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# A comparison of the planning systems in Ireland and Northern Ireland

A joint paper by the Oireachtas Library & Research Service and the Northern Ireland Assembly Research & Information Service.

*Suzie Cave & Maggie Semple*

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Front cover images (clockwise from top right): **Inishturk, County Mayo: image of the 'Tale of the Tongs' architectural monument created as part of the 'Spirit of Place' competition** (image used courtesy of MyIrelandTour.com); **The Peace Bridge, Derry/Londonderry** (image by Mark McGaughey and used under a Creative Commons Attribution-Share Alike 4.0 International licence); **Kennedy Quay, Cork** (image by William Murphy and used under an Attribution-ShareAlike 2.0 Generic (CC BY-SA 2.0) licence); **Devenish monastic site, County Fermanagh** (image by John Armagh, reproduced under a Creative Commons Attribution-Share Alike 3.0 Unported licence).

In this paper, 'Ireland' is used to refer to the nation state of Ireland as governed by the Government of Ireland; 'Northern Ireland' (or 'NI' in its shortened form) is used to refer to the devolved jurisdiction of the UK over-seen by the Northern Ireland Executive; and 'the island of Ireland' is used to describe the whole geographical entity.

Graphics by Dan Hull, Keara McKay & Aidan Stennett.

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## Glossary

### Northern Ireland

AONB	Area of Outstanding Natural Beauty
ASAs	Areas of Significant Archaeological Interest
DAERA	Department for Agriculture, Environment and Rural Affairs
DfC	Department for Communities
DfI	Department for Infrastructure
EC	European Commission
EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report
ES	Environmental Statement
EU	European Union
GB	Great Britain
LBC	Listed building consent
LDPs	Local Development Plans
LPP	Local Policies Plan
NI	Northern Ireland
NIEA	Northern Ireland Environment Agency
PAC	Planning Appeals Commission
PfG	Programme for Government
PPS	Planning Policy Statement
PS	Plan Strategy
RaISe	Research and Information Service
RDS	Regional Development Strategy
SPPS	Strategic Planning Policy Statement
SPZ	Simplified Planning Zone
UK	United Kingdom

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### **Ireland**

CDP	City/County Development Plan
DCHG	Department of Culture, Heritage and the Gaeltacht
DHPLG	Department of Housing, Planning and Local Government
EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report (formerly Environmental Impact Statement [EIS])
EPA	Environmental Protection Agency
LAP	Local Area Plan
LECP	Local Economic and Community Plans
L&RS	Oireachtas Library & Research Service
NDP	National Development Plan
NPF	National Planning Framework
PDA	Planning and Development Act 2000 (as amended)
PDR	Planning and Development Regulations 2001 (as amended)
RSES	Regional Spatial and Economic Strategies
SDZ	Strategic Development Zone
SHD	Strategic Housing Development
SID	Strategic Infrastructure Development
The Board	An Bord Pleanála

### Summary

This paper describes and compares aspects of the current land use planning systems operating in Northern Ireland (NI) and Ireland. It also explores some considerations around the impacts of Brexit and the two planning systems, particularly in relation to the border region.

Both NI and Ireland operate under a two-tier planning system with planning responsibilities split between central government and local councils/planning authorities. Both planning systems are 'planned' meaning that planning decisions are made based on national and local development plans and policies. These work to provide a balance between development and environmental protection, while ensuring the needs and well-being of local communities are provided for. Both jurisdictions allow for certain types of permitted (known as 'exempt' in Ireland) development that do not require a planning application, this includes change of use within the same 'use classes' as defined in the respective pieces of legislation. Unauthorised development or breaches of planning consent are dealt with by each jurisdiction under their system of enforcement, operated by the local council/planning authorities.

While the basic structures of the two systems are similar, there are differences in the detail and in how each system works. For example, both operate a slightly different planning policy hierarchy, with more tiers in Ireland than in NI. Nationally significant projects are decided differently between the two jurisdictions, and the appeal process in Ireland allows for third party appeals, while NI does not.

As discussions continue around Brexit, the impacts it may have on NI and its border with Ireland has been one of the main areas of focus. While NI and Ireland operate under different planning systems, both systems have been influenced by developments in the EU, particularly around the areas of spatial planning, environmental requirements and protection, and enforcement. Synergies lost in these areas may present new challenges for those operating across jurisdictions in the future. Due to this it has been highlighted that continued collaboration and co-operation will prove even more important for development both sides of the border post Brexit.

This paper has been prepared jointly by the Northern Ireland Assembly Research and Information Service (RaISe) and the Oireachtas Library & Research Service, with contributions from research staff working for each of the two legislatures. The paper does not intend to provide a complete like for like analysis of both systems, but attempts to highlight examples of some of the main similarities and differences.

*The information provided in this paper does not constitute legal advice and should not be used as a replacement for such.*

## I. The legislative framework

### Northern Ireland

Institutional arrangements are quite unique in Northern Ireland compared to other parts of the UK and Ireland. While Ministers within departments are granted full executive authority in their respective areas of responsibility, they must achieve broad agreement from the Northern Ireland Executive to ensure cohesion.

On 1st April 2015 a new two-tier planning system came into force under the [\*\*Planning Act \(Northern Ireland\) 2011\*\*](#) (2011 Planning Act), introducing a sharing of planning responsibilities between councils and the Department for Infrastructure (DfI). This replaced the old system under the [\*\*Planning \(Northern Ireland\) Order 1991\*\*](#) where the Department of the Environment used to hold responsibilities for planning in Northern Ireland<sup>1</sup>. Under the 2011 Planning Act, each new council is the Local Planning Authority (LPA) for its district council area. The councils now have responsibility for local development planning; development management and planning enforcement.

However, the DfI still holds responsibility for regionally significant and 'called-in' applications; regional planning policy; planning legislation; oversight and guidance for councils and performance management.

The 2011 Act is supported by a significant programme of subordinate legislation<sup>2</sup>.

### Ireland

The two principal pieces of legislation which govern planning and development in Ireland are the [\*\*Planning and Development Act 2000\*\*](#) (as amended) and the [\*\*Planning and Development Regulations 2001\*\*](#) (as amended).

The *Planning and Development Act 2000* (as amended) sets out the planning framework. It consolidates all previous planning acts and is the basis for the Irish planning code, setting out the detail of regional planning guidelines, development plans and local area plans as well as the basic framework of the development management and consent system. Among other things, it provides the statutory basis for protecting our natural and architectural heritage, the carrying out of Environmental Impact Assessment (EIA) and the provision of social and affordable housing.

The *Planning and Development Regulations 2001* (as amended) implement the *Planning and Development Act 2000* by prescribing the details of the planning code. They consolidate all previous Regulations made under the *Planning and Development Act 2000* (as amended) and replace the *Local Government (Planning and Development) Regulations 1994-2000*.

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<sup>1</sup> Departmental reorganisation in 2015 saw planning responsibilities split between the new DfI and local councils under the [\*\*Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016\*\*](#).

<sup>2</sup> For further detail on subordinate legislation, please visit: [http://www.planningni.gov.uk/index/policy\\_legislation.htm](http://www.planningni.gov.uk/index/policy_legislation.htm)

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Both the *Planning and Development Act* and Regulations have been amended several times.<sup>3</sup> For example, the *2000 Act* has been amended by almost 40 Acts since it was originally enacted.<sup>4</sup> The latest Revised Planning and Development Act<sup>5</sup> is available on the Law Reform Commission website and is updated to 18 June 2018.<sup>6</sup> An unofficial consolidation of the *Planning and Development Regulations* to 26 July 2018 is available from the Department of Housing, Planning and Local Government.<sup>7</sup>

The Minister for Housing, Planning and Local Government is responsible for developing planning policy and legislation while the physical planning system is operated by the 31 local authorities (City and County councils). An Bord Pleanála (the Planning Board or the Board) is the national planning appeals body and also has responsibility for determining applications for strategic infrastructure projects of national importance (refer to the Section on *National strategic infrastructure projects*, page 10 for further detail).

Further information on planning legislation is available from the Department of Housing, Planning and Local Government, [here](#).

## 2. Regional/National planning policy

### Northern Ireland

Generally, NI planning policy begins at a regional rather than national level, compared to Ireland and other parts of the UK. The development of regional planning and development policy and guidance in NI is the responsibility of DfI and operates on a single regional (i.e.: Northern Ireland) basis.

The [Regional Development Strategy 2035](#) (RDS), produced by the old Department for Regional Development (now the responsibility of DfI after departmental reorganisation in 2015), offers a strategic and long-term perspective on the future development of Northern Ireland up to 2035. Its purpose is to deliver the spatial aspects of the Programme for Government (PFG)<sup>8</sup> and it is therefore a framework for regional planning across Northern Ireland. The *2011 Planning Act* requires the DfI to ensure that any policy it produces is 'in general conformity' with the RDS.

The new planning system involves the move away from the existing suite of Planning Policy Statements (PPS) to a single [Strategic Planning Policy Statement \(SPPS\)](#). The SPPS consolidates the suite of PPS into one document and provides the overarching planning principles from which

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<sup>3</sup> Department of Housing, Planning and Local Government [online] *Planning legislation*. Available at: <http://www.housing.gov.ie/planning/legislation/planning-legislation> [accessed on 28.03.2018]

<sup>4</sup> Law Reform Commission [online] *Revised acts*. Available at: <http://revisedacts.lawreform.ie/revacts/intro> [accessed on 12.03.2018]

<sup>5</sup> A Revised Act is an administrative consolidation of that Act. It brings together in a single text all amendments and changes to an Act, making the law more accessible for all users. In Ireland, as in most other states, once an Act on a specific legal topic is enacted it is often amended subsequently, sometimes in significant respects.

<sup>6</sup> Law Reform Commission. *Planning and Development Act 2000 Revised* [online]. Available at: <http://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/pdf?annotations=true> [accessed 28.09.2018]

<sup>7</sup> DHPLG, 2018. *Planning and Development Regulation 2001-2018 (Unofficial consolidation)*. Available at: [https://www.housing.gov.ie/sites/default/files/legislations/planning\\_and\\_development\\_regulations\\_2001-2018unofficial\\_consolidationannotated2.pdf](https://www.housing.gov.ie/sites/default/files/legislations/planning_and_development_regulations_2001-2018unofficial_consolidationannotated2.pdf)

<sup>8</sup> The Programme for Government (PFG) is the highest level strategic document of the NI Executive which sets out the priorities that government will pursue in the respective Assembly mandate. However, any new PFG requires Executive approval, therefore the current PFG is in draft form until the NI Assembly resumes normal business. Access the draft PFG at NI Executive Programme for Government [online] <https://www.northernireland.gov.uk/programme-government>



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councils should develop their own planning policies within their new Local Development Plans (LDPs). It will also be material to individual planning decisions and appeals.

However, a transitional period is currently in operation until councils develop their own planning policies under their LDPs (see section 3 for more detail on LDPs). This means that during this time the new councils will apply the policy of some of the old PPS together with the new SPPS when determining planning decisions. However, where there is difference between the two, the SPPS takes precedence. Once councils have developed and published their own policies, the old PPS will cease to have effect. For more detail on the transition period, refer to the [SPPS](#).

In September 2016, the Minister at the time, Mr. Chris Hazzard MLA, announced his intention to conduct [a review into the strategic planning policy for 'Renewable Energy' and 'Development in the Countryside'](#) under the SPPS. While this review was expected to be completed in 2018, subject to Executive agreement, any decision may be put on hold until business resumes at the NI Assembly.

According to the [Chief Planner's Update 2017](#), DfI is considering the development of a Regional Infrastructure Delivery Plan. This will support the spatial elements of the RDS, inform the long term delivery of infrastructure at the regional level and assist in achieving Programme for Government outcomes.

Understanding that spatial planning does not stop at the border, the [Framework for Co-operation: Spatial Strategies of Northern Ireland and the Republic of Ireland](#) was produced by both governments to promote co-ordinated spatial planning and infrastructure delivery between both jurisdictions. While it is not a statutory document, it aims to identify further opportunities for more co-operative working at the regional and local level.

## Ireland

### **National planning policy**

On 16 February 2018 the Government published *Project Ireland 2040*. Project Ireland 2040 comprises two reports – the [National Planning Framework](#) (NPF) and the [National Development Plan 2018-2027](#) (NDP). The Department of Housing, Planning and Local Government on behalf of the Government is responsible for the NDP and NPF.

*Project Ireland 2040* is the successor to the [National Spatial Strategy 2002-2020](#) (NSS), which was Ireland's first national land-use planning framework. The NSS was called for review in 2013 by the then Minister, Phil Hogan T.D, as it was felt that key concepts under the NSS had not worked and there was a lack of investment due to the subsequent economic downturn.<sup>9</sup>

The *National Planning Framework* (NPF) (which is given statutory recognition in the [Planning and Development \(Amendment\) Act 2018](#)) anticipates that Ireland will grow significantly in the next twenty years with an extra one million people expected to be living here by 2040 and a need for an extra 550,000 homes close to services and amenities. It has been developed in parallel with the three Regional Spatial Economic Strategies (the successors to RPGs, refer to next section for further detail) and sets out a high-level framework for planning and development in Ireland to 2040. The focus of the plan is on:

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<sup>9</sup> Joint Committee on Jobs, Enterprise and Innovation, 2013 [online] *Rural communities report: discussion with Minister for the Environment, Community and Local Government*, 12 February. Available at: <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/BUJ2013021200004?opendocument> [accessed on 26.03.2018]

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- Growing Ireland's regions, their cities, towns and villages;
- Building more accessible urban centres of scale; and
- Better outcomes for communities and the environment, through more effective and coordinated planning, investment and delivery.

The NPF identifies ten centres of population growth – five cities (Dublin, Cork, Galway, Limerick and Waterford) and five regional centres (Sligo, Athlone, Letterkenny, Dundalk and Drogheda). Cities and, to a lesser extent, towns, are targeted for compact high density growth with urban regeneration (brownfield development) supported.<sup>10</sup>

The *National Development Plan* is a 10-year, €116 billion programme underpinning the *National Planning Framework* (NPF). The capital will be used to upgrade Ireland's infrastructure in anticipation of the population increase.<sup>11</sup> The NDP includes for the strategic investment priority to transition to a low carbon and climate resilient society. It has committed funding of €21.8 billion (€7.6 billion Exchequer/€14.2 billion non-Exchequer) to achieve this. In addition, the NDP allocated a further €8.6 billion for investments in sustainable mobility. Examples of this include the Government goal to have 500,000 electric vehicles on the road by 2030.

### **Regional planning/strategies**

Eight regional authorities were established in Ireland by the *Local Government Act 1991* and came into existence in 1994. The Regional Authorities monitored the delivery of EU Structural Fund assistance in the regions and developed Regional Planning Guidelines (RPGs). The aim of the RPGs was to co-ordinate development at a regional level including key infrastructural considerations and to help shape County / City and Local Area Development Plans for local authority members.

For EU structural funding purposes Ireland was divided into two Regional Assemblies (Border, Midland & Western and Eastern & Southern) in 1999.

As a part of local government reform plans set out in 2012 in ***Putting people first – action programme for effective local government***, the ***Local Government Reform Act 2014*** provided for the dissolution of the eight regional authorities and two regional assemblies and for their replacement with three new regional assemblies. The three new regional assemblies were established in 2015 representing the **Northern and Western**, **Eastern and Midland** and **Southern** Regions. Members of the Regional Assemblies consist of the local authorities within that region.

The aim of the new assemblies is to utilize EU and Exchequer funding to co-ordinate, promote or support strategic planning and sustainable development and promote effectiveness in local government and public services. Their main function is to draw up Regional Spatial and Economic Strategies (RSEs), replacing existing Regional Planning Guidelines.<sup>12</sup> The RSE is 'a strategic plan which identifies regional assets, opportunities and pressures and provides appropriate policy responses'<sup>13</sup>. Each Regional Assembly has published an Issue Paper to inform the initial consultation phase for the RSEs for their region. Each RSE will support the implementation of the National

<sup>10</sup> Van der Kamp, 2018 [online] *Summary of Project Ireland 2040 National Planning Framework*. Available at: <http://www.rwnowlan.ie/project-ireland-2040/> [accessed on 26.03.2018]

<sup>11</sup> DHPLG, 2018 [online]. *Reimagining our country: Government launches €116 billion Project Ireland 2040, 16 February*. Available at: <http://npf.ie/project-ireland-2040-launched/> [accessed on 04.04.2018]

<sup>12</sup> Citizens Information. *Regional Information* [online]. Available at: [http://www.citizensinformation.ie/en/government\\_in\\_ireland/local\\_and\\_regional\\_government/regional\\_assemblies.html](http://www.citizensinformation.ie/en/government_in_ireland/local_and_regional_government/regional_assemblies.html) [accessed on 30.05.2018]

<sup>13</sup> NWRRA, 2017 [online]. *RSES Issues Paper*. Available at: <http://www.nwra.ie/wp-content/uploads/NWRA-RSES-Issues-Paper.pdf> [accessed on 26.03.2018]

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Planning Framework 2040 as well as setting the framework for local economic development and spatial planning in its region.

