Planning Bill

Clause by Clause Summary of Responses – Clauses 3 - 28

Abbreviations:

ABC – Antrim Borough Council
ABCNM – Armagh, Banbridge, Craigavon, Newry and Mourne Councils
AN – Arena Network
AR – Anja Rosler
ASDA – Asda
AT – Alan Tedford
BBC – Ballymena Borough Council
BCAW – Belfast City Airport Watch
BCC – Belfast City Council
BCT – Belfast Civic Trust
BD – Bill Donnelly
BHC – Belfast Healthy Cities
BHRA – Belfast Holyland Regeneration Association (endorsed via email by Rosana Trainor, Henry, Sarah and Thelma Deazley)
BMRG – Belfast Metropolitan Residents' Group
BNF$ - Belfast Not For $hale
CAC – Corralea Activity Centre
CBC – Castlereagh Borough Council
CBI – CBI Northern Ireland
CCC – Cavehill Conservation Campaign
CEF – Construction Employers Federation
CH – Connal Hughes
CIEH – Chartered Institute of Environmental Health
CMCC – Ciaran McClean (Member of the Public)

CNCC – Council for Nature Conservation and Countryside
CP – Community Places
DB – David Bolton
DBK – Dawn Bourke (Member of the Public)
DCOD – Dr Carroll O'Dolan
DG – Committee based on discussions with Daniel Greenberg QC
DGBA – Dundonald Green Belt Association
DMW – Development Media Workshop
DN – David Noble
DP – Donaldson Planning
DS – David Scott DSTBC – Dungannon and South Tyrone Borough Council
FFAN – Fermanagh Fracking Awareness Network
FJ – Fiona Jones
FOE – Friends of the Earth (endorsed via email by Antrim & District Angling Association, Kenneth Dougherty/Public, Jim Martin/Public, Jim Gregg/Public, The Right Honourable Sir Liam McCollum/Public, Michael Martin, Vice Chair, Six Mile Water Trust, Adrian Guy, Dr Miriam de Burca/Public, Richard Rowe/Public, John Martin/Public, Heather McDermott/Public)
FT – Fermanagh Trust
GC – Geraldine Cameron
GD – Gerard Daye (Member of the Public)
GE – Geraint Ellis (QUB) (endorsed by Seahill Residents' Association)
GHEG – Greenisland Heritage and Environment Group
GL – Professor Greg Lloyd.
GMCA – Geralyn McCarron
HCG – Holywood Conservation Group
IOD – Institute of Directors
JMcG – Joe McGlade
JA – John Anderson
JC – J Cosgrove (Member of the Public)
LC – Lecale Conservation
LINI – Landscape Institute Northern Ireland
LS – Laurence Speight
LVG – Lagan Valley Residents' Association

MC – Mark Crean
MERA – Mounteagles Ratepayers Association
MG – Mairead Gilheaney
MK – Mr Mark Kearney (Member of the Public)
MMcC – Majella McCarron
MS – Marian Silcock
MT – Martina Tedford
NIBG – Northern Ireland Biodiversity Group
NIEL – Northern Ireland Environment Link
NIHE – Northern Ireland Housing Executive
NILGA – Northern Ireland Local Government Association (endorsed by Omagh District Council)
NIRIG – Northern Ireland Renewables Industry Group
NMDC – Newry and Mourne District Council
NT – National Trust
PAC – Planning Appeals Commission
PP – Patricia Pederson
QPANI – Quarry Products Association Northern Ireland
QUB – Queen's University Belfast
QUBPACE – Queen's University Belfast: School of Planning, Architecture and Civil Engineering
QUBPSR – Queen's University Belfast: Planning for Spatial Reconciliation
RG – Robert Graham
RI – Richard Ireson
RMG – Rosemarie Gilchrist
RSPB – RSPB Northern Ireland
RTPI – Royal Town Planning Institute Northern Ireland SCNI – Supporting Communities in NI
SBPB – South Belfast Partnership Board
SBRG – South Belfast Residents Group
SCNI – Supporting Communities NI
SS – Siobhan Small
TF – Tim Fogg
TW – Tom White
UAF – Ulster Angling Federation

UAHS – Ulster Architectural Heritage Society
UMARA – Upper Mounteagles Avenue Residents Association
UWT – Ulster Wildlife Trust
VR – Victor Russell
WHJ – WH Jones
WT – Woodland Trust
ZK – Zelda Kingston

CLAUSE NO	CLAUSE (FROM BILL)	EXPLANATIONS (From Explanatory and Financial Memorandum)	VIEW FROM SUBMISSIONS	OPTIONS	DEPARTMENT'S COMMENTS
3	**Meaning of development [j11]** **3.** In paragraph (2) of Article 11 of the 1991 Order (meaning of "development"), after sub-paragraph (f) add— "(g) a structural alteration of any description of building specified in a direction given by the Department for the purpose of this section, where the alteration consists of demolishing part of the building.".	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.	1 - Welcome **(ABC, CBC, BCC, BBC, NILGA, UWT)** 2 - Object - does not make a distinction between land/building development and economic development; must define economic development and its place in the context of land/building development, and clarify the distinction between sustainable development and (sustainable) economic development. **(BHRA, MERA, UMARA, CCC, HCG)**		1 - Noted. 2 - Currently Article 11 of the Planning (Northern Ireland) Order 1991 (the 1991 Order) Order defines the types of development (primarily buildings and uses of land) which require planning permission under Article 12. This is unrelated to economic or sustainable development which are separate issues.

