

EXPLANATORY MEMORANDUM TO
THE PLANNING (LISTED BUILDINGS) REGULATIONS (NORTHERN
IRELAND) 2015

S.R. 2015 No. 108

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the above named Statutory Rule which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections 42 (as applied by section 87(1) and (2)), 80(5), 86, 95(2), 100(2), 107(2), 181(1) and 247(1) and (6) of the Planning Act (Northern Ireland) 2011 (“the 2011 Act”) and is subject to negative resolution procedure before the Assembly.
- 1.3 The Rule is due to come into operation on 1st April 2015

2. Purpose

- 2.1 These Regulations replace the Planning (Listed Buildings) Regulations 1992. They specify the:
 - procedures in relation to applications for consent to carry out works to listed buildings and related matters; and
 - the form of notice to be given to the owner and occupier of the building advising them the building has been included in or excluded from the list of buildings of special architectural or historic interest.

3. Background

- 3.1 Section 80 of the 2011 Act requires the Department to compile a list of buildings of special architectural or historic interest; any building included in the list is referred to as a “listed building”. Section 85(1) makes it an offence to execute (or cause to be executed) any works for demolishing a listed building, or for altering it or extending it in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised. Section 85(2) provides that these works are authorised only if consent (“listed building consent”) has been granted for them and they are carried out in accordance with that consent.
- 3.2 The 2011 Act gives the Department the powers to prepare regulations concerning a range of detailed aspects of the procedure for obtaining listed building consent and associated matters. These Regulations specify the:

- manner in which applications for listed building consent are to be made, and the information and documents which applicants must provide;
- circumstances in which a design and access statement must be submitted with an application, and the requirements of such a statement;
- publicity and consultation requirements for applications;
- time periods within which councils should determine applications;
- procedure for claims for compensation for revocation or modification of a consent; and
- Form of notice which must be served on the owners and occupiers of buildings, informing them that the building has been included in or removed from the list of buildings of special architectural or historic interest.

4. Consultation

- 4.1 The Department consulted on its “Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1” between 28 May 2014 and 20 August 2014.

5. Equality Impact

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

6. Regulatory Impact

- 6.1 A regulatory impact assessment was carried out on the Regulations. These Regulations do not make any significant changes to existing practice and so should not result in any additional impacts on the owners or occupiers of listed buildings, councils, the Department or those with an interest in the protection of listed buildings.

7. Financial Implications

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

8. Section 24 of the Northern Ireland Act 1998

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

9. EU Implications

9.1 There are no EU implications.

10. Parity or Replicatory Measure

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

11. Additional Information

11.1 Not applicable.

REGULATORY IMPACT ASSESSMENT (Final)
Listed Buildings Regulations

1. Title of Proposal

The Planning (Listed Buildings) Regulations (Northern Ireland) 2015.

2. Purpose and intended effect of measure

i) The objective:

This statutory rule puts in place the regulatory framework required to implement much of the listed building provisions in Chapter 1 of Part 4 of the Planning Act (Northern Ireland) 2011 [“the Act”]. The Act will transfer the majority of planning powers from the Department to district councils and reform the planning system in Northern Ireland. The 2011 Act provides the primary legislative framework and the Planning (Listed Buildings) Regulations (Northern Ireland) 2015 [“the Regulations”] stem from those provisions.

The key objectives of the Regulations are to:

- specify the information and documents which applicants must submit to councils; and
- set out requirements in relation to:
 - consultation on applications;
 - publicity of applications; and
 - the procedure in relation to determination of applications.

The Regulations will provide the basis for clarity and consistency across Northern Ireland regarding the submission, processing and determination of applications for listed building consent.

ii) The background:

Currently, the detail in relation to the information and documents which applicants must submit and procedures for advertising, consulting on and determining these applications are set out in the Planning (Northern Ireland) Order 1991 and the Planning (Listed Buildings) Regulations (Northern Ireland) 1992.

The Department does not propose to make any significant changes in relation to the above legislative requirements. However, one key difference is that the Regulations propose to place a statutory duty on councils to consult the Department on all applications for consent to carry out works to a listed building. In effect Northern Ireland Environment Agency [NIEA] will respond to consultation requests from councils. NIEA has a detailed knowledge of Northern Ireland’s buildings of special architectural or historic interest and they are consulted by planning staff on current applications for listed building consent.

iii) Risk Assessment and Rationale for Government Intervention:

Section 86(1)(b) the Act requires the Department to set out in regulations the information and documents which applicants must submit to councils.

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

- publicity requirements for applications* [section 86(4)(a)];
- the time within which applications must be determined by councils [section 86(4)(b)];
- consultation arrangements on applications [section 86(4)(c)];
- a prohibition on the determination of applications within a specified time period [section 86(4)(d)]; and
- requirements that the council must take account of responses from those consulted [section 86(4)(e)].

Specifying these matters in regulations will provide the basis for consistency across the new council planning departments and provide clarity to applicants (or agents submitting applications on their behalf) or others with an interest in the protection of listed buildings regarding the processing and determination of these applications.

*NB: In relation to the requirement to publicise applications, the Regulations propose that councils must advertise details of these applications in a local newspaper. Policy in relation to advertising is set out in paragraphs 13.9 to 13.13 of the consultation paper “Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation” which is available on the Department’s website.

3. Options Appraisal

Option 1 – Do Nothing

Section 86(1)(b) of the Act requires the Department to set out in regulations the information and documents which applicants must submit to councils. This is a mandatory requirement and as such the Department cannot adopt a do nothing option.

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

Under this option the Department would make regulations setting out the information and documents which applicants must submit to councils. This approach would satisfy the mandatory minimum requirements only under section 86(1)(b) of the Act.

Importantly under this option the Regulations would not include provisions for:

- a requirement that councils must determine applications within a specified time period;
- a requirement that councils must consult NIEA/Department on all applications for listed buildings consent. Therefore, councils would be free to decide on a

case by case basis whether or not to consult the Department [in practice the Northern Ireland Environment Agency (“NIEA”) will deal with consultation requests from councils]. In order to properly consider an application for consent to carry out works to listed buildings, councils will need to seek the advice of appropriately qualified and experienced individuals or organisations. Currently DOE planning staff consult specialist staff in NIEA on all applications for listed building consent to obtain this advice. If this option were adopted then there may be cases where specialist advice is not obtained which may result in a significant difference of opinion between the council and the Department. This is likely to lead to:

- a delay in issuing the decision by the council i.e. where the Department considers calling in the application, under section 88 of the Act, but does not do so; or
- the application being called in by the Department, under section 88, for its own determination;
- a prohibition preventing councils from determining applications within a specified time period. This time period is intended to allow the public a reasonable period of time to respond to the newspaper advertisement; and
- a requirement that councils must take account of responses from those consulted.

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

Under this option the Department would make regulations setting out the information and documents which applicants must submit to councils; this approach would satisfy the mandatory requirements under section 86(1)(b) of the Act together with additional discretionary requirements which are considered to be important in the interests of consistency and clarity in the determination of applications for listed building consent.

The Department would therefore make regulations under its discretionary powers to:

- require councils to determine applications within a specified time period;
- require councils to consult NIEA/Department on all applications for listed buildings consent. If this approach is adopted then NIEA/Department can comment on all applications at the earliest possible stage and before councils have reached their own conclusions on them. This approach is likely to reduce the number of cases where there are significant differences of view between the council and the Department which may result in a delay in the issuing of the decision or the application being called-in;
- prohibit councils from determining applications within a specified time period. This will allow the public time to respond to newspaper advertisements; and
- require the council to take account of responses from those consulted.

4. Costs and Benefits

It is not proposed to introduce any significant changes to the current legislative requirements and as such there is only a redistribution of costs. The Regulations require councils on a statutory basis to consult NIEA/Department on these applications which was not previously included in regulations. However, it is current practice to consult NIEA/Department on these applications and as such there is no policy change.

Option 1: Do Nothing

Costs:

The Act requires the Department to set out in regulations the information and documents which applicants must submit to councils and this is a mandatory requirement. Whilst this option would not incur any additional costs, this is not considered viable as it does not meet the requirements of the 2011 Act to transfer planning powers to councils. Therefore it follows that the Department cannot adopt this approach.

Benefits:

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

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

In relation to owners of listed buildings:

Costs:

This approach is more likely to lead to cases where specialist advice is not obtained (with associated savings in cost outgoings) which may result in a significant difference of view between the council and the Department with an associated delay in the issuing of the decision which in turn may have cost implications for developers.

Benefits

– There is no economic benefit to the applicant as there is no application fee for a listed building consent.

In relation to councils:

Costs:

There is no cost arising from the requirements under the Regulations to consult the NIEA/Department in relation to these applications since the Department bears the costs in relation to NIEA i.e. there is no additional cost to the council compared to option 3.

Benefits:

There will be no economic benefit to councils since they will have to follow the same approach as that under option 3 i.e.:

- determine applications within a reasonable time period;
- provide the public with sufficient time to respond to the newspaper

advertisement i.e. withhold determining applications until a reasonable time period has expired;

- take account of responses from those consulted.

In relation to the Department:

Costs:

Under the Act responsibility for the determination of applications for consent to carry out works to a listed building is transferred from the Department to district councils. There will be cost implications for councils but this has been taken into account in the financial package associated with the transfer of the new two tier planning system to councils.

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

Benefits:

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

In relation to those, other than the owner, with an interest in listed buildings:

Costs:

Those with an interest in listed buildings may be concerned that councils will not obtain specialist advice in relation to some applications for consent to carry out works to a listed building and that the quality of these buildings will deteriorate as a result compared with option 3.

Benefits:

There is no benefit for those with an interest in listed buildings in adopting this approach compared with option 3.

Option 3: Introduce regulations regarding mandatory requirements under the Act and in relation to discretionary powers under the Act
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In relation to owners of listed buildings:

Costs:

There is no cost advantages to the owners of listed buildings in adopting this approach as there is no application fee.

Benefits:

This approach is likely to reduce the number of cases where there are differences of view between the council and the Department which may result in a delay in the issuing of the decision.

In relation to councils:

Costs:

- there is no cost arising from the requirements under the Regulations to consult NIEA in relation to these applications since the Department bears the cost of maintaining NIEA;
- councils will follow the same approach under option 2 and option 3 and it follows that there is no additional cost implications for councils in adopting this approach under option 3 when compared with option 2.

Benefits:

There is no additional benefit to councils in adopting this approach when compared with option 2 since they will have to adopt similar procedures under both options.

In relation to the Department

Costs:

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

Benefits:

This option is likely to result in a lower number of applications called in by the Department compared to option 2. This is consistent with the Act i.e. that responsibility for the determination of applications for consent to carry out works to a listed building is transferred from the Department to district councils.

In relation to those, other than the owner, with an interest in listed buildings:

Costs:

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

Benefits:

This option should reassure those, other than the owner, with an interest in listed buildings since councils will be required to obtain specialist advice from NIEA/Department on all applications for consent to carry out works to a listed building.

5. Sectors and Groups Affected

The main sectors and groups affected are:

- owners of listed buildings;
- councils i.e. the planning authority since they are responsible for processing and determining these applications;
- the Department since it bears the cost of funding NIEA and also in relation to the operation of the Departments call-in powers under section 88 of the Act;
- those, other than the owner, with an interest in listed buildings.

6. Enforcement and Sanctions

Councils will have primary responsibility for enforcement under the Act.

It is an offence to execute, or cause to be executed without first obtaining listed building consent, any works for the demolition, alteration or extension of a listed building in any manner affecting its character or to fail to comply with the terms of any condition attached to a consent (section 85 of the Act). The current penalty for conviction in a Magistrates' Court is a fine of up to £20,000 or imprisonment for up to six months (or both). Whilst on conviction in the Crown Court, an unlimited fine or a prison sentence of up to two years (or both) may be imposed in determining the amount of any fine, the Magistrates Court or Crown Court must have regard to any financial benefit accruing from the offence.

7. Consideration of Impacts

Equality Impact Assessment

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

Health Impact

No impact on health has been identified.

Small Firms Impact Test

The requirement that those proposing to carry out works to a listed building must apply for and obtain consent was introduced by the Act. In relation to small firms occupying a listed building, or firms who wish to do so, these Regulations will:

- have no adverse impact;
- provide clarity regarding the process of applying for consent and the procedures council will apply to those applications.

In relation to small firms who act as agents i.e. submit applications for listed buildings consent on behalf of owners, the Regulations will ensure there is a basis for consistency across council planning departments.

Human Rights Assessment

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

Rural Impact Assessment

There will be no significant differential impact arising from these Regulations as there are no fees for these applications.

8. Monitoring and Review

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

9. Consultation

The primary legislative powers under which the Regulations are made derive from a range of proposals which were the subject of public consultation in 2009 and subsequent Assembly scrutiny of the Act.

In addition, the Department consulted on its "Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1" between 28 May 2014 and 20 August 2014. The consultation included proposals setting out the detail of the procedure for obtaining listed building consent from councils and other associated matters for inclusion in the Planning (Listed Building) Regulations (NI) 2015.

10. Summary and Recommendations

Option 3 is the recommended option as this will satisfy the mandatory requirement under the Act that the Department must set out in regulations the information and documents which applicants must submit to councils and will provide further clarity to owners, occupiers and others with an interest in listed buildings regarding the processing and determination of these applications.

Declaration:

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

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

Date
26 February 2015

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