Regional Planning Guidelines remain in force until replaced by the Regional Spatial and Economic Strategies which are expected to be published and adopted by the end of 2018.<sup>14</sup>

### 3. Development plans

Development plans in NI and Ireland are part of a systematic hierarchy which is informed by national and/or regional planning policy and also by the plans and strategies of central government and other public agencies in general.

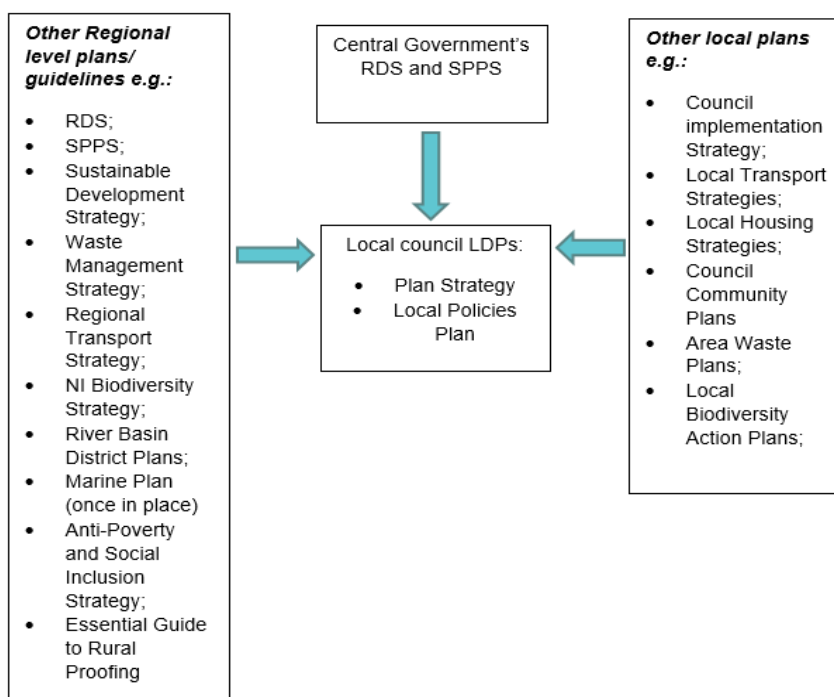
While the national/regional policy focuses on strategic issues, as one moves down the planning hierarchy there should be an increasing focus on detailed issues at the more local level. In NI, Local Development Plans (LDPs) are a two stage process with a Plan Strategy (PS) providing the strategic framework for the local, site specific Local Policies Plan (LPP) (see Figure 1). In the Ireland, under national and regional policy, local planning authorities produce County/City Development Plans for the whole of their area. Under these plans councils may produce Local Area Plans (see Figure 2) for a particular area within the whole council area. However, this is mandatory if the population is greater than 5000.

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<sup>14</sup> The L&RS found a target date of end 2018 for adopting the RSEs for both the Eastern Midlands and Southern Regions but could not find a date for the Northern and Western Region.

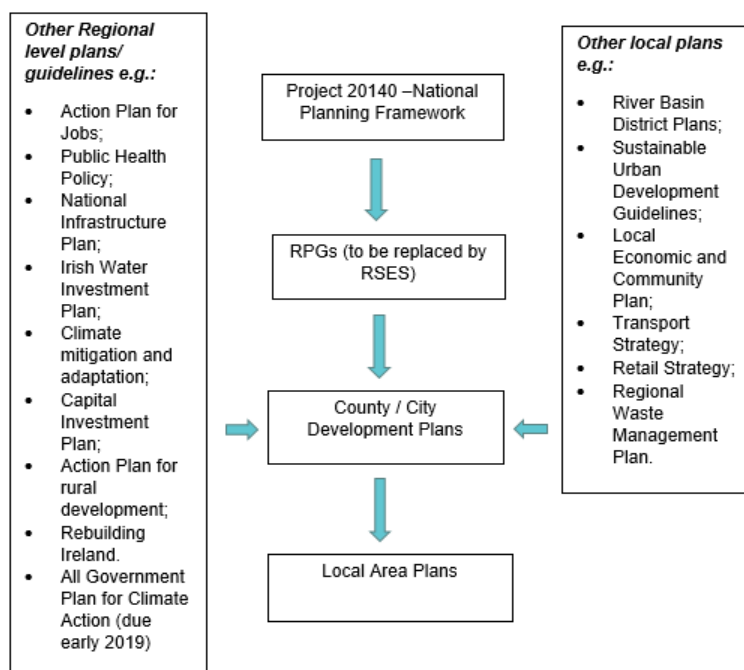
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**Figure 1: Planning hierarchy and links with development plans in Northern Ireland**



Source: Informed by Development Practice Note 1<sup>15</sup>

**Figure 2: Planning hierarchy and links with Development Plans in Ireland**



Source: Development Management: Guidelines for Planning Authorities<sup>16</sup> (updated by the L&RS)

<sup>15</sup> DOE, 2015. Development Plan Practice Note 1 – Introduction: Context for Local Development Plans p.9 [http://www.planningni.gov.uk/index/advices/practice-notes/dp\\_practice\\_note\\_1\\_intro.pdf](http://www.planningni.gov.uk/index/advices/practice-notes/dp_practice_note_1_intro.pdf)

<sup>16</sup> DEHLG, 2007. Development Management: Guidelines for Planning Authorities, updated by L&RS, 2018. Available at <http://www.housing.gov.ie/search/archived/current/category/planning/sub-type/guidelinesstandards/type/publications?query=&page=2>

### Northern Ireland

Since April 2015, the NI planning system has operated under a plan-led system, where the local development plans are the primary consideration in the determination of planning applications for the development or use of land.<sup>17</sup> The [Planning \(Northern Ireland\) Act 2011](#) establishes a new system of local development planning in NI. Under the new system local councils are responsible for the development of Local Development Plans (LDPs) rather than the department. The new system defines development plans as LDPs and these must be based on consultation with the local community.

[The Planning \(Local Development Plan\) Regulations \(Northern Ireland\) 2015](#) set out in more detail that LDPs should provide a 15 year framework on how the council area should look in the future by deciding what type and scale of development should be encouraged and where it should be located. During its preparation the council must take into account the newly developed SPPS and also deliver the spatial elements of a council's community plan.

The LDP will be made up of two documents: the plan strategy and the local policies plan:

#### **The Plan Strategy (PS)**

The PS is the first stage of the two stage local development plan process. It provides the strategic policy framework for the plan and takes account of the RDS and SPPS. According to the [Development Plan Practice Note 7](#), the PS provides the strategic direction and vision on which to base key development decisions in the area, while providing the policy framework for the development of the local policies plan.

#### **The Local Policies Plan (LPP)**

This is the second stage of the LDP process. The LPP sets out the council's local policies and site specific proposals for development, designations and land use zonings in its district. It must be consistent with the PS, deliver its vision and objectives, while adhering to national/regional policies and strategies and other district councils.<sup>18</sup>

Under the LDP process, the department will have an oversight and scrutiny role to ensure the overall LDP is in line with central government plans, policies and guidance. The local community will also have an important role to play in the plan preparation process. A council's Statement of Community Involvement (SCI) will set out the key stages for public engagement and inform the community of how and when they can become involved.

The timeframe for the preparation of LDPs is set out in each council's timetable, as prescribed under the Planning Act 2011 and the subsequent 2015 LDP Regulations. Councils have now published their timetables, and most plan to have them adopted between 2019 -2021. Until the new local councils develop their own LDPs, the [existing development plans](#) made by the department under the old system will remain in place.

Additional guidance is provided in [Development Plan Practice Notes](#) produced by the department.

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<sup>17</sup> DOE, 2015. *Development Plan Practice Note 1 – Introduction: Context for Local Development Plans* p.7

[http://www.planningni.gov.uk/index/advice/practice-notes/dp\\_practice\\_note\\_1\\_intro.pdf](http://www.planningni.gov.uk/index/advice/practice-notes/dp_practice_note_1_intro.pdf)

<sup>18</sup> Planning NI, *Development Plan Practice Note 8 – The Local Policies Plan* <https://www.planningni.gov.uk/index/advice/practice-notes/common-newpage-9.htm>

### Ireland

#### County/City Development Plans

Each local authority (City or County Council) acts as the planning authority with responsibility for making planning decisions within its functional area. Under Section 9 of the *Planning and Development Act 2000 (as amended)*, each planning authority is obliged to make a Development Plan for the whole of its functional area. The Development Plan (City/County Development Plan [CDP]) is a statutory land-use plan generally consisting of a written statement and associated maps. It sets the overall strategy for proper planning and sustainable development of the functional area taking due cognisance of regional and national plans, policies and strategies.<sup>19</sup> It provides one of the key policy contexts for individual planning decisions in the development plan area.

As such, the CDP is the main statement of planning policies for the local area, setting out the land use, and amenity and development objectives of the planning authority. The plan includes zoning of land for particular types of development (residential, amenity, commercial, industrial etc.) and may also list various sites, features and natural amenities such as trees for protection. It is a function of the councillors (elected members of each planning authority) to make, review, vary (if required) and adopt the plan with technical assistance from the planning authority and following extensive public consultation. If the elected members fail to make a plan within six years then the county/city manager of the planning authority must make one. The planning authority must commence review of the plan within four years and make a new plan every six years.<sup>20</sup>

Under the *Planning and Development (Strategic Environmental Assessment) Regulations 2004 (SI No. 436 of 2004)* as amended, planning authorities must conduct a Strategic Environmental Assessment (SEA) during the making of the CDP. SEA is the process by which environmental considerations are required to be fully integrated into the preparation of Plans and Programmes prior to their final adoption. The objectives of SEA are to provide for a high level of protection of the environment and to promote sustainable development.<sup>21</sup>

The CDP is part of a systematic hierarchy which is informed by national and regional planning policy and also by the plans and strategies of the Government and other public agencies in general. While the National Planning Framework (NPF) focuses on strategic issues, as one moves down the planning hierarchy there should be an increasing focus on detailed issues.<sup>22</sup> The links between the CDP and other plans is set out in Figure 2.

#### Local Area Plans

A planning authority **may** at any time make a Local Area Plan/s (LAP) for any particular area within the planning authorities' functional area in accordance with Sections 18, 19 and 20 of the *Planning and Development Act 2000* (as amended) while an LAP is mandatory in certain circumstances (e.g. where the population of the area is greater than 5,000). The LAP shall be consistent with the

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<sup>19</sup> P&D Act 2000 available at: <http://www.irishstatutebook.ie/eli/2000/act/30/enacted/en/print>

<sup>20</sup> Department of Environment and Local Government, 2002. *PL8 – The development plan* [online]. Available at:

<https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/NationalSpatialStrategy/FileDownload%2C1589%2Cen.pdf> [accessed on 15.01.2018]

<sup>21</sup> EPA [online] *Strategic Environmental Assessment*. Available at: <http://www.epa.ie/monitoringassessment/assessment/sea/> [accessed on 16.03.2018]

<sup>22</sup> DEHLG, 2007 [online]. *Development Plan Guidelines*. Available at: <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/FileDownload%2C14468%2Cen.pdf> [accessed on 26.03.2018]

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objectives and core strategy of the CDP which is the parent document and with any regional planning guidelines that apply to the area in the plan.<sup>23</sup>

Statutory LAPs provide for proper consultation with the public and statutory consultees and are subject to approval by elected members of the planning authority. They provide more detailed planning policies for areas where significant development and change is anticipated, without having to prepare very detailed local planning policies and objectives for many specific areas within City and County Development Plans.<sup>24</sup>

While a review of an LAP must be commenced by the planning authority after six years, this review interval may be deferred if the LAP remains consistent with the objectives and core strategy of the CDP for the area.

The LAP consists of a written statement and a map / series of maps indicating objectives including for zoning, phased development, community facilities and amenities.

## 5. Hierarchy of development

### Northern Ireland

Under the [\*Planning \(Northern Ireland\) Act 2011\*](#), development falls under a new three-tier hierarchy of development. This includes: local, major and regionally significant development. Further details on categories are set out in the [\*Planning \(Development Management\) Regulations \(Northern Ireland\) 2015\*](#).

All local and major developments are to be dealt with by councils and major developments will be subject to pre-application consultation with the community.

An applicant must give all stakeholders and local communities a chance to discuss and voice their views before a formal application for major development is submitted. The level and extent of pre-application consultation is to be proportionate to the scale and the complexity of the proposed development.

Further details can be found in [\*\*Information Leaflet 16: Guidance on Pre-Application Community Consultation.\*\*](#)

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<sup>23</sup> An example of a LAP is: Fingal County Council, 2013. *Adopted Baldoyle Staaplin Local Area Plan*. Available at: <http://www.fingalcoco.ie/planning-and-buildings/development-plans-and-consultations/adopted-local-area-plans/baldoyle-stapolin-local-area-plan/> [accessed on 01.10.2018]

<sup>24</sup> Department of Environment, Community and Local Government, 2013 [online]. *Local area plans – guidelines for planning authorities*. Available at: <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/FileDownload%2C33557%2Cen.pdf> [accessed on 15.01.2018]

### ***Scheme of delegation***

Each council has established a planning committee to consider and decide local and major applications. However, not all local applications may come before the planning committee for decision. Under Section 31 of the *Planning Act 2011*, councils are required to publish a Scheme of Delegation determining which local applications will be dealt with by the planning committee and which will be delegated to officers. According to a Practice Note on Schemes of Delegation, only local applications are to be delegated to officers (Chief Planning Officer and any officer nominated by them), with large developments, contentious applications and those that receive a number of objections likely to come before the committee for decision.<sup>25</sup> While requirements provide councils with the flexibility to decide on what applications may be exempt from their scheme, part 8 of the *Planning (Development Management) Regulations 2015* prohibits certain applications from being delegated, these include:

- Major and regionally significant applications;
- Applications made by the council or an elected member of the council; and
- Applications where the council has an estate in the lands.

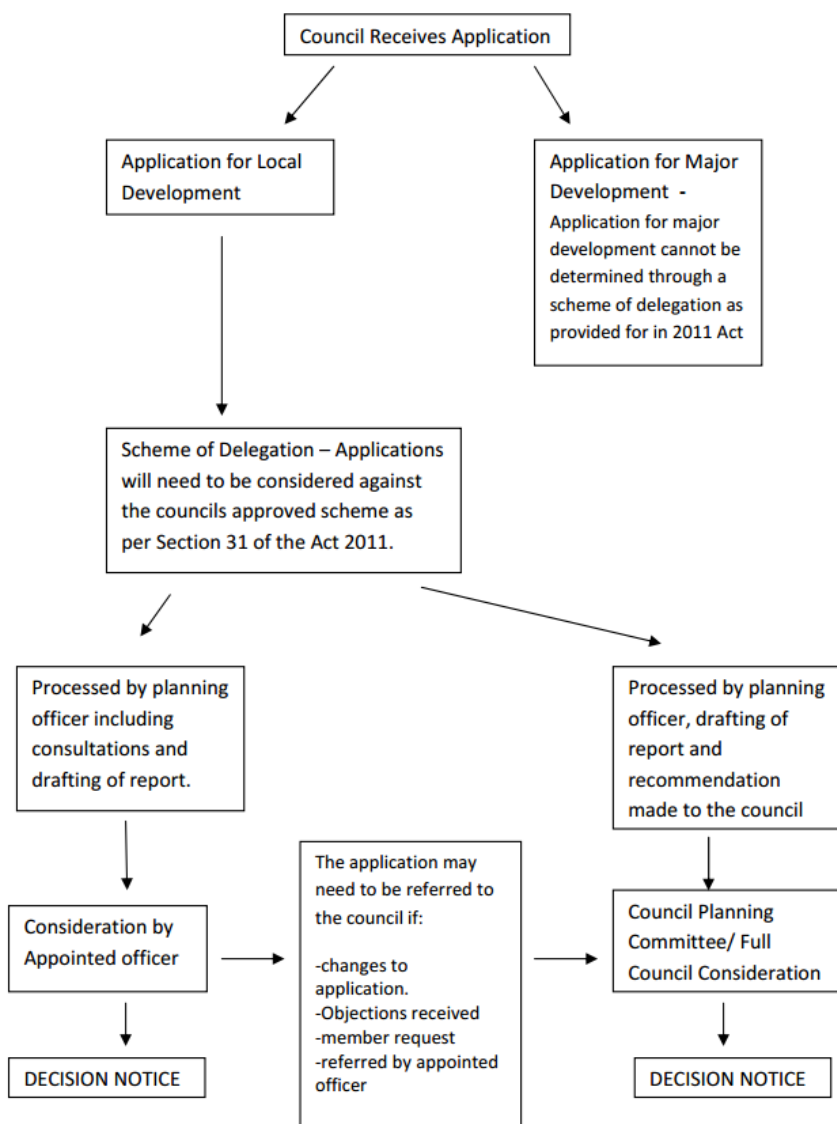
Where an application has been delegated, the case officer considers the proposal and presents a report to the officer delegated under the scheme to make a determination. However, the council still has the power to determine an application which would have otherwise fallen to the planning officer under the scheme, should an elected member or objector raise issues that are felt best discussed by the planning committee.

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<sup>25</sup> DOE, 2015 [online]. *Development Management Practice Note: Schemes of Delegation p.6/7* [accessed 14.12.2018].  
[http://www.planningni.gov.uk/index/advice/practice-notes/dm\\_practice\\_note\\_15\\_sod\\_complete.pdf](http://www.planningni.gov.uk/index/advice/practice-notes/dm_practice_note_15_sod_complete.pdf)



**Figure 3: Process for determination of a local development application**



Source: DOE (2015) Development Practice Note 15<sup>26</sup>

## Ireland

There is no similar system in Ireland. Rather, Section 32 of the *Planning and Development Act 2000 (as amended)* provides for a general obligation for planning permission. Planning permission is required for:

- Any development which is not exempted development; and
- In the case of unauthorised development, for the retention of that unauthorised development.

<sup>26</sup> Ibid p.12

## A comparison of the planning systems in Ireland and Northern Ireland

Where permission is required (above), development shall not be carried out except in accordance with the planning permission granted.<sup>27</sup>

In this way, under section 32 of the *Planning and Development Act 2000 (as amended)* all planning applications for development are submitted to the local authority with the exception of applications for Strategic Infrastructure Development (SID) and Strategic Housing Development (SHD), both of which are applied for directly to the Board. In addition, where a development is proposed for a Strategic Development Zone, the applicant may choose whether to apply directly to An Bord Pleanála or to the local authority. Applications for SID, SHD and for developments within an SDZ submitted directly to the Board cannot be appealed. Refer to the following sections for further detail: 7, 8 and 15.

## 6. Code of conduct

### Northern Ireland

The new planning system has brought about a change in the role of councillors from being consultees on planning applications, to making decisions on applications as members of the planning committee or full council.

The introduction of a new mandatory **Code of Conduct** for councillors was introduced by Section 53 of the Local Government Act 2014.<sup>28</sup> This will have a bearing on how councillors make decisions on planning applications, which is provided under section 9 of the Code.

According to **guidance** on the planning section of the Code of Conduct,

*It has to be recognised that there may be tension between your role as a local councillor, wishing to represent the views of particular constituents or groups, and your role as a planning committee member, **where your responsibility is to the whole community and not individual constituents or particular interests.***<sup>29</sup>

The guidance makes it clear that members of a planning committee must remain impartial and cannot lobby other members of the committee on behalf of an applicant/constituent. However, should they choose to represent an applicant/constituent they must forfeit their role on the planning committee and only then may they lobby as a local councillor and not a member of the committee.

Section 6 of the Code refers to disclosure and declaration of interests, which means that members of a planning committee must declare any financial or private/personal interest in a matter (or application) and may be required to withdraw from the meeting whilst it is being discussed.

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<sup>27</sup> Part III (**Sections 32-50B of the PDA**) provide for the control of development. This includes provisions for the obligation to apply for planning permission, planning conditions, appeals, substitute consent, acquisition of land, development contributions, judicial review and costs in environmental matters.

<sup>28</sup> Local Government Act 2014. Available at: <http://www.legislation.gov.uk/niu/2014/8/contents/enacted>

<sup>29</sup> DOE, 2015 [online]. *Application of the Councillor's Code of Conduct with Regards to Planning Matters* p.7 [https://www.planningni.gov.uk/index/about/about-reform/guidance\\_on\\_planning\\_element\\_of\\_councillors\\_code\\_of\\_conduct.htm](https://www.planningni.gov.uk/index/about/about-reform/guidance_on_planning_element_of_councillors_code_of_conduct.htm) [accessed 14.12.2018]

## A comparison of the planning systems in Ireland and Northern Ireland

### Ireland

Section 21 of the Local Government Reform Act 2014 and section [150 of the Planning and Development Act 2000 \(as amended\)](#) provides for the production of a Code of Conduct by the local planning authority / An Bord Pleanála in relation to:

- Disclosure of interests and relationships where they are of relevance to the work of the planning authority / the Board;
- Membership of other bodies;
- Membership of, or other financial interests in, companies, partnerships or other bodies;
- Undertaking work, not being work on behalf of the planning authority / the Board but during or after any time in employment of the planning authority / the Board;
- Acceptance of gifts, sponsorship, considerations or favours; and
- Disclosure of information pertaining to any work of the planning authority / the Board.

A planning authority / the board may amend the Code of Conduct or adopt a new one at any time.

## 7. Community plans

### Northern Ireland

The [Local Government \(Northern Ireland\) Act 2014](#) places a statutory duty on councils to produce and implement community planning through the production of a Community Plan for their area. The Community Plan is based on engagement with the community and provides the strategic framework within which councils, departments, statutory partners and other relevant organisations must work together to develop and implement a shared vision that complements the outcomes and plans of the PfG. This is a long term vision for promoting the economic, social and environmental well-being of their area through the delivery of better services.

The 2014 Act provides for the production of a list of statutory partners that must participate in and support community planning. This has been provided for under the [Local Government \(Community Planning Partners\) Order \(Northern Ireland\) 2016](#) which lists the following as statutory partners:

- The Education and Library Boards (now unified under a single Education Authority)
- The Health and Social Care Trusts
- Public Health Agency
- Health and Social Care Board
- Police Service of Northern Ireland
- Northern Ireland Housing Executive
- Northern Ireland Fire and Rescue Service
- Invest Northern Ireland
- Northern Ireland Tourist Board
- Sports Council for Northern Ireland, (Sport NI)
- Libraries NI
- Council for Catholic Maintained Schools

## A comparison of the planning systems in Ireland and Northern Ireland

Also, unique to Northern Ireland, compared to the rest of the UK, is the creation of a statutory link between the Community Plan and the development of LDPs under Section 77 of the [Local Government Act 2014](#).

For more information refer to [Circular LG 28/15 – Statutory guidance for the operation of community planning](#) produced by the department.

### Ireland

In Ireland, the [Local Government Reform Act 2014](#) (s.44) created new Local Economic and Community Plans (LECPs). LECPs are six year plans for the local authority's administrative area. They are prepared by the local authority in association with the Local Community Development Committee (whose establishment was provided for under the *Local Government Reform Act 2014*). The LECP must be consistent with the core strategy and objectives of the CDP and any RSES that apply to the area.

Similar to NI, LECPs are there to help facilitate better integration of public bodies, social and community partners to collaboratively work on integrated plans for improving the social, economic and environmental wellbeing of communities.

## 8. Regionally Significant/Strategic Infrastructure Development

### Northern Ireland

Under the *2011 Planning Act*, regionally significant development is any major project deemed to be of regional significance by the Department for Infrastructure (DfI). Proposals will also be subject to pre-application community consultation and will be determined by the department. According to the Schedule of the [Planning \(Development Management\) Regulations 2015](#), any major application of regional significance will include those listed that meet or exceed the criterion under Column 3 – for example any electricity generating station at or exceeding 30 megawatts.

The department may ask the [Planning Appeals Commission](#) (PAC) to hold a public local inquiry into any application of regional significance. When determining the planning application, the department must take any report produced from the inquiry into account. However, the department takes the final decision.

For applications being dealt with by the councils, the *2011 Planning Act* requires councils to produce a Scheme of Delegation. This provides for the delegation of local applications to officers; those with large developments, contentious applications and those that receive a number of objections will go before the planning committee for a decision to be made.

For more information see [Practice Note 15 on Schemes of Delegation](#).

### Ireland

#### **Strategic Infrastructure Development (SID)**

The **Planning and Development (Strategic Infrastructure) Act 2006** provides that a planning application for any category of development classified as Strategic Infrastructure under the Seventh Schedule of the Act shall be made directly to An Bord Pleanála (the Board) rather than the local planning authority. Strategic Infrastructure Development (SID) generally relates to major energy, transport and environmental type developments considered to be of strategic economic or social importance to the State. The 2006 Act also provided for the establishment of a new Strategic Infrastructure Division of the Board. SID planning applications are made directly to the Strategic Infrastructure Division which has exclusive responsibility for determining the applications. These SID planning applications are subject to materially different procedures than 'ordinary' planning applications.

The 2006 Act also alters the development consent process in respect of local authority development, electricity transmission, and gas pipelines, and transfers the approval of such types of development to the Strategic Infrastructure Division of the Board.<sup>30</sup>

#### **Strategic Housing Development (SHD)**

A shortage of residential accommodation as a result of a drop in home construction during the economic crisis has led to a subsequent lack of housing. This has resulted in rising house prices and rents and an increase in homelessness in Ireland. In order to try to remedy this, the Government legislated for a number of actions set out in their plan for housing and homelessness, **Rebuilding Ireland** under the **Planning and Development (Housing) and Residential Tenancies Act 2016**.

The 2016 Act legislated for:

- Temporary introduction of Strategic Housing Development;
- Rent control including caps in the annual rent increases permitted each year; and
- Greater protection of tenants' rights.

One of the principal provisions under the 2016 Act specifically relating to planning was the provision for the introduction of temporary fast-track planning procedures for strategic housing developments (SHD) whereby planning applications for large-scale housing developments are made directly to the Board and determined within a specified timeframe.

Strategic housing developments are defined as developments of 100 or more houses, or student accommodation with 200 or more bed spaces on zoned land. The intention behind the planning aspects of the 2016 Act is to provide greater certainty for developers and facilitate the earlier provision of increased housing supply through greater streamlined efficiencies in the planning process.

The 2016 Act also provides for the establishment of a new Strategic Housing Division within the Board. Planning applications for SHD are made directly to the new Strategic Housing Division of the Board (after mandatory pre-application consultation involving the local planning authority [anticipated to be completed within nine weeks]). The Strategic Housing Division is responsible for determining SHD applications and is required to make a final determination in respect of planning

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<sup>30</sup> Flynn, T. 2007 [online]. *Developments in Planning, Environmental and Local Government Law*. Available at: <https://www.lawlibrary.ie/media/lawlibrary/media/Secure/070721MidlandsandWesternCircuitcourt.pdf> [accessed on 28.03.2018]

## A comparison of the planning systems in Ireland and Northern Ireland

applications within 16 weeks of the receipt of application, bringing the total process to a maximum of 25 weeks (note this 16-week period can be changed if there is an oral hearing or by the Ministers' direction).

The 2016 Act is in place until 31 December 2019. However, this period may be extended by the Minister, though not beyond 31 December 2021.

The 2016 Act does specify that in cases where a proposed strategic housing development is to be located in a strategic development zone (SDZ), the applicant can elect between the two processes, i.e. the applicant can apply directly to the Strategic Housing Division of the Board or send the application to the local planning authority under Section 34 of the *Planning and Development Act 2000*. If this is the case, then Section 170 of that Act will apply.

The [\*Planning and Development \(Strategic Housing Development\) Regulations 2017 \(S.I. 271 of 2017\)\*](#) implements the 2016 Act by setting out the detail relating to the determination of planning applications for proposed strategic housing developments.<sup>31</sup>

## 9. Zoning

### Northern Ireland

A Simplified Planning Zone (SPZ) is an area where the need to apply for planning permission for certain types of development is removed, so long as the development complies with the details and guidance set out in the scheme.

Sections 33 to 38 and Schedule 1 of the [\*Planning Act 2011\*](#) provide the powers for new councils to develop SPZs rather than Dfl (as was the case under the old system). However, Dfl will retain an oversight role, and where necessary intervene. It will also provide advice and guidance.<sup>32</sup>

An SPZ will have effect for 10 years from its date of adoption. The [\*Planning \(Simplified Planning Zones\) Regulations 2015\*](#) provide detail on the process for councils making, adopting and altering SPZs. Sections 5 and 6 lay out the process for making objections and representations on a proposed SPZ scheme, and how the councils should consider them. Regulation 6 requires objections/representations to be made in writing within eight weeks of the council's first notification of the proposed scheme/alteration.<sup>33</sup> Any decisions made by a council to adopt or alter a scheme must be advertised.

The 2015 Planning Act provides councils with similar powers for SPZs as the 1991 Order gave the department. However, according to the department's [consultation](#) for the new system, the old process was untested as the department never exercised its SPZ powers. That being said, the

<sup>31</sup> For further information, see: DHLG, 2017. *Minister Murphy signs new regulations to fast track large scale housing developments* [online]. Available at: <http://www.housing.gov.ie/housing/planning-applications/minister-murphy-signs-new-regulation-fast-track-large-scale-housing> [accessed on 27.03.2018]

<sup>32</sup> DOE, 2014 [online]. *Planning Reform and Transfer of Functions: Proposals for subordinate legislation. Phase 2 Consultation* p.14 [http://www.planningni.gov.uk/index/news/news\\_consultation/planning\\_reform\\_transfer\\_to\\_local\\_government\\_proposals\\_for\\_subordinate\\_legislation\\_phase\\_2\\_public\\_consultation.pdf](http://www.planningni.gov.uk/index/news/news_consultation/planning_reform_transfer_to_local_government_proposals_for_subordinate_legislation_phase_2_public_consultation.pdf) [accessed 14.12.2018]

<sup>33</sup> The Planning (Simplified Planning Zones Regulations) 2015 <http://www.legislation.gov.uk/nisr/2015/188/regulation/6/made>

## A comparison of the planning systems in Ireland and Northern Ireland

department highlighted that SPZs are considered a future tool for councils in support of their local economic development.<sup>34</sup>

### Ireland

#### Strategic Development Zones (SDZs)

Provided for in Part IX of the *Planning and Development Act 2000 (as amended)*, SDZs are designed to **facilitate developments of national economic or social importance**. Following public consultation with the local authority, the Government may **designate an area** as an SDZ. Once designated, a **planning scheme** is prepared setting out how the site should be developed. The planning scheme goes through a series of assessments and public consultation before being adopted and may be appealed to An Bord Pleanála. The designation of SDZs is meant to fast track the process for developing these lands as developers are more likely to get planning permission if their site is in an SDZ and their application is in synergy with the planning scheme for the area. To date, SDZs have been used for mostly residential developments, for example, Adamstown in Dublin.

There is no appeal to the Board against the decision of the local authority on an individual planning application for development within an SDZ.

#### Zoning under the Development Plan

Separately, the requirement for the inclusion of zoning in Development Plans (County/City Development Plans or CDPs) is provided for under Part III, Section 10 of the *Planning and Development Act 2000 (as amended)*. The CDP must set out, among other things, the objectives for the zoning of land for the sole, or mixed use of residential, commercial, industrial, agricultural, recreational, and/or open space.

## 10. Permitted/Exempted Development

### Northern Ireland

The Planning Act 2011 and accompanying **[Planning \(General Permitted Development\) Order \(Northern Ireland\) 2015](#)** provide for a system of permitted development. This means that development types listed under the Order's Schedule are not required to undergo the usual planning application process, provided they meet certain thresholds/conditions stated in the Schedule. Development listed in the Schedule includes, but is not limited to:

- Extension or alteration to a dwelling house;
- Minor operations such as the construction or alteration to a fence or wall;
- Certain changes of use;
- Installation of domestic micro-generation equipment such as solar panels;
- The building erection and alteration of certain agricultural buildings; and
- Mineral exploration.

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<sup>34</sup> DOE, 2014 [online]. *Planning Reform and Transfer of Functions: Proposals for subordinate legislation. Phase 2 Consultation* p.14. Available at: [http://www.planningni.gov.uk/index/news/doe\\_planning\\_news/news\\_consultation/planning\\_reform\\_transfer\\_to\\_local\\_government\\_proposals\\_for\\_subordinate\\_legislation\\_phase\\_2\\_public\\_consultation.pdf](http://www.planningni.gov.uk/index/news/doe_planning_news/news_consultation/planning_reform_transfer_to_local_government_proposals_for_subordinate_legislation_phase_2_public_consultation.pdf) [accessed 14.12.2018]

## A comparison of the planning systems in Ireland and Northern Ireland

However, the department or council has the power to restrict or remove permitted development rights in the interests of local amenity using directions under Article 4 of the Order. They can also be removed through conditions attached to a planning permission.

The 2015 Order gives councils the power to remove or limit PD rights in protected or sensitive environments such as conservation areas or Areas of Outstanding Natural Beauty (AONBs); for mineral exploration; and for development where an Environmental Impact Assessment is required.

From December 2016 to February 2017 a [consultation](#) was conducted by the Department for Infrastructure on amending the 2015 Order to remove PD rights for oil and gas (or mineral) exploration. However, as this is a policy issue, further changes would require the input of a future Minister.

### Ireland

Exempted developments are those developments for which planning permission is not required and are legislated for under [Section 4](#) of the *Planning and Development Act 2000* (as amended). The classes of exempted development are set out in column 1 (description of development) of the 2<sup>nd</sup> Schedule to the [Planning and Development Regulations 2001](#) (as amended) provided that such development complies with the corresponding conditions and limitations set out in column 2 of the 2<sup>nd</sup> Schedule.

Examples of exempted development under the 2<sup>nd</sup> Schedule include: house extensions under 40m<sup>2</sup>, front porch, garage, TV aerial, chimney or boiler house, gate or car parking, agricultural structures, mineral and petroleum prospecting, peat extraction, and the installation of domestic microgeneration such as small turbines or solar panels.

## 11. Use classes

### Northern Ireland

A system of use classes is provided by the [Planning \(Use Classes\) Order \(Northern Ireland\) 2015](#). In general planning is not required for a change of use within the same use class, but a change between use classes does require planning permission. That being said, under the [Planning \(General Permitted Development\) Order \(Northern Ireland\) 2015](#), there are certain instances listed in Part 4 of the Schedule where it is possible to change between use classes without making a planning application.

### Ireland

Part 4 of the 2<sup>nd</sup> Schedule, *Exempted development – Classes of Use*, of the [Planning and Development Regulations 2001](#) sets out 11 classes of use which include use as a shop, art gallery, an office, a residential club, place of worship, crèche, public hall, library, theatre, etc. Article 10(1) of the 2001 Regulations states that 'development which consists of a change of use within any one of the classes of use specified in Part 4 of the 2<sup>nd</sup> Schedule shall be exempted development for the purposes of the Act'.



## 12. Planning conditions

### Northern Ireland

The department or council may impose conditions on planning permission under Part 3 of the *2011 Planning Act*. Conditions may be applied to enhance the quality of the development and enable development to proceed where it otherwise would have been refused. They may be used to introduce time limits, restrict use or permitted rights, or impose after care conditions.

#### Archaeological mitigation

As an example, conditions may be used for archaeological mitigation. According to the [SPPS](#), preserving an archaeological site is a material consideration in determining a planning application. Archaeological remains of regional importance include monuments in State Care, scheduled monuments and Areas of Significant Archaeological Interest (ASAs) all of which are given statutory protection. In fact, any development adversely affecting World Heritage Sites is not permitted. However, preservation of these sites may be ensured through the use of planning conditions requiring archaeological mitigation. It is therefore best practice for a developer to perform an archaeological assessment of their site before submitting an application. See the [SPPS](#) for more detail.

According to [guidance from DfC](#), Environmental Impact Assessments (EIA) or a stand-alone Archaeological Impact Assessment will require assessment of the potential impact of a development on heritage assets. Conditions may then be used to minimise or avoid any impact.

Information can also be found in LDPs ([see Development Plan Practice Notes 5, 7 and 8](#)) which are required to identify any designations, ASAs and features of archaeology and built heritage. The Northern Ireland Monuments and Buildings Record is available at the Department of Communities, who hold the responsibility for maintaining the Record under the [Historic Monuments and Archaeological Objects \(NI\) Order 1995](#).

For conditions to be imposed, they must satisfy a six-point test to ensure they are necessary, fair and practicable:

- necessary;
- relevant to planning;
- relevant to the development being permitted;
- precise;
- enforceable; and
- reasonable.

The [Development Management Practice Note 20](#) provides more detail.

## A comparison of the planning systems in Ireland and Northern Ireland

Grants of planning permission must impose a time limit of five years from the date of permission within which the development must be started. However, there are exemptions to the five-year limit. Conditions may be challenged on appeal in writing to the Planning Appeals Commission (PAC).

A council may issue a 'breach of condition notice' (under section 152 of the *Planning Act 2011*) where conditions attached to a grant of planning permission have not been complied with. Non-compliance with such a notice is an offence and may result in a fine of up to level 3 (£1000).

### Ireland

Local planning authorities have the power to impose planning conditions on planning permission.

Section 34(1) of the *Planning and Development Act 2000* (as amended) provides that planning permission may be granted subject to or without conditions or refused. Section 34(4) sets out the type of conditions which may be imposed. These include conditions for requiring the carrying out of works (including provisions of facilities); measures to reduce noise and vibration; requiring of planting of trees; maintenance and waste storage; and disposal among other things.

The Fifth Schedule of the *Planning and Development Act 2000* (as amended) provides for a list of conditions which may be imposed on the granting of permission to develop land without compensation.<sup>35</sup> These include conditions such as to pay a development contribution; to protect the environment or cultural heritage of the area; to protect against flooding; or to regulate and control the design, colour, layout, materials used in the development etc.

Any development which requires permission and does not have that permission is unauthorised development, as is a development which is proceeding in breach of conditions laid down in the planning permission. The carrying out of unauthorised development is an offence.<sup>36</sup>

The *Development Management: Guidelines for Planning Authorities* (DECLG, 2007)<sup>37</sup> state that:

*Certain basic criteria have often been suggested as a guide to deciding whether to impose a condition. These include whether the condition is:*

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise;
- Reasonable.

<sup>35</sup> The Fifth Schedule is subject to Section 191 (restriction of compensation). Section 191(3) states that 'compensation shall not be payable under section 190 [right to compensation] in respect of the imposition, on the granting of permission to develop land, of any condition of a class or description set out in the Fifth Schedule.'

<sup>36</sup> DECLG, 2012 [online]. *A guide to planning enforcement in Ireland*. Available at: <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/FileDownload%2C31564%2Cen.pdf> [accessed on 09.03.2018]

<sup>37</sup> DECLG, 2007 [online]. *Development Management: Guidelines for Planning Authorities*. Available at: <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/FileDownload%2C14467%2Cen.pdf> [accessed on 12.03.2018]

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*In addition, it is useful before deciding to impose a condition to consider what specific reason can be given for it: if the only reason which can be framed is a vague, general one, the need for or relevance of the condition, or its validity, may be questionable.*

### **Archaeological mitigation**

The *Planning and Development Act 2000* provides for the protection of the archaeological heritage. Where a planning application might affect or be unduly close to any archaeological site, monument or feature, the planning authority refers the planning application to the Department of Culture, Heritage and the Gaeltacht (DCHG). The National Monuments Service (NMS) within the DCHG provides, among other things, expert advice to planning authorities from an archaeological perspective. Once the DCHG receives a planning application, the NMS will carry out an appraisal of it and based on their findings, may request an archaeological assessment of the site or recommend planning conditions so as to ensure archaeological mitigation.

If archaeological material is discovered once construction has commenced without appropriate archaeological conditions attached to the permission, then the development must be interrupted. Similar to NI, this can cause significant costs and delays to the developer, therefore it is suggested that archaeological input is needed at the start of the planning process.

As a requirement under the *Planning and Development Act 2000 (as amended)*, Development Plans and Local Area Plans highlight archaeological zoning, policies and objectives. *The National Monument Acts* provide for, among other things, the protection of national monuments and archaeological objects (note the *Monuments and Archaeological Heritage Bill* is on the legislative programme for Autumn 2018. The Bill proposes to replace, in revised form, all the existing *National Monuments Acts 1930 to 2014* and provide a strengthened and modernised framework for the protection of monuments and archaeological objects). The NMS is also responsible for maintaining the Record of Monuments and Places and for the regulation of Ireland's archaeological heritage.

For further information, see: [\*\*National Monuments Service\*\*](#)

## 13. Developer contributions

### Northern Ireland

Developer contributions can be secured as a condition to planning permission or by a planning agreement under Section 76 of the 2011 Planning Act. This enables the department or council (whichever is the relevant Planning Authority) to enter into legal Planning Agreements for the purpose of facilitating, regulating or restricting the development or use of the land. This may include the setup of contributions to be paid by the developer to the relevant authority, or any Northern Ireland department, to offset the impact of the proposed development, in conjunction with granting planning permission.

According to the [Spatial Planning Policy Statement \(SPPS\)](#) developer contributions can be used:

- Where a proposed development requires the provision or improvement of infrastructural works over and above those programmed in a LDP;
- Where earlier than planned implementation of a programmed scheme is required;
- Where a proposed development is dependent upon the carrying out of works outside the site; and
- Where archaeological investigation or mitigation is required.

Currently in NI, there are no developer contributions for social/affordable housing. However, it has been discussed whether planning agreements under the new system could support this. A [joint consultation](#) was issued in 2014 by the then Departments for Social Development (DSD) and the Environment (DoE) on the possible introduction of a Developer Contributions Scheme for social and affordable housing in Northern Ireland. Similar to systems in the rest of GB and Ireland, the proposals would require planning authorities in Northern Ireland to seek contributions from developers for affordable housing, as a proportion of all newly-proposed housing developments above a threshold number of dwellings.

[Independent research](#) was commissioned in 2015 in response to suggestions from respondents then about the need for further economic research on the issue. The latest [position from the Minister for Communities](#) in 2016 (who is responsible for social housing) is:

*Independent research, published by the then Department for Social Development in February 2016, highlights that most housing markets in Northern Ireland could not sustain a scheme of developer contributions at present. The report also highlights that there are key data and evidence gaps on issues pertinent to housing supply and the NI housing market more generally. My officials are working with **officials in the Department for Infrastructure on these issues.**<sup>38</sup>*

On this basis there has been no further movement on the issue as yet.

Another mechanism relating to infrastructure works is [Article 122 of the Roads \(Northern Ireland\) Order 1993](#).

Developers may decide to offer community benefits to communities likely to be affected by their development. This may involve payments to the community, in-kind benefits and shared ownership arrangements. However, community benefits are voluntary and are not legislated for, unlike planning

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<sup>38</sup> Assembly Question **AQW 1336/16-21** by Steven Agnew 16.06.2016 [online]. Available at <http://aims.niassembly.gov.uk/questions/printquestionsummary.aspx?docid=267629> [accessed 12.12.2018]

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agreements/developer contributions which are. For this reason, community benefits are not material considerations in the determination of planning applications.

### Ireland

Development contributions are dealt with under Sections 48 and 49 of Part III of the **Planning and Development Act 2000 (as amended)**. There are three types of development contribution:

1. General development contribution (Section 48);
2. Special development contribution (Section 48); and
3. Supplementary development contribution (Section 49).

Section 48(1) of the *Planning and Development Act 2000* (as amended) enables a planning authority, when granting a planning permission under Section 34 of the Act, to include conditions requiring the payment of a contribution. This **general development contribution** is in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that is intended will be provided, by or on behalf of the local authority (regardless of other sources of funding for the infrastructure and facilities).<sup>39</sup>

Section 48(2) requires that, to determine the basis of the development contribution, local planning authorities must adopt a general development contribution scheme which states the levels of contribution payable under the scheme. In addition, where specific exceptional costs not covered by a scheme are incurred by the planning authority in respect of public infrastructure and facilities which benefit the proposed development, the payment of a **special development contribution** may also be required.

The DHPLG has long-standing guidance in place that local authorities should apply exemptions to development contributions in respect of social housing development that is carried out by voluntary or co-operative housing associations that are recognised by the relevant planning authority.<sup>40</sup>

Section 49 of the *Planning and Development Act 2000* (as amended) requires the adoption of a **supplementary development contribution** scheme in order to 'facilitate a particular public infrastructure service or project which is provided by a local authority or a private developer on behalf of and pursuant to an agreement with a local authority (e.g. through Public Private Partnership), and which will directly benefit the development on which the levy is imposed.'<sup>41</sup>

### **Development contribution rebate scheme**

In 2015, the then Department of Environment, Community and Local Government (DECLG) noted that a major contributing factor to the housing problems currently faced, particularly in Dublin and Cork, was the insufficiency of housing supply and low levels of construction activity. As many planning permissions for residential developments had been granted but construction hadn't commenced, the Government introduced a development contribution rebate scheme for housing developments of 50 or more units in Dublin and Cork for 2016 and 2017 to stimulate house building (excluding contributions paid/due to Irish Water and subject to certain conditions).<sup>42</sup>

<sup>39</sup> Dublin City Council. *Development Contribution Schemes*. Available at: <http://www.dublincity.ie/developmentcontributionschemes>

<sup>40</sup> DÁIL Question 259 addressed to the Minister for Housing, Planning and Local Government (Deputy Eoghan Murphy) by Deputy Eoin Ó Broin for written answer on 26/09/2018

<sup>41</sup> Department of the Environment and Local Government, 2003. *Circular Letter PD 4/2003, Development contributions*

<sup>42</sup> DECLG, 2015 [online]. *Circular: Development contribution rebate scheme*. Available at: <http://www.housing.gov.ie/circular-pl-132015-development-contribution-rebate-scheme> [accessed on 12.03.2018]

## 14. Environmental Impact Assessments

*Environmental Impact Assessment (EIA) is the process of examining the anticipated environmental effects of a proposed project - from consideration of environmental aspects at design stage, through consultation and preparation of an Environmental Impact Assessment Report (EIAR), evaluation of the EIAR by a competent authority, the subsequent decision as to whether the project should be permitted to proceed, encompassing public response to that decision.<sup>43</sup>*

The EIA Directives (from 1985 to 2014)<sup>44</sup> set out the requirement for an EIA in European law.

A core obligation under Article 2 of the EIA Directive is that Member States shall adopt all measures necessary to ensure that, before development consent is given, **projects likely to have significant effects on the environment** by virtue, *inter alia*, of their nature, size or location **are made subject to a requirement for development consent and an Environmental Impact Assessment (EIA)**.

The EIA is the assessment process carried out by the competent authority while the Environmental Impact Assessment Report (EIAR) (formerly referred to as an Environmental Impact Statement or EIS) is the written statement of the effects, if any, of a project, if carried out, would have on the environment. The competent authorities' assessment (EIA) is based on the findings in the EIAR.

The EIA must identify and assess effects (direct, indirect and cumulative effects) on human beings, flora & fauna, soil, water, air, climate and landscape, material assets and cultural heritage.

As the requirement to carry out an EIA of certain planning proposals comes from European legislation, which has been transposed nationally by Member States through regulations, there is a broadly similar approach adopted both in NI and Ireland with respect to EIAs.

Whether or not an EIA is required for a particular development depends on the nature of the development. All projects listed in Annex I of the Directive require a mandatory EIA (e.g. long-distance railway lines, motorways and express roads, installations for the disposal of hazardous waste etc.).

Those listed in Annex II are at the discretion of the Member State as to whether they require an EIA and this is usually done through the 'screening procedure' which determines the effects of projects on the basis of thresholds/criteria or a case by case examination.

At the scoping stage the developer may request advice from the planning authority about what information they should provide for the EIA. The developer then provides an EIAR on the environmental impacts of their proposal. The environmental authorities<sup>45</sup> and public must be informed and consulted. The planning authority makes its decision based on the EIA Report and any consultation responses, and must inform the public of its decision, which can be appealed before the courts.

The 2011 EIA Directive has been superseded by Directive (2014/52/EU) which entered into force on 15 May 2014. Member States had to the 16 May 2017 to transpose the Directive into domestic

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<sup>43</sup> EPA, 2017 [online]. *Environmental Impact Assessment*. Available at: <http://www.epa.ie/monitoringassessment/assessment/eia/> [accessed on 14.03.2018]

<sup>44</sup> The 1985 EIA Directive (as amended by three Directives in 1997, 2003 and 2009) has been repealed and all of these EIA Directives have been codified by **Council Directive 2011/92/EU**. Most recently, Directive 2011/92/EU has been amended in 2014 by **EIA Council Directive 2014/52/EU** (new EIA Directive).

<sup>45</sup> The Northern Ireland Environment Agency [NIEA] as part of DAERA and the Environmental Protection Agency [EPA] in Ireland.

