

EXPLANATORY MEMORANDUM TO
THE PLANNING (MODIFICATION AND DISCHARGE OF PLANNING
AGREEMENTS) REGULATIONS (NORTHERN IRELAND) 2015

2015 No. 187

1.0 Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of the Environment to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.
- 1.2 This Statutory Rule is made under sections 77(8) and (10), 78(3) and 247(1) and (6) of the Planning Act (Northern Ireland) 2011 and is subject to the negative resolution procedure.
- 1.3 The Rule is due to come into operation on 22nd April 2015.

2.0 Purpose

- 2.1 The purpose of this Statutory Rule is to allow councils and the Department, in certain circumstances, to modify and discharge planning agreements as part of a two-tier planning system. As part of planning and local government reform the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005 (“the 2005 regulations”), were reviewed and relevant changes identified. The changes provide new powers for councils which allow them to carry out functions in relation to the modification and discharge of planning agreements. In addition the Department will have powers to enter into, modify and discharge planning agreements in respect of applications for regionally significant development (including applications for major development that are to be treated as regionally significant).

3.0 Background

- 3.1 A planning agreement is a voluntary, legally-binding agreement which can be utilised to overcome identified barriers to the grant of planning permission, normally for large-scale major planning applications, which cannot be suitably addressed by way of conditions attached to the permission. Such an agreement is negotiated at the pre-application stage and the planning agreement will take the form when signed, of a legally binding contract. An agreement may or may not be subject to conditions, may impose restrictions or requirements indefinitely or for a specified period, and require payment and stipulate the period and method of payment.
- 3.2 Section 76 of the Planning Act (Northern Ireland) 2011 (the 2011 Act) enables any person who has an estate in land to enter into a planning agreement with either a council or the Department (whichever is the relevant planning authority). Section 77 of the 2011 Act provides enabling powers for making

regulations - the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015 (“the 2015 regulations”).

- 3.3 This Statutory Rule revokes the current subordinate legislation for the modification or discharge of a planning agreement i.e. the 2005 regulations, and is necessary to accommodate the future roles performed by the councils and the Department within the new two tier planning system. The 2015 Regulations will essentially reproduce the existing provisions of the 2005 Regulations, making provision for:- the form and content of applications to modify or discharge an agreement; the notification of and publicity for such applications; the determination of such applications; appeals to the Planning Appeals Commission against the relevant authority’s determination of such applications although within a revised appeal period of 4 months; transitional arrangements in relation to planning agreements and appeals functions exercised prior to the transfer of planning functions; and revocation of the 2005 regulations.
- 3.4 For those agreements already in the system it is proposed that in line with the new hierarchy of development the Department will retain responsibility for any planning agreement made in relation to what would be considered regionally significant development and all others will transfer to the new councils. This means that only the planning agreement related to the regionally significant development of George Best Belfast City Airport will remain with the Department. All other planning agreements will become the responsibility of the new councils relevant to their respective council areas.
- 3.5 In summary, this Statutory Rule provides for the management of applications to councils or the Department to modify or discharge a planning agreement. It also includes a revised appeal period of 4 rather than 6 months. The 2005 Regulations will be revoked. The Statutory Rule will ensure there is a continued and appropriately regulated system for applicants to apply for the modification or discharge of a planning agreement to councils or the Department. The proposed 4 month period for appeal will provide consistency with other appeal provisions under the 2011 Act.

4.0 Consultation

- 4.1 The draft regulations were subjected to an eight week public consultation in the Department’s Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 2 between 31 October 2014 and 31 December 2014.

5.0 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.

6.0 Regulatory Impact

6.1 A Regulatory Impact Assessment was carried out and is attached at Annex A.

7.0 Financial Implications

7.1 There is no fee associated with an application to modify or discharge a planning agreement. An applicant may incur costs in relation to any legal advice they may seek but this would be a matter for an individual applicant and is not a requirement of the Regulations. Costs to businesses associated with the Regulations are considered to be minimal. There may be increased costs to the Department/Councils/Planning Appeals Commission associated with training staff on the operation of these Regulations. Overall it is not possible to be precise regarding cost implications in detail as there is no indication as to when, or how often, these provisions will be required. The financial implications for local government of the move to the new two-tier planning system have been addressed in the financial package being transferred to the new councils.

