

EXPLANATORY MEMORANDUM TO
THE PLANNING (INQUIRY PROCEDURE) RULES (NORTHERN IRELAND) 2015
2015 No. 189

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 section 231(3) of the Planning Act (Northern Ireland) 2011 (“the 2011 Act”) 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 provide for the procedures to be followed in connection with inquiries where the Secretary of State or the Department of Justice (DOJ) has issued a certificate under section 235 of the 2011 Act and where the Secretary of State or DOJ has directed that evidence described in a direction shall only be heard or be open to inspection at that inquiry by persons specified in the direction.

3.0 Background

- 3.1 Current subordinate legislation governing procedures for inquiries to be held as a consequence of a certificate issued under Article 123B of the Planning (Northern Ireland) Order 1991 (“the 1991 Order”) is the Planning (Inquiry Procedure) Rules (Northern Ireland) 2006 (S.R. 2006 No. 213). Such Rules provide for the conduct of an inquiry held under Article 123B (2) of the 1991 Order where an “appointed representative” has been appointed. They include provisions in relation to: the management of and access to “closed material”; the holding of separate “open” and “closed” sessions; site visits; and reporting requirements prior to the determination of the application.
- 3.2 The 2011 Act establishes a two tier planning system. Councils will become the local planning authorities responsible for drawing up their own development plans and making the vast majority of planning decisions. Councils will also be responsible for enforcing against breaches of planning control in their areas. The Planning (Inquiry Procedure) Rules (Northern Ireland) 2015 (“the 2015 Rules”) take account of changes resulting from planning and local government reform. In addition there are changes accommodating the existence of the DOJ and the possibility of the Planning Appeals Commission (PAC) conducting an inquiry where an “appointed representative” has been appointed. These 2015 Rules set out the responsibilities and requirements placed upon the Department, the PAC or

inspector appointed by the Department to hold the inquiry and the other interested parties including as appropriate councils, the applicant, persons making representations and appointed representatives. These are new revised and updated Rules and the Planning (Inquiry Procedure) Rules (Northern Ireland) 2006 are revoked.

4.0 Consultation

4.1 The Department consulted on its “Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 2” between 31 October 2014 and 31 December 2014. In the consultation document the Department indicated that it would also take forward a number of technical Statutory Rules needed to take account of the new two-tier planning model. Those technical Statutory Rules do not involve new policies or significant changes to existing policies and were not made subject to public consultation. The Planning (Inquiry Procedure) Rules (Northern Ireland) 2015 was one of those Statutory Rules.

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 may be costs to the Department/DOJ/Council/PAC associated with training staff and the operation of these Rules. The Department is unable to estimate any costs accurately, particularly as it is anticipated that the use of these Rules will be on rare occasions. The rare occasions will include the processing of those planning applications etc. whose consideration, in the opinion of Secretary of State or DOJ, raise matters relating to national security/public interest and where public disclosure of information relating to such matters would be contrary to the national/public interest. It is not expected that these Rules will have any significant financial impact on any particular group in the community. 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.

8.0 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 (Inquiry Procedure) Rules (Northern Ireland) 2015

1. Title of Proposal

The Planning (Inquiry Procedure) Rules (Northern Ireland) 2015

2. Purpose and intended effect of measure

i) The objective:

The purpose of the Planning (Inquiry Procedure) Rules (Northern Ireland) 2015 (“the 2015 Rules”) is to provide for the procedures to be followed in connection with inquiries where the Secretary of State or the Department of Justice (DOJ) has issued a certificate under section 235 of the Planning Act (Northern Ireland) 2011 (“the 2011 Act”) and where the Secretary of State or DOJ has directed that evidence described in a direction shall only be heard or be open to inspection at that inquiry by persons specified in the direction.

ii) The background:

Current subordinate legislation governing procedures for inquiries to be held as a consequence of a certificate issued under Article 123B of the Planning (Northern Ireland) Order 1991 (the 1991 Order) (“the 1991 Order”) is the Planning (Inquiry Procedure) Rules (Northern Ireland) 2006 (S.R. 2006 No. 213). Such Rules provide for the conduct of an inquiry held under Article 123B (2) of the 1991 Order where an “appointed representative” has been appointed. They include provisions in relation to: the management of and access to “closed material”; the holding of separate “open” and “closed” sessions; site visits; and reporting requirements prior to the determination of the application.

The 2011 Act establishes a two tier planning system. Councils will become the local planning authorities responsible for drawing up their own development plans and making the vast majority of planning decisions. Councils will also be responsible for enforcing against breaches of planning control in their areas. The 2015 Rules take account of changes resulting from planning and local government reform. In addition there are changes accommodating the existence of the DOJ in recent years and the possibility of the Planning Appeals Commission (PAC) conducting an inquiry where an “appointed representative” has been appointed.

These Rules set out the responsibilities and requirements placed upon the Department, the inspector or PAC appointed by the Department to hold the inquiry and the other interested parties including as appropriate councils, the applicant, persons making representations and appointed representatives. They are new revised and updated Rules and the Planning (Inquiry Procedure) Rules (Northern Ireland) 2006 are revoked.

iii) Risk Assessment

Although current legislation may be adequate for a single tier planning system (where the Department is the unitary planning authority in Northern Ireland) the new Rules will cover changes resulting from planning and local government reform i.e. the transfer of planning functions to councils. In addition they will cover the existence of the DOJ and the possibility of the PAC conducting an inquiry. The 2015 Rules will provide for amended procedures to be followed in connection with inquiries to be held under section 235 of the 2011 Act and where, as appropriate, the Secretary of State or the DOJ has directed that evidence described in the restricting direction shall only be heard or be open to inspection at that inquiry by persons specified in the restricting direction. New, revised and updated rules are necessary and the 2015 Rules specify the respective roles of the Department, the appointed representative, the Secretary of State, DOJ, the inspector and the PAC involved in the inquiry process.

3. Options Appraisal

Option 1 – Do nothing

Do nothing and retain the Planning (Inquiry Procedure) Rules (Northern Ireland) 2006 (“the 2006 Rules”) is not considered viable. 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 rules

This option is to introduce revised and updated rules (as provided for in the 2011 Act) governing inquiry procedures – the Planning (Inquiry Procedure) Rules (Northern Ireland) 2015. This will mean that there will be new and revised responsibilities and requirements placed on the Department, DOJ, the inspector (or possibly the PAC) appointed by the Department to hold the inquiry and the other interested parties including as appropriate the applicant, persons making representations and appointed representatives.

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 2015 Rules.

4. Costs and Benefits

The Department is unable to estimate any costs accurately, particularly as it is anticipated that the use of these Rules will be on rare occasions. The rare occasions will include the processing of those planning applications etc. whose consideration by the Department raises matters relating to national security/public interest and where public disclosure of information relating to such matters would be contrary to the national/public interest. It is not expected that the proposed 2015 Rules will have any significant financial impact on any particular group in the community.

Benefits

The 2015 Rules will contribute to the planning framework for dealing with those rare planning applications etc or exceptional cases of evidence at any public local inquiry where the public disclosure of information would be contrary to the national/public interest.

The Department will benefit by having revised, updated and new procedures relating to an inquiry to be held as a consequence of a certificate issued under section 235 of the 2011 Act.

A further benefit relates to the Department having rules which provide for the conduct of an inquiry held under the 2011 Act where *an inspector or the PAC* could be appointed by the Department to hold the inquiry.

The public/individuals/private sector/developers will benefit as the rules apply to an appointed representative to represent the interests of any person who will be prevented from hearing or inspecting any evidence at an inquiry if a restricting direction is given by the Secretary of State or the DOJ.

Costs

There may be increased costs to the Department/DOJ/Council/PAC associated with training staff and the operation of these Rules. It is not possible to be precise regarding cost implications in detail as there is no indication regarding when or how often these provisions will be required. In addition organisational structures in relation to planning and local government reform are still under development.

5. Business Sectors Affected

The effects of the rules will be equal for all businesses involved in relation to the inquiry. Persons (either individuals or companies) could be involved in relation to an inquiry as applicants, persons making representations and appointed representatives.

6. Enforcement and Sanctions

The 2015 Rules do not set out any specific rules for enforcement and sanctions and are in keeping with the 2006 Rules. The 2015 Rules set out new and revised responsibilities and requirements placed on the Department, DOJ, the inspector (or

possibly the PAC) appointed by the Department to hold the inquiry and the other interested parties including as appropriate the applicant, persons making representations and appointed representatives

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

The legislation will apply to small businesses where they are representing appellants or acting as appellants themselves, however it is considered that there is no greater impact on small businesses than on other businesses.

Human Rights Assessment

The Department considers that the proposed 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

The policy and implementation of the rules will be reviewed on an ongoing basis by the Department. It is difficult to set any performance measure e.g. in relation to the number of inquiries to be decided within a set timescale, as it is anticipated that these Rules will be operational only on rare occasions.

9. Consultation

The Department consulted on its “Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 2” between 31 October 2014 and 31 December 2014. In the consultation document the Department indicated that it would also take forward a number of technical Statutory Rules needed to take account of the new two-tier planning model. Those technical Statutory Rules do not involve new policies or significant changes to existing policies and were not made subject to public consultation. The Planning (Inquiry Procedure) Rules (Northern Ireland) 2015 was one of those Statutory Rules.

10. Summary and Recommendations

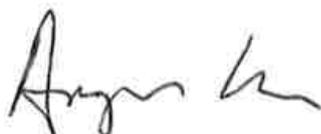
Option 2 is the recommended option as it implements the new and required provisions contained in the 2011 Act through the 2015 Rules. It is considered the benefits of the proposal greatly outweigh any costs. Given the Ministerial commitment to drive forward planning and local government reform there are now new and revised responsibilities and requirements. These are placed on the Department, DOJ, the inspector (or possibly the PAC) appointed by the Department to hold the inquiry and the other interested parties including as appropriate the applicant, persons making representations and appointed representatives.

The new rules are necessary and deal with the respective roles of the Department, the appointed representative, the Secretary of State, DOJ, the inspector and the PAC involved in the inquiry process. 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.

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.



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