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legislation. While the overall EIA process will remain generally the same, the new 2014 Directive has made a number of changes in relation to, and not limited to:

- Simplifying environmental assessment procedures;
- New timeframes for the different stages of environmental assessments: screening decisions within 90 days and public consultations should last at least 30 days. Member States also need to ensure that final decisions are taken within a 'reasonable period of time'; and
- Reports made more understandable with improved quality and evidence of objectivity and expertise in authority assessments.

More information is available on the European Commission's [website](#).

### Northern Ireland

**[The Planning \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017](#)** transpose the requirements of the 2011 EIA Directive so as to reflect the new planning system under the 2011 Planning Act. The 2017 Regulations list Annex I and Annex II projects in Schedule 1 and Schedule 2 respectively, and provide the Selection Criteria under Schedule 3.

The Local Planning Authority has 16 weeks from the date of receipt of the EIA Report (known as the Environmental Statement (ES) in the NI Regulations) to determine the planning application, instead of the normal eight weeks from the receipt of a planning application.<sup>46</sup> It must seek the views of the consultation bodies listed in the Regulations. The authority must take account of the ES, together with any other information, comments and representations made on it, in deciding whether or not to give permission for the development. Where an ES reveals that a development would have an adverse impact on the environment, it does not automatically follow that planning permission will be refused. If permission is granted, conditions may be attached that include mitigation measures that can be based on the ES.

However, a consultation was held December 2016 to February 2017 on introducing the changes from the 2014 Directive. These changes were then introduced through the **[Planning \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017](#)** in May 2017.

### Ireland

The EIA Directives have been transposed into Irish legislation by way of a number of EIA Regulations from 1989 to 2018<sup>47</sup>. EIA provisions in relation to planning consents are currently contained in the *Planning and Development Act, 2000* (as amended) (Part X) and in Part 10 of the *Planning and Development Regulations, 2001* (as amended).<sup>48</sup> Developments for the purpose of Part 10 (i.e. those developments requiring an EIA) are set out in Schedule 5 (Parts 1 and 2) of the *Planning and Development Regulations 2001* (as amended).

The transposition deadline for the new 2014 EIA Directive was 16 May 2017. But Ireland was late and in the interim, to facilitate compliance with the new Directive, the Environmental Protection Agency (EPA) published **[Draft guidelines on what is to be contained in an Environmental](#)**

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<sup>46</sup> **[The Planning \(General Development Procedure\) Order 2015 \(Regulation 20\)](#)** and **[DOE \(2015\) Development Management Practice Note 16: The Determination of a Planning Applications. P.14](#)**

<sup>47</sup> A link to EIA Regulations is available by a search of the Irish Statute Book, available [here](#)

<sup>48</sup> DECLG, 2013 [online]. *Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment*. Available at: <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/FileDownload%2C32720%2Cen.pdf> [accessed on 28.03.2018]

**Impact Assessment Report** in August 2017. In July 2018, Ireland transposed the Directive by way of the **European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018** which came into operation on 1 September 2018. The Regulations provide for the transposition of the 2014 EIA Directive and give further effect to the 2011 EIA Directive by way of extensive amendments to existing planning law. Updated **Planning guidelines for planning authorities and An Bord Pleanála on carrying out Environmental Impact Assessments** were published by the Department of Housing, Planning and Local Government on 30 August 2018.<sup>49</sup>

## 15. Habitats, species and appropriate assessment

European sites of ecological conservation importance are defined as Special Areas of Conservation (SACs) for habitats and species, designated under the **Habitats Directive 92/43/EC** and Special Protection Areas (SPAs) for birds designated under **Directive 2009/147/EC on the conservation of wild birds** (the codified version of Council Directive 79/409/EEC as amended) ('the Birds Directive'). These are also known, collectively, as Natura 2000 sites.

The Natura 2000 sites form a pan-European ecological network of SACs and SPAs for threatened habitats, species and birds. The Habitats and Birds Directives are transposed by Member States through regulations:

- The **Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995** (as amended) and **Wildlife and Natural Environment Act (Northern Ireland) 2011** in NI; and
- The **EC (Birds and Natural Habitats) Regulations 2011-2015** in Ireland.

According to both regulations referred to above, any plan/project/activity (Ireland Regulations) or decision on planning permission (NI Regulations) on a European Natura 2000 site must be assessed in relation to its potential impact on the integrity of the site.<sup>50</sup>

On this basis, planning authorities may require certain assessments and site surveys to accompany a planning application. The ecological features of a site and the details of the project will determine the types of surveys required. In NI, surveys are normally conducted by professional ecologists in line with the **Chartered Institute of Ecology and Environmental Management (CIEEM) Guidelines** and relevant **DAERA-specific survey requirements**, so as to be deemed adequate by the planning authority.

In Ireland a Natural Impact Statement (NIS) is carried out by ecological specialists on behalf of the proponent of the plan/project and assessed by the planning authority.<sup>51</sup>

<sup>49</sup> Further information on the new Regulations and Guidelines is available at: Department of Housing, Planning and Local Government, 2018 [online]. *Minister Murphy publishes updated planning guidelines on Environmental Impact Assessment*. Available at: <https://www.housing.gov.ie/planning/guidelines/minister-murphy-publishes-updated-planning-guidelines-environmental-impact> [accessed on 28.09.2018]

<sup>50</sup> See **EC (Birds and Natural Habitats) Regulations** s.28 and **Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995** s.49.

<sup>51</sup> NPWS, n.d.. *Guidance on Appropriate Assessment for Planning Authorities* [online]. Available at: <https://www.npws.ie/protected-sites/guidance-appropriate-assessment-planning-authorities> [accessed on 14.012.2018]



### **Appropriate Assessment**

Article 6 (3) of the Habitat Directive requires any plan or programme, not directly connected with or necessary to the management of a European protected site, but likely to have significant impacts on it, to undergo an Appropriate Assessment. This is a scientific assessment carried out by the competent authority (developer usually prepares all AA documentation, but responsibility lies with the consent authority). The AA is specific to the conservation objectives of the site, so it will only assess those aspects of a site for which it is designated.<sup>52</sup>

In exceptional circumstances a plan or project may still be allowed go ahead, in spite of a negative assessment if that plan or project must be carried out for 'imperative reasons of overriding public interest' (IROPI). In such cases, a Member State must take compensatory measures to ensure the overall coherence of Natura 2000 is protected.<sup>53</sup> The implementing legislation for AA in Ireland is found in Part XAB (Appropriate Assessment) of the Planning and Development Acts and EC (Birds and Natural Habitats) Regulations 2011 (Parts 4 and 5).

## 16. Appeals/Planning Inspectorate

### **Northern Ireland**

Planning appeals are legislated for under **Part 3** of the Planning Act 2011.

Appeals on decisions may be made by, or on behalf of, the applicant to the Planning Appeals Commission (PAC). There is no 'third party' right of appeal against a planning decision. However, when an application is appealed, objectors or anyone with an interest in the proposal may make a response to the PAC.

**The Planning Appeals Commission (PAC)** is an independent appeals body which operates under the 2011 Planning Act. Its operation falls into the following two categories:

- Decisions on appeals – the PAC makes decisions on all appeals against departmental and council decisions on a wide range of planning and environmental matters. However, this does not apply to any application called-in by the department.
- Hearing and reporting on public inquiries/hearings – the PAC makes recommendations on a wide range of cases referred to it by the department. The final decision on these matters is taken by the relevant department.

Decisions are transferred out from political decision, unlike elsewhere in the UK where the appeal bodies make decisions in the name of the relevant Ministers. In NI, the PAC must reach its decision on the basis of the reports made by the Commissioners. Commission decisions are final; however, they are open to challenge by application to the High Court for judicial review.

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<sup>52</sup> For further information see s.17 of the **Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995** and Part 5 of the **EC (Birds and Natural Habitats) Regulations**.

<sup>53</sup> EC, n.d. *Management of Natura 2000 sites* [online]. Available at: [http://ec.europa.eu/environment/nature/natura2000/management/guidance\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm) [accessed on 14.12.2018]

### Ireland

Established in 1977, **An Bord Pleanála** (Ireland's planning inspectorate or appeals board), provides an arbitration forum in which any planning decision by a local planning authority may be subject to an independent review (i.e. appealed).

Appeals can be made to An Bord Pleanála (the Board) by:

- A first party (applicant); and/or
- A third party who submitted a submission or observation at the planning stage to the local planning authority. However, there are three exceptions where a third party may appeal even if he/she did not make an objection / submission already:
  1. A person with an interest (owner / occupier) in the land adjoining the site of proposed development;
  2. Where an EIAR (formerly EIS) has been submitted; a party with genuine environmental protection concerns subject to certain conditions; and
  3. A prescribed body who was entitled to be notified of a planning application by the planning authority and was not notified in accordance with law.

The Board has published a **[Guide to making a planning appeal](#)** for further information.

The appeals process is governed by the *Planning and Development Act 2000* (as amended) and implemented by the *Planning and Development Regulations 2001* (as amended).

Separately, the Board is also responsible for determining planning applications for strategic infrastructure development (SID) and strategic housing development (SHD). Refer to *Regionally Significant / Strategic Infrastructure Development*, section 8 of this paper for further information on SID and SHD.

The planning appeals decision of the Board is final and a challenge cannot be made other than to its legal validity by way of judicial review in the High Court. This is the same for SID and SHD planning decisions made by the Board which cannot be the subject of a planning appeal and can only be challenged by way of judicial review on procedural or legal matters.

## 17. Enforcement

### Northern Ireland

Under the *2011 Planning Act*, one of the functions transferring to local councils is planning enforcement; however, the DfI has powers to take enforcement measures where it believes a council failed to take action.

Under **Part 5** of the *Planning Act 2011* it is an offence to carry out development without planning permission, or failing to comply to any conditions set with planning permission. Similar to other UK jurisdictions, the power to take enforcement action is left up to the discretion of the council or the department who may request further information with a **contravention notice**. It is not necessarily an offence to undertake development without planning consent; in some cases, if it is

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agreed that the development is in keeping with the LDP and material considerations, retrospective planning consent may be simply required.

However, should the breach be considered extensive, the decision may be made to issue an **enforcement notice**, a **breach of condition notice**, and/or a **stop notice**, to bring the unauthorised development under control. Failure to comply with an enforcement or stop notice is an offence liable to a fine of up to £100,000 on summary conviction, or an unlimited fine on indictment, under section 147 and section 137 respectively. Failure to comply with a breach of condition notice is liable up to a level three fine (£1000) under section 152 of the *Planning Act 2011*.

Under section 32 of the *2011 Act*, enforcement action must be taken within five years of completion for breaches of development (building, engineering, mining or other operations in, on, over or under land) and five years from the start of the breach for any change of use to a dwelling house.

It is possible for individuals to attempt to make a defence to the local planning authority against certain offences. However, an appeal against an offence under an enforcement notice must be made to the PAC. The PAC must publically provide details of the appeal, so that anyone with an objection or interest can become involved in the process.

For more information on the range of enforcement powers given to local councils and the department, refer to Part 5 of the [2011 Planning Act](#).

### Ireland

Any development which requires permission but does not have that permission is unauthorised development. [Section 151](#) of the *Planning and Development Act 2000 (as amended)* states that anyone carrying out, or who has carried out, unauthorised development is guilty of an offence.

Anyone can complain about unauthorised development which has been, is being, or is about to be carried out. If a planning authority receives a written complaint about unauthorised development and is of the view that unauthorised development has been or is being carried out, then it must act upon the complaint unless it considers the development to be minor or trivial in nature. The first step is for the local planning authority to issue a **warning letter** under Section 152 of the *Planning and Development Act 2000 (as amended)* within six weeks of receipt of the written complaint (requiring a response from the unauthorised developer within four weeks). The second step is for the planning authority to carry out investigations to determine whether they should proceed with enforcement under Section 153 of the *Planning and Development Act 2000 (as amended)* within 12 weeks of the issuing of the warning letter (preferably sooner).

Under Section 154, if the planning authority determines the unauthorised development is being carried out and is not minor and/or the unauthorised developer has not moved to remedy the situation, and it considers it necessary, the planning authority proceeds by serving an **enforcement notice** on the person who is carrying out the development, and where considered necessary, the owner or the occupier of the land and shall notify the complainant of the issuing of the enforcement notice. The enforcement notice states that the person must cease unauthorised development or comply with conditions etc. as appropriate.<sup>54</sup>

Alternatively, or subsequently to serving an enforcement notice (if it is not complied with), where unauthorised development is being or is about to be undertaken, the planning authority can seek a

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<sup>54</sup> DCELG, 2012 [online]. A guide to planning enforcement in Ireland. Available at: <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/FileDownload%2C31564%2Cen.pdf> [accessed on 07.03.2018]

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**court order.** This is done by applying to the Circuit or High Court for an injunction to cease works under Section 160 of the *Planning and Development Act 2000* (as amended).<sup>55</sup>

**Section 157(4) of the Planning and Development Act 2000 (as amended)** provides for a statute of limitation ('**the seven-year rule**'). This means that if a development exists where no planning permission was granted, then seven years after the development commenced the relevant authority can't take enforcement proceedings. Where there was planning permission, after a seven-year period (from the date of expiration of planning permission which is usually five years giving a total of 12 years), enforcement proceedings cannot be taken against the unauthorised development. In both cases this does not mean you now have default planning. All that exists is a development without planning permission that is now exempt from enforcement action. Rectification of the planning status will still be required if any subsequent alterations or statutory applications are to be made or, indeed, in most cases where the related property is to be sold. This can be rectified by either the correction of the relevant non-compliance or by applying for retention of planning.

The 'seven year rule' applies equally to all developments with the **exception of unauthorised quarrying operations and unauthorised peat abstractions**.<sup>56</sup>

## 18. Listed buildings

### Northern Ireland

Responsibilities in relation to the historic environment and planning are split between the Department for Infrastructure (DfI), the Department for Communities (DfC) and local councils.

The planning system has a duty towards listed buildings under [\*\*Part 4 of the Planning Act 2011\*\*](#). Under the Act consent (known as listed building consent (LBC)) is required from the council or DfI for the demolition or any works, alteration and extension that may in any way affect the character of a listed building. Any unauthorised works to a listed building may lead to a fine of up to £100,000 and/or imprisonment up to six months. The Act also requires a [\*\*list\*\*](#) of buildings of special architectural or historic interest to be compiled and maintained. This is now performed by [\*\*DfC\*\*](#) following departmental reorganisation in 2015, as provided under [\*\*the Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016\*\*](#).

The SPPS recognises the importance of preserving the natural and built heritage assets, and in doing so states the need to assess development proposals impacting listed buildings and their settings. According to the SPPS, applications for development involving works to, or the alteration of, a listed building may be permitted, provided the development respects the character, setting and fabric of the building. The SPPS has been informed by [\*\*PPS 6 Planning, Archaeology and the Built Heritage\*\*](#) and must be reflected in councils' new Local Development Plans. However, until such times as these are adopted, PPS 6 will be retained for the consideration of LBC applications.

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<sup>55</sup> *Ibid*

<sup>56</sup> *Ibid*

### Ireland

The conservation principles of care and protection of architectural heritage and the facilitation of the listing of significant buildings of architectural merit are set out in Part IV of the *Planning and Development Act 2000 (PDA)*. These include<sup>57</sup>:

- Local authorities must create a Record of Protected Structures, to be included in City/County Development Plans (CPD);
- Local authorities must provide for the preservation of townscapes etc. through the designation of Architectural Conservation Areas (ACAs) in the CDP;
- CDPs must include objectives for the preservation and protection of structures;
- Owners of protected structures also have obligations to protect structures and local authorities have powers for endangered/neglected buildings; and
- The local authority may inform the owner of the works that require planning permission and those that do not. This is known as a declaration. However, all changes which may materially affect the character of a protected structure require planning permission.

For note, a protected structure includes the structure itself, interior and land and buildings within the curtilage<sup>58</sup>.

Other guidelines and legislation that apply are the *National Monuments Acts 1930 – 2014*<sup>59</sup>. These Acts apply to monuments of architectural, historical or archaeological interest and overlap with the *PDA 2000* which protects structures of special architectural, historical, archaeological interest etc.<sup>60</sup>

The protection of archaeological heritage is administered at local and national level. At the local level, local authorities are responsible for protection under the *PDA 2000*, while the Minister for Culture, Heritage and the Gaeltacht is responsible for the formulation and implementation of policy and legislation. An Bord Pleanála and other statutory bodies (the Heritage Council, the Arts Council, Bord Fáilte and An Taisce etc.) have a role to play in planning decisions affecting a protected structure. Protection under the *Monuments Acts* is administered at national level.<sup>61</sup>

## 19. Advertisement consent

### Northern Ireland

**[The Planning \(Control of Advertisements\) Regulations \(Northern Ireland\) 2015](#)**, issued under the 2011 Act, include provisions to allow councils to restrict and regulate the display of advertisements in the interest of amenity and public safety, including road safety (Article 87 of the *Roads Order 1993* provides additional controls for advertisements on public roads).

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<sup>57</sup> DAHG, 2011. Architectural Heritage Protection - guidelines for planning authorities (p.15). Available at <https://www.chg.gov.ie/app/uploads/2015/07/Architectural-Heritage-Protection-Guidelines-2011.pdf>

<sup>58</sup> Ibid

<sup>59</sup> Note the Monuments and Archaeological Heritage Bill is on the legislative programme for Autumn 2018. The Bill proposes to replace in revised form all the existing National Monuments Acts 1930 to 2014 and provide a strengthened and modernised framework for the protection of monuments and archaeological objects.

<sup>60</sup> Ibid (p.16)

<sup>61</sup> Ibid (p.17/18)

## A comparison of the planning systems in Ireland and Northern Ireland

A consent to display must be applied for to the council or department. However, there are a number of exemptions to this control listed in Schedule 2 of the Regulations (e.g. advertisements on enclosed land, but does not include public parks or gardens). Certain cases may be classed as 'deemed consent' under Schedule 3, provided certain conditions are met (e.g. advertisements relating to identification, direction or warning in relation to the land or building on which it is displayed, provided it is no larger than 0.3 metres and is not illuminated etc.).

Local councils may bring forward policies within their LDPs for the control of advertisements in their local area. These may address requirements for Listed Buildings, Conservation Areas and Areas of Townscape Character<sup>62</sup> etc. and must comply with the SPPS.

Further information is provided in the [SPPS](#) on the Control of Outdoor Advertisements (p.49/50) and [Development Management Practice Note 7](#).

### Ireland

Under the *Planning and Development Regulations 2001* (as amended), advertisements are generally considered exempted development (subject to Article 9 [restrictions on exemptions]). The specifics of which type of advertisements are exempt are set out in Part 2, *Exempted development – advertisements* of the 2<sup>nd</sup> Schedule to the [Planning and Development Regulations 2001](#).

However, an advertisement structure cannot be erected, constructed, maintained or placed on, under, over or along a public road without a licence granted by a planning authority under [Section 254](#) of the *Planning and Development Act 2000* (as amended). Section 254 also states that the planning authority may set conditions to the licence including the location and design of the advertising structure and can specify the period of time for which the licence is granted. Once a licence is granted the advertising structure is classified as exempted development (Section 254(7)).

Fees for licensed appliances etc., including advertising structures, as listed under Section 254 of the *Planning and Development Act 2000* (as amended) are set out in Schedule 12 of the [Planning and Development Regulations 2001](#).

Planning authorities can set out policies on advertising and advertising structures in their County / City Development Plan depending on the sensitivity of the area etc.

Under Part IV, *Environment and Amenities*, of the 1<sup>st</sup> Schedule, *Purposes for which objectives may be indicated in Development Plan*, of the *Planning and Development Act 2000* (as amended), a planning authority may prohibit, restrict or control the exhibition of any particular forms of advertising or erection of advertising structure, either generally or in particular places or within a specified distance of the centre line of all roads or any specified road. An example of this is set out in Appendix 19, *Outdoor Advertising Strategy* of the 2016-2022 Dublin City Development Plan which has an outdoor advertising policy based on the various geographical areas within the Dublin City boundaries.<sup>63</sup>

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<sup>62</sup> Areas of Townscape Character are designated so as to preserve the distinct historic character and qualities of a town city and/or village. This is the key consideration for planning applications in ATCs. For further information see Planning NI: <https://www.planningni.gov.uk/index/policy/planning-statements-and-supplementary-planning-guidance/guides/guides-atc.htm>

<sup>63</sup> DCC [online] *Dublin City Development Plan 2016-2022*. Available at: <http://www.dublincity.ie/main-menu-services-planning-city-development-plan/dublin-city-development-plan-2016-2022> [accessed on 29.03.2018]

## 20. Main comparisons

The following section draws together some of the main comparisons between the two planning systems. Please note that this is not an exhaustive list but merely draws together some brief examples.

### Regional/national policy

While both planning systems operate a plan-led system, planning policy begins at a national level in Ireland, and a regional level in NI. For example, the hierarchy of planning policy in Ireland begins with national policy (*Project Ireland 2040 – National Planning Framework*) at the top, working down through regional policy (the three regions of - Eastern and Midlands, Northern and Western, and Southern), County/City level (County and City Development Plans) and Local Area Plans at the local authority level. In contrast, NI operates from a regional level with the RDS and SPPS forming the strategic policy framework at the top, both of which inform the local planning policies developed by councils (LDPs). See figures 1 and 2 in section 3 of this paper.

### Development Plans

Both in NI and Ireland, local planning authorities produce development plans for the whole council area, and more localised plans for site specific areas within the council boundary. The difference being that all councils in NI must produce Local Policies Plans as part of the overall LDP plan process, whereas in Ireland, local councils must only produce their more specific Local Area Plans if the population is greater than 5000. See section 3 for more detail.

### Community plans

In both jurisdictions, local government reform brought about the opportunity for strengthening community collaborative working through the introduction of community planning. After the introduction of the [Local Government Act 2014](#), NI councils are responsible for community planning and the development of community plans. In Ireland, community plans are known as Local Economic and Community Plans (LECP) under the *Local Government Reform Act 2014*. Similar to NI, these are to help facilitate better integration of public bodies, social and community partners to collaboratively work on integrated plans for improving the social, economic and environmental wellbeing of communities. However, one of the main differences is that NI lists statutory planning partners that must assist councils with the development and delivery of their community planning functions, whereas Ireland does not.

Unlike the other parts of the UK, both NI and Ireland place a statutory link between these plans and their inclusion in the development of council development plans<sup>64</sup>. For more information see NI's [Statutory Guidance for the Operation of Community Planning](#) and Ireland's [Guidelines on Local Economic and Community Plans](#). Also see section 7 of this paper.

### Nationally significant projects

Known as Strategic Infrastructure Development (SID) in Ireland, An Bord Pleanála (also the national planning appeals body) has responsibility for determining applications for strategic infrastructure projects (and strategic housing development). In comparison, applications of Regional Significance in NI are made to and decided by DfI.

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<sup>64</sup> See [Local Government Act 2014 S.66 \(6\)](#) and [Local Government Reform Act S.66B \(4\)](#)

## A comparison of the planning systems in Ireland and Northern Ireland

Unlike NI, Ireland has provision (under the *Planning and Development (Housing) and Residential Tenancies Act 2016*) for the introduction of temporary fast-track planning procedures for strategic housing developments (SHD) whereby planning applications for large-scale housing developments are made directly to An Bord Pleanála. See section 8 of this paper for more detail.

### Delegated decision making

NI operates a scheme of delegated decision making on planning applications by local councils under the *Planning Act 2011*. The purpose of this is to help speed up the planning process, allowing small and straight forward applications to be decided by planning officers, rather than the planning committee. However, this form of delegated decision making does not exist in Ireland. See section 5 of this paper for more detail.

### Permitted Development (NI), Exempted Development (Ireland)

There are a number of slight differences between what is classed as permitted development in NI and exempted development in Ireland. For example, in Ireland peat extraction (with certain limits) is exempt, whereas it is not permitted development in NI and requires planning permission<sup>65</sup>. In terms of agricultural development, the regulations in Ireland are a lot more specific to the type of agricultural building compared to NI. However, in general NI allows for agricultural buildings of up to 500 metres squared<sup>66</sup>, whereas Ireland gives permitted development for up to 200/300 metres squared, depending on the type of building.<sup>67</sup>

As discussed in section 19 of this paper, in Ireland, advertisements are generally considered exempted development under the *Planning and Development Regulations 2001* (as amended), subject to certain conditions. However, in NI advertisements are not classed as permitted development and require permission from the local council or department under *The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015*, subject to certain exemptions.

### Appeals

There are no third party rights of appeal in NI. However, this is not the case in Ireland. In Ireland, a third party who makes a submission or observation at the planning stage to the local planning authority may make an appeal. However, there are three exceptions where a third party may appeal even if he/she did not make an objection / submission already:

1. A person with an interest (owner / occupier) in the land adjoining the site of proposed development;
2. Where an EIAR (formerly EIS) has been submitted; a party with genuine environmental protection concerns subject to certain conditions; and
3. A prescribed body who was entitled to be notified of a planning application by the planning authority and was not notified in accordance with law.

There is also no right to third party appeals in England, Scotland or Wales which, similar to NI, base their appeal rights on the first person, i.e. the applicant who can only appeal a decision.

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<sup>65</sup> For further detail see DAERA *Peatlands* [online]. Available at <https://www.daera-ni.gov.uk/articles/peatlands> [accessed 31.05.2018].

<sup>66</sup> The Planning (General Permitted Development) Order (Northern Ireland) 2015. Schedule 2 Part 7 <https://www.legislation.gov.uk/nisr/2015/70/schedule/made>

<sup>67</sup> Planning and Development Regulations, 2001. Schedule 2 Part 3 <http://www.irishstatutebook.ie/eli/2001/si/600/made/en/print#sched2>



## A comparison of the planning systems in Ireland and Northern Ireland

While the issue of third party appeals was explored in NI during the introduction of the *Planning Act 2011*, the Department of the Environment (responsible for planning then, which has since been handed over to the new DfI) decided against their introduction. Given, however, that the majority of respondents to a consultation supported their introduction, the department felt that:

*...further consideration of third party appeals should be deferred until the extensive changes to the planning system with local government reform had time to settle down. In addition, this approach would ensure that third party appeals would not present an opportunity to hinder the recovery and delivery of a productive and growing economy in Northern Ireland. Third party rights at this stage could well be a competitive economic disadvantage to Northern Ireland, given that third party appeals have not been introduced in England, Scotland or Wales and there is a suggested significant risk of potential adverse impact upon investment in the Northern Ireland economy if they were to be introduced.<sup>68</sup>*

### Enforcement period

In NI enforcement action must be taken within five years of completion of any unauthorised development as described under section 132 of the *Planning Act 2011*. In comparison, the time period is seven years once the development has commenced in Ireland, after which enforcement action cannot be taken. See section 17 of this paper for further detail.

### Developer contributions

Both NI and Ireland have provisions for developer contributions in relation to necessary infrastructure works and mitigation measures etc. NI does not provide for developer contributions for social housing, whereas Ireland does. However, the DHPLG has long-standing guidance in place that local authorities should apply exemptions to development contributions in respect of social housing development that is carried out by voluntary or co-operative housing associations that are recognised by the relevant planning authority.<sup>69</sup>

The issue has been discussed in NI through consultation and research. However, the latest position from the **Minister for Communities** in 2016 (who is responsible for social housing) is:

*Independent research, published by the then Department for Social Development in February 2016, highlights that most housing markets in Northern Ireland could not sustain a scheme of developer contributions at present. The report also highlights that there are key data and evidence gaps on issues pertinent to housing supply and the NI housing market more generally. My officials are working with **officials in the Department for Infrastructure on these issues.***

Recognising the problems facing the housing and construction industry in Ireland, where many permissions for residential development had been granted but construction had not commenced, the Government introduced a development contribution rebate scheme for housing development above a certain size (in Cork and Dublin only) for the years 2016 and 2017 to stimulate house building.<sup>70</sup> See section 13 of this paper for further details.

<sup>68</sup> Planning NI, 2010 [online]. *Government Response to the Planning Reform Public Consultation July – October 2009* (p.86). Available at <https://www.planningni.gov.uk/index/about/about-reform.htm> [accessed 12.12.2018]

<sup>69</sup> DÁIL QUESTION 259 addressed to the Minister for Housing, Planning and Local Government (Deputy Eoghan Murphy) by Deputy Eoin Ó Broin for WRITTEN ANSWER on 26/09/2018

<sup>70</sup> DECLG, 2015 [online]. *Circular: Development contribution rebate scheme*. Available at: <http://www.housing.gov.ie/circular-pl-132015-development-contribution-rebate-scheme> [accessed on 12.03.2018]

## 21. Potential Brexit and cross-border considerations for planning

The following section explores some considerations around the impacts of Brexit and the two planning systems, particularly in relation to the border region.

### Background

The cross border relationship currently experienced by NI and Ireland is greatly influenced by EU policy frameworks. While some frameworks, such as the Water Framework Directive and the Birds and Habitats Directives, are directly related to protecting the environment, there are other areas such as trade which require environmental standards to be met under trading standards. For example, the [Customs Union](#) controls quotas and tariffs for goods and enforces rules that provide for environmental protection and the safety of humans, health and animals.

The shared body of EU laws and regulations, known as the [acquis communautaire](#) (acquis), has provided regulatory alignment on a cross-border basis. Concerns have been expressed in relation to the potential for regulatory divergence post Brexit and the possible impacts of this. For example, a [report](#) from the negotiators of the European Union and the UK Government (8 December 2017) acknowledged that:

*North-South cooperation relies to a significant extent on a common European Union legal and policy framework. Therefore, the United Kingdom's departure from the European Union gives rise to substantial challenges to the maintenance and development of North-South cooperation.*

The [Joint Report](#) states that the UK is committed to ensuring North-South cooperation and is prepared to offer specific solutions to the circumstances faced on the island of Ireland, should these not be addressed through the overall EU-UK relationship. It states that:

*In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all island economy and the protection of the 1998 Agreement.*

That being said, the [Scottish Centre on European Relations](#) has commented on the Joint Report's proposals and asks questions in relation to 'full alignment' and its impact on cooperation across the border:

*The UK maintains that alignment is not the same thing as harmonisation. So isn't there a risk that this concept could unravel once the UK starts to regulate in ways which it sees as 'aligned', but Brussels does not?*

The [Joint Report](#) lists its main areas of focus for north south cooperation as: political, economic, security, societal and agricultural. While development could be categorised as falling under economic, environmental requirements have a large impact on planning for development, and there is no specific mention of environment in the Joint Report.

It should be noted, however, that the Joint Report has been described by the UK Government as presenting the areas where both Parties have reached 'agreement in principle'.

[The European Commission's Draft Withdrawal Agreement](#) as agreed at negotiators' level on 14 November 2018, states under its Protocol on Ireland/Northern Ireland, that the European Union and the UK will recall:

## A comparison of the planning systems in Ireland and Northern Ireland

*...the commitment of the United Kingdom to protect North-South cooperation and its guarantee of avoiding a hard border, including any physical infrastructure or related checks and controls, and bearing in mind that any future arrangements must be compatible with these overarching requirements;*

While NI and Ireland operate under different planning systems, both systems have been influenced by developments in the EU. On this basis the following section will consider some of the common areas of planning that may be influenced by Brexit, and which may present particular challenges either for those working or living close to the border, or for individuals and companies operating on a cross-border basis.

### Spatial planning

**The European Spatial Development Perspective** (ESDP) is a non-binding statutory agreement by Member States to follow common objectives for spatial development within Europe. It was formally adopted by the EU in May 1999, and focuses on the role of spatial planning, investment and infrastructure for the development of remote border communities. With this in mind, overarching spatial strategies both sides of the border, the **Regional Development Strategy** (RDS) 2035 and the **Project Ireland 2040 – National Planning Framework** in Ireland (NPF), make reference to the ESDP. This includes the need for co-operation both sides of the border in order to encourage development.<sup>71</sup>

In line with this, both Governments have developed **Spatial Strategies on the Island of Ireland – Framework for Collaboration**. This is a non-statutory framework which lays down the approach to be taken by both Governments in co-operating with the implementation of their spatial strategies.

The NSPF and RDS identify the North West as an area requiring focused cross-border co-operative working through the promotion of a Derry/Londonderry Letterkenny gateway for economic growth and development. This has been developed through the North West Gateway Initiative (NWGI) **described by the NI Executive** as follows:

*The NWGI was established to foster and encourage economic growth in the North West region including the Derry and Strabane District Council and Donegal County Council areas.*

*The objective was to provide a focus for sustained cooperative action from the two Governments which, over a period of time, would make a real difference to the region. The Initiative has played an important role in providing a focus on the region and in encouraging practical co-operation from existing Departments and agencies on a North South basis in developing a range of projects.*

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<sup>71</sup> RDS, 2012. p.66 <https://www.infrastructure-ni.gov.uk/publications/regional-development-strategy-2035> and NPF, 2018. p.115 <http://npf.ie/wp-content/uploads/Project-Ireland-2040-NPF.pdf>

### Regionally significant projects

Large cross-border projects, such as the North South interconnector, rely on a degree of commonality in development approaches either side of the border. However, as mentioned previously, without the influence of the EU in NI, there may be concerns in relation to each jurisdiction potentially working to different overarching spatial planning frameworks and environmental requirements. While this project has planning permission for the southern section, a decision on the northern part was **approved** in January 2018. According to a **NI Affairs Committee Report** (2017) construction of the interconnector will take approximately two years after planning permission is granted. At this stage it is not known whether investment into the development of the North South Interconnector would be at risk due to the current uncertainty surrounding Brexit and the border. This could potentially have an impact on the security of electricity supply in the north as the interconnector may be relied on to acquire electricity from the south following an anticipated supply deficit by 2021.

