

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

2015 No. 62

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 7(5), 8(2), (3) and (5), 9(2), (3) and (6), 10(3), 11(1), 12(3), 13(1) and (3), 17(7) and (9), 21(2) and (3), 22, 247(1) and (6) of the Planning Act (Northern Ireland) 2011 and is subject to the negative resolution procedure.
- 1.3 The Rule is due to come into operation on 1st April 2015.

2. Purpose

- 2.1 The Statutory Rule contains nine Parts, 32 regulations and one schedule and makes provision for the preparation of a local development plan by a council.
- 2.2 Regulations 5 to 8 deal with the content of the council's timetable for the preparation of its local development plan, its agreement with the Department and publishing the timetable for the public and stakeholders information.
- 2.3 Part 3 deals with the preferred options paper. Regulations 9 to 11 place a requirement on the council, before preparing its local development plan, to prepare a preferred options paper and the regulations make provision for the preparation of the paper, its publicity, public consultation and the requirement to take account of any representations received in preparing its local development plan.
- 2.4 Parts 4 and 5 deal with the form and content of the local development plan documents and the procedures and requirements for the preparation of the local development plan. Regulations 12 to 14 set out the form and content of the local development plan and the matters that the council should take account of in its preparation. Regulations 15 to 19 deal with the publicity and availability of the local development plan for public consultation and the requirements placed on the council for the handling and consideration of any representations received during the public consultation.
- 2.5 Regulations 20 to 21 deal with the requirements for the independent examination of the local development plan and set out the publicity requirements for the examination and the availability of the documents and representations submitted for the examination.

- 2.6 Regulations 23 and 24 set out the requirements for the adoption or withdrawal of the local development plan after the independent examination has been completed and the independent examination recommendations have been considered by the Department.
- 2.7 Part 6 deals with the monitoring and review of the local development plan by the council and Regulations 25 to 26 set out the requirements for the annual monitoring of the plan and for a five year review of the plan. Regulation 27 sets the requirements for the availability of the monitoring and review reports.
- 2.8 Part 7 covers the Department's oversight powers and sets out the requirements to be met by the Department in the highly unlikely circumstances that it intervenes in or takes over the preparation of a council's local development plan. Part 8 sets the requirements that must be met by the Department if it directs two or more councils to prepare a joint local development plan. Part 8 also contains provision if a council withdraws from a joint plan to allow the remaining council(s) to continue with the plan preparation for their own district.
- 2.9 Part 9 and the Schedule contain the transitional arrangements for the smooth transition from Departmental development plans made under the Planning (Northern Ireland) Order 1991 to the new council local development plans and define what constitutes a local development plan during the transition until such time as the council has fully adopted its own local development plan.

3. Background

- 3.1 Under the 2011 Act councils must prepare local development plans for their areas. The Rule will make provision for the detailed preparation requirements.

4. Consultation

- 4.1 The Regulations were subjected to a 12 week period of public consultation in the Department's Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1 Consultation between 28 May 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 new local development plan Regulations indicated that the proposals would not impose any significant costs to business or the voluntary sector. (See Annex)

7. Financial Implications

- 7.1 There will be costs to councils in the preparation of their respective local development plans, however this forms part of their functions under the new two-tier planning system and meets the requirements of the 2011 Act to transfer planning powers to councils. The Department will provide councils with adequate funding to cover the lifetime costs of preparing, publishing and reviewing local development plans.

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)

1. Title of Proposal

The Planning (Local Development Plan) (Northern Ireland) Regulations 2015. (2011 Act).

2. Purpose and intended effect of measure

i) The objective:

The Regulations are required to implement Part 2 of the 2011 Act to enable the preparation of new local development plans (LDP) by the new 11 councils. The Regulations will ensure that LDP are delivered in an effective and consistent manner across Northern Ireland, while minimising the complexity of the preparation process and the regulatory burden on councils. The Regulations have been drafted to meet the expectations of the Department, councils and other stakeholders as expressed during the passage of the Planning Act (Northern Ireland) 2011, particularly as regards improved community engagement with the planning system and greater transparency in the decision making process. The aim is to bring the Regulations into force by April 2015. The intention is then for councils to prepare their own up-to-date LDP.

ii) The background:

Currently, the content and preparation of development plans by the Department are regulated by the Planning (Development Plan) Regulations (Northern Ireland) 1991¹. The commencement of the 2011 Act will represent the most significant change to the Northern Ireland development plan system since the transfer of planning powers to central government in the 1970s and requires the comprehensive replacement of the 1991 Regulations.

Many of the elements of the new LDP system that will be introduced through these Regulations have already been subject to full public consultation as well as being scrutinised by the Environment Committee during the course of the Assembly scrutiny of 2011 Act itself.

These Regulations set out the detail of the new local development plan process and include:

- The sequence of LDP preparation from creation of a timetable through to adoption by the council;
- The roles of the council, the Department and independent examiner;
- Functions post adoption including annual monitoring, review and revision; and
- Departmental intervention powers and transitional arrangements.

iii) Risk assessment:

¹ 1991 No. 119 (as amended)

The Regulations are largely required by the 2011 Act and the expectation of the Assembly and stakeholders in the planning system was that various matters which arose during passage of the 2011 Act would be dealt with in secondary legislation. Without these Regulations, it would not be clear how the new LDP system should work in practice, and the new system would not be workable.

As the LDP system is new and it will be carried out by councils and not the Department, these Regulations are required to achieve consistency in the delivery of the new LDP system across the 11 new councils, the Planning Appeals Commission and statutory consultees involved in the preparation of the new LDP. They are also required to ensure that individuals and organisations, including businesses, communities and voluntary organisations can fully engage with the new councils in the preparation of their LDP.

The Regulations are a vehicle for ensuring that the Department's priorities for development planning are delivered. These priorities include better engagement with the public and other stakeholders which is important for the efficient delivery of LDP; this should increase the relevance of the development planning system for all users of the planning system including the public, businesses, developers and environmental organisations.

If these Regulations were not brought into force the benefits listed above would not be achieved.

3. Options Appraisal

Option 1: Do nothing

Do nothing is not an option. The new LDP system cannot work without regulation as it would be reliant upon guidance and this could lead to inconsistency in one of the fundamental building blocks of the new system. There are certain statutory requirements that must be met by the councils, the Planning Appeals Commission and the Department and failure to meet these requirements will lead to the LDP being found unsound and impact on the introduction of a plan lead system.

Option 2: Introduce subordinate legislation and guidance for the new local development plan system

The revised framework for the LDP system is set out in some detail in the 2011 Act, nevertheless it is important to provide further detail on each of the key stages and processes to ensure consistency in key elements such as timetabling, key requirements on the contents of the LDP, engagement, participation, statutory consultation, independent examination, adoption, intervention etc. This will provide clarity to councils and all users of the planning system and ensure the involvement of key players critical to the delivery of the development plan.

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 development planning powers to councils and for councils to set the framework for planning decisions in their areas.

Benefits:

No economic, social or environmental benefits are derived from this option.

Option 2: Introduce subordinate legislation and guidance for a new development plan system

Costs:

There will be costs to councils in the preparation of their respective LDP however this forms part of their functions under the new two-tier planning system and meets the requirements of the 2011 Act to transfer planning powers to councils.

Benefits:

This option will ensure that the following principles for a LDP system are met:

- the timetable will make anyone with an interest in the LDP aware of the forthcoming key stages in its preparation well in advance of the key dates;
- public involvement in the preparation of the preferred options report and the development plan documents (DPDs);
- adequate minimum publicity requirements are met;
- the form and content and preparation requirements of the different LDP across the 11 councils are consistent;
- the relevant statutory consultees are involved in the preparation of the LDP,
- the annual monitoring reports are made available for inspection and are sent to the Department for scrutiny;
- the major review of the LDP takes place every five years: and
- transitional arrangements and intervention powers are clear.

5. Business sectors affected

These Regulations will not significantly affect businesses over anyone else who wishes to engage in the local development planning system. The proposals may place some additional procedural and financial requirements on businesses, who wish to make representations on the local development plan however, this will be no more burdensome than anyone else wishing to make such representations.

Where businesses and other organisations choose to engage in the LDP process, the new system, as enabled by these Regulations, should enable them to do so in a more constructive and less repetitious fashion. For instance the preferred options paper should enable businesses to express their opinions on how areas should develop in a more informal and fruitful manner. More regular reviews of plans i.e. at least every 5 years, could involve greater effort and cost for businesses and other organisations. It will, however, be for them to decide which LDP if any that they wish to input to. In addition the enhanced opportunities for early and effective engagement

in the LDP system should assist small businesses to ensure that LDP reflect their needs and aspirations.

The principal businesses to be affected by these Regulations will be those who may potentially wish to make representations on a proposed development plan. Among small business these are likely to be companies with a particular interest in the development and use of land, for instance developers or housing associations. Other groups who are currently extensively involved in local plan examinations are professional consultants e.g. planning, transport or landscape consultants, and the legal profession.

The costs for these small businesses are likely to be no more than those if they had participated in the Department's existing development plan system.

6. Enforcement and Sanctions

If a council fails to comply with the Regulations the Department has the power to take over the preparation of the council's LDP and the council must pay any costs incurred by the Department.

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 local development plan process but the Department does not expect the proposals 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 proposed amendments 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. This

provision places a statutory requirement on the Department to monitor and report on the implementation of the new LDP system including these Regulations.

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 Recommendation

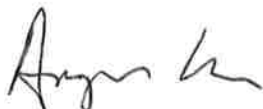
Option 2 is the recommended option as it will ensure that all the statutory requirements of the new LDP system are met by the councils, the Planning Appeals Commission and the Department. It will also ensure that the public are fully involved in the LDP system and that any representations they may make are fully considered by the councils in the preparation of their LDP.

The provisions provide the opportunity to enhance the openness, transparency and the democratic nature of the planning system and will increase the public participation in the preparation of LDP.

11. Declaration

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

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



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