence of a major accident.
- (c) the Department for Regional Development where a development proposal;
  - (i) involves the formation, laying out or alteration of any means of access, or is likely to create or attract traffic which may result in a material increase in the volume of traffic—
    - (aa) entering or leaving a road;
    - (bb) using a level crossing over a railway; or
    - (cc) which would result in an additional demand for car parking;
  - (ii) consists of or includes the laying out or construction of a new street;
  - (iii) is likely to prejudice the improvement or construction of a classified or proposed road;
  - (iv) involves power lines which cross a public road; or
  - (v) is a reserved matters application; where an outline planning permission includes roads conditions;
- (d) the Department for Regional Development or water undertaker as defined under article 13 of the Water and Sewerage Services Order 2006<sup>(10)</sup>, shall be consulted where a development proposal;

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<sup>(10)</sup> S.I.2006 No. 3336 (N.I.21)

- (i) is likely to significantly impact upon the availability of suitable water and sewerage infrastructure to service development proposals.
- (e) licensed aerodromes where a development proposal;
  - (i) is within an area identified as a potential hazard on an airport safeguarding map submitted by a licensed aerodrome; or
  - (ii) is for wind turbine development within 30 kilometres of the licensed aerodrome.
- (f) the Department for Agriculture and Rural Development where a development proposal;
  - (i) is likely to impact upon drainage and/or flood defence provisions;
  - (ii) is—
    - (aa) on a riverine or coastal flood plain; or
    - (bb) beyond flood plains on land with a known history of flooding;
  - (iii) may affect a flood bank or other flood control structure;
  - (iv) is likely to involve the alteration or diversion of a watercourse;
  - (v) is of a size or nature that could significantly increase surface runoff; or
  - (vi) is a reserved matters application was made subject to an outline planning condition or informative applied following the consideration of a previous consultation response from the Department for Agriculture and Rural Development.
- (g) the Department of Enterprise, Trade & Investment on all energy infrastructure applications classed as major development under the Planning (Development Management) Regulations (Northern Ireland) 2015.

## **Annex E - Freedom of Information Act 2000 - Confidentiality of Responses**

1. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.
2. The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.
3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
  - the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
  - the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and
  - acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
4. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: <http://www.informationcommissioner.gov.uk> ).

## Annex F - Consultee List

20:20 Architects  
Action on Hearing Loss  
Action Renewables  
Age NI  
An Munia Tober  
Aquaculture Initiative EEIG  
Archbishop Of Armagh & Primate Of All Ireland  
Arcus Architects  
Arqiva  
Association for Consultancy and Engineering  
Atlas Communications  
Autism NI  
B9 Energy Services Ltd  
Bahai Council for NI  
Bar Library  
Barnardos NI  
BBC Engineering Information Department  
Belfast Butterfly Club  
Belfast Civic Trust  
Belfast Harbour Commissioners  
Belfast Hebrew Congregation  
Belfast Healthy Cities  
Belfast Hills Partnership  
Belfast International Airport  
Belfast Metropolitan College  
Belfast Metropolitan Residents Group  
Belfast Solicitors Association  
Brennen Associates  
British Deaf Association (NI)  
British Telecom (NI)  
Bryson House  
Building Design Partnership  
Cable & Wireless Communications  
Campaign for Better Transport  
Cara Friend  
Carers Northern Ireland  
Carey Consulting  
Catholic Bishops of NI  
Causeway Coast & Glens Heritage Trust  
Chartered Institute of Architectural Technologists  
Chartered Institute of Environmental Health  
Chartered Institute of Housing  
Chief Executive of the NI Judicial Appointments Commission  
Chief Officers 3rd Sector  
Children's Law Centre