For further information on the North South Interconnector refer to the System Operator for NI (SONI) **[North South Interconnector: Answering your questions.](#)**

Ireland's latest **[National Planning Framework](#)** (NPF) was published in February 2018. Despite Brexit, it aims to promote an all-island approach to planning and development through cross-border cooperation in strategic planning and the coordination of national, regional and local authority policies and plans. Its three key areas of focus for cross border cooperation are:

1. Working together for economic advantage (Dublin-Belfast Economic Corridor, North West Strategic Group Partnership and Cross Border Local Initiatives);
2. Co-ordination in investment for infrastructure (mobility and accessibility, energy, communications and tourism); and
3. Managing our shared environment responsibly.

### Environmental requirements

Planning is informed and influenced greatly by environmental requirements, which are currently driven by EU legislation. For example, the **[Strategic Environmental Assessment](#)** (SEA) and the **[Environmental Impact Assessment](#)** (EIA) directives set out environmental assessment requirements for plans and projects, so as to protect species and habitats from development.

Both directives have been ratified by Member States through regulations, and have become an integral part of the planning decision process north and south, where applications for certain types of development may have to include EIAs/SEAs and are judged on their outcome.

## A comparison of the planning systems in Ireland and Northern Ireland

While the environmental considerations of development are currently controlled by the EU, it will be for negotiations between the UK Government and NI Executive to reveal the level of control given to NI and whether there should be any relaxation, tightening or retention of requirements.

According to a House of Commons Library paper '[Brexit and the Environment](#)', environmental law is likely to be affected by Brexit through the following factors:

- The outcome of the Brexit negotiations;
- The approach of the UK Government and the devolved Administrations post-Brexit;
- The historical compliance record of the UK with EU requirements; and
- Whether it is an area that integrates with wider policy or legislative areas (e.g. product regulation and trade).

A [White Paper](#) on the future UK and EU relationship (July 2018) implies that a 'common rulebook' could be applied to goods to ensure the UK meets product standards of the EU. According to the White Paper this would:

*...remove the need to undertake additional regulatory checks at the border – avoiding the need for any physical infrastructure, such as Border Inspection Posts, at the border between Northern Ireland and Ireland.<sup>72</sup>*

Many environmental standards apply to goods e.g. eco labelling and design, suggesting that standards in this area may not be compromised. However, concerns have been raised in relation to how this 'common rulebook' will impact future trade deals with non- EU states. That being said, the full impact of this may not be known until there is further clarity on how many EU goods standards are in fact globally/internationally driven and likely to be in keeping with non- EU countries signed up to similar agreements.

The White Paper states that the UK Government has committed to continuing to uphold its international environmental obligations.<sup>73</sup> This is in line with the [European Union \(Withdrawal\) Act 2018](#), which aims to copy over all environmental EU law into domestic law from the day of exit. The [draft Withdrawal Agreement, as agreed at EU negotiators' level \(Nov 2018\)](#) makes provision for a Protocol on Ireland/Northern Ireland which includes continued North-South co-operation in a number of areas, including the environment.<sup>74</sup>

That being said, it is not yet known whether either side of the Irish border could eventually be working to different environmental standards and requirements impacting planning decisions, due to regulatory divergence over time. This divergence could affect cross border development if businesses wishing to work in the area have to understand and adhere to two potentially different regulatory frameworks. Even more so, it is not clear how much say NI will have over setting its own agendas in certain environmental areas. For example, the House of Commons Library paper, '[Brexit and the Environment](#)', considers the application of the Birds and Bathing Water Directives as discussed by the Welsh Government in *Brexit and Devolution: Securing Wales' Future*. The Welsh Government states:

*Some existing EU frameworks, for example, those created by the Birds Directive or the Bathing Waters Directive, are not primarily motivated by internal market considerations, and there may*

<sup>72</sup> HM Government, 2018 [online] *The future relationship between the United Kingdom and the European Union*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/725288/The\\_future\\_relationship\\_between\\_the\\_United\\_Kingdom\\_and\\_the\\_European\\_Union.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf) p.23 [accessed 12.12.2018]

<sup>73</sup> Ibid p.38.

<sup>74</sup> EC, November 2018 [online] *Draft Withdrawal Agreement as agreed at EU negotiators' level* [https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-uk-eu-agreed-negotiators-level-14-november-2018-including-text-article-132-text-subject-final-legal-revision-coming-days\\_en](https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-uk-eu-agreed-negotiators-level-14-november-2018-including-text-article-132-text-subject-final-legal-revision-coming-days_en) . Articles 7 and 8 [accessed 14.12.2018]

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*be no need to retain a UK-wide regime for these. This does not mean that the protections achieved by such Directives should be withdrawn; the point is rather that it should be for the responsible governments in each part of the UK to have the freedom to decide.<sup>75</sup>*

Currently, in both NI and Ireland, the Habitats Directive is one of the main drivers for biodiversity conservation. **Article 6** gives protection against development to designated sites and species through ‘appropriate assessment’. This has necessitated the requirement for **habitat and species surveys** to accompany certain planning applications both sides of the border<sup>76</sup>. There are a number of designated sites under the European network of **Special Areas of Conservation (SACs)** and **Special Protection Areas (SPAs)** that **span the border area**, such as Lough Foyle, Pettigoe Plateau and Cuilcagh Mountain. Examples of SACs can be seen in Figure 4.

**The Environmental Pillar (a consortium of 26 environmental NGOs in Ireland)** has expressed a need for a common approach north and south of the border for nature conservation. According to the Pillar, one in five species on the island of Ireland are endangered. Their main concern is any difference in approaches used north of the border, particularly if this results in different standards which could ultimately affect conservation practices, planning approaches and development opportunities in the area.

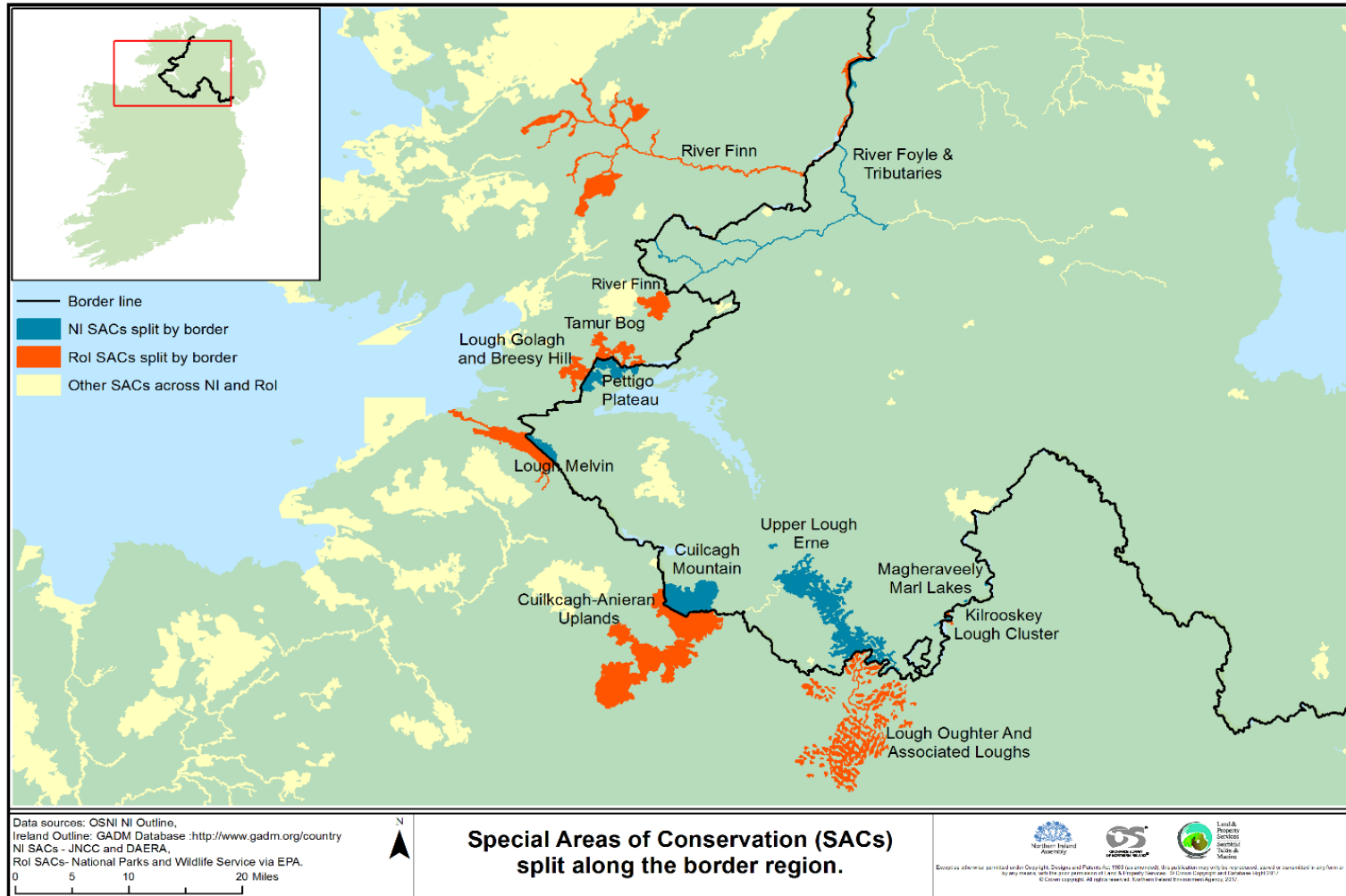
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<sup>75</sup> Welsh Government, June 2017 [online] Brexit and Devolution: securing Wales’ future, p15. Available at <https://beta.gov.wales/brexit-and-devolution> [accessed 14.12.2018]

<sup>76</sup> For further information see **Standing Advice Note 13: Priority Species (2017)**.

In Ireland, appropriate assessments have been written into planning legislation and further detail is available from the National Parks and Wildlife Service (NPWS) <https://www.npws.ie/guidance-appropriate-assessment-planning-authorities>.

**Figure 4: SACs spanning the border region**



Source: NI Assembly (RaiSe) in partnership with Ordnance Survey NI and LPS.

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According to a [House of Commons Library paper](#), the UK Government has stated there will be no relaxation in environmental standards and that international environmental agreements will be upheld and rolled over. Indeed, the paper states that, for its part,

*The EU is keen to maintain similar environmental standards on both sides of the border to prevent environmental 'dumping'.*

In fact, the recent [UK 25 Year Environment Plan](#) aims to introduce new environmental safeguards to improve the environment through:

- Increasing protected habitats for endangered species and supporting farmers to make meadows and habitats out of their fields;
- Improving environmental protection through introducing measures to reduce plastic and marine plastic;
- Delivering a Green Brexit by consulting on a new independent environmental body to hold government to account on environmental standards and developing new approaches to agriculture and fisheries management (see Enforcement section for more detail); and
- Introducing a 'net environmental gain' principle for development to deliver environmental improvements locally and nationally.

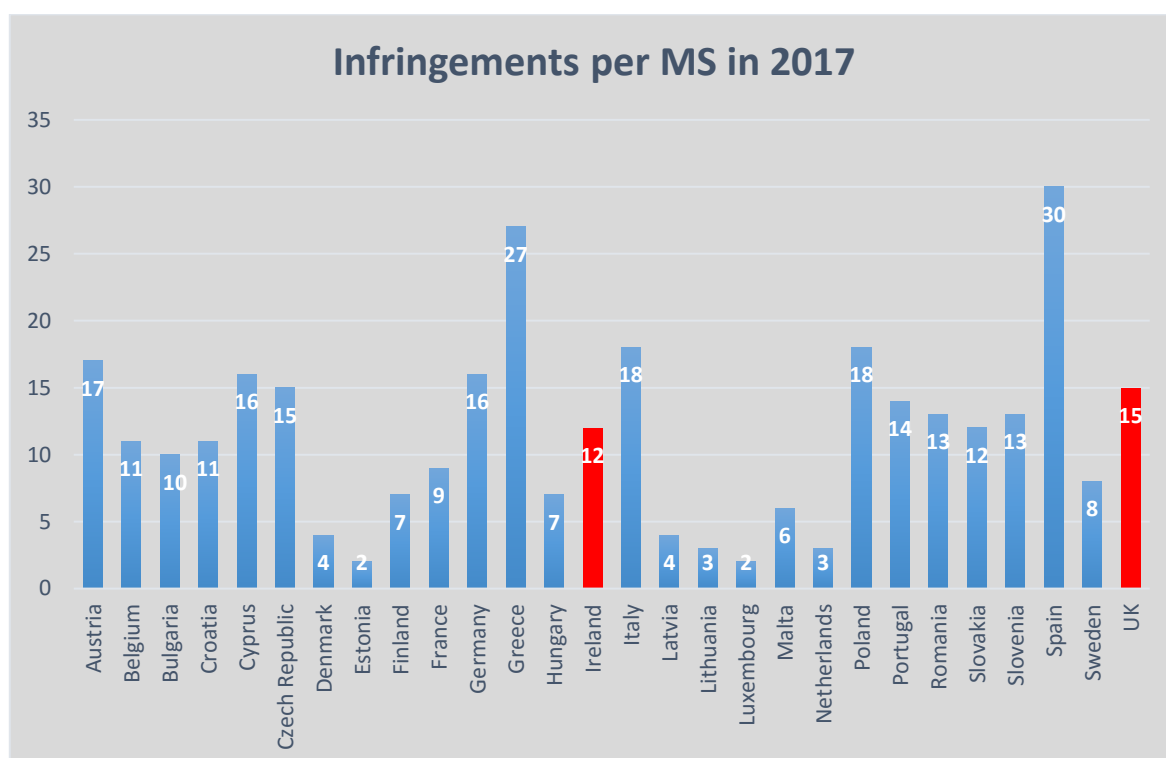
That being said, the [Environmental Pillar](#) has expressed concern about the long term potential for the unravelling and weakening of certain legislative requirements over time. Could we see a divergence emerging over time in areas where the UK has maybe struggled with compliance in the past? For example, there are certain areas where the UK has been subject to [infringement proceedings by the EU](#). As examples, the European Commission referred the UK to the European Court of Justice in the following areas:

- 2015 – [poor waste water collection and treatment](#)
- 2015 – [power plant emissions](#)
- 2014 – [persistent air pollution problems](#) e.g. nitrogen oxide levels.

Figure 5 illustrates that in 2017 alone, the UK faced 15 Infringements and Ireland faced 12.



**Figure 5: Environmental Infringements per Member State 2017**



Source: [European Commission Environmental Infringement statistics](#)

In fact, the UK had four **Article 260 cases** and Ireland had two. An Article 260 is described by the [European Commission](#) as follows:

*An Article 260 case is opened when a Member State fails to comply with a judgment of the Court (CJEU) that found a failure to fulfil an obligation under the EU law by that Member State. If the judgment is not finally complied with, the Commission would bring such a case again before the Court, which may impose fines on that Member State.*

With respect to dealing with more specific areas of regulation that may impact on planning and development potential post Brexit, the **Draft Withdrawal Agreement** (as agreed by EU negotiators in November 2018) states that it will:

*(Recall) the commitment of the UK to protect North-South cooperation and its guarantee of avoiding a hard border, including any physical infrastructure or related checks and controls...<sup>77</sup>*

In his speech in Brussels (March 2017), **Michel Barnier**, the EU's Brexit negotiator, recognised that any divergence of standards north and south of the border could cause damage, particularly in relation to future cooperation and trade.

Post Brexit, environmental requirements may continue to have a direct impact on planning and planning decisions in the border region. However, it is not yet clear what direction will be taken with new environmental legislation and policy in the UK and NI, and whether there will be much difference with Ireland in the longer term. According to a [Welsh Research Brexit Monitoring](#)

<sup>77</sup> EC [online] *Draft Withdrawal Agreement as agreed at negotiators' level on 14 November 2018 p.304*. Available at [https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018\\_en](https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018_en), [accessed 14.12.2018].

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**Report** (May 2018), Michel Barnier stated in a speech to the European Parliament in April 2018, that the agreement on the future relationship with the UK should include a 'non-regression clause' for environmental standards. In fact, the **White Paper** on the UK and EU relationship (12 July 2018), has stated the UK's intention to agree a non-regression principle to maintain current environmental standards, despite concerns raised by Michael Gove in April 2018 to the House of Commons Environmental Audit Committee<sup>78</sup>.

With this in mind, on the 12 September 2018, Michael Gove introduced the **Agriculture Bill**, which aims to deliver a 'green Brexit' through a new Environmental Land Management system. The legislation aims to deliver a cleaner and healthier environment without EU control over farmers. It aims to replace the current subsidy system of Direct Payments with a new one which will pay farmers and land managers for 'public goods'. These include better air and water quality, improved soil health, higher animal welfare standards, public access to the countryside and flood reducing measures. This means farmers and land managers who provide the greatest environmental benefits will secure the largest rewards.

In Ireland, farmers will remain supported by the Common Agricultural Policy (CAP). CAP is currently under negotiation for the post-2020 period with increased greening of Pillar I (Direct Payments) in the form of a new eco-scheme being proposed.

This difference in approach to farming and land management either side of the border may present problems in the future both administratively and physically, particularly if one side is seen as more rigorous than the other.<sup>79</sup>

Questions may still remain around how much input NI will have in developing any new UK wide framework, what freedom NI will have in shaping their own frameworks and how much these might differ from Ireland, and how much the current political circumstances facing NI might affect this.

### Enforcement

Another concern **expressed by the Environmental Pillar** is that:

*...without formal oversight by the European Commission and the European Court of Justice, a significant 'governance gap' could open up in the system of environmental law enforcement in Northern Ireland, leading to a de facto weakening of environmental protection on the island of Ireland.*

While it is unclear at this stage precisely what arrangements will be in place post-Brexit, it seems likely that NI will no longer be subject to the enforcement mechanism and infractions of the Court of Justice of the European Union (**CJEU**). A **consultation** on a new UK body to hold government to account states:

*Once we leave the EU, and regardless of the nature of the future relationship we negotiate, we will no longer be a party to the EU Treaties or under the direct jurisdiction of the CJEU.*

*...It is, and it will remain, the role of Parliament, including Select Committees, to hold the executive to account and scrutinise its effectiveness. Parliament passes legislation and is*

<sup>78</sup> Welsh Assembly, May 2018. [online] *Research Briefing: Brexit Monitoring Report: Environment* (p.3). Available at <https://seneddresearch.blog/2018/05/24/new-publication-brexit-monitoring-report-environment/> [accessed 12.12.2018]

<sup>79</sup> GOV.UK, September 2018, [online] *Landmark Agriculture Bill to deliver a Green Brexit*. <https://www.gov.uk/government/news/landmark-agriculture-bill-to-deliver-a-green-brexit> [Accessed 07/12/2018]

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*ultimately accountable to the electorate. We also have a strong legal framework for environmental protection, including the implementation of environmental laws by regulatory authorities and their enforcement through the courts. The courts can also review the actions of government and its delivery bodies.*

*... These domestic mechanisms will remain in place on our departure from the EU. However without further action, accountability for the environment will change once we leave the EU, regardless of the future relationship we negotiate with it.<sup>80</sup>*

A [House of Lords Select Committee report](#) (2017) raised issues in relation to the effectiveness of legislation once it is transposed without the influence of the CJEU to hold Member States to account:

*Even a direct transfer of EU environmental legislation into UK law will result in an erosion of the protections that this legislation provides. Of concern is the loss of accountability from both the European Commission ... and the [CJEU].*

The planning system in NI is considered to be particularly litigious due to potential challenge by judicial review.<sup>81</sup> Judicial review has been used in the past to challenge the process used by a public body to make a decision (rather than challenge the decision itself). According to the UK Courts and Tribunals Judiciary, some of the grounds for challenging planning decisions may include:

- Domestic planning and environmental law or policy; and
- EU environmental law.

The UK's withdrawal from the EU may remove the EU environmental grounds for challenge by judicial review, which may potentially limit the challenge of decisions by judicial review in the UK and NI.

Concerns were expressed in relation to the ability of domestic courts to take over the role of holding the Government to account through the lengthy and costly process of domestic judicial review. On this basis the Lords Report recommended the need for an independent domestic enforcement mechanism. The UK Secretary of State for Environment, Food and Rural Affairs has also voiced concerns that the judicial review process alone may not be enough. At the [Environmental Audit Committee](#) (1 Nov 2017) he made reference to a 'commission-like' body to oversee environmental law and replace the European Commission and the European Court of Justice. According to a [House of Commons Library Briefing Paper](#), the UK Government has proposed that the body would be independent and responsible for holding the Government to account for upholding environmental standards in England, and for the development of a new environmental policy statement. A [consultation](#) on a proposed *Environmental Principles and Governance Bill* that will seek to introduce a statutory environmental body opened 10 May 2018 and closed 2 August 2018.

In a [statement](#) on such a statutory body, the Environment Secretary of State also raised the following:

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<sup>80</sup> DEFRA, 2018 [online]. Environmental Principles and Governance after EU Exit (p.2). Available at <https://consult.defra.gov.uk/eu/environmental-principles-and-governance/> [accessed 12.12.2018]

<sup>81</sup> NILGA, 2016. [online] Judicial Review Leaflet. Available at <http://www.nilga.org/News/Leaflet---Judicial-review.aspx>. [accessed 12.12.2018]

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*One of the key questions, which we will explore with the devolved administrations (DAs), is whether Scotland, Wales and Northern Ireland wish to take a different or similar approach.*

Before the NI Assembly elections in March 2017, discussions were still ongoing about the introduction of an **Independent Environmental Protection Agency** (EPA) in NI. Therefore, it is unclear whether enforcement would be carried out by a similar NI body, or a UK wide body after **David Davis' statement** in relation to the need for a 'common framework' for the UK. Again this raises questions in relation to whether either side of the border will be answering to different enforcement bodies with different standards, processes and requirements.

That being said, non-EU Member States can be in a collaborative relationship with the European Environment Agency (EEA), as can be seen in Figure 6. Further consideration may be needed to explore whether retaining membership of the EEA would help to facilitate cooperation and harmonisation of approaches between the UK and Ireland.



## Continued co-operation

Under the [Northern Ireland Act 1998](#) and the [Good Friday Agreement 1998](#), the [North South Ministerial Council](#) (NSMC) and the [British-Irish Council](#) (BIC) were formed to provide forums for co-operative relationships and development of common policies either side of the border in a number of areas. Environment was identified under the Good Friday Agreement (Strand I of the Annex) as one of the key areas for 'North- South cooperation and implementation' by the bodies. As Brexit unfolds, these forums may be of particular importance to ensure that development regulation and environmental standards either side of the border strike the right balance between environmental protection and development opportunities.

In a [statement](#) in October 2017, the then Secretary of State for Exiting the European Union, David Davis, stated that,

*Our teams have also mapped out areas of cooperation that function on a North-South basis. And we have begun the detailed work to ensure this continues once the UK has left the EU.*

The [Draft Withdrawal Agreement](#) (as agreed by EU negotiators in November 2018) provides for a Protocol for Northern Ireland/Ireland. The Draft Withdrawal Agreement states that:

*This Protocol sets out arrangements necessary to address the unique circumstances on the island of Ireland, maintain the necessary conditions for continued North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions.<sup>82</sup>*

Both sides of the border, local councils are responsible for [community planning](#) (or local economic and community development in Ireland under the Local Government Reform Act 2014). Both jurisdictions position local government as the lead for community planning/development in collaborating and co-ordinating with other statutory partners to provide for service delivery and economic, social and environmental well-being at the local level (for further information refer to [Community Planning and Land Use Planning in Ireland's Border Area 2014](#)). As policy development continues in this area there is an opportunity for border councils to consider how they can achieve some alignment and establish mutually beneficial working structures and processes on cross boundary community planning issues.

For example, Ireland's [National Planning Framework -2040 Our Plan](#) recognises the importance of Letterkenny in the context of the North-West Gateway Initiative and Drogheda-Dundalk in relation to the Dublin-Belfast economic corridor as cross border networks for regional development. Objective 45 of the NPF has identified the need to:

*Work with the relevant Departments in Northern Ireland for mutual advantage in areas such as spatial planning, economic development and promotion, co-ordination of social and physical infrastructure provision and environmental protection and management.*

In relation to this the NPF highlights the need for both regional development strategies (NPF in Ireland and RDS in NI) to be implemented in tandem, where such work will be supported by the jointly produced [Framework for Co-operation on Spatial Strategies for Northern Ireland and the Republic of Ireland](#).

While cross border collaboration has been identified at the national framework level in Ireland, local councils in NI are responsible for community planning in their respective area. During the

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<sup>82</sup> Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 14 November 2018: [https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018\\_en](https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018_en), p307.

## A comparison of the planning systems in Ireland and Northern Ireland

development of local council community plans, a number of common concerns and suggestions in relation to Brexit and cross border collaboration have been identified by three out of the five councils in NI running along the border region.



## A comparison of the planning systems in Ireland and Northern Ireland

For example, as shown in Figure 7, the Fermanagh and Omagh district borders four counties in Ireland: Donegal, Cavan, Monaghan and Leitrim. The [Fermanagh and Omagh Community Plan](#) raises concerns about the district's border area in light of the decision to leave the EU and calls for the need for close scrutiny of the local implications. Similarly, the [Mid Ulster Community Plan](#) stresses the need to further develop cross-border opportunities in the area and suggests that the council's new planning powers may be a way of taking this forward.

Similarly the new [Derry/Londonderry and Strabane Community Plan](#) raises concerns in relation to the impacts of Brexit on cross border trade and investment and highlights the need for integrated and closer cross border planning and delivery structures. With this objective in mind, new partnership arrangements have been established between Derry City and Strabane District Council, Donegal County Council and both Governments. According to the [Community Plan](#):

*The North West Regional Development Group is a joint committee of both councils driving forward a collaborative work programme across the 3 pillars of well-being while the North West Strategic Growth Partnership brings together senior representatives from both Governments, North and South to improve collaboration on delivery of key strategic projects and initiatives and reduce 'back to back' planning.*

The [Donegal County Development Plan 2018-2024](#) raises concerns around the issue of tourism and the challenges any potential future border controls could bring and highlights how important achieving cross-border commitments on transportation are to economic growth. The County Development Plan also notes the importance of connectivity between Donegal and Northern Ireland, stating:

*Connectivity between the Border Region and Northern Ireland is considered critical to the success of the North-West Strategic Growth Partnership agenda, notwithstanding concerns around the potential negative impacts that may arise from the 'Brexit' arrangements.*

A study completed in 2017 by Queen's University Belfast and ICBAN (Irish Central Border Area Network) entitled '[Bordering on Brexit - The views of local communities in the Central Border Region of Ireland/Northern Ireland](#)' highlights some of the main concerns from people living and working in the Central Border Area. The study highlights the importance of cross border collaborative working for the area in overcoming severe social, political and economic challenges, as well as violent conflict. Due to this, the study states that,

*As such, the Central Border Region is the area most exposed to the risks of Brexit, for the impact of any divergence between the UK and Ireland will be felt most acutely at the Irish border. Although the nature and extent of any changes are as yet unknown, the very prospect of them is already having an impact in the Central Border Region.*

Through an online survey and focus groups in 2017, the study attempts to understand the anticipated effects of Brexit from the perspective of local communities in the Central Border Region (Armagh City, Banbridge and Craigavon; Fermanagh and Omagh; Mid Ulster and the counties of Cavan, Donegal, Leitrim, Monaghan and Sligo). Some of the main areas of concern highlighted by participants included:

- Concern with regards to the movement of people and goods;
- Possible fallout from Brexit for the peace process;
- Diverging environmental standards;
- Reduced funding for cross-border initiatives resulting in a return to back-to-back development either side of the border;



## A comparison of the planning systems in Ireland and Northern Ireland

- With a predominantly rural population in the ICBAN area, concerns were expressed on the impact on agriculture in terms of the movement of goods and produce and any loss of EU funding (including CAP);
- Specialised healthcare provision;
- Shrinking recruitment pools; and
- Tourism decline and tariff barriers.

In light of these concerns, the study states that,

*...so too is it imperative that the benefits of cross-border cooperation in the Central Border Region are preserved and protected during and after the UK's withdrawal from the EU. Amid current uncertainties and political differences, there remains a widely-held commitment across local communities and groups around the Region to continue working together to preserve the gains already achieved and to realise potential benefits for future generations.*

The House of Commons NI Affairs Committee published its report '[The land border between Northern Ireland and Ireland](#)' (March 2018). The Committee stated that it recognises the importance of cross-border initiatives in improving infrastructure and public services in the border corridor. It states that North-South cooperation is currently facilitated by a shared regulatory framework and governance bodies. The Committee recommends that the Government put forward targeted proposals for how cross-border cooperation in policy areas dominated by EU law will continue after the UK leaves the EU. In relation to the political situation in NI it states,

*...in the event of the restoration of the Northern Ireland Executive, EU competencies could be devolved to Northern Ireland so it can balance maintaining UK wide frameworks with EU alignment for cross-border policy areas. In their continued absence, alternative means of taking decisions will have to be devised.*

An area of concern highlighted in the ICBAN study is the loss of funding for the border areas in terms of development projects and initiatives. In relation to this the Committee states that,

*The Government should clarify in its response to this report whether it will seek to continue funding for cross-border projects under the Interreg programme post 2020. If it is the Government's intention to replicate this funding through the UK Shared Prosperity Fund it should specify the amount of funding it will make available, whether this money could support cross-border projects in Northern Ireland and the border regions of Ireland and what its spending priorities will be.*

A cross border forum for senior officials involved in preparing Local Development Plans in the Border region was established in 2017. According to the [Chief Planner's Update for NI \(2017\)](#) this

*...provided participants with an opportunity to meet colleagues in the South and to explore opportunities for enhanced co-operation on issues of mutual interest.*

The forum plans to meet biannually and could provide a cross border platform to further discuss the impacts of planning and Brexit.

## 22. Further information

### Northern Ireland

- [Planning Act 2011](#)
- [Subordinate legislation to Planning Act 2011](#)
- [Regional Development Strategy 2035](#)
- [Strategic Planning Policy Statement](#)
- [Old Planning Policy Statements](#)
- Further advice on the planning system in NI is available from the [Planning Portal](#) NI. Of particular use are the [Practice Notes](#). These provide advice for homeowners, business, developers and practitioners.
- [Department for Infrastructure – Strategic Planning Division and Strategic Policy Division](#)
- Each local council website also has a section on planning. A list of the 11 councils is available [here](#).
- [Planning Appeals Commission NI](#) (PAC)
- [Northern Ireland Assembly Research & Information Service briefings](#).

Northern Ireland does not have a specific planning advice service as such. DfI advises that the majority of queries relating to the planning process, planning applications and fees should be directed to the local area planning offices. Each new council area will have its own local planning office. Anything on strategic applications and policy may be directed to the department itself [here](#).

The department, through its [Planning Portal](#) provides online information and advice on legislation, regional policy, planning applications and the planning system. However, this may be subject to change over the next year, with most information being transferred to the DfI's website and NI Direct.

[Community Places](#) is an independent charity with full-time staff offering advice on planning issues, training and project support for groups meeting Community Places eligibility criteria. It also independently facilitates public and community consultation on planning and public service issues.

### Ireland

- National Planning Framework website, available [here](#);
- Information on legislation and guidelines, the planning system and the national planning framework is available [here](#);
- A set of planning leaflets are available [here](#);
- The most recent unofficial consolidated version of the *Planning and Development Act 2000* (as amended and updated to 8 February 2018) is available on the Law Reform Commission website [here](#);
- The most recent unofficial consolidated version of the *Planning and Development Regulations 2001* (as amended and updated to 17 December 2015) is available on the Department of Housing, Planning and Local Government website [here](#);
- [An Bord Pleanála](#);

## A comparison of the planning systems in Ireland and Northern Ireland

- Each local authority website also has a section on planning;
- A list of all county and city councils is available [here](#);
- Dublin City Council planning services (for example) are available [here](#);
- Citizens information provides information on planning and development, available [here](#);
- Environmental Impact Assessment, available on EPA website, [here](#); and
- Strategic Environmental Assessment, available on EPA website [here](#).

Ireland does not have a planning advice service; rather planning queries etc. are directed to the local planning authorities, the Board and/or the Department of Housing, Planning and Local Government. Local authorities provide planning advice and guidance for their area on their websites.

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