

# **PLANNING BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department of the Environment (DOE) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Department of the Environment (DOE) is delivering a major programme to reform the Northern Ireland planning system. Key elements of the programme are already in place including the Planning (Northern Ireland) Act 2011 (the 2011 Act) which received Royal Assent on 4 May 2011.
4. The 2011 Act sets the legislative framework for a reformed planning system. It also gives effect to the local government reforms which will transfer the majority of planning functions and decision making responsibilities to district councils.
5. The Department intends to transfer planning functions to councils in 2015 in line with the Executive's commitment to reform local government. In the interim, the Executive has agreed to the drafting of a Bill to accelerate the introduction of a number of reforms to the planning system contained within the 2011 Act. The Bill will make legislative changes to improve the efficiency and effectiveness of the planning system agreed by the previous Assembly available to the Department in advance of the transfer of planning functions to councils. It therefore brings forward amendments to The Planning (Northern Ireland) Order 1991 which reproduce provisions in the 2011 Act. The Bill also introduces additional provisions to underpin the role of planning in promoting economic development through amendments to both the Planning (Northern Ireland) Order 1991 and the 2011 Act. The Bill is intended as an interim measure most of which will remain in place only until it is possible to fully commence the 2011 Act at which point it will be repealed. However, where the Bill amends the 2011 Act those provisions will apply to the planning system post transfer of planning functions to councils. In keeping with the 2011 Act, the Bill will modernise and strengthen the planning system by providing faster decisions on planning applications, enhanced community involvement, faster and fairer appeals, tougher and simpler enforcement as well as a strengthened Departmental sustainable development duty.

### **CONSULTATION**

6. The policy underpinning the vast majority of the provisions within the Bill is essentially the same as that underlying the 2011 Act. This policy was subject to equality, regulatory and human rights impact assessment, and to extensive public consultation from 6 July to 2 October 2009, before being finally agreed by the Executive on 25 February 2010. Once

embodied in the Planning Bill, the policy was subject to scrutiny in the Assembly from 6 December 2010 until 23 March 2011. The additional provisions which underpin the role of planning in promoting economic development have been recently identified as desirable additions to the Planning Bill and have been subject to consultation and scrutiny during the Assembly process.

## **OPTIONS CONSIDERED**

7. The 2011 Act contains a range of enforcement related provisions which amend the Planning (Northern Ireland) Order 1991. A number of these provisions came into effect when the Act received Royal Assent. Further amendments to enforcement powers came into operation on 1 December 2011. The bulk of the Act, however, reflects the planning system which will be in place when planning functions transfer to district councils and cannot be commenced before the transfer of powers. With the new arrangements for councils now anticipated to take place in 2015 the Department considered two options. Option one is a do nothing option i.e. to retain the existing legislative framework until planning powers transfer. Option two is to bring forward a Bill to accelerate the implementation of a number of those reforms contained within the 2011 Act to be administered, in the interim, by the Department and additional measures to strengthen the planning system.
8. The Department considers the do nothing option would delay key planning reforms designed to improve the efficiency and effectiveness of the planning system which support the Executive's objectives of growing the economy while also enhancing community involvement. Option two provides the legislative basis and an early opportunity for the Department to introduce a number of planning reforms which will strengthen the planning system sooner and support measures to aid economic recovery and enhance community involvement. This option also allows key planning reforms to be implemented and tested by the Department prior to the transfer of planning powers to councils. Option two is the preferred option.

## **OVERVIEW**

9. The primary objective of the Bill is to accelerate the implementation of reforms contained within the 2011 Act. It will legislate in five key areas which will lead to:
  - **faster processing of planning applications** by streamlining processes to speed up decision making and deliver development. This includes the appointment of persons other than the Planning Appeals Commission to conduct inquiries and hearings into major planning applications and a duty for statutory consultees to respond to consultation within a prescribed timeframe.
  - **faster and fairer planning appeals system** through restricting the introduction of new material at appeal and allowing the Planning Appeal Commission to award costs where the unreasonable behaviour of one party has left another out of pocket. The time limit for submitting appeals is also reduced from six to four months.
  - **enhanced community involvement** through a requirement on the Department to prepare and publish within one year of commencement a statement of its policy for involving the community in the delivery of planning functions. Developers will also be required to consult the community before submitting major planning applications and demonstrate they have done so.

- **simpler and tougher enforcement** through raising fines for a series of offences, introducing fixed penalty notices as an alternative to costly and lengthy prosecutions through the Courts, as well as multiple fees for retrospective planning applications.
- **other measures to enhance the environment** and to strengthen the planning system including an amendment to the general functions of the Department and the Planning Appeals Commission to exercise certain functions with the objective of furthering sustainable development, promoting or improving well being and promoting economic development, paying particular attention to the desirability of achieving good design. The Department's consent must also be given to the felling of trees covered by a tree preservation order which are dying and the control of demolition in conservation areas will also be extended to include the partial demolition of buildings. The power of the Department to grant aid non-profit organisations has been extended to include furthering an understanding of planning policy.

## **COMMENTARY ON CLAUSES**

A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

### **Clause 1: Statement of community involvement**

This clause introduces the requirement for the Department to produce a statement of its policy for involving the community in its development plan and planning control functions within one year of the clause coming into operation.

### **Clause 2: General functions of the Department and the Planning Appeals Commission**

Clause 2 amends Article 10A of the Planning (Northern Ireland) Order 1991. A statutory duty is imposed on the Department and the Planning Appeals Commission in exercising any function under Part 2 or Part 3 to do so with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development. In addition where the Department or as the case may be the Planning Appeals Commission exercise any function under Part 2 or Part 3 of the Planning (Northern Ireland) 1991 they must have regard to the desirability of achieving good design. Corresponding amendments are made to Section 1 and Section 5 of the Planning Act (Northern Ireland) 2011.

The Department must review and publish a report on the implementation of Clause 2(1) not later than 3 years from it coming into operation.

### **Clause 3: Meaning of development**

This clause amends Article 11 of the Planning (Northern Ireland) Order 1991 by expanding the operations or uses of land that for the purposes of the Order are not to be taken to involve development. This now includes structural alterations of buildings specified in a direction where the alteration consists of demolishing part of the building.

### **Clause 4: Economically significant planning zone schemes**

This clause will introduce economically significant planning zones (ESPZ) in Northern Ireland. The Office of the First Minister and Deputy First Minister (OFMDFM) may make ESPZs at any time, either by order made with the consent of the DOE or by order approved by affirmative resolution of

the Assembly. The new provisions are applied to both the Planning (Northern Ireland) Order 1991 and the Planning Act (Northern Ireland) 2011.

Article 13A defines ESPZ and their content and effect. The effect of an ESPZ is to grant planning permission for development specified in the scheme or for development of any specified class. It enables OFMDFM to make or alter an ESPZ scheme at any time. Procedures for the making or alteration of an ESPZ are similar to those for a simplified planning zone (SPZ - see Articles 14 to 18 of the 1991 Order and Sections 33 to 38 of the 2011 Act). An ESPZ cannot be made where a SPZ is in force.

Article 13B describes the types of conditions and limitations which may be placed on development permitted in an ESPZ. It also covers the effects of an ESPZ on development other than that for which permission has been granted under the scheme.

Article 13C provides that an ESPZ scheme shall last for a period of ten years from the date when it was adopted. Upon expiry of the scheme, the planning permission under the scheme shall no longer have effect except where development authorised by it has already been commenced.

Article 13 sets out the effect of alterations to an existing ESPZ scheme. Such alterations range from the inclusion of additional land in the scheme to the exclusion of land previously included in the scheme, the withdrawal or relaxation of conditions, limitations or restrictions, the withdrawal of planning permission, or the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject.

Article 13E requires DOE to provide such assistance to OFMDFM as may be necessary to carry out its ESPZ functions.

Article 13F provides that any reference to planning permission granted by DOE or any reference to a condition, limitation or exception includes a reference to such granted by an ESPZ unless OFMDFM regulations prescribe otherwise.

Similar provisions are inserted into the Planning Act (Northern Ireland) 2011 as sections 38A, 38B, 38C, 38D, 38E, 38F, 38G and Schedule 1A.

#### **Clause 5: Publicity etc. in relation to applications**

This clause substitutes Article 21 of the Planning (Northern Ireland) Order 1991 and makes provision for a development order to set out the detailed publicity requirements for applications for planning permission. The Department must not consider an application if the publicity requirements are not satisfied.

Article 25 as amended also makes provision that a development order may prescribe that the Department must not determine an application before the end of a certain period and must take any representations into account in that determination.

Similar amendments are made at Schedule 1 for applications for listed buildings consent.

#### **Clause 6: Pre-application community consultation**

Clause 6 inserts three articles into the Planning (Northern Ireland) Order 1991 to introduce pre-application community consultation.

Article 22A places an obligation on developers to consult the community in advance of submitting an application if the development falls within a class prescribed for the purposes of this Article. The prospective applicant must give 12 weeks notice that an application is to be submitted and provide details of the application including a description of the development and address of the site. Regulations will prescribe the minimum consultation requirements placed on the applicant. Additional requirements may be placed on a particular development if the Department considers it appropriate.

Clause 6 also inserts Article 22B which requires the applicant to produce a report indicating what has been done to comply with the pre-application community consultation requirements. The report must be submitted with the application. The form of the pre-application consultation report may be set out in Regulations.

In addition Clause 6 inserts Article 25AB. If the pre-application community consultation requirements have not been complied with the Department must decline to determine the application. The Department can request additional information in order to decide whether to decline the application.

Clause 6 also places a requirement upon the Department to include notices of Pre-application community consultations and consultation reports in the planning register prepared in accordance with Article 124 of the Planning (Northern Ireland) Order 1991.

#### **Clause 7: Determination of planning applications**

Clause 7 amends Article 25 of the Planning (Northern Ireland) Order 1991 and Section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission.

The Department must review and publish a report on the implementation of Clause 7 not later than 3 years from its coming into operation.

#### **Clause 8: Power to decline to determine subsequent application**

This clause extends the Department's power to decline subsequent applications for planning permission or listed building consent under Article 25A and paragraph 4A of Schedule 1 of the Planning (Northern Ireland) Order 1991. This now includes the power to decline applications where the Department has refused more than one similar application and there has been an appeal to the Planning Appeals Commission which has been withdrawn. It also includes the power to decline to determine a planning application where the Commission has refused a similar "deemed application" arising from an appeal against an Enforcement Notice within the last two years.

#### **Clause 9: Power to decline to determine overlapping applications**

This clause extends the Department's power to decline to determine overlapping applications for planning permission or listed building consent under Article 25AA and paragraph 4B of Schedule 1 of the Planning (Northern Ireland) Order 1991 to include the power to decline to determine similar applications made on the same day. It also includes the power to decline a planning application where the same development is subject to a "deemed application" determination by the Planning Appeals Commission arising from an appeal against an Enforcement Notice under and the Commission has not issued its decision.

**Clause 10: Aftercare conditions for ecological purposes on grant of mineral planning permission**

Clause 10 amends Article 27A of the Planning (Northern Ireland) Order 1991 by extending the list of land uses to be considered when the land is being restored to a required standard to include “use for ecological purposes”.

**Clause 11: Public inquiries: major planning applications**

This clause amends Article 31 of the Planning (Northern Ireland) Order 1991 to allow the Department to appoint a person other than the Planning Appeals Commission to hold a public local inquiry [or hearing ] to consider representations made in respect of any application to which Article 31 has been applied.

**Clause 12: Appeals: time limits**

Clause 12 reduces the appeal periods for making an appeal to the Planning Appeals Commission under Articles 32 (planning decisions), 57 (hazardous substances consent) and 83E (certificates of lawful use or development) of the Planning (Northern Ireland) Order 1991 from six to four months or such other period as may be specified by development order.

**Clause 13: Matters which may be raised in an appeal**

Clause 13 inserts a new Article 32A in the Planning (Northern Ireland) Order 1991 so that any party to the proceedings of an appeal under Article 32 will not be able to raise any matter that was not in front of the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the Planning Appeals Commission, that the matter could not have been raised before that time or that its not being raised was due to exceptional circumstances.

**Clause 14: Appeal in default of a planning decision.**

The proposals for pre-application community consultation contain provision that the Department must refuse to determine an application if the applicant/developer has not complied with the consultation requirements set down by the Department.

This clause ensures that where an applicant has not complied with the pre-application community consultation requirements under clause 6 an appeal cannot be made to the Planning Appeals Commission (in default of a decision) to have the Commission determine the application.

**Clause 15: Review of certain decisions**

This clause provides that any decision by DOE or OFMDFM to grant or refuse planning permission; grant or refuse any consent, agreement or approval required by a planning condition; grant or refuse approval required under a development order; and determinations made by the Planning Appeals Commission following a refusal of planning permission shall not be subject to appeal or liable to be questioned in any court except where it is incompatible with Convention rights or EU law. An appeal to the High Court on these grounds must be made within six weeks of the decision / determination being made.

**Clause 16: Power to make non-material changes to planning permission**

This clause inserts provision at Article 37A of the Planning (Northern Ireland) Order 1991 to allow the Department to may make a change to a planning permission already granted on application. The change must not have any material effect on the permission, and it includes the power to amend or

remove conditions or impose new ones. Consultation and publicity arrangements may be set out in Regulations.

**Clause 17: Aftercare conditions imposed on revocation or modification of mineral planning permission.**

This clause inserts a provision at Article 38A of the Planning (Northern Ireland) Order 1991 which permits the Department to impose aftercare conditions where a mineral planning permission has been modified or revoked by an order served under Article 38, provided a restoration condition is included or in place on the land.

**Clause 18: Planning agreements: payments to departments**

This clause amends Article 40 of the Planning (Northern Ireland) Order 1991 to enable any sum payable under a planning agreement to be made to any Northern Ireland department and not solely the Department of the Environment.

**Clause 19: Increase in Certain Penalties**

Clause 19 increases penalties in relation to 7 articles in the Planning (Northern Ireland) Order 1991. For offences under Article 49 (acts causing or likely to result in damage to listed buildings) the maximum level of fine, on summary conviction, has been raised to the statutory maximum. Also the fine payable on summary conviction when a person fails to prevent damage or further damage resulting from the offence is raised from one tenth of a level 3 fine to one tenth of a level 5 fine on the standard scale for each day on which the failure continues. Offences may also be convicted on indictment.

This clause also increases the maximum level of fine, on summary conviction, for a range of offences relating to breaches of planning control or consents from £30,000 to £100,000. This applies to offences under Articles 61 (hazardous substances); 67G (temporary stop notices); 72 (enforcement notices) and 73 (stop notices) of the Planning (Northern Ireland) Order 1991 Order. The fine on summary conviction for an offence under Article 67 D (non-compliance with planning contravention notice) is raised from level 3 to level 5 on the standard scale while the fine for an offence on summary conviction under Article 76 (enforcement notice to have effect against subsequent development) increases from level 5 on the standard scale to £7500. The increased fines do not apply to any offence committed before this clause comes into operation.

**Clause 20: Conservation areas**

Clause 20 amends Article 50 of the Planning (Northern Ireland) Order 1991 to include provision that the Department must pay special attention to (a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise; or (b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise.

**Clause 21: Control of demolition in conservation areas**

Clause 21 amends Article 51 of the Planning (Northern Ireland) Order 1991 by adding additional provision that any structural alteration to a building in a conservation area, where the alteration consists of demolishing part of the building, shall be taken to be demolition for the purposes of Article 51.

**Clause 22: Tree preservation orders: dying trees**

Clause 22 amends Articles 65 and 65B of the Planning (Northern Ireland) Order 1991 and Section 125 of the Planning Act (Northern Ireland) 2011 by removing the reference to dying trees. Dying trees are no longer exempt from the provisions of a tree preservation order.

**Clause 23: Fixed Penalties**

This clause inserts 2 articles into the Planning (Northern Ireland) Order 1991. Articles 76C and 76D enable an authorised officer to issue a fixed penalty notice for the offences of failing to comply with an Enforcement Notice or Breach of Condition Notice, offering the offender an opportunity to discharge any liability for the offence without having to go to court. The amount of the penalty can be such amount as may be prescribed. The level of fixed penalty will be prescribed by Regulations and is reduced by 25% if paid within 14 days. Payment of a fixed penalty as an alternative to court prosecution, while providing immunity from prosecution for that particular offence will be treated as being equivalent to an initial conviction for the purposes of the prosecution of subsequent offences under Article 72 of the 1991 Order, likewise Payment of a fixed penalty as an alternative to court prosecution, while providing immunity from prosecution for that particular offence will be treated as being equivalent to an initial conviction for the purposes of the prosecution of subsequent offences under Section 147 of the 2011 Act. An offender can be prosecuted through the courts for a second or subsequent offence following a payment of a fixed penalty.

**Clause 24: Power of planning appeals commission to award costs**

Clause 24 inserts Article 111A into the Planning (Northern Ireland) Order 1991. This power enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will normally come to an agreement amongst themselves, but in the event agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court.

Article 111B applies the provisions relating to award of costs, to circumstances where a hearing has been cancelled.

**Clause 25: Grants**

Clause 25 amends Article 120 of the Planning (Northern Ireland) Order 1991 to extend the Department's power to grant aid non profit organisations whose objectives include furthering an understanding of planning policy. The Department of Finance and Personnel's approval to such grants is no longer required.

**Clause 26: Duty to respond to consultation**

Clause 26 inserts Article 126A which requires those persons or bodies which the Department is required to consult before determining certain applications for planning permission or consent to respond to consultation requests within a prescribed period or such other period as is agreed in writing between the consultees and the Department. The section also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.



### **Clause 27: Fees and Charges**

Clause 27 amends Article 127 of the 1991 Order to enable the Department to charge multiple fees for retrospective planning applications.

### **Clause 28: Duration**

This clause allows the Department to make subordinate legislation to repeal provisions in the Bill and to include transitional or transitory provisions and savings in connection with the coming into operation of any provisions. A draft of such an order must be laid before and be approved by resolution of the Assembly.

### **Clause 29: Interpretation**

This clause contains interpretation provisions and defines a number of terms used throughout the Bill.

### **Clause 30: Commencement**

This clause concerns the commencement of the Bill and enables the Department to make commencement orders. Clauses 1, 2(1), 4(1) to (6), 7(1), 15(1), 18, 19, 25, 29 and 31 shall come into operation on Royal Assent.

Sections 4(7) to (13) and section 15(2) come into operation when part 3 of the 2011 Act comes into operation.

### **Clause 31: Short title**

This clause provides a short title for the Bill.

## **FINANCIAL EFFECTS OF THE BILL**

10. The main additional Departmental costs (in relation to the Bill as introduced) are expected to be those associated with the modifications to existing Departmental IT systems, staff training and guidance to developers, agents, consultees and others involved in the planning system. The Department will incur additional costs if it chooses to appoint independent examiners to conduct Article 31 public inquiries or hearings as opposed to appointing the Planning Appeals Commission. Any potential increase in costs of the Bill as introduced should be offset by the benefits of more efficient processes

## **HUMAN RIGHTS ISSUES**

11. The provisions of the Bill as introduced are not in the Department's view incompatible with the provisions of the Human Rights Act 1998.

## **EQUALITY IMPACT ASSESSMENT**

12. The policy underpinning the 2011 Act was subject to equality impact assessment and to extensive policy consultation from 6 July 2009 to 2 October 2009, before being finally agreed by the Executive on 25 February 2010. Once embodied in the Planning Bill, the policy was subject to scrutiny in the Assembly from 6 December 2010 until 23 March 2011. The provisions of this Bill, as introduced, which largely stem from the policy formulated during the preparation of the 2011 Act and the additional provisions, do not in the Department's view adversely affect equality of opportunity. The additional provisions at clauses 2 and 7

relating to economic development have not been identified as having significant implications for equality of opportunity.

13. It is the Departments view that the proposed Bill, as introduced, will not act unlawfully, unfairly or unjustifiably discriminate, directly or indirectly, against any section of the community specified in section 75 of the Northern Ireland Act 1988.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

14. The policy underpinning the 2011 Act was subject to regulatory impact assessment and to extensive policy consultation from 6 July 2009 to 2 October 2009, before being finally agreed by the Executive on 25 February 2010. Once embodied in the Planning Bill, the policy was subject to scrutiny in the Assembly from 6 December 2010 until 23 March 2011. No significant additional costs to businesses, charities, social economic enterprises or the voluntary sector were identified for the Bill as introduced. Similarly, no significant additional costs are identified in relation to the additional provisions at clauses 2 and 7 relating to the promotion of economic development. In relation to the Bill as introduced, costs to system users are likely to be offset by the benefits of more efficient, inclusive development management processes and improved service delivery bringing significant benefits to the development industry, individual applicants and the economy.

## **LEGISLATIVE COMPETENCE**

15. In relation to the Bill as introduced the Minister of the Environment had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the Planning Bill would be within the legislative competence of the Northern Ireland Assembly.”*

## **SECRETARY OF STATE CONSENT**

16. Secretary of State consent is not required under section 8 of the Northern Ireland Act 1998.