

**EXPLANATORY MEMORANDUM TO**  
**THE PLANNING (CONSERVATION AREAS) (DEMOLITION)**  
**REGULATIONS (NORTHERN IRELAND) 2015**

**S.R. 2015 No. 107**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the above named Statutory Rule which is laid before the Northern Ireland Assembly
- 1.2 The Statutory Rule is made under sections 42(7) (as applied by sections 87(1) and (2)), 86(1), (4) and (5), 95(2), 100(2), 107(2), 181(1) (as applied by section 105(6)) and 247(1) and (6) of the Planning Act (Northern Ireland) 2011 (“the 2011 Act”) and is subject to negative resolution procedure before the Assembly.
- 1.3 The Rule is due to come into operation on 1<sup>st</sup> April 2015

**2. Purpose**

- 2.1 These Regulations replace the Planning (Conservation Areas) (Demolition) Regulations 1988. They provide for a range of procedures which will enable councils to discharge their new functions as planning authorities in relation to applications for consent to demolish an unlisted building in a conservation area [“conservation area consent”].

**3. Background**

- 3.1 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 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 an offence to carry out such demolition without consent.
- 3.2 These Regulations specify the:
  - manner in which applications for conservation area consent are to be made, and the information and documents which applicants must provide;
  - publicity requirements for applications;
  - time periods within which councils should determine applications; and

- procedure for claims for compensation for revocation or modification of a consent.

3.3 Section 105(3)(a) of the 2011 Act requires that applications made by councils for conservation area consent (for buildings in their own districts) [“applications by interested councils”] are determined by the Department. Therefore, regulation 9 of the Regulations provides for the Department to operate as planning authority in relation to these applications.

#### **4. Consultation**

4.1 The Department consulted on its “Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1” between 28 May 2014 and 20 August 2014. In the consultation document the Department indicated that it will also take forward a range of technical Statutory Rules 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 were not made subject to public consultation. The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 was one of those Statutory Rules.

#### **5. Equality Impact**

5.1 In accordance with its duty under Section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals and has concluded that they do not have implications for equality of opportunity. The measures will not affect any group disproportionately.

#### **6. Regulatory Impact**

6.1 A regulatory impact assessment was carried out on the Regulations. These Regulations do not make any significant changes to existing practice and so should not result in any additional impacts on the owners of unlisted buildings in a conservation area, or others with an interest in conservation areas.

#### **7. Financial Implications**

7.1 The financial implications of the move to the new two-tier planning system have been addressed in the financial package being transferred to the new councils.

#### **8. Section 24 of the Northern Ireland Act 1998**

8.1 The Department considers that the proposed Order is compatible with section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

9.1 There are no EU implications.

## **10. Parity or Replicatory Measure**

10.1 Equivalent Regulations have been made in England [Planning (Listed Buildings and Conservation Areas) Regulations 1990], Wales [Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012] and Scotland [Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Regulations 1987].

## **11. Additional Information**

11.1 Not applicable.

REGULATORY IMPACT ASSESSMENT (Final)  
Conservation Areas Demolition Regulations 2015

**1. Title of Proposal**

The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015

**2. Purpose and intended effect of measure**

**i) The objective:**

The objective of the Statutory Rule is to put in place the regulatory framework required for the control of demolition of unlisted buildings in conservation areas under section 105 (control of demolition in conservation areas) of the Planning Act (Northern Ireland) 2011 [“the Act”].

**ii) The background:**

The present legislative framework for the control of demolition in conservation areas is the Planning (Northern Ireland) Order 1991 [“the 1991 Order”] and the Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 1988 (SR 1988 No 5 as amended) [“the 1988 Regulations”]. Under the present legislative framework the Department is responsible for determining a particular application for consent to demolish an unlisted building in a conservation area. After the commencement of section 105 of the Act, primary responsibility for these applications rests with councils.

**iii) Risk Assessment and Rationale for Government Intervention:**

The Act requires the Department to:

- set out in regulations the information and documents which applicants for conservation area consent must submit to councils<sup>1</sup>;
- set out in regulations the arrangements for advertising the fact that an unopposed revocation or modification order has been made<sup>2</sup>;
- specify the time period within which applications must be determined by councils<sup>3</sup>.

Failure to prescribe the above matters would not be consistent with the Act since:

- the requirement to set out in regulations the:
  - information and documents which applicants must submit;

<sup>1</sup> Section 86(1)(b) of the Act as applied by section 105(6)

<sup>2</sup> Section 100(2)(a) (procedure for section 98 orders: unopposed cases) of the Act as applied by section 105(6)

<sup>3</sup> Section 86(4)(b) of the Act as applied by section 105(6)

- arrangements for advertising the fact that an unopposed revocation or modification order has been made; are mandatory;
- the Act gives applicants the right to appeal<sup>4</sup> to the Planning Appeals Commission if the council fails to determine their application within the time period specified in regulations. Therefore, applicants would be deprived of their right to appeal under the Act if the Department did not specify this time period in regulations.

The Act also gives the Department specific discretionary powers to prepare regulations regarding:

- publicity requirements for applications<sup>5</sup> [section 86(4)(a) (applications for listed building consent)];
- a prohibition on the determination of applications within a specified time period [section 86(4)(d)]; and
- requirements that the council must take account of responses from those consulted [section 86(4)(e)].

Specifying these matters in regulations will provide:

- the basis for consistency across the new council planning departments; and
- clarity to owners who wish to apply for conservation area consent (and agents submitting applications) and others with an interest in the protection of unlisted buildings in conservation areas regarding the submission of applications and the procedures for processing, and determination of these applications.

### 3. Options Appraisal

#### Option 1 – Do Nothing

Under this option the Department would commence section 105 of the Act but would not make regulations:

- setting out the information and documents which applicants for conservation area consent must submit to councils;
- setting out the arrangements for advertising the fact that an unopposed revocation or modification order has been made; and
- specifying the time period within which applications must be determined by councils.

As set out above<sup>6</sup>, failure to make regulations dealing with these matters would not be consistent with the Act and as such the Department cannot adopt a do nothing option.

<sup>4</sup>Section 97 (appeal against failure to take decision) of the Act

<sup>5</sup>Policy in relation to advertising is set out in paragraphs 13.9 to 13.13 of the consultation paper "Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation". I.e. it is considered in a separate RIA.

Option 2 – Introduce regulations in relation to mandatory requirements only under the Act

Under this option the Department would make regulations setting out the:

- information and documents which applicants must submit to councils;
- arrangements for advertising the fact that an unopposed revocation or modification order has been made; and
- time period within which councils must determine applications for conservation area consent. This will ensure that applicants right of appeal, under section 97 (appeal against failure to take decision) of the Act, is not removed.

This approach would satisfy the mandatory minimum requirements under the Act.

Under this option the 2015 Regulations would not:

- include a prohibition preventing councils from determining applications within a specified time period;
- include a requirement that councils must take account of responses received to the application;
- include a requirement that councils must give reasons where they refuse an application, or grant consent subject to conditions; and
- require councils, where they require conservation area consent (for a building in their district), to publicise the application in the same way as other applications.

In practice councils would have to develop administrative procedures in relation to these matters.

Option 3 – Introduce regulations in relation to mandatory requirements and discretionary requirements under the Act

Under this option the 2015 Regulations would comply with the mandatory requirements of the Act i.e. they would:

- set out the information and documents which applicants must submit to councils;
- set out the arrangements for advertising the fact that an unopposed revocation or modification order has been made; and
- specify the time period within which councils must determine applications for conservation area consent;

In addition the Department would exercise specific, non-mandatory, powers in the Act to include in the 2015 Regulations a:

- prohibition preventing councils from determining applications within a specified time period. The intention is to provide the public with sufficient time to respond to the newspaper and web advertisement;
- requirement that councils must take account of responses received to the application. The intention is to provide clarity, to those who wish to respond and to councils, regarding the handling of responses to the application;
- requirement that councils must give reasons where they refuse an application, or grant consent subject to conditions. The intention is to :
  - assist those who wish to appeal the council's decision to the Planning Appeals Commission;
  - assist those who wish to submit a new revised application; and
  - to maintain public confidence in the planning system; and
- requirement that councils must where they require conservation area consent (for a building in their district), publicise the application in the same way as other applications including publication on the council's website, where they maintain one. The intention is to ensure that these applications are publicised in the same way as other applications.

#### 4. Costs and Benefits

It is not proposed to introduce any significant changes to the current legislative requirements, under the 1991 Order and 1988 Regulations, and as such there is only a redistribution of costs.

##### Option 1: Do Nothing

###### **Costs:**

This option would not incur any additional costs. However, this is not considered a viable option as explained above.

###### **Benefits:**

No economic, social or environmental benefits are derived from doing nothing.

##### Option 2: Introduce regulations regarding mandatory requirements under the Act but not in relation to discretionary requirements

###### **In relation to owners of unlisted buildings in conservation areas:**

###### **Costs:**

If this option is adopted then different councils will likely adopt different administrative approaches to the processing of applications for conservation area consent which in turn is likely to have cost implications for applicants. In addition, this may lead to a lack of consistency in approach and confidence among owners regarding the procedures adopted by councils to process and determine these applications.

**Benefits:**

There is no economic benefit to the owner as the approach under option 2 and option 3 will be substantially the same i.e. councils will have to:

- provide the public with sufficient time to respond to the newspaper advertisement i.e. withhold determining applications within this time period;
- take account of responses from those who respond to the newspaper and web advertisement of the application; and
- give reasons where they refuse an application, or grant consent subject to conditions.

Therefore, the time taken to determine the application will not be shorter under this option compared with option 3.

**In relation to councils:****Costs:**

As outlined in the previous paragraph, there will be no additional costs to councils in adopting this approach since they will have to follow substantially the same approach as that under option 3, albeit on an administrative rather than a statutory basis.

**Benefits:**

There will be no economic benefit to councils since they will in effect have to develop their own administrative procedures which will be substantially the same as the legislative procedures under option 3.

**In relation to the Department:****Costs:**

The Department has been given specific enabling powers, in the Act, to make regulations dealing with these additional matters. However, under this approach the Department will not be exercising these powers but instead will be relying on councils to develop their own administrative approach. As such costs may vary and it will be difficult to justify this policy approach, compared to the approach under option 3.

**Benefits:**

There will be no economic benefit to the Department in adopting this approach compared with option 3.

**In relation to those, other than the owners of unlisted buildings in conservations areas, with an interest in conservation areas:**

**Costs:**

Those with an interest in conservation areas may be concerned regarding the lack of clarity, compared with option 3, regarding the processing and determination of these applications.

**Benefits:**

There is no benefit to those with an interest in conservation areas in adopting this approach compared with option 3.

Option 3: Introduce regulations regarding mandatory requirements under the Act and in relation to discretionary powers under the Act

**In relation to owners of unlisted buildings in conservation areas:****Costs:**

There is no cost difference to the owners of unlisted buildings in conservation areas in adopting this approach, compared to option 2, as the requirements under options 2 and 3 will in practice be substantially the same.

**Benefits:**

This approach is likely to increase confidence of owners since there will be greater clarity regarding the handling and determination of applications for conservation area consent.

**In relation to councils:****Costs:**

There is no additional cost to councils in adopting this approach compared with option 2 since they will have to adopt substantially the same approach under both options.

**Benefits:**

One possible benefit to councils in adopting this approach, rather than option 2, is that councils will not have to justify their administrative approach i.e.:

- the minimum time period which they allow for making representations to the newspaper and website advertisement;
- the weight they give to responses received to the application; and
- the information which will they include in their decision notice, including the reasons for refusal or conditional grant.

**In relation to the Department:**

**Costs:**

There will be no economic cost to the Department in adopting this approach compared with option 2.

**Benefits:**

The Department is in effect complying with the Act since it is dealing with these matters in regulations; i.e. exercising the enabling powers contained in the Act.

**In relation to those, other than the owner, with an interest in conservation areas:****Costs:**

There is no cost to those, other than the owner, with an interest in conservation areas in adopting this approach compared with option 2.

**Benefits:**

This option should reassure those with an interest in conservation areas since the procedures for determining these applications will be clear and consistent across Northern Ireland.

## 5. Sectors and Groups Affected

The main sectors and groups affected are:

- owners of unlisted buildings in conservation areas;
- councils i.e. the planning authority since they are responsible for processing and determining applications for conservation area consent;
- the Department since it has the power under section 88 of the Act to call-in applications; and
- those, other than the owners of unlisted buildings in conservation areas, with an interest in conservation areas.

## 6. Enforcement and Sanctions

Councils will have primary responsibility for enforcement under the Act.

It is an offence to:

- demolish an unlisted building in a conservation area without first obtaining consent<sup>7</sup>;

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<sup>7</sup> Section 85(1) (control of works for demolition, alteration or extension of listed buildings) of the Act

- fail to comply with the terms of any condition attached to a consent<sup>8</sup>.

The current penalty for conviction in a Magistrates' Court is a fine of up to £100,000 or imprisonment for up to six months (or both). Whilst on conviction in the Crown Court, an unlimited fine or a prison sentence of up to two years (or both) may be imposed. In determining the amount of any fine, the Magistrates Court or Crown Court must have regard to any financial benefit accruing from the offence.

## 7. Consideration of Impacts

### Equality Impact Assessment

An Equality Impact Assessment screening carried out in respect of this proposal found no evidence of any additional impact on any of the Section 75 categories.

### Health Impact

No impact on health has been identified.

### Small Firms Impact Test

The requirement that those proposing to demolish an unlisted building in a conservation area must apply for and obtain consent was introduced by the Act. In relation to small firms who act as agents i.e. submit applications for conservation area consent on behalf of others, the 2015 Regulations will ensure there is a basis for consistency across council planning departments.

### Human Rights Assessment

The Department considers that the proposed amendments are fully compliant with the Human Rights Act 1998.

### Rural Impact Assessment

No significant differential impact is anticipated between urban and rural areas.

## 8. Monitoring and Review

Section 228 of the Act requires the Department to review and issue a report on the implementation of the Act 3 years after the commencement of Part 3 of the Act and at least once in every 5 years after that.

## 9. Consultation

The Department consulted on its "Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1" between 28 May 2014 and 20 August 2014. In the consultation document the Department indicated that it will also take forward a range of technical Statutory Rules 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. The Planning (Conservation Area) (Demolition) Regulations (NI)

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<sup>8</sup> Section 85(5) of the Act

2015 was one of those Statutory Rules.

## 10. Summary and Recommendations

Option 3 is the recommended option as this will:

- satisfy the mandatory requirement under the Act that the Department must:
  - set out in regulations the information and documents which applicants for conservation area consent must submit to councils; and
  - set out in regulations the arrangements for advertising the fact that an unopposed revocation or modification order has been made;
  - specify the time period within which councils must give their decision; and
- provide clarity to owners of unlisted building in a conservation area, and others with an interest in conservation areas, regarding the processing and determination of these applications.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by a senior officer of the Department of the Environment.  
Angus Kerr

Date  
26 February 2015

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