8.0 Section 24 of the Northern Ireland Act 1998

8.1 The Department considers that the legislation complies with the requirements of section 24 of the Northern Ireland Act 1998.

9.0 EU Implications

9.1 There are no EU implications.

10.0 Parity or Replicatory Measure

10.1 This is not a parity or replicatory measure.

11.0 Additional Information

11.1 Not applicable.

Regulatory Impact Assessment (Final)
The Planning (Modification and Discharge of Planning Agreements)
Regulations (Northern Ireland) 2015

1. Title of Proposal

The Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015

2. Purpose and intended effect of measure

i) The objective:

The purpose of the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015 (“the 2015 regulations”) is to allow councils and the Department of the Environment, in certain circumstances, to modify and discharge planning agreements as part of a two-tier planning system. Under the review of public administration responsibility for the majority of planning functions carried out by the Department transfer to councils. As part of this planning and local government reform the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005 (“the 2005 regulations”), have been reviewed and relevant changes identified. The changes provide new powers for councils which allow them to carry out functions in relation to the modification and discharge of planning agreements.

In addition the Department will have powers to enter into, modify and discharge planning agreements in respect of applications for regionally significant development (including applications for major development that are to be treated as regionally significant).

ii) The background:

A planning agreement is a voluntary, legally-binding agreement which can be utilised to overcome identified barriers to the grant of planning permission, normally for large-scale major planning applications, which cannot be suitably addressed by way of conditions attached to the permission. Such an agreement is negotiated at the pre-application stage and the planning agreement will take the form when signed, of a legally binding contract. An agreement may or may not be subject to conditions, may impose restrictions or requirements indefinitely or for a specified period, and require payment and stipulate the period and method of payment. The primary intention of the proposed 2015 regulations is to grant new powers to councils to modify or discharge planning agreements as part of a two-tier planning system.

Section 76 of the Planning Act (Northern Ireland) 2011 (the 2011 Act) enables any person who has an estate in land to enter into a planning agreement with either a council or the Department (whichever is the relevant authority). Section 77 of the 2011 Act provides enabling powers for regulations - the 2015 regulations (Northern Ireland) 2015 to be made in relation to the modification and discharge of planning agreements.

iii) Risk Assessment

The Planning (Northern Ireland) Order 1991 provides for the Department only to perform planning functions in relation to planning agreements, however, as part of the two-tier planning system, revised legislation has been developed to allow councils to have new powers to carry out the transferred planning functions. The new proposal will take account of all the necessary changes required as a result of the transfer of functions to councils. The 2015 regulations revised and update the provisions which will govern the modification and discharge of planning agreements by councils and, as appropriate, the Department.

These Regulations revoke the 2005 regulations and are necessary to accommodate the future roles performed by the councils and Department. No additional risks are envisaged with the enabling powers and transitional arrangements allowing councils to perform these planning functions. If these Regulations were not brought into operation the councils and the Department would be unable to carry out their respective roles with the attendant risk that parties to an agreement would not have a clear process through which to modify or discharge an agreement.

3. Options Appraisal

Option 1 – Do nothing

Do nothing and retain the 2005 regulations is not considered viable. The 2011 Act provides for the transfer of planning powers to councils and these subordinate legislation proposals, which stem from the 2011 Act, are required for the council and Department involvement in the process to modify or discharge an agreement. In addition this option is not realistic given the Ministerial commitment to drive forward local government reform and transfer of planning functions to 11 new councils.

Option 2 – Introduce revised and updated regulations

Revised and updated regulations (as provided for in the 2011 Act) governing the modification and discharge of planning agreements by councils and the Department – the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015 will mean that there will be new responsibilities and requirements placed on the councils and revised responsibilities and requirements placed on the Department. Option 2 captures the requirements of local government reform and transfer of planning functions to 11 new councils. This RIA, therefore, focuses on the costs and benefits of implementing the proposed 2015 Regulations.

4. Costs and Benefits

It is very difficult to estimate any costs accurately, particularly as planning agreements are entered into voluntarily and completed for only a very small number of planning applications per year. Consequently applications to modify or discharge such agreements are even fewer. As a planning agreement is a legally binding contract it could be expected that both parties would incur legal costs if such an application for modification or discharge was to be made. It is not expected that the proposed regulations will have any significant financial impact on any particular person or group in the community.

Benefits

The 2015 regulations will be part of a new legislative framework for a reformed and transferred planning system in Northern Ireland which aims to improve efficiency and effectiveness.

The revised and updated regulations will ensure there is a continued and appropriately regulated system for applicants to apply for the modification or discharge of a planning agreement to councils or, as the case may be, the Department. There will be clarity in the process and a right of appeal. The proposed 4 month period for appeal will provide consistency with other appeal provisions under the 2011 Act.

Overall, the purpose of planning agreements is to make development acceptable in planning terms. At this stage, however, it is not possible to gauge in advance the total extent to which the regulations will benefit parties to a planning agreement as it is not possible to predict how many individual applications to modify or discharge an agreement will be made.

Costs

There is no cost associated with an application to modify or discharge a planning agreement. An applicant may incur costs in relation to any legal advice they may seek but this would be a matter for an individual applicant and is not a requirement of the regulations. The costs to businesses associated with **Option 2** are considered to be minimal.

There may be increased costs to the Department/Councils/Planning Appeals Commission associated with training staff and the operation of these Regulations. At this stage it is not possible to be precise regarding cost implications in detail as there is no indication as to when, or how often, these provisions will be required. In addition, organisational structures in relation to local government reform are still under development.

5. Business Sectors Affected

The regulations will affect those businesses involved in development that have entered into a planning agreement. The regulations include provisions whereby a party to a planning agreement may apply to have the agreement modified or

discharged and, if necessary, appeal to the Planning Appeals Commission in certain circumstances. The Planning Appeals Commission will have a continued appellate role. In general, though, a planning agreement is a voluntary agreement the use of which is influenced by the nature of a planning application rather than the nature of the applicant who may enter into such an agreement.

6. Enforcement and Sanctions

The Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015 do not include any provisions for enforcement or sanction as a decision to apply to modify or discharge a planning agreement is entirely at the discretion of a party to such an earlier agreement.

7. Consideration of Impacts

Equality Impact Assessment

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

Health Impact

No impact on health has been identified.

Small Business Impact Test

It is considered that the legislation will not have any greater impact on small businesses than on other businesses. The requirement of the legislation is to accommodate a two-tier planning system which will allow councils or the Department to modify and discharge planning agreements. On the basis that there is no anticipated significant impact specific consultation has not taken place on the legislation, with small businesses, beyond the public consultation process.

Human Rights Assessment

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

Rural Impact Assessment

The Department does not consider that there will be any significant differential impact of the proposals between urban and rural areas because of the specific scope of the changes.

8. Monitoring and Review

Planning agreements are concluded for only a very small number of planning applications per year and consequently applications to modify or discharge such agreements are even fewer. The policy and implementation of the regulations will be reviewed on an ongoing basis by the Department. This will include monitoring of the number of appeals received by the Planning Appeals Commission.

9. Consultation

The primary legislative powers under which these Regulations were made derive from a range of proposals which were the subject of public consultation in 2009 and Assembly scrutiny of the 2011 Act. These regulations were the subject of a further public consultation exercise from 31st October 2014 to 31st December 2014.

10. Summary and Recommendations

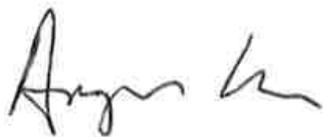
These Regulations provide acceptable amendments to the existing arrangements for the modification and discharge of planning agreements appropriate for the move to a new two-tier planning system. They have been developed as an element of the transfer of planning functions to the new councils and the establishment of a new two-tier planning system in Northern Ireland.

In view of the above, it is recommended that these Regulations be introduced into Northern Ireland law.

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.



.....
Date: 26th March 2015

Angus Kerr
Planning Policy Division
Department of the Environment
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG