EXPLANATORY MEMORANDUM TO

THE PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER (NORTHERN IRELAND) 2015

2015 No. 72

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 32, 40, 41 (and that section as it is applied by sections 58(7), 143(6) and 159(3)), 42(7), 45(2), 54(2), 56(1), 60, 67(5), 171, 185(3), 187(5), 191(4), 229, 242(1) and (2) and 247(6) of the Planning Act (Northern Ireland) 2011 (the 2011 Act).

1.3 The Rule is due to come into operation on 1 April 2015.

2.0 Purpose

2.1 The main purpose of this Statutory Rule is to transfer the necessary powers required to operate the planning system currently contained within the Planning (General Development) Order 1993 (the 1993 GDO) to the councils. It also introduces some new provisions, namely:

- Design and access statements for major applications;
- Non-material changes to a previous grant of planning permission:
- Publicity of applications for planning permission; and
- Changes to the statutory consultation process.

3.0 Background

3.1 This Order relates purely to development management, those provisions in the 1993 GDO that dealt with permitted development can now be found in a separate permitted development order.

3.2 The process to be followed when making an application for planning permission is established, setting out the form and content of the application. This is carried over from the 1993 GDO, but now also requires the inclusion of both a pre-application community consultation report and a design and access statement whenever either of these are deemed necessary. The form and content of applications for a renewal of a planning permission is also established (Article 3).

3.3 Applications for outline planning permission can be granted separately, pending future approval of reserved matters. However the council or as the case may be the Department, may require that the application ought not to be considered separately from the application for reserved matters, depending on the circumstances of the case. In addition, if a council or the Department is

unable to determine an application unless further details are supplied, it shall notify the applicant and specify the details required (Article 4).

3.4 The form and content of applications for reserved matters is established (Article 5).

3.5 Design and access statements: this new provision requires that such statements made under section 40 of the 2011 Act shall be required for certain specified development and specifies the issues that such statements must address. It also specifies those applications where such statements are not required (Article 6).

3.6 Non-material changes: this new provision prescribes the manner of an application for a non-material change to a previous grant of planning permission (Article 7).

3.7 Notice etc. of applications for planning permission: there is now a statutory requirement to send notices of planning applications to identified occupiers of premises on neighbouring land. Definitions of “identified occupier” and “neighbouring land” are included in statute for the first time. The form and content of the notice is also specified. The existing requirements to publish notice of planning applications in at least one newspaper circulating in the locality of the proposed development or on a website (where one is maintained for this purpose) is carried over from the 1993 Order (Article 8). Similar provisions apply, with modifications, to planning appeals.

3.8 Certificates and notices under section 42 of the 2011 Act: this requires that such notices shall be in the form set out in Schedule 1. These notices satisfy a council, or the Department, that the owner has consented to, or is aware of the development of their land (including land held on a tenancy) (Article 9).

3.9 Notice of reference of applications to the Department: this new provision requires a council to give notice to applicants of directions made by the Department when it calls in applications under section 29 of the 2011 Act (Article 10).

3.10 Certificate of lawfulness of existing use or development and certificate of lawfulness of proposed use or development: the nature of these certificates is set out in Schedule 2. The form and content of the application is also prescribed in the Article. Councils may request further information if necessary and an applicant has a right of appeal if a council declines the application (Article 11).

3.11 Applications made under planning conditions: this provision is carried over from the 1993 GDO and requires that a council, or the Department, shall give notice of its decision to the applicant on any approval required by a planning application condition within 2 months of it being made or such longer period as may be agreed in writing (Article 12).

3.12 Consultations as to applications for planning permission: this new provision requires a council, or the Department to consult a statutory consultee before determining an application for planning permission for any of the development types listed in Schedule 3. Schedule 3 is in two parts to accommodate the position of NIEA. NIEA, because it has no legal identity outside of the

Department, will only be a statutory consultee for applications made via the councils and consequently only appears as a statutory consultee in Part 1 of the Schedule. There is a prohibition on determining the application within 21 days, or such longer period as may be agreed between the council, or the Department, and the consultee to allow the consultee time to make its response. This prohibition does not apply if the consultee makes a substantive response before these time limits have expired (Article 13).

3.13 Consultation before the grant of planning permission pursuant to section 54 of the 2011 Act: this new provision requires a council, or the Department to consult those statutory consultees it considers appropriate before determining a section 54 application. Section 54 allows an applicant who has already been granted planning permission to apply to have the conditions changed or set aside; provided the time limits have not expired on this permission (Article 14).