			3 - Will the Department provide a separate direction exempting demolition in certain areas as was proposed in the Department's recent consultation: *Demolition and Development* **(BCC)**		3 - Demolition control through the development management regime is achieved by specifying in a Direction made under Article 11(2)(f) of the 1991 Order, those buildings whose demolition will or will not come within the meaning of development. Subject to legal advice, the Department intends to further revise its Departmental Direction on Demolition so that the provisions relating to partial demolition of buildings in new Article 11(2)(g) are included. The Direction was previously revised on 19th September 2012, following public consultation, to ensure that the demolition of a building which engages the Environmental Impact Assessment Directive was subject to the full planning application process. This requirement will not change. Clause 3 is a technical amendment which complements the

					requirement in clause 18 of the Bill so that anyone who wishes to demolish part of a building in a conservation area must obtain the consent of the Department.
			4 - What implications this will have for the Development Management process? **(BCC)**		4 - Minimal. Applicants and agents will need to be familiar with the requirement for permission or consent to partially demolish a building though this will normally be an integral part of a redevelopment application. Further information is set out in the Department's response to clause 18 below.
			5 - Will "alterations consisting of demolishing part of a building" bypass the need for planning permission? **(SBRG)**		5 - No. However, to ensure that the planning system is not overburdened with unnecessary planning applications for the demolition of relatively insignificant buildings and at the same time maintain planning

					controls over demolition of buildings in areas of townscape and village character (ATCs) the Department introduced permitted development rights for the demolition of buildings at the same time as it revised its Departmental Direction on Demolition and Development. The demolition of buildings in ATCs or where demolition engages EIA will continue to require planning permission on foot of an application. This will apply to partial or complete demolition of buildings. The separate requirement for express consent for the demolition of listed buildings, unlisted buildings in conservation areas and archaeological monuments will also remain.
4	**Publicity, etc., in relation to applications [j21]** **4.**—(1) For	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	1. Could the Department explain why it has chosen '*have been satisfied*' as the level of certainty in 4(1)? **(DG)**		1. This wording has been chosen to reflect that it is a matter for the Department to be

	Article 21 of the 1991 Order (publication of notices of applications) substitute— **"Notice, etc., of applications for planning permission** 21.—(1) A development order may make provision requiring notice to be given of any application for planning permission and provide for publicising such applications and for the form, content and service of such notices. (2) A development order may require an applicant for planning permission to provide evidence that any requirements of the order have been satisfied.	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.	2. What are the sanctions if the Department doesn't comply with the duties imposed on it in Clause 4? **(DG)** 3. Provision in this clause is to be welcomed and supports the concept of pre-application consultation. **(CBC, ABC)** 4. Concept of pre-application consultation is welcome **(ABCNM, BCC, BBC, BCAW, NMDC, NILGA)** 5. Welcome the power to refuse to consider an application if advertising requirements are not met **(CP)**		satisfied that advertising requirements have been met. Similar wording is provided under Section 41 of the 2011 Act. 2. Failure to adequately publicise a planning application may result in censure from the Ombudsman and may attract compensation liability and judicial review. 3. Noted. See comments on clause 5 4. Noted. See comments on clause 5 5. Noted. See comments on clause 5

	(3) An application for planning permission must not be entertained by the Department unless any requirements imposed by virtue of this Article have been satisfied.". (2) In Article 25 of the 1991 Order (determination of planning applications), for paragraph (2) substitute— "(2) A development order may provide that the Department must not determine an application for planning permission before the end of such period as may be prescribed by the development order. (2A) In determining any application for planning permission		6. Details of all applications should be widely advertised in popular press **(SBRG, HCG)**, should be mandatory for Department to notify everyone within the affected area of a proposed development **(BCAW)** and site notices should be a requirement **(RSPB, LVG, SCNI, SBRG, NIEL, BCT)** 7. Regulations should establish strict conditions that ensure that local people are fully informed about development proposals in their area. **(CP, FT)** 8. Could 'streamlined' approvals be decided before time for consultation? **(LVG)**		6. The mechanisms for publicising planning applications will be set out in subordinate legislation which will be subject to public consultation and Assembly scrutiny. 7. See comment 6. 8. Streamlined applications, like all applications, are advertised in the local press, neighbours are notified and the Council is consulted. The Department allows 2 weeks from advertisement and neighbour notification before a decision can be issued to allow comment. This period runs concurrently with a 3 week period for Council consultation during

		the Department must take into account any representations relating to that application which are received by it within such period as may be specified by a development order.". (3) In Schedule 1 to the 1991 Order (listed building consent)— (a)in paragraph 1, for sub-paragraphs (2) and (3) substitute— "(2) Provision may be made by regulations with respect to— (a) requirements as to publicity in relation to applications for listed building consent; (b) the time within which				which, if the Council request, the application can be removed from the streamlining process. Only at this stage will the most straightforward and non contentious applications be issued as approvals and the earliest timeframe is around 3 weeks from the submission of the application. If a consultee view on particular issues related to the proposed development is required, reasonable time will be provided to allow the consultee to respond. On occasion a decision may issue without a consultee comment when after extending the time period to make comment and advising that if no response is received within that time it will be taken that the consultee has no comment to make on the proposal no response is received.

	such applications are to be dealt with by the Department; (c) requirements as to consultation in relation to such applications; (d) prohibiting the determination of such applications during such period as is prescribed; (e) requirements on the Department to take account of responses from persons consulted and to notify the persons responding of the decision of the Department on the application.		9. Developers/speculators have a vested interest in ensuring their application is successful. Community consultation should be the responsibility of planners or councils. **(BHRA, MERA, UMARA, CCC)** 10. Request early engagement in the formulation of any Development Order and associated subordinate legislation. **(BCC)** 11. Applicants should be banned from issuing public notices of planning applications during the months of July and December **(BMRG)** 12. Will the Department take all comments into consideration no matter how small the organisation making the comment? **(HCG)** 13. Consideration should be given to adding a new paragraph to Clause 4 to delete the requirement to advertise appeals from the 1991 Order and the		9. Noted. See comments on clause 5. Pre-application community consultation is in addition to publicity arrangements. 10. All subordinate legislation will be subject to public consultation and Assembly scrutiny. 11. See comments on clause 5. The Department would suggest this is an unreasonable approach. 12. All representations and objections are considered by the Department when determining applications. 13. The PAC has written to the Department separately on this issue.

	(3) Sub-paragraphs (1) and (2)(b) shall apply to applications to the Department for any approval of the Department required by a condition imposed on a grant of listed building consent as they apply to applications for listed building consent."; (b)omit paragraphs 2 and 4.		2011 Act to ensure consistency with Clause 12. **(PAC)**		The Department is giving consideration to this proposal which will also require legal advice.
5	**Pre-application community consultation [j27]** **5.** —(1) After Article 22 of the 1991 Order insert— **"Pre-application community consultation** 22A.—(1) Before submitting an application for	Clause 5 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	1. Could the Department explain why it has chosen 'being of the opinion' as the level of certainty in 5(2)? **(DG)** 2. What are the sanctions if the Department doesn't comply with the duties imposed on it in Clause 5? **(DG)**		1. The drafting reflects that this is a matter of judgement for the Department. It further reflects similar wording under section 50 of the 2011 Act. 2. If the Department fails to comply with its statutory duties, it could face investigation by the Ombudsman or challenges through the

	planning permission for a development of a class prescribed for the purposes of this Article, the prospective applicant must comply with the following provisions of this Article. (2) The prospective applicant must give notice (to be known as a "proposal of application notice") to the Department that an application for planning permission for the development is to be submitted. (3) A period of at least 12 weeks must elapse between giving the notice and submitting any such application. (4) A proposal of application notice must be in such	applicant. Additional requirements may be placed on a particular development if the Department considers it appropriate. Clause 5 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 5 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 5 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.	3. Does not define the class of application to which this requirement applies **(BCC, BMRG, SBPB)** 4. Pre-application should apply to major planning applications only **(CEF)** 5. Pre-application consultation should be extended to include all applications **(SBRG, BMRG, HCG)**		Judicial Review process. 3. Proposed Article 22A(1) enables the Department to prescribe through subordinate legislation classes of development applications which will be subject to pre-application community consultation. The classes of development will be subject to public consultation and Assembly scrutiny. 4. Noted. The Department's proposal is to apply this provision to major applications which will be set out in forthcoming subordinate legislation. See also comments to Issue 3 above. 5. It is the Department's intention that this provision shall only be applied to proposals for major applications which

	form, and have such content, as may be prescribed but must in any event contain— (a) a description in general terms of the development to be carried out; (b) if the site at which the development is to be carried out has a postal address, that address; (c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site, and (d) details as to how the prospective applicant may be contacted and corresponded with.		6. The public should be consulted on which types of planning application will require pre-application consultation, the details of the content of the report and how engagement with communities should be conducted **(FT, SBPB)** 7. How is "community" to be defined? **(CBC, ABCNM, BCC, NMDC)**		will be defined in forthcoming subordinate legislation. It is the Department's opinion that applying this provision to all applications would slow the planning process down unnecessarily and would be counterproductive. 6. The Department intends to consult on subordinate legislation proposals which will set out what categories of development which will require pre-application community consultation as well as what evidence will be required by the applicant. The forthcoming subordinate legislation will be issued for public consultation and Assembly scrutiny. 7. Community is taken in its widest sense and will include the public, businesses, voluntary groups and any person who has an interest in the area.

	(5) Regulations may— (a) require that the proposal of application notice be given to persons specified in the regulations; (b)prescribe— (i) the persons who are to be consulted as respects a proposed application, and (ii)the form that consultation is to take. (6) The Department may, provided that it does so within the period of 21 days after receiving the proposal of application notice, notify the prospective applicant that it requires (either or both)—		8. Welcomes community involvement in the planning process **(BHC, FOE, ASDA, BBC, CIEH, CNCC, NIEL, NIRIG, RSPB, SBPB, WHJ, UWT)** 9. Pre-application consultation is welcomed but must be carried out within the context of an up-to-date area plan **(CBC, ABCNM, ABC, NMDC, NILGA)** 10. Must be adequately resourced **(FOE, WHJ)** and the capacity of all participants increased **(UWT)**		8. Noted. 9. Noted. An up to date area plan is not essential to the pre-application community consultation process. 10. Noted. Applicants will be required to factor pre-application community consultation into the development process. The Department intends to issue guidance which, in conjunction with experience from pilots, will increase capacity. A scoping exercise is also currently underway to identify capacity building and training needs for councillors and all

	(a) that the proposal of application notice be given to persons additional to those specified under paragraph (5) (specifying in the notification who those persons are); (b) that consultation additional to any required by virtue of paragraph (5)(b) be undertaken as regards the proposed development (specifying in the notification what form that consultation is to take). (7) In considering whether to give notification under paragraph (6) the Department is to		11. Requirements and desires of the community should only be considered in the context of planning policy and not a 'wish list' that can be used as a means to delay development or impose additional cost burdens on development **(CEF)** 12. How will community concerns be taken on board and will there be opportunity to object if the community feel their concerns have been ignored? **(LVG)**		affected staff prior to the transfer of planning functions in 2015. This exercise will inform a full capacity building and training action plan for roll out later this year. 11 & 12. Noted. The Department intends to publish subordinate legislation proposals which will set out what categories of development require pre-application community consultation as well as the process and expectations of applicants and interested parties. The forthcoming subordinate legislation will be subject to public consultation and Assembly scrutiny. Experience suggests pre-applications consultation in conjunction with pre-application discussions can resolve issues and shorten processing times to the benefit of all parties. The provisions do not prevent

	have regard to the nature, extent and location of the proposed development and to the likely effects, at and in the vicinity of that location, of its being carried out. **Pre-application community consultation report** 22B.—(1) A person who, before submitting an application for planning permission for a development, is required to comply with Article 22A and who proceeds to submit that application is to prepare a report (a "pre-application community consultation report") as to what has been done to effect such compliance. (2) A pre-application		13. What is to prevent the applicant treating the exercise as a formality and then proceed with the development? **(LVG, BMRG, FT, SBPB, WHJ)** 14. Would the Department consider an impartial observer to monitor the community and developer views? **(SCNI)**		representations /objections from being made and fully considered during the formal application process. 13. The requirements which will be set out in subordinate legislation will require an applicant to demonstrate that they have complied with the requirements involved in pre-application community consultation through the submission of a Pre-application community consultation report. The outcomes of this process will be carried through the formal planning application process and will be considered in the determination. 14. The Department is of the opinion that planners are skilled in considering community and developers views. Also, Clause 1 introduces the

	community consultation report is to be in such form as may be prescribed.”. (2) After Article 25AA of the 1991 Order insert— “**Duty to decline to determine application where Article 22A not complied with** 25AB.—(1) The Department must decline to determine an application for the development of any land if, in the opinion of the Department— (a)compliance with Article 22A was required as respects the development, and (b)there has not been such compliance. (2) Before		15. Third party rights of appeal should still be put in place as a safeguard **(SCNI, GMC, DB, CBC, ABCNM, GMCA, FOE, AT, CIEH, DN, DSTBC, MG, MMcC, MC, MT, SS, NMDC, NIEL, BCT, RSPB, FFAN, WHJ, UWT, CH)**		requirement for the Department to produce a statement of its policy for the involving the community within one year of the clause coming into operation. Further policy and guidance will be published including regulations on the form which pre-application consultation reports should take. 15. This provision will enhance opportunities for third parties to engage in the planning process. It is not the Department’s intention to introduce a Third Party Right of Appeal at this time. This will be kept under review in light of the range of reforms to the planning system. Third Party appeals could undermine the aim of pre-application community consultation which itself aims to front-load the system to encourage and facilitate greater community involvement in the

	deciding whether, under paragraph (1), an application must be declined, the Department may request the applicant to provide such additional information as it may specify within such time as may be prescribed. (3) Where, under paragraph (1), the Department declines to determine an application, the Department must advise the applicant of the reason for its being of the opinion mentioned in that paragraph.". (3) In Article 124 of the 1991 Order (planning register), in paragraph (1) after sub-paragraph (b) insert— "(bb) notices under Article 22A(2);		16. Thresholds to determine which applications will require pre-application consultation and which ones will not need to be set out in regulation as soon as possible **(CBC, CP, ABC, FT, NILGA, SBPB);** they must be consistent, fair and transparent **(CP, ASDA)** and must avoid loopholes such as large developments being split into smaller phases **(CBC, NILGA, SBPB)** 17. This clause might result in delays **(CBI. AN, ASDA)** but prepared to accept it because of the inclusion of 'promotion of development' in the Bill **(CBI, QPANI)**		planning process. 16. The Department intends to publish subordinate legislation proposals which will set out what categories of development require pre-application community consultation. The forthcoming subordinate legislation will be subject to public consultation and Assembly scrutiny. Loophole point is noted. 17. Noted. It is the Department's opinion and experience that the proposed clause may assist in speeding up the processing of the subsequent planning application as possible contentious issues will have been assessed during the pre-application period.

	(bc) pre-application community consultation reports under Article 22B;".		18. Must have safeguards to ensure that any group representing a community is genuinely representative of that community, with a mechanism whereby interests are declared to avoid single-issue groups dominating discussions and giving false impressions of community feelings **(CNCC, NIEL)** 19. Could the 12 week consultation time be reduced to 28 days? **(AN)**; 8 weeks? **(ASDA)**		18. Further subordinate legislation will set out how and what should be included as part of the consultation process. The pre-application community consultation stage is an opportunity for the applicant and community to engage and discuss issues affecting the proposed development. An individual objector will not have a formal mechanism to stall this process during this stage, however they can make representation to the formal application once it is submitted to the Department as part of the statutory planning process. 19. The 12 week period is the timescale that the Department requires an applicant to give notice of their intention to submit an application i.e. "proposal of application

			20. Will guidance be produced? **(BCC, ABC, NILGA, NIRIG, UWT)** 21. Guidance should be issued that requires a pre-application consultation report to include: • the extent of community support and objection • a list of objections and how these have been addressed **(FT)**		notice". The categories of development to which this is to apply will be set out in subordinate legislation. Applicants should factor this in to the programme for their proposed scheme. It is during this period that an applicant must carry out meaningful community consultation which may, at the applicant's discretion, go beyond the minimum requirements in legislation. It is this process that will ultimately form the basis of the consultation report which accompanies the subsequent planning application. This provision reflects legislation and experience in other jurisdictions. 20 & 21. The Department intends to publish subordinate legislation proposals which will set out which categories of development require pre-application community

			• any written submissions from the community **(SBRG, FT)** • evidence of how the application has changed as a result of the consultation process (**FT)** It should be made publicly available at no charge and a short period of time provided for the community to comment on the report prior to the Department accepting or rejecting it. **(CP, UWT)** 22. Guidance should be consulted on **(NIRIG)** 23. The Department should identify and maintain a list of approved consultants to undertake this work and require applicants to use one of these consultants. **(CP)**		consultation and accompanying guidance. The forthcoming subordinate legislation will be subject to public consultation and Assembly scrutiny. The pre-application community consultation report will be publicly available with the formal application. 22. Guidance will be consulted upon where appropriate. 23. The use (or not) of consultants in undertaking pre-application community consultation will be at the discretion of the applicant / developer. The Department does not consider it necessary or appropriate to establish a select list of consultants for such activity.

			24. The applicant should be responsible for the community consultation **(BCC)**		24. Clause 5 of the Planning Bill stipulates that the applicant is responsible for carrying out the pre-consultation duty.
			25. The Department should be responsible for community consultation **(BMRG)**		25. The Department is of the opinion that as the applicant is bringing forward the proposal, they should be responsible for engaging with the community prior to submitting their application. The Department will also consider all representations/objections made during the application process.
			26. Will councils be involved in the formulation of regulations to prescribe the persons to be involved in pre-application consultation? **(BCC, ABC, NILGA)**		26. The Department intends to consult publicly on the details to be set out in the subordinate legislation. Councils will continue to be actively involved in all relevant matters as part of the on-going Reform Programme.

			27. Pre-application consultation with communities should be a statutory requirement in respect of regionally significant applications to ensure the process is open and transparent and allow communities the opportunity to influence proposal at an early stage **(BCC)**. 28. Once the developer has informed the residents of the proposed development, they must not be allowed to go beyond the permission given and must be dealt with severely if he does so **(SBRG)**		27. Section 26 of the Planning Act (Northern Ireland) 2011 enables the Department to assess and determine Regionally Significant planning applications. These are considered a "top slice" of major applications and therefore will be subject to the requirements of pre-application community consultation. 28. The proposed provision requires the applicant to carry out a pre-application consultation. During this stage the applicant has not formally submitted a planning application and therefore no determination shall be made during this period. The details contained with a subsequent planning application may vary however these will be open to public inspection as well as scrutiny and representations can be

					made during this process. Once permission is granted any subsequent breach may be subject to enforcement action.
			29. Recommend the Scottish model for pre-application community consultation, including a requirement for one event along with an advert in the local press and engagement with local community groups. The English definition is currently too wide ranging and can be open to differing interpretation. **(ASDA)**		29. Noted. The Department's proposals have been informed by the Scottish model. See also Comment 28 above.
			30. Recommend the approach taken by the Town and Country Planning Association in Britain in its guide Biodiversity by Design, which sets out important principles relating to green infrastructure, landscape character and local distinctiveness. **(CNCC)**		30. Noted. This issue does not appear to be relevant to Clause 5, and is more appropriate to policy consideration.
			31. Want more detail on the persons that may be specified to be given notice in the regulations **(RSPB)**		31. The Department intends to publish subordinate legislation proposals which will set out what categories of development require pre-application community consultation. The

					forthcoming subordinate legislation will be issued for public consultation as well as being scrutinised by the Environment Committee.
7	**Power to decline to determine subsequent application [j25A]** **7.**—(1) In Article 25A of the 1991 Order (power to decline to determine subsequent application for planning permission)— (a) in paragraph (4)(b) after "refusal" add "or, if there has been such an appeal, it has been withdrawn"; (b) after paragraph (4) insert— "(4A) The Department may also decline to determine a relevant	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.	1. This clause should not prevent subsequent applications from being determined if they are clearly distinguishable proposals from those previously submitted **(CEF)** 2. Could the Department explain why it has chosen 'thinks' as the level of certainty in 7(1)(b)? **(DG)** 3. Welcome **(CBC, CP, ABCNM, BCC, AN, SBRG, ABC, BBC, CIEH,**		1. Under Article 25A(8) of the 1991 Order an application is similar to another application if the Department thinks that the development and the land to which the application relates are the same or substantially the same. Clearly distinguishable proposals are unlikely to be considered "the same or substantially the same" 2. The drafting reflects that this is a matter of judgement for the Department. It is similar to wording under section 46 of the 2011 Act. 3. Noted

	application if— (a)the condition in paragraph (4B) is satisfied; and (b)the Department thinks there has been no significant change in the relevant considerations since the relevant event. (4B) The condition is that— (a) in the period of 2 years ending with the date on which the application mentioned in paragraph (4A) is received the planning appeals commission has refused a similar application, (b) the similar		**NIEL, BCT, NILGA, RSPB)** 4. Will a subsequent application for a site which immediately follows an approval given for that site (whether or not it has been to the PAC) be refused? If not, it could be a means of upgrading an application by stealth to something which, if it had been submitted originally, would have been unlikely to succeed. **(LVG).** 5. The Bill may be better served by strengthening the proposed terminology e.g. with 'shall' instead of 'may' where appropriate. **(ABC, NILGA)** 6. Appears to duplicate legislation already in place since the introduction of the Planning Reform Order (NI) 2006 Article 9 which amended the 1991 Order **(JA)**		4. Article 25A applies to similar applications that have been refused or dismissed on appeal rather than approvals. 5. The use of "may" allows for flexibility and discretion for an exceptional case were the planning authority wish to accept a subsequent application. 6. Article 9 of the Planning Reform Order (NI) 2006 amended the 1991 Order by substituting Article 25A and amending Schedule 1. Clause 7 is amending Article 25A of, and Schedule 1 to the 1991 Order to extend the Department's power to decline subsequent

	application was an application deemed to have been made by Article 71(5)."; (c) in paragraph (7)(a) for "paragraphs (2) and (4)" substitute "paragraphs (2), (4) and (4B)". (2) In paragraph 4A of Schedule 1 to the 1991 Order (power to decline to determine subsequent application for listed building consent), in sub-paragraph (4)(b) after "refusal" insert "or, if there has been such an appeal, it has been withdrawn".		7. The provision to decline applications that have gone to appeal but have subsequently been withdrawn could stifle the ability to develop sites and could result in significant financial losses being accrued as the extent of revisions that may be required to address a previous reason for refusal may not necessarily be substantially different from the		applications for planning permission under these provisions, 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. 7. In the scenario outlined it would be expected that the changes would be significant which would allow the submission of another application. In any event, the power to decline is discretionary and the planning authority in that particular case may

			previous submission. It runs contrary to the measures being put into effect to promote economic development (**ASDA)** 8. Would like the term 'similar application' clarified **(NIRIG)**		decide to accept the application. 8. Clarification is provided at Article 25A(8) of the 1991 Order. See comment 1 above.
8	**Power to decline to determine overlapping applications [j25AA]** **8.**—(1) In Article 25AA of the 1991 Order (power to decline to determine overlapping applications)— (a)for paragraph (1) substitute— "(1) The Department may decline to determine an application for planning permission for the development of any land which is—	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.	1. Welcome **(CBC, CP, ABCNM, AN, ABC, BBC, CIEH, NIEL, BCT, NILGA, RSPB, SBRG)** 2. The word 'may' could be strengthened to the word 'shall' to avoid inconsistency in approach **(CBC, ABCNM, NILGA)** 3. A developer should be free to pursue various development options on a specific site at the same time in order to realise the best possible development opportunity within the same timeframe. This could stifle development and result in significant financial losses being accrued and		1. Noted 2. The use of "may" allows for flexibility and discretion for an exceptional case were the planning authority wish to accept a subsequent application. 3. Different development options are unlikely to be considered similar applications.

	(a) made on the same day as a similar application; or (b) made at a time when any of the conditions in paragraphs (2) to (4) applies in relation to a similar application."; (b)after paragraph (4) insert— "(4A) The Department may also decline to determine an application for planning permission for the development of any land which is made at a time when the condition in paragraph (4B) applies in relation to a similar application. (4B) The condition is that— (a) a similar application is		runs contrary to the provision in the Bill to promote economic development. **(ASDA)** 4. Appears to duplicate legislation already in place since the introduction of the Planning Reform Order (NI) 2006 Article 9 which amended the 1991 Order **(JA)**		4. Article 9 of the Planning Reform Order (NI) 2006 amended the 1991 Order by inserting Article 25AA and amending Schedule 1. Clause 7 is amending Article 25AA of, and Schedule 1 to the 1991 Order to extend the Departments power to determine overlapping applications for planning permission under these provisions, 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.

	under consideration by the planning appeals commission, (b) the similar application is an application deemed to have been made by Article 71(5), and (c) the planning appeals commission has not issued its decision."; (c) after paragraph (6) add— "(7) If the Department exercises its power under paragraph (1)(a) to decline to determine an application made on the same day as a similar application, it may not also exercise that power to decline to determine the				

	similar application.”. (2) In Schedule 1 to the 1991 Order, in paragraph 4B (power to decline to determine overlapping application for listed building consent)— (a) for sub-paragraph (1) substitute— “(1) The Department may decline to determine an application for a relevant consent which is— (a) made on the same day as a similar application; or (b) made at a time when any of the conditions in sub-paragraphs (2) to (4) applies in relation to a similar application.”;				

	(b)after sub-paragraph (4) insert— "(4A) If the Department exercises its power under sub-paragraph (1)(a) to decline to determine an application made on the same day as a similar application, it may not also exercise that power to decline to determine the similar application.".				
9	**Aftercare conditions for ecological purposes on grant of mineral planning permission [j27A]** **9.** In Article 27A of the 1991 Order (power to impose aftercare conditions on grant of mineral planning permission), in	Clause 9 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".	1. Welcome **(CBC, BCC, BHC, AN, ABC, BBC, CNCC, LINI, NIEL, BCT, QPANI, RSPB, UWT,)** 2. Would recommend the inclusion of 'nature conservation' as a use for closed mineral works **(RSPB)**.		1. Noted. 2. 'Use for ecological purposes' was introduced to subsection 53(1)(b)(iv) of the Planning Act (Northern Ireland) 2011 at further consideration stage by a member, as it was viewed that the amendment considered

	paragraph (1), at the end of sub-paragraph (iii) add "; or (iv)use for ecological purposes.".		3. The steps in Article 53(5) of the Planning Order (NI) 1991, as amended, do not include all steps that might be needed for nature conservation after use. Recommend that the wording is changed to "The steps....may consist of but are not limited to....." **(RSPB)**		would include looking at wildlife habitats, grasslands, heath land, woodlands and wetlands and by using those conditions to simulate what occurs in the natural environment. The Department therefore is of the opinion that the proposed wording adequately incorporates how 'Nature Conservation' is defined as previously lobbied by RSPB during the 2011 Planning Act. 3. The Department is of the opinion that the inclusion of "or otherwise" provides wide discretion in what is itself a discretionary provision.
11	**Appeals: time limits [j32]** **11.**—(1) In Article 32 of the 1991 Order	Clause 11 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	1. Most developers will know within 4 months whether or not they wish to appeal **(CEF)** 2. Welcome **(LVG, SCNI, CBC, CBI, CP, ABCNM, BCC, ABC, BMRG,**		1. Agreed 2. Noted

	(appeals) for paragraph (3) substitute— "(3) Any notice under this Article must be served on the planning appeals commission within 4 months from the date of notification of the decision to which it relates or such other period as may be specified by development order.". (2) In Article 57 of the 1991 Order (appeals in relation to hazardous substances consents) for paragraph (3) substitute— "(3) Any notice under this Article must be served on the planning appeals commission within 4 months from the date of the notification of the decision to which it	Planning (Northern Ireland) Order 1991 from six to four months or such other period as may be specified by development order.	**NIEL, BCT, NILGA, RSPB)** 3. Reservations [unspecified] about the reduced time period for appeals **(BBC)** 4. Concern that if more policies are removed there will be scope for more inconsistency giving rise to an		3. The Department wishes to ensure that all appeals are made to the PAC in a prompt manner. The 4 month period is the initial upper limit within which appeals must be lodged and the Department believes this is a reasonable period of time for applicants to decide if they wish to appeal. The Department will have the option to alter the limit via subordinate legislation where, for example, there is evidence of a significant increase in appeals to the planning appeals commission as a result of the reduction from 6 to 4 months or other circumstances where the Department deems it necessary to alter the time limit. 4. Noted. It is the Department's intention to

	relates or such other period as may be prescribed.”. (3) In Article 83E of the 1991 Order (appeals against refusal or failure to give decision on application) in paragraph (1) for “planning appeals commission.” substitute— “planning appeals commission— (i)in the case described in sub-paragraph (a), within the period of 4 months from the date on which the application is refused or is refused in part or such other period as may be prescribed; (ii)in the case described in sub-paragraph (b),		increased number of appeals and this in itself would require funding sources to administer **(ABCNM)** 5. Time limits should be matched by additional limits whereby applicants must submit all relevant material and additional information within a defined and reasonable time. Failure to comply should consistently result in a refusal by default. **(JA)**		issue a single planning policy statement later this year for public consultation. These views can be replicated into a consultation response to the proposed policy which will be scrutinised by the Environment Committee. 5. Currently at the outset, the Department requires the following information for an application to be considered valid: • Correct Fee • Correct forms completed fully • Site clearly identified • Accurate description provided • Appropriate/ relevant drawings to be provided • Ownership clarified • Signature on forms If this information is not provided, normally there

	within the period of 4 months from the end of the period referred to in that sub-paragraph or such other period as may be prescribed.”. (4) In paragraph 7 of Schedule 1 to the 1991 Order (appeals in relation to listed building consent, etc.) for sub-paragraph (2) substitute— “(2) Any notice under this paragraph must be served on the planning appeals commission within 4 months from the date of notification of the decision to which it relates or such other period as may be prescribed.”.				will be one opportunity to provide it. If it is not provided then the application is considered invalid, and is returned to the applicant along with the fee. When an application is valid then the Department endeavours to be reasonable in terms of requesting additional information and the deadlines that it sets. For example some reports and surveys may require to be undertaken at certain times of the year e.g. . bat surveys, and others such as contamination reports may require continual monitoring over a period of time. Therefore it is not realistic to put a standard period for receipt of additional information and to refuse at the end of that period if the information is not received. Also unless a detailed Pre Application Discussion has taken place on the application

					the applicant may not be aware of all the additional information that may be required to be submitted as part of the application. Case officers will provide timeframes under the Good Practice Guide and actively manage cases. Ultimately the Department has the power to refuse applications if there is insufficient information to determine it. However this is only likely to be used when the Department has exhausted all options to obtain the required information. Once an application has been made valid or when a refusal is issued the applicant is not entitled to a fee refund. There is a right of appeal to both applications deemed invalid by the Department and those where permission has been refused.

12	**Matters which may be raised in an appeal [j32A]** **12.** After Article 32 of the 1991 Order (appeals) insert— **"Matters which may be raised in an appeal under Article 32** 32A.—(1) In an appeal under Article 32, a party to the proceedings is not to raise any matter which was not before the Department at the time the decision appealed against was made unless that party can demonstrate to the satisfaction of the planning appeals commission— (a)that the matter could not have been raised before that time,	Clause 12 inserts "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.	1. Welcome **(LVG, CNI, CBC, ABCNM, ABC, ASDA, BBC, NIEL, BCT, NILGA, RSPB)** 2. There may be practical difficulties in obtaining full information before an appeal is scheduled for hearing which could end up delaying an application until all information is available **(CEF)** 3. Disagree that parties should not be allowed to introduce new material at appeal**. (CBI)**		1. Noted 2. The matters should only be those which were before the Department when it made its decision. Therefore there should be no difficulties supplying this before the appeal. 3. The previous Environment Committee requested this provision to prevent any new material being presented after an appeal has been lodged unless it could not have been presented at the time or there were exceptional circumstances for it not being presented. The proposed appeal process is legitimate. It is not unreasonable to provide that if information could have been raised before, it cannot be raised later at appeal. Guidance to PAC can state that there may