Chinese Welfare Association  
Church of Ireland  
Chrysalis Women's Centre  
Coiste – Na N-iarchimi  
City of Derry Airport  
Civil Aviation Authority  
Civil Law Reform Division  
Coleraine Harbour Commissioners  
Communication Access  
Committee for the Administration of Justice  
Communities and Local Government  
Community Development and Health Network (NI)  
Community Places  
Community Relations Council  
Confederation of British Industry, NI Branch  
Construction Employers Federation  
Construction Register Ltd  
Council for Catholic Maintained Schools  
Countryside Access & Activities Network for NI  
Courts and Tribunal Services  
Crown Castle UK Ltd  
Cruse Bereavement Care (NI)  
Derryhale Residents' Association  
Derry Well Woman  
Development Planning Partnerships  
Disability Action  
Down's Syndrome Association  
Energy Saving Trust Northern Ireland  
Enniskillen Airport  
Environment and Planning Law Association of NI  
Environmental Health Services Department  
Equality Coalition  
Equality Commission for NI  
Falls Community Council  
Falls Women's Centre  
Family Planning Association NI  
Federation of Small Businesses  
Ferguson & McIlveen  
Fisher German LLP  
Food Standards Agency NI  
Foyle Women's Information Network  
Friends of the Earth  
Geological Survey of Northern Ireland  
George Best Belfast City Airport  
Gingerbread Northern Ireland  
Health and Safety Executive Northern Ireland  
Health And Social Services Boards and Trusts  
HM Council of County Court Judges  
HM Revenue & Customs  
Human Rights Commission

Indian Community Centre  
I-Document Systems  
Information Commissioners Office  
Institute of Professional Legal Studies  
Institute Of Directors  
Institute of Historic Building Conservation  
Institution of Civil Engineers (NI Association)  
International Tree Foundation  
Invest NI  
Kenneth Crothers, Deane & Curry  
Lagan Valley Regional Park Officer  
Landscape Institute NI  
Larne Harbour Commissioners  
Law Centre (NI)  
Liz Fawcett Consulting  
Local Government Staff Commission NI (LGSC)  
Londonderry Port & Harbour Commissioners  
Lord Chief Justice Office  
Lough Neagh and Lower Bann Management Committees  
LPG Association  
Magherafelt Women's Group  
Magistrates Court  
Manufacturing Northern Ireland  
Marks and Spencer  
McClelland/Salter Estate Agents  
MENCAP  
Mens Action Network  
Men's Project – Parent's Advice Centre  
Methodist Church In Ireland  
Michael Burroughs Associates  
Ministerial Advisory Group for Architecture and the Built Environment in  
Northern Ireland  
Ministry of Defence  
Mobile Operators Association  
Mono Consultants Limited  
Mourne Heritage Trust  
Multi-Cultural Resource Centre  
National Air Traffic Services (NATS)  
National Society for the Prevention of Cruelty to Children (NSPCC)  
National Trust  
Newry and Mourne Women Limited  
Newtownards Aerodrome  
NI Association for Mental Health  
NI Association of Citizens Advice Bureau  
NI Chamber of Commerce and Industry  
NI Chamber of Trade  
NI Independent Retail Trade Association  
NI Islamic Centre  
National Pensioners Convention, NI  
NI Women's Aid Federation



NI Women's European Platform  
NIACRO  
NIC/ICTU  
NICARE  
NICOD  
NIPSA  
North West Architectural Association  
Northern Builder  
Northern Ireland 2000  
Northern Ireland Agricultural Producers Association  
Northern Ireland Ambulance Service  
Northern Ireland Amenity Council  
Northern Ireland Association Engineering Employer's Federation  
Northern Ireland Blood Transfusion Service Agency  
Northern Ireland Council For Ethnic Minorities  
Northern Ireland Court Service  
Northern Ireland District Councils  
Northern Ireland Economic Council  
Northern Ireland Education and Library Boards  
Northern Ireland Electricity Plc  
Northern Ireland Environment Committee  
Northern Ireland Environment Link  
Northern Ireland Federation of Housing Associations  
Northern Ireland Fire and Rescue Service  
Northern Ireland Government Departments  
Northern Ireland Housing Council  
Northern Ireland Housing Executive  
Northern Ireland Law Commission  
Northern Ireland Local Government Association  
Northern Ireland Members of the House of Lords  
Northern Ireland MP's, MEP's, Political Parties and MLA's  
Northern Ireland Office  
Northern Ireland Public Health Agency  
Northern Ireland Quarry Products Association  
Northern Ireland Regional Medical Physics Agency  
Northern Ireland Women's Rural Network  
Northern Ireland Tourist Board  
Northern Ireland Water Ltd  
O2  
OFCOM  
Office of Attorney General for Northern Ireland  
Orange  
Ostick and Williams  
Parenting NI  
Participation & the Practice of Rights Project  
Participation Network NI  
Phoenix Natural Gas Ltd  
Planning Appeals Commission  
Planning Magazine  
Playboard N.I. Ltd

POBAL  
Policing Board Of Northern Ireland  
Polish Association  
Pragma Planning  
Presbyterian Church In Ireland  
PSNI  
Quarryplan Ltd  
Queens University  
Renewable UK  
RICS NI  
Rivers Agency  
RJM Architects  
Robert Turley Associates  
Royal National Institute of Blind People (RNIB)  
Royal Society for Protection of Birds  
Royal Society of Ulster Architects  
Royal Town Planning Institute  
Royal Town Planning Institute (Irish Branch, Northern Section)  
RPS Group PLC  
RTPI Irish Branch (Northern Section)  
Rural Community Network  
Rural Development Council for Northern Ireland  
Rural Support  
Save the Children  
Scottish Government  
SENSE NI  
Society of Local Authority Chief Executives  
Southern Waste Management Partnership  
Sport NI  
Statutory Advisory Councils (including Historic Buildings Council, Historic  
Monuments Council and Council for Nature Conservation and the  
Countryside)  
Strangford Lough Advisory Council  
Strangford Lough Management Committee  
Sustrans  
The Architectural Heritage Fund  
The Board of Deputies of British Jews  
The Cedar Foundation  
The Commissioner for Older People for Northern Ireland  
The Executive Council of the Inn of Court of NI  
The General Consumer Council for NI  
The Guide Dogs for the Blind Association  
The Law Society of Northern Ireland  
The NI Commissioner for Children and Young People  
The NI Council for Voluntary Action  
The Rainbow Project  
The Senior Citizens Consortium Sperrin Lakeland  
The Utility Regulator  
The Women's Centre  
Three

T-Mobile  
Todd Planning  
Town and Country Planning Association  
Training for Women Network Ltd  
Translink  
Travellers Movement NI  
Turley Associates  
Tyrone Brick  
Ulster Angling Federation  
Ulster Architectural Heritage Society  
Ulster Farmers' Union  
Ulster Society for the Protection of the Countryside  
Ulster Wildlife Trust  
ULTACH  
UNISON  
University of Ulster  
Urban and Rural Planning Associates  
UTV Engineering Information Department  
Virgin Media  
Vodafone Ltd  
Volunteer Now  
Warrenpoint Harbour Authority  
Waterways Ireland  
Welsh Government  
WDR & RT Taggart  
Western Group Environmental Health Committee  
Wildfowl and Wetland Trust  
Women's Forum NI  
Women's Resource and Development Agency  
Women's Support Network  
Woodland Trust  
World Wildlife Fund (NI)  
Youth Council For Northern Ireland

## Abbreviations

AMR	annual monitoring review
DAS	design and access statement
DPD	development plan document
EIA	environmental impact assessment
EU	European Union
GDO	Planning (General Development) Order (NI) 1993
GDPO	Planning (General Development Procedure) Order (NI) 2015
HSENI	Health and Safety Executive for Northern Ireland
LDP	local development plan
LPA	local planning authority
LPP	local policies plan
NIEA	Northern Ireland Environment Agency
OFMDFM	Office of the First Minister and Deputy First Minister
PAC	Planning Appeals Commission
PD	permitted development
POP	preferred options paper
PPS	planning policy statement
PS	plan strategy
RDS	Regional Development Strategy
RSD	regionally significant development
RSS	rich site summary (RSS feeds)
SAR	sustainability appraisal report
SCI	statement of community involvement
SEA	strategic environmental assessment
SR	statutory rule
TPO	tree preservation order







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