3.14 Duty to respond to consultation: this new provision requires a statutory consultee to make a substantive response to a request from a council, or the Department, within a specified time limit or a period agreed in writing between the consultee and council/Department. The nature of a substantive response is also specified (Article 15).

3.15 Duty to respond to consultation: annual reports: this requires consultees to provide annual reports to the Department outlining their performance in meeting their statutory requirement under Article 15. (Article 16).

3.16 Directions restricting the grant of planning permission: this allows the Department to give directions preventing a council from granting planning permission indefinitely or for a specified period in respect of any development or any class of development that may also be specified (Article 17).

3.17 Directions requiring information: this allows the Department to give directions to councils to provide, in relation to applications made to the council for planning permission, such information as may be specified (including the manner in which any such application was dealt with) to the Department or any such person specified in the direction (Article 18).

3.18 Directions requiring consideration of conditions: this new provision allows the Department to give directions to a council whereby the council is required to consider imposing any condition specified in the direction if the council is minded to grant planning permission and not to grant planning permission until it has satisfied the Department that such a condition has been considered (Article 19).

3.19 Time period for decision: this provision is carried over from the 1993 GDO (though now an amendment makes it applicable to councils). This requires a council to give notice to an applicant that it has determined an application or that it has been referred to the Department within a specified timeframe. This timeframe is 8 weeks, or 16 weeks in the case of major developments. Alternatively a different timeframe can be agreed between a council and the applicant, except where the applicant has given notice of appeal to the Planning Appeals Commission. Allowance is also made for those cases where councils may have to wait for decisions to be made by the Secretary of

State or the Department of Justice on cases that may involve national security or public interest implications (Article 20).

3.20 Permission to develop land without compliance with conditions previously attached: this allows the Department to cause a public local inquiry to be held or, alternatively if a notice of opinion is issued, allows the applicant to request a hearing before the Planning Appeals Commission, whichever is appropriate in the particular circumstances in each case (Article 21).

3.21 Written notice of decision or determination relating to a planning application: this provision is carried over from the 1993 GDO and requires a council, or the Department, to give notice in writing of decisions or determinations on applications for planning permission or approval of reserved matters. The notice shall give reasons for any application refused or permitted subject to conditions (Article 22).

3.22 Schemes of delegation: this new provision allows councils to enable the determination of specified local developments under section 31 of the 2011 Act by an appointed officer by ensuring that references to a council within Articles 10, 13, 17 – 20, 22 and Schedule 3 of the Order may also be treated as references to the appointed officer (Article 23).

3.25 Register of applications: this establishes the form and content of records to be kept by councils in their planning registers, pursuant to section 242 of the 2011 Act. The Department is also required to send copies of the specified documents to the relevant council whenever it determines a planning application so that they can be placed on the council's register (Article 24).

3.26 Register of Simplified Planning Zones and Enterprise Zones: this provision is carried over from the 1993 GDO and specifies the information to be recorded when a planning authority establishes a Simplified Planning Zone. It also includes the information that is to be recorded when the Department establishes an Enterprise Zone (Article 25).

3.27 Register of enforcement notices etc.: this provision is carried over from the 1993 GDO and specifies the information to be recorded in connection with the service of enforcement notices (Article 26).

3.28 Register of Orders and Directions: requires the recording of discontinuance orders made under section 73 of the 2011 Act and directions made by the Department pursuant to sections 105(4) (directions specifying that certain classes of building in a conservation area can be omitted from the requirement that conservation consent is required prior to demolition) and section 118 (that the presence of certain hazardous substances does not constitute a contravention of hazardous substances control in an emergency) of the 2011 Act, tree preservation orders and any provision included in a development order by virtue of section 32 of the 2011 Act. The information to be recorded is specified (Article 27).

3.29 Registers held using electronic storage: this provision, carried over from the 1993 GDO, requires that if a council uses electronic storage to keep the above registers, then it shall make them available to public inspection on a website maintained for that purpose (Article 28).

3.30 Use of electronic communications: this provision, carried over from the 1993 GDO, applies to anyone using electronic communication to make an application for planning permission under Article 3, an approval for reserved matters under Article 5, for a certificate of lawfulness of existing (or proposed) use or development under Article 11 or a claim for compensation or serving a purchase notice under Article 29. In such cases it is deemed that the applicant shall be taken to have agreed to the use of electronic communication for all purposes relating to the application and the address for such communications shall be that which was associated with the application. This agreement can be revoked if the applicant gives such notice in writing (Article 29).

3.31 Claims for compensation and purchase notices: this provision, carried over from the 1993 GDO, requires that compensation claims to a planning authority under sections 185 (compensation for loss due to stop notice and 187 (compensation for loss due to temporary stop notice) of the 2011 Act shall be made in writing and served within 6 months (or a longer period with the agreement of the council, or as the case may be the Department) of the date of the decision that provoked the claim. The same stipulations also apply to the service of a purchase notice made under section 191 of the 2011 Act (Article 30).

4.0 Consultation

4.1 The primary powers under which the The Planning (General Development Procedure) Order (Northern Ireland) 2015 (the GDPO) is made derive from a range of proposals which were publicly consulted upon in 2009. The new provisions within the GDPO were further consulted on in 2014. All the new proposals received strong support except for the definition of who would receive a neighbour notification letter to alert them to a new planning application. The Department responded with a minor amendment to the definition to make its meaning clearer.

5.0 Equality Impact

5.1 Equality Impact Screenings carried out in respect of these proposals found no evidence of any differential impact on any of the section 75 categories.

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 will be minimal additional costs incurred by the introduction of the new provisions within the GDPO. For the vast majority of cases there will be no additional costs as these essentially formalise existing guidance and best practice. In some cases there will be a cost savings to large firms or those businesses that are involved in large scale developments. Placing statutory consultees under a requirement to make their responses within a prescribed timeframe and to report on their performance on meeting those timeframes

should bring general benefits by speeding the planning system.

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 l 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.

Annex A

REGULATORY IMPACT ASSESSMENT (FINAL)

Procedures Order

1. Title of Proposal

The Planning (General Development Procedure) Order (Northern Ireland) 2015 (the GDPO)

2. Purpose and intended effect of measure

i) The objective:

The key aims of modernising the planning system are to make it: fit for purpose; more efficient; more inclusive; and play its part in delivering sustainable development. Flowing from the Planning Act (NI) 2011 (the 2011 Act) the emphasis of the Planning (General Development Procedure) Order (Northern Ireland) 2015 (the GDPO) is on supporting planning reform and the transfer of planning powers to the new district councils. Changes to development management are concerned specifically with making the processes around applying for planning permission fit for purpose and responsive to different types of development proposal; improving efficiency in developing and determining applications and improving public involvement in the consideration of proposals requiring such permission.

Many of the elements of the new GDPO currently exist within the Planning (General Development) Order (Northern Ireland) 1993 (the 1993 GDO) and therefore only require technical amendments to make the powers available to the new councils, that is, to change the wording from 'the Department' to 'the council or, as the case may be, the Department'. The permitted development schedules will not be set out in the GDPO but will be replicated in a new Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO). Alongside the existing elements of the 1993 GDO will sit new elements from Part 3 of the 2011 Act. The SR introduces the following new provisions:-

- Design and access statements for major applications;
- Non-material changes to a previous grant of planning permission;
- Publicity of applications for planning permission; and
- Changes to the statutory consultation process.

ii) The background:

The new Order is required to carry forward provisions within the 1993 GDO and also implement new elements from Part 3 of the 2011 Act. The 2011 Act received Royal Assent in May 2011 and provides primary powers in relation to a range of reforms to the planning system and the transfer of planning powers to local councils. The GDPO is made on the basis of a range of enabling powers in the 2011 Act and in addition to technical changes to the existing system to accommodate the new two-tier planning system it will also:

- introduce a requirement for design and access statements (DAS);
- provide for non-material changes to planning permission;
- set out publicity arrangements for applications for planning permission (including a statutory requirement to neighbour notify); and
- new provisions relating to a statutory duty on identified consultees to provide a substantive response to a consultation request within a prescribed timescale.

These powers will be available to councils when they take over planning functions in 2015. The Order will ensure that these elements are delivered in an effective and consistent manner across Northern Ireland.

iii) Risk Assessment and Rationale for Government Intervention:

In the “Reform of the Planning System in Northern Ireland: Your Chance to Influence Change” (July 2009) the Department set out the aims and objectives of planning reform as improving the Northern Ireland economy, while promoting social inclusion, sustainable communities and personal health and well being as well as promoting viable and vital towns and cities and helping to create shared spaces accessible to all and where people can live, work and socialise. The Department must also balance this with protecting the environment and heritage and contributing to sustainable development.

The 2009 reform paper set out the measures intended to improve all aspects of the planning system including development management, enforcement and regulation of householder development. It recognised that the key focus for development management is proportionality and developing ways to deal with different types of development in different ways to support greater efficiency and effectiveness.

There are several areas within the current system, which could be improved to the benefit of the council, the Department and those who submit applications for planning permission. In many cases straightforward, non-contentious development proposals may have no significant impacts and therefore the associated resource costs could be reduced and redirected to those applications of greater economic and social importance.

3. Options Appraisal

Option 1 – Do Nothing

This is not a viable option as the current provisions set out in the 1993 GDO would have to be replicated in a new Development Order under the 2011 Act and amended to take account of the move to a new two-tier planning system. This is not considered to be an appropriate option as it fails to achieve the Department's objectives of further reform of the development management regime to support the transfer of a more efficient and effective planning system to local government.

Option 2 – Changes to the processes currently set out in the 1993 GDO

The 1993 GDO will be split into two documents:

(i) The Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO); and
(ii) The Planning (General Development Procedure) Order (Northern Ireland) 2015 (the GDPO).

This RIA focuses on the latter document. Each of the new areas of provision detailed in the background are discussed in turn.

4. Design and Access Statements for Major Applications

4.1 Purpose and intended effect of measure

i) The objective:

Section 40(3) and (4) and Section 86 (2) and (3) of the 2011 Act establishes for the first time that certain descriptions of applications for planning permission and listed building consent are to be accompanied by a design and access statement (DAS). The purpose of the DAS is **to explain and justify the design and access principles and concepts** on which a development proposal is based, and explain how these will be reflected in individual aspects of the scheme.

ii) The background:

The Department recognises the need to deliver inclusive environments that can be used by everyone, regardless of age, gender or disability. Prior to the 2011 Act, there was no statutory requirement for a statement to accompany a planning application explaining the design principles and concepts that have been applied to the development, and how issues relating to all forms of access including access for disabled people, to the development, have been dealt with. This new requirement ensures that inclusive design is followed at key stages and in the design features of the development. The intention is to consider and to integrate design and access elements into developments at an early stage.

4.2 Options Appraisal

Option 1 – Do Nothing

Retain the status quo and do not commence the provision to request an applicant to accompany an application for planning permission and listed building consent with a DAS.

Option 2 - Require a design and access statement for development which is major or within a designated area consisting of one or more dwelling houses or the provision of a building or buildings where the floor space is 100sq metres or more.

This would introduce a statutory requirement for a more focussed range of planning applications, namely major developments and local developments where there would be a potential impact on areas designated as sensitive.

4.3 Costs and Benefits

Sectors and groups affected

Both options will impact on how councils, or the Department consider and assess planning applications, although the potential impact will be different, depending on the option taken forward. For developers promoting major developments, the impact of these options may not be substantial. In terms of design, the requirements would essentially formalise existing guidance and best practice, (for example Development Control Advice Note 11 – Access for All – Designing for an accessible Environment et al). For developers of sites in sensitive areas, the requirement to produce a design statement, while new, also reflects current guidance. The major effect will be on developers where access issues are required in the statement.

4.4 Benefits

Option 1 – Do Nothing

There are no benefits associated with this option as DAS is placing in statute what is already in guidance and best practice.

Option 2 - Require a design and access statement for development which is major or within a designated area consisting of one or more dwelling houses or the provision of a building or buildings where the floor space is 100sq meters or more.

Although design statements are encouraged through advice, they are not a statutory requirement under current NI planning legislation. This option would put into statute what is already advised as being good practice - leading to better designed and accessible developments. The focus for both developer, council and Department resources will be on developments which have a potentially major impact either on design or access issues.

4.5 Costs

Option 1 – Do Nothing

There are time costs incurred by the Council, or Department involved in reaching decisions due to lack of transparent and accountable design and access arrangements.

Option 2 - Require a design and access statement for development which is major or within a designated area consisting of one or more dwelling houses or the provision of a building or buildings where the floor space is 100sq meters or more.

The potential additional costs of preparing a statement have been considered.

Current good practice with regard to major developments is for a design statement to be prepared and therefore there should be little additional cost in meeting the statutory obligations for a design and access statement.

In England when preparing regulations, Commission for Architecture and the Built Environment was consulted. It suggested that given that design and access issues have to be addressed as part of the normal process of drawing up development proposals, it was not believed that the production of the statement should, on average, take more than an additional 3 - 4 hours, that is, half a day. With the likely time constraints and it has been suggested that this would equate to a cost of £200 – £250.

Some of the financial costs attributable are likely to accrue under this option, though they will relate to a lower number of overall applications. In addition, it is likely that some planning applications where design and access issues may be important factors in the consideration of a proposal will not be accompanied by a statement which sets out how these issues have been considered. However, there is scope for a council, or the Department to ask for additional information where they consider it necessary.

In light of responses to the consultation paper and the issues raised above, the Department is proposing to take forward Option 2.

5. Non-material Changes to Previous Grant of Planning Permission

5.1 Purpose and intended effect of measure

i) The objective:

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:

- impose new conditions; and
- remove or alter existing conditions.

The purpose of bringing forward specific legislative provisions for making non-material changes to a previous grant of planning permission is to prevent unnecessary delay, cost and uncertainty for developments where minor amendments to proposals are required after planning permission has been granted.

ii) The background:

Under the Planning (Northern Ireland) Order 1991 (the 1991 Order) planning permission is required for the carrying out of any development of land.

However, when developers are carrying out development in accordance with planning permission, they can often find for a variety of reasons that minor changes to their original proposal are necessary. In many cases, the minor changes required will not significantly change the scheme that was originally granted planning permission, have no or very small effects on public amenity and are, in effect, “non-material”. Nevertheless, the change may require a new planning application.

The Department considers that the need to make a new planning application for non-material changes and to comply with the full rigours of the planning application process, including public consultation, places disproportionate demands upon both the Department and developers. The views of members of the public and other consultees may be sought on an almost identical proposal to that which has already been granted planning permission. There is also potential for additional cost and delay hindering completion of development.

In England, provision to provide a mechanism to make non-material amendments to planning permission was introduced via section 190 of the Planning Act 2008, which inserted section 96A into the Town and Country Planning Act 1990 and was commenced in October 2009. This allows non-material amendments to be made to an existing planning permission via a simple application procedure with a quick decision time.

In Scotland, provision was made in section 31A of the Town and Country Planning (Scotland) Act 1972, by an amendment within section 46 of the Local Government and Planning (Scotland) Act 1982, giving planning authorities power to vary any planning permission granted by them, on the request of the grantee or of a person acting with his consent, if they consider that the variation sought is not material. The provision is currently located in Section 64 of the Town and Country Planning (Scotland) Act 1997.

5.2 Options Appraisal

Option 1 – Do Nothing

The current arrangements will continue and the planning authority relies on case law to enable it to make non-material changes to planning permission in agreement with the person having the interest in the land to which the permission relates.

Option 2: Introduce a statutory procedure for approving non material amendments to an existing planning permission.

The Order provides, at the request of the applicant in writing, discretion for the council to decide whether an amendment to development that has planning permission is so minor and the variation sought is not material, that a further planning application is not required.

5.3 Costs and Benefits

Sectors and groups affected

Most significant impact and benefit is likely to be achieved by large firms or those businesses that are involved in the large scale developments that typically require minor amendments to permission more often than smaller-scale developments.

5.4 Benefits

Option 1 – Do Nothing

This maintains the status quo and brings no benefits.

Option 2: Introduce a statutory procedure for approving non material amendments to an existing planning permission

- provide a legal basis for making non-material amendments to existing planning permissions, which will give certainty and clarity to developers and applicants as to the ability to make such amendments;
- provide a consistent approach to the process and procedures by which such amendments can be made to existing permissions;
- allow prospective applicants to respond and adapt more efficiently, quickly and cost effectively where the need to make non-material amendments to an existing permission becomes apparent;
- introduce a more formal and robust procedure for making and determining non-material amendments;
- place beyond doubt the ability of the planning authority to approve non-material changes to an existing planning permission;
- free up planning authorities resources, potentially diverting them from considering new proposals;
- provide greater transparency to the public on how decisions on applications for non-material amendments are dealt with;
- it would bring Northern Ireland broadly into line with other UK jurisdictions; and
- substantial administrative savings for developers as the costs associated with preparing new applications, application fees and delays to projects will no longer be incurred.

5.5 Costs

Option 1 – Do Nothing

There are no direct costs.

Option 2: Introduce a statutory procedure for approving non material amendments to an existing planning permission

The new statutory procedure will enable applicants to make non-material amendments to an existing planning permission without the need to submit an entirely fresh application. This will provide direct cost savings especially to large firms or those businesses that are involved in the large scale developments, when the proposed amendments relate to larger development proposals.

6. Publicity of applications for planning permission

6.1 Purpose and intended effect of measure

i) Background

It is important that applications for planning permission are advertised in order to bring them to the attention of interested parties and provide the opportunity to comment on the proposal. Arrangements for publicity are currently set out in primary legislation – the 1991 Order. The 2011 Act provides that such publicity arrangements are to be set out in subordinate (or secondary) legislation. This will be done via the GDPO. The Department proposes to maintain the current requirement in relation to advertisement in at least one local newspaper as well as on a website where one is maintained for that purposes. The Department is also proposing a further publicity process be made a statutory requirement on all planning authorities.

The Department currently alerts occupiers of premises on neighbouring land most likely to be affected by a proposed development by sending them a letter to notify them that an application has been made ("neighbour notification"). This is done on an administrative basis against set criteria in line with policy outlined in paragraph 9 of Planning Policy Statement 1 (PPS1).

ii) Objective

The Department proposes to place the current neighbour notification arrangements on a statutory basis to:

- provide clarity in relation to who can expect to be neighbor notified; and
- ensure consistency of approach by local councils acting as the local planning authority under the new two-tier planning system.

This will add neighbour notification to the existing statutory provisions that require all planning applications to be published by way of press advertisement and

electronically by way of a website (where one is maintained for that purpose) to ensure that appropriate publicity is given to applications and are delivered in a consistent manner across the new council areas.

6.2 Options Appraisal

Option 1 – do nothing

Retaining neighbour notification on an administrative rather than a statutory basis would not provide the unambiguous clarity that legislation would provide as to the circumstances in which such notification should be made and to whom. Reliance on an administrative system under the new two-tier planning system could lead to variance of interpretation and inconsistency of application within and across different council areas with the public experiencing differing levels of service and engagement.

Option 2 – place the present administrative process of neighbour notification on a statutory basis

Statutory provisions would provide clarity for staff and public and reduce the risk of neighbour notification become vulnerable to differing interpretations in its criteria and variations in its application.

Option 3 – make statutory provision for alternative publicity methods for neighbour notification e.g. site notices or additional electronic methods

Requiring the use of further publicity methods could in theory reach even more members of the public. Legislation could specify the use of site notices for all or a limited range of development types, as is the case in some other jurisdictions. It could also require the use of additional electronic methods (currently used administratively in other jurisdictions) such as RSS feed, E mail alerts or social media sites.

6.3 Costs and Benefits

Sectors and groups affected

There are no particular sectors or groups affected by these changes, as the impact is geographically based, rather than sectoral and are reliant on the submission of an application for development.

District councils as local planning authorities will be affected by the need to carry out the process correctly and to defend their actions should they be called into question.

6.4 Benefits

Option 1 – Do Nothing

This would allow current practice to continue which, given the recent efforts put into staff training and refining of guidance, should still allow the initial operation of an improved neighbour notification system. However, this would be at the discretion of the district council and could lead to variations in practice.

Option 2 - place the present administrative process of neighbour notification on a statutory basis

This would maintain the level of neighbour notification already delivered by the Department (albeit it on an administrative basis) ensuring that occupiers of premises most likely to be affected by development proposals are made aware of applications coming into the system. A clear unambiguous statement of the neighbour notification criteria in statute would make them obvious to all stakeholders, not just planning staff. It would also make the system less vulnerable to differing interpretations and variations in operation.

Option 3- make statutory provision for alternative publicity methods for neighbour notification e.g. site notices or additional electronic methods

The Department's view is that the introduction of such additional publicity methods 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, particularly in terms of how non-compliance would be enforced, with no clear understanding of the likely benefits, if any, that would be delivered. Introducing new statutory requirements at the point of transfer of planning powers to councils has the potential to introduce error and potential confusion into the system.

6.5 Costs

Option 1 – Do Nothing

Not placing neighbour notification on a statutory basis could mean that neighbour notification is not undertaken by all councils or is subject to variation in the absence

of established requirement and criteria. This could lead to a diminution in the degree of neighbour notification already provided by the Department and limit the scope for stakeholders to engage in the planning system.

Option 2 - place the present administrative process of neighbour notification on a statutory basis

No costs other than the administrative costs to the Department associated with bringing forward legislation. There should be no impact on planning authorities as this is a continuation of an existing process, albeit now on a statutory basis. As the financial transfer to councils will include provisions for the current administrative system there is no anticipated additional cost to councils. Fears have been expressed that not completing a statutory duty to neighbour notify could result in planning permissions being declared invalid. However, case law shows that this is already possible under the current administrative scheme. In Warner Chillcott UK Ltd and Caridian BCT Ltd (2011 NIQB 137) Judge Treacy quashed a decision on the grounds of inadequate notification stating that Planning Service is required to take account of all statements of planning policy, including PPS1. He found that the statements within PPS1, in the circumstances of that case, created a legitimate expectation on the applicants that Planning Service would take all reasonable steps to identify neighbours, particularly those sharing a land boundary with the development site, and notify them accordingly. This was the case even though the 1991 Order did not impose any statutory requirement to notify neighbours.

Option 3 make statutory provision for alternative publicity methods for neighbour notification e.g. site notices or additional electronic methods

Site notices have never been used in Northern Ireland so no estimates exist for any additional costs this might introduce into the planning system – either for planning authorities or for applicants dependent upon the model of system which might be developed. However, it might be reasonably assumed that additional costs would be incurred to support IT systems, staff numbers and training which may need to be reflected in planning fees. Non-compliance issues such as the penalty for not correctly displaying the notice, unauthorised removal of the notice by third parties and practicalities of maintaining the notice (in terms of damage by wind, rain etc.) could potentially involve enforcement action and possibly require the submission of a new application.

Furthermore there is no guarantee that site notices would be any more effective than the other established Northern Ireland publicity methods.

A second option is legislation requiring an expansion of electronic publicity methods. Many electronic options are being explored by local authorities, albeit on a so far administrative basis.

However, while internet usage is expanding in Northern Ireland, there are indications that it is not sufficiently advanced to offer equal access to all groups. A Northern Ireland Statistics and Research Agency report “A profile of Older People in Northern

Ireland 2013 update" published on behalf of OMFDFM in November 2013 highlighted that, although 76% of all individuals aged 16 and over had internet access in 2012/13, this varied widely amongst the different age brackets. Access was almost universal between ages 16 – 39 (90%), but dropped to 88% amongst the 40 – 49 year olds, 61% amongst the 60 – 69 year olds and 28% for those aged 70 and over. Internet access for the over 70's had increased from 3% in 2001/02, but this percentage point increase was lower than for any other age group. The report warned that "*these differences give rise to notions of "digital exclusion" amongst older people which potentially puts them at risk of missing out on digital content and services"*.

Various Ofcom reports "Communications Market Report Northern Ireland", published in August 2011, 2012 and 2013, also indicate disparity in broadband access amongst different demographics and socioeconomic groups. The most recent report found that age and income are key drivers of broadband take-up in Northern Ireland. Eight out of 10 aged 16 – 34 had access to broad band services at home in the first quarter of 2013, but this fell to 4 in ten for those aged 65+. Access was nearly 9 out of 10 for higher income households with an annual income of £17.5k, dropped to approximately 5 in 10 for households with an income of less than £17.5k.

The Department believes that placing too heavy an emphasis on electronic communication methods now by imposing a legislative requirement could omit some of the most disadvantaged groupings in Northern Ireland from the planning process. It is possible that planning authorities could be encouraged to redeploy resources from the existing methods to the detriment of those social groups who still rely on these more "traditional" methods. However, the Department recognises that electronic communication methods are rapidly evolving and will keep this issue under review.

7. Statutory Consultation Process

7.1 Purpose and intended effect of measure

i) The objective:

Section 229 of the Planning Act (Northern Ireland) 2011 establishes for the first time a statutory duty for consultees to provide a substantive response to a consultation request within a prescribed timescale. These powers will be available to councils when they take over planning functions in 2015.

ii) The background:

The 2011 Act introduces a number of reforms, including the statutory duty to provide a substantive response to a statutory consultation request within a prescribed timeframe.

Table 1: Planning Consultations issued between the period 01/01/11 – 30/06/12, indicates the key public authorities or independent bodies that are currently consulted during the process of determining planning applications.

Table 1. Number of consultations issued by the Department

Consultee	No. of Consultations issued by the Department			
	2010-2011	2011-2012	2012-2013	2013-2014
DRD Roads Service	12,033	10,288	8,903	4,558
District Councils Environmental Health	7,426	7,100	6,165	3,241
NIEA	4,276	4,357	4,041	2,052
NI Water	6,257	5,106	4,194	2,363
DARD	2,512	2,701	2,024	1,094
Airports	983	2,022	1,699	890
DCAL	55	115	88	54
DETI	57	113	52	35
NIHE	8	11	0	1
NI Sports Council	4	0	0	1
DSD	1	4	0	0

7.2 Options Appraisal

Option 1 – Do Nothing

Do nothing and continue to apply the existing provisions as they are, rather than introduce the provisions of the 2011 Planning Act. Continue to rely on non statutory administrative improvements.

This option would simply continue to apply the provisions and procedures that currently exist, which do not require a consultee to provide a substantive response within a prescribed timeframe. This option has associated risks such as; a degree of uncertainty, delayed response times and a level of unaccountability.

Option 2 – Retain only the existing statutory consultees but impose the duty to respond on them

Current legislation only recognises two statutory consultees, the Health and Safety Executive (NI) and the council responsible for the land where the proposed development is to be situated. As seen in Table 1 above, planning consultation requests are made to a much wider range of bodies, albeit on an administrative basis. Extending the list of statutory consultees is necessary if the proposed duty to respond is to bring any benefits to the new two tier system.

Option 3 - Extend the existing list of statutory consultees; introduce a legislative requirement placing a statutory requirement for consultees to provide a substantive response within a prescribed timeframe as well as an annual report on the consultees performance to issued consultations.

This option provides a comprehensive legislative consultation framework which includes; a statutory duty to provide a substantive response within a prescribed timeframe and an annual report on the consultees performance to which they are accountable for. However, a statutory requirement doesn't necessarily guarantee improved performance by consultees and may have potentially significant resource implications.

7.3 Costs and Benefits

Sectors and groups affected

Public sector consultees; Central Government Departments; Departmental agencies and GoCo's (Government owned Companies e.g. NI Water); would all benefit from

greater clarity in relation to consultation requests and timescales. They would also benefit from an improved Planning system with more timely input into the decision making process and improvement in planning processing times.

Private Sector and all other applicants would also benefit from a faster system.

7.4 Benefits

Option 1 – Do Nothing

There are no obvious benefits from continuing with the status quo.

Option 2

There is no obvious benefit from extending the list of statutory consultees without placing them under a statutory duty to respond and to report on their performance. This would leave the crucial area of late responses unaddressed.

Option 3- Extend the existing list of statutory consultees; introduce a legislative requirement placing a statutory requirement for consultees to provide a substantive response within a prescribed timeframe as well as an annual report on the consultees performance to issued consultations.

One anticipated benefit is greater clarity in the roles of planning authorities, statutory consultees and applicants. In addition, greater certainty on the timing of decisions and shorter timeframes for those decisions should provide greater confidence in the planning system for applicants and potentially reduce time periods where developers might be reliant on finance arrangements. The proposed changes should also provide greater overall accountability in relation to contributing to the effective operation of the planning system. For example, the Department views the requirement for statutory consultees to report on their performance in meeting their statutory timeframes, and in particular to provide explanations for late responses, as the most significant likely benefit. This will provide the Department and the consultee with information that should highlight bottlenecks in the system and also allow the sharing of best practice.

7.5 Costs

Option 1 – Do Nothing

No additional costs would be associated with continuing with current practice.

Option 2

There would be increased administrative costs to these bodies as they would now be required to report on their performance on meeting the response time deadlines. It is expected that such costs would be negligible.

Option 3 - Extend the existing list of statutory consultees; introduce a legislative requirement placing a statutory requirement for consultees to provide a substantive response within a prescribed timeframe as well as an annual report on the consultees performance to issued consultations.

There would be an additional cost to the consultees as they would be required to produce a performance report and collate the necessary data for it. This is expected to be negligible compared to the work already required to provide consultation inputs.

8. Enforcement and Sanctions

The GDPO provides the framework for the management of applications for planning permission and therefore is a key regulatory basis of the planning system. Failure by an applicant or developer to comply with the requirements of the system can result in:-

- refusal or non-determination of an application; or
- enforcement action, including prosecution.

Failure by a council, or the Department to comply with the requirements placed on it can result in:-

- decisions made being challenged and potentially overturned; or
- complaints regarding maladministration.

In relation to the duty to respond to a statutory consultation request statutory consultees will be required to report on their performance in meeting their duty. This will provide an important source of information to inform future performance review and if necessary process improvement.

9. 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 Firms Impact Test

The majority of small firms will not be affected as the requirement relates only to major applications.Therefore there will be minimal impact as regards the requirements for design and access statements. However, the new provisions may result in developers getting faster decisions from councils, or as the case may be, the Department and therefore carrying out development with greater speed from inception of the project to completion. The benefits are of a more efficient system. There are also exemptions to the types of applications required to be accompanied by a DAS which reduces any unnecessary burdens.

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 and technical nature of the proposals.

10. Monitoring and Review

Should the status quo be retained the current provisions will remain in place but would not be subject to 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. This provision places a statutory requirement on the Department to monitor and report on the implementation of the new articles including this Order.

11. Consultation

The primary legislative powers under which the GDPO is made derive from a range of proposals which were the subject of public consultation in 2009 and Assembly scrutiny of the 2011 Act. The detail of the changes to be introduced by the GDPO were the subject of a further public consultation exercise from May to August 2014.

12. Summary and Recommendations

The Order will ensure that there are robust and workable statutory controls for the determination of applications for planning permission.

In view of the above, it is recommended that the Order is 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: 25 February 2015

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