	or (b)that its not being raised before that time was a consequence of exceptional circumstances. (2) Nothing in paragraph (1) affects any requirement or entitlement to have regard to— (a) the provision of the development plan, or (b) any other material consideration.”.		4. All relevant considerations need to be considered at appeal stage if a robust decision is to be taken **(NIRIG)** 5. The Commission carefully scrutinises all revisions to proposals and not infrequently declines to admit revisions for consideration. Where revisions are found to be compliant with case law, the Commission ensures that the Department and any third parties have sufficient time to examine the new proposals **(PAC)** 6. Clause as currently worded is contradictory. On the one hand it seeks to restrict the matters which may be raised at an appeal but on the other maintains the requirement to have regard to material considerations. Where new matters are raised that are		be information that, in exceptional circumstances, might be revisited. 4. All relevant matters that were available when the decision was made will be considered. The legislation also provides circumstances were a new matter may be raised. 5. Noted. 6. Guidance will set out advice on what matters may and may not be raised. Material considerations in planning determinations are set out in PPS 1 and

			material they could not be ruled out. The Commission foresees significant difficulty in interpreting and applying these provisions, especially in the current litigious climate. **(PAC)** 7. More clarification is required as to what will or will not be considered as "any other material consideration". While the intention of the clause may be to prevent or reduce changes to a proposal pre-appeal, this may be undermined by the interpretation of what constitutes other material considerations **(RTPI)** 8. Is this clause compatible with both Article 32(4) of the Planning (Northern Ireland) Order 1991 and Article 6 of the European Convention on Human Rights? **(Mr Allister MLA)**		by case law. 7. See response to comment 6. 8. The Planning Bill is compatible with the European Convention on Human Rights (Department – answer to Committee Query 11 March)
13	**Power to make non-material changes to planning permission [j67]** **13.** After Article 37 of the 1991	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	1. Is this giving a legislative basis to what is already happening in practice? **(CEF)**		1. Yes. The Department currently relies on case law (Lever Finance Ltd v Westminster City Council 1970) to enable it to make non-material changes to planning

	Order insert— **"Power to make non-material changes to planning permission** 37A.—(1) The Department may make a change to any planning permission granted if it is satisfied that the change is not material. (2) In deciding whether a change is material, the Department must have regard to the effect of the change, together with any previous changes made under this Article, on the planning permission as originally granted. (3) The power conferred by paragraph (1) includes power—	impose new ones. Consultation and publicity arrangements may be set out in Regulations.	2. Could the Department explain why it has chosen 'it is satisfied' as the level of certainty in Clause13? **(DG)** 3. What are the sanctions if the Department doesn't comply with the duties imposed on it in Clause 13? **(DG)** 4. Any changes should be advertised (or those who be affected by the change should be notified) before permission		permission. The Department is seeking legislative provision for making non-material changes to in line with planning law in GB. 2. The drafting reflects it is a matter of judgement for the Department. Clause 13 is informed by the wording in section 96A of the Town and Country Planning Act 1990 to provide that the Department must be satisfied that the change is non-material. 3. While there are no sanctions in legislation, the Department will be scrutinised by and accountable to the Committee and Assembly in terms of its compliance. 4. As an application under new Article 37A

	(a)to impose new conditions; (b)to remove or alter existing conditions. (4) The power conferred by paragraph (1) may be exercised only on an application made by or on behalf of a person with an estate in the land to which the planning permission relates. (5) An application under paragraph (4) must be made in the form and manner specified by a development order. (6) Paragraph (7) applies in relation to an application under paragraph (4) made by or on behalf of a person with an estate in some, but not all, of the land to which the		for changes are given. This could be a way for an applicant to get permission for something which would not have been passed in the original application. **(LVG)** 5. Wary of a practice where once planning permission has been given, the extent of the permission or conditions can be changed without seeking the views of the local residents. **(SBRG)** 6. It will encourage applicants to try to gain permission for something they would have been unable to achieve with an original application. **(SBRG)**		will not be an application for planning permission, the existing provisions relating to statutory consultation and publicity will not apply. Given that the requirements for consultation and publicity will have already been applied and undertaken to the original planning application and the fact that the amendment is only non-material in nature it is not expected that consultation or publicity will be necessary in the majority of cases. 5 and 6. This power only allows the Department the power to make changes that do not have a material effect on the planning permission. It is not intended for changes to be made to a permission that would not have been permitted on the original application. Also it does not allow for amendments to

	planning permission relates. (7) The application may be made only in respect of so much of the planning permission as affects the land in which the person has an estate. (8) The Department must comply with such requirements as may be specified by development order as to consultation and publicity in relation to the exercise of the power conferred by paragraph (1).”.		7. Guidance is needed as to what constitutes material/non-material change and who defines that distinction. **(SCNI, NIEL, BCT)** 8. Is it only possible to make a non-		conditions that are material to the permission and it does not allow for development to be carried out without complying with the development conditions attached to the permission.. Any developer who does wish to make such changes or vary conditions must apply under Article 28 of the 1991 Order: Permission to develop land without conditions previously attached and that application would be advertised and representations invited. 7. Guidance will be produced by the Department on the various aspects of the non-material change provisions to supplement the primary and subordinate legislation and to give advice to all users of the new process. 8. Only a person who has an estate in the land

			material change to planning permission if the applicant is an owner of the lands and what are the implications for those developing by way of a Development Brief in which legal interest may only transfer upon completion? **(ABCNM)**		which the non-material amendment relates, or someone else acting on their behalf can apply. This could include someone with a valid contract for the purchase of the land.
			9. There should be some constraint imposed on the department where it wishes to impose new nonmaterial conditions and it is conceivable that some conditions if applied could be impractical if a cut-off date is not established from the outset in the Legislation. This would assist developers in providing clarity and setting a parameter around what the Department can and cannot do under certain circumstances. **(ABCNM)**		9. Non-material changes to planning permission can only be imposed on an application made by or on behalf of a person with an interest in the land to which the planning permission relates. They are not initiated by the Department. Any conditions would have to follow the normal tests.
			10. It is not clear if the request comes from the Department or the developers in respect of who initiates the application for the non-material change to planning permission. **(ABCNM)**		10. The Department may make a change to any planning permission granted if it is satisfied that the change is not material. This can only be exercised on an application made by or on behalf of a person with an interest in the land to

