

EXPLANATORY MEMORANDUM TO
THE PLANNING (DEVELOPMENT MANAGEMENT) REGULATIONS
(NORTHERN IRELAND) 2015

2015 No. 71

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 25(2), 26(1), 27(4) and (5), 30(1), 31(1) and (3), 50(2) and 247(1) and (6) of the Planning Act (Northern Ireland) 2011 (the 2011 Act) and is subject to the negative resolution procedure.
- 1.3 The Rule comes into operation on 1 April 2015.

2. Purpose

- 2.1 The Statutory Rule sets out the details of key elements of the development management process in relation to the new hierarchy of development, pre-application community consultation, pre-determination hearings and schemes of delegation while also making a transitional provision.

Hierarchy of Development

- 2.2 The Statutory Rule establishes a hierarchy of development based on a 3-tier classification of developments consisting of regionally significant, major and local. Under the 2011 Act, an application 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.
- 2.3 Regulation 2 differentiates between the major and local categories of development by establishing clear thresholds. In addition, regulation 3 identifies potentially regionally significant applications within the major category. Applications which are of regional significance in effect form the 'top slice' of the major development category. The Schedule to the Regulations sets out nine 'classes' of major developments and five classes of regionally significant development, each with a description and relevant threshold or criteria.

Pre-application community consultation

- 2.4 Section 27 of the 2011 Act places 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 by this Rule.

- 2.5 The Rule sets out the details to be included in the proposal of application notice required under section 27 of the 2011 Act and prescribes the manner of pre-application community consultation which an applicant will have as a minimum to undertake. This requires the holding of a public event and publication of the proposed event in a local newspaper. The Rule also prescribes a time period of 21 days for requesting additional information where section 27 of the 2011 Act has not been complied with.

Pre-determination hearings

- 2.6 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.
- 2.7 The Rule sets 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 but which have been returned to a council to determine. 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.

Schemes of delegation

- 2.8 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.
- 2.9 The Statutory Rule makes provision in relation to the content of the scheme of delegation and prescribes the circumstances that prohibit an appointed officer from determining an application for planning permission. The Rule also provides 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.
- 2.10 Finally, the Rule provides that a council will be required to prepare a scheme of delegation at intervals of no greater than every three years.

Transitional provision

- 2.11 At the date of transfer of planning powers to councils, sections 27 (pre-application community consultation) and 50 (duty to decline to determine application where section 27 not complied with) 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, the

Statutory Rule provides that pre-application community consultation will apply only to planning applications made on or after 01 July 2015. This provides a lead in time for applicants to prepare for the new pre-application community consultation arrangements while at the same time still permitting major applications (including regionally significant) to be made in the interim period.

3. Background

- 3.1 The 2011 Act provides the primary legislative framework for a new development management process which is set out in this Statutory Rule.
- 3.2 Overall the new process is intended to improve efficiency in developing and determining planning applications and enhance community involvement at the appropriate points in the planning process

4. Consultation

- 4.1 The draft regulations were subjected to a 12 week public consultation in the Department's 'Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1' between 28 May 2014 and 20 August 2014.

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.

6. Regulatory Impact

- 6.1 A Regulatory Impact Assessment carried out in respect of the changes is attached to this memorandum at Annex A.

7. Financial Implications

- 7.1 There will be some minor costs to councils in preparing schemes of delegation and holding pre-determination hearings, however, these form part of their functions under the new two tier planning system and meet the requirements of the 2011 Act to transfer planning powers to councils in April 2015. The financial implications for local government of the move to the new two-tier planning system, including funding to support the delivery of the development management 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 legislation complies with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 This is not a parity or replicatory measure.

11. Additional Information

11.1 Not applicable.

Regulatory Impact Assessment (Final)
The Planning (Development Management) Regulations
(Northern Ireland) 2015

1. Title of Proposal

The Planning (Development Management) Regulations (Northern Ireland) 2015. The rule is subject to the negative resolution procedure.

2. Purpose and intended effect of the measure

i) The objective:

The Statutory Rule puts in place the regulatory framework required to implement the development management provisions in Part 3 of the Planning Act (Northern Ireland) 2011 (the 2011 Act). The purpose of the rule is to improve efficiency in developing and determining planning applications and enhance community involvement at the appropriate points in the planning process.

The 2011 Act will transfer responsibility for the majority of planning decisions from the Department to district councils and reform the planning system in Northern Ireland. Although the Act received Royal Assent on 4th May 2011 the majority of provisions will not come into operation until April 2015 in conjunction with the transfer of planning powers to district councils as part of local government reform. The 2011 Act provides the primary legislative framework for the new development management process. The Development Management Regulations stem from these provisions.

ii) The background:

On the commencement of the transfer of planning powers, councils will become responsible for determining the vast majority of the planning applications within their respective districts. Development Management is a key part of the planning system. It supports the Executive's central purpose of growing a dynamic, innovative economy alongside efforts to improve our society, and protect and enhance our environment.

These Regulations set out the detail to a new development management system and include:

- a new development hierarchy based on a 3-tier classification of developments (consisting of regionally significant, major and local);
- pre-application consultation between prospective applicants and communities;

- pre-determination council hearings prior to the determination of certain types of applications; and
- schemes of delegated decision making for local planning applications.

iii) Risk Assessment

If the proposals are not implemented the transfer of planning powers to the councils as provided for in the 2011 Act would not be possible.

The 2011 Act recognises that the planning application system needs to become more proportionate, faster and more responsive to the needs of all users. The Regulations provide the further detail required in order to make the 2011 Act provisions meaningful. Without these Regulations the new system would not be workable.

3. Options Appraisal

Option 1 – Do Nothing

This option is not considered viable as the 2011 Act provides for the transfer of planning powers to councils and these subordinate legislation proposals which stem from the 2011 Act will be required in order to introduce a new development management process.

Option 2 – Introduce subordinate legislation for a new development management system

This option is to introduce subordinate legislation for a new development management process as contained in the Regulations which would see the introduction of:

A new hierarchy of development

Section 25 of the 2011 Act specifies that development will fall into two categories to be known as “major development” and “local development”. These applications will be determined by councils after the transfer of planning powers. The 2011 Act provides the enabling power to prescribe in regulations classes of development and assign each class to either “major” or “local” developments.

In addition, under section 26 of the 2011 Act major developments will also include a higher tier of developments to be known as “regionally significant developments”. These development proposals 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, this will mean in practice there will be three categories.

The schedule to the Development Management Regulations sets out the description of development and the thresholds for major and regionally significant development.

The definition of local developments has been kept straight forward by classing all remaining developments which are neither regionally significant, nor major development as local development.

Pre-application community consultation

Section 27 of the 2011 Act places 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 Development Management Regulations. The Development Management Regulations set out the key steps and requirements within that process by prescribing the content of the proposal of application notice and the minimum requirements to be placed on the prospective applicant in relation to consultation with the public.

The objective is that local communities are better informed about major and regionally significant development proposals and to have an opportunity to contribute their views before a formal planning application is submitted.

Section 50 of the 2011 Act also provides that the council or Department must decline to determine an application where the applicant has not complied with the requirements of pre-application consultation.

Pre- determination hearings

The Regulations make provision for a mandatory hearing prior to the determination of certain types of planning applications. The proposals give the opportunity of appearing before and being heard by the council for applicants and those who have made representations on an application for a major development which has been the subject of call in by the department and has been returned to the council for determination.

Schemes of delegated decision-making

The Regulations require each council to prepare a scheme of officer delegation, stating the application types within the local development category where the council will allow the decision to be taken by an appointed officer rather than a full council or committee. The Regulations also set out conditions where the Scheme of Delegation would not be able to delegate determination, as well as the procedure for adoption, publication and review of the scheme. These proposals aim to improve efficiency in the decision making process effectively carrying forward existing streamlining arrangements for processing planning applications.

4. Costs and Benefits

Option 1: Do Nothing

Costs:

This option would not incur any additional costs, however this option is not considered viable as it does not meet the requirements of the 2011 Act to transfer planning powers to councils.

Benefits:

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

Option 2: Introduce subordinate legislation for a new development management system

A new hierarchy of development

Costs:

The Department will incur costs in the production of guidance to inform all users of the system, to ensure that they are familiar with the information requirements and process steps involved.

The consultation between prospective developers and the Department to establish if an application is to be determined as a regionally significant development will have a staffing resource implication for the Department. This cost should be offset later in the process through better thought out application proposals, more efficient processes and shorter processing times.

Prospective applicants/developers will incur minor costs if they are required to consult with the Department on prospective applications to establish if the Department will determine the application as regionally significant development. The prospective applicant will see the benefit of this cost as they will be able to plan their project and resources more efficiently.

Benefits:

Clearly defined thresholds will be applied to major, regionally significant and local development types in order to make the process straightforward and easily understood by all users. This will ensure clarity about which process a proposed development should follow and provide a proportionate response to applications depending on their scale and complexity.

Pre-Application Community Consultation

Costs:

For local communities and community groups, if they wish to attend the public event arranged by the prospective applicant/developer, there will be marginal costs in preparing for, travelling to and contributing to pre-application events.

For prospective applicants/developers the primary cost of pre-application community consultation could relate to compliance with any requirements set out in the council's or Department's response to the proposal of application notice. The statutory minimum requirements for the consultation will be to hold at least one public event in the locality and arrange local advertising.

Prospective applicants/developers will incur costs in consulting, convening and supporting public events, arranging local advertising and completion of proposal of application notice and pre-application consultation report for the council or as the case maybe the Department.

Possible costs for applicants/developers of a public event are indicated below:

- venue hire - £200;

- preparation of materials – contingent on standard, numbers and dissemination;
- staff/consultants' time – contingent on staff levels;
- advertising - £200.

Whilst an estimate of the cost of undertaking the statutory minimum is calculable, this is not so for any additional requirements set out by the Department or council, which should be proportionate to the nature, extent and location of the proposed development and the likely effects both at and in the vicinity of that location

Department/councils will incur the costs of handling, processing and responding to the proposal of application notices. These cost should be offset later in the process through better prepared application proposals, leading to more efficient processes and shorter processing times

Benefits:

Pre-application Community Consultation will better inform local communities about regionally significant and major development proposals and will provide the community with an opportunity to contribute their views before a formal planning application is submitted. It will facilitate meaningful public engagement upfront and in so doing improve the quality of planning applications, mitigate negative impacts where possible and address community issues or misunderstandings, and mean better informed decisions which may be processed more quickly. The Department is committed to encourage prospective applicants to engage in meaningful and effective pre-application community consultation and has produced guidance on how pre-application consultation could be undertaken by prospective applicants for major applications.

Pre- determination hearings

Costs:

Applicants will incur costs in travelling to and preparing to appear before the pre-determination council hearings.

Individuals and local communities, who have made representations in respect of an application, if they wish to attend, will incur costs in travelling to and preparing to appear before the pre-determination council hearings.

Councils will incur the costs of arranging and hosting the hearings and the staff costs of those involved in the hearing. It is not possible to estimate the number of applications which are to be offered the opportunity of a pre-determination hearing because applications are not currently classified in the same way as they will be once the provisions of the 2011 Act have been commenced.

Benefits:

Pre-determination hearings will make the planning system more inclusive and transparent, allowing the views of applicants and those who have made representations to be heard before a planning decision is taken when an application for a major development has been subject to a notification under call-in and has been returned to the council for determination.

Schemes of delegated decision making

Costs:

There will be marginal costs for councils in initially setting up and reviewing the schemes of delegation.

Benefits:

Delegated decision making will create efficiencies in the planning system by allowing quicker decision making on the smaller less contentious local developments and by allowing elected members to focus their attention on more complex or controversial applications.

5. Business Sectors Affected

The Regulations will affect businesses who engage with the planning system. They will place some additional procedural and financial requirements on agents, particularly those who are to engage in pre-application community consultation, which will involve consulting, convening and supporting public events, arranging local advertising and completion of proposal of application notices and pre-application consultation reports.

6. Enforcement and Sanctions

The Department does not consider that the Regulations significantly add to the enforcement provisions and sanctions which are part of the planning system.

7. Consideration of Impacts

Equality Impact Assessment

The Department's screening for equality impacts considers that the proposals will not discriminate unlawfully, unfairly or unjustifiably against any sections of the community specified in Section 75 of the Northern Ireland Act 1998. The views of the public were invited on the screening analysis through the consultation paper.

Health Impact

No impact on health has been identified.

Small Business Impact Test

All businesses that engage with the planning system will be affected by the introduction of the development management plan process but the Department does not expect the Regulations to impact adversely upon small businesses. Small businesses and their representatives were consulted as part of the wider public consultation.

Human Rights Assessment

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

Rural Impact Assessment

There will be no significant differential impact of the proposals between urban and rural areas because of the specific scope of the changes.

8. Monitoring and Review

Under the provisions of section 228 of the 2011 Act the Department must carry out a review and report back to the Assembly on the implementation of the Act three years after planning functions transfer to councils and every five years thereafter. The Department will monitor how effectively the development management system is operating through the overall monitoring of planning performance. Under the terms of the 2011 Act, councils are required to keep their Scheme of Delegation under review and to prepare a scheme whenever required to do so by the Department.

9. Consultation

(i) Within Government

The Regulations have been the subject of discussion and internal consultation within DOE and consultation with other departments.

(ii) Public Consultation

The public consultation paper "Reform of the Planning System in Northern Ireland: Your chance to influence change" issued in July 2009 set out the context for the reform of the development plan system. A full public consultation on the policy to deliver option 2 was included in the Department's Planning Reform and Transfer to Local Government Proposals for Subordinate Legislation: Phase 1 Consultation between 28 May 2014 and 20 August 2014.

10. Summary and Recommendations

Option 2 is the recommended option as it will ensure that all the statutory requirements to deliver a new development management system as provided for in the 2011 Act are met.

11. Declaration

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs."

Signed

Date

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