			11. Clause welcome **(ABC, BBC, ASDA)** 12. There should be an onus on the Department to write to all parties who have made representation regarding the application, inviting their comment. **(BMRG)** 13. Clarification is required regarding what is a material/non material change **(CIEH)** 14. The Department and Council should initiate the practice of informing developers/agents of the 'draft' planning conditions which are to be imposed on the planning permission prior to the determination **(QPANI)**		which the planning permission relates. The Department does not initiate the application. 11. Noted. 12. See comment 5 above. 13. Guidance will be produced by the Department on the various aspects of the non-material change provisions to supplement the primary and subordinate legislation and to give advice to all users of the new process. 14. Noted – Any decisions in relation to this query would be unlikely to be non-material in nature.

14	**Aftercare conditions imposed on revocation or modification of mineral planning permission [j69]** **14.** After Article 38 of the 1991 Order insert— **"Aftercare conditions imposed on revocation or modification of mineral planning permission** 38A.—(1) An order under Article 38 may in relation to planning permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials, include such aftercare condition	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.	1. Could the Department explain why it has chosen 'thinks' as the level of certainty in Clause 14? **(DG)** 2. Welcome **(ABCNM, ABC, BBC, RSPB, UWT)**		1. The drafting reflects it is a matter of judgement for the Department. 2. Noted.

	as the Department thinks fit if— (a) it also includes a restoration condition; or (b)a restoration condition has previously been imposed in relation to the land by virtue of any provision of this Order. (2) Paragraphs (3) to (12) of Article 27A shall apply in relation to an aftercare condition so imposed as they apply in relation to such a condition imposed under Article 27A.”.				
15	**Planning agreements: payments to departments [j40]** **15.** In Article 40 of the 1991 Order	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.	1. Welcome **(CBC, AN, ABC, BBC)** 2. Payments should also be made available to councils **(CBC, BCC,**		1. Noted. 2. The proposed amendment to the 1991 Order will only impact upon the existing NI

	(planning agreements), in paragraph (1) at the end of sub-paragraph (c) omit "or" and, after sub-paragraph (d), add— "or (e) requiring a sum or sums to be paid to a Northern Ireland department on a specified date or dates or periodically.".		**ABC, NILGA)** 3. The English model of the Community Infrastructure Levy should be considered **(CBC, ABC, NILGA)** 4. There should also be scope for the Environmental Statement fee received by the Department (£10,000) to be redistributed to the consultees for the extra work required **(BCC, ABC, NILGA)**		Departments in relation to where sums are payable to. Section 76(15) of the Planning Act (Northern Ireland) 2011 does, however, enable payments to be made to the relevant council where a planning application has been made to it by an applicant. These powers will take effect on commencement of section 76 of the 2011 Planning Act. 3. Noted. The Department does not intend to introduce a similar Infrastructure Levy at this time. 4. The Department does not propose to redistribute the EIA fee at this time.

			5. The payments should be bound by the following tests: • relevant to planning • necessary to make the development acceptable in planning terms • directly relate to the proposed development • fair and reasonable in scale and kind • reasonable in all other aspects **(ASDA)** 6. Due consideration must be given to the process which governs these payments. The system would work in a more efficient and timely manner if these contributions were organised and decided upon by one single NI Executive Department and recorded in one document. Whilst separate Departments would still make requests for financial support, there needs to be consistency in the level and application of these contributions **(ASDA.** 7. We would also like to see greater understanding amongst Departments of the purpose of these contributions and their collective benefit **(ASDA)**		5. PPS1: General Principles sets out the principles against which the Department would consider the use of planning agreements. 6. Noted. The current approach to planning agreements in NI is set out in PPS1. 7. Contributions are sought relevant to an individual proposal where they are necessary to overcome a particular barrier to the grant of planning permission. See comment 5 above.

			8. We recommend that Guidance is introduced to ensure all Departments understand the role of Article 40 Agreements and when they can be utilized **(ASDA)**		8. The underpinning principles governing the use of planning agreements are set out in PPS 1 (General Principles).
16	**Increase in penalties [j49]** **16.**—(1) In Article 49 of the 1991 Order (acts causing or likely to result in damage to listed buildings)— (a)in paragraph (1), for the words from "and liable" to the end of that paragraph substitute— "and liable— (i)on summary conviction to a fine not exceeding the statutory maximum; or (ii)on conviction	Clause 16 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	1. Welcome increase in penalties **(SCNI, CP, AN, BBC, CNCC, NIEL, BCT, QPANI, RSPB, SBRG, UWT)** 2. The penalty that is applied should be commensurate with the scale of the breach of the legislation **(CEF)** 3. Fines should be proportionate to the scale of the development and the potential value to the applicant without an upper ceiling **(LVG)** 4. Mandatory minimum level of fines should be clearly defined and not left to the discretion of the magistrate/court. **(LVG)**		1. Noted. 2. Agree. The level of fine is a matter for the courts. 3. Noted. See response to comment 2 above. 4. The Department does not have any legislative power in directing the minimum level of fines that a court imposes on an offender. The Justice Department does however have the legislative basis to set

	on indictment, to a fine."; (b) in paragraph (3), for "level 3" substitute "level 5". (2) In Article 61 of the 1991 Order (offences in relation to hazardous substances control), in paragraph (4)(a) for "£30,000" substitute "£100,000". (3) In Article 67D of the 1991 Order (penalties for non-compliance with planning contravention notice), in paragraph (4) for "level 3" substitute "level 5". (4) In Article 67G of the 1991 Order (temporary stop notices: offences), in paragraph (6)(a) for "£30,000" substitute "£100,000".	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.	5. As Planning Service does not have the facility to monitor developments once permission has been granted, how will planners/councils actually know that the terms of the planning approval have been complied with? **(LVG)** 6. No objection but would welcome an early engagement in any conversation on fees. **(ABC, NILGA)**		various levels of fines which may be imposed. In considering the level of fines to impose on an offender a magistrate may have regard to the context in which an offence has occurred. 5. Local Planning Offices Enforcement teams respond and investigate reports of developments which have been carried out not in compliance with approved plans that are reported by the public and other departments / agencies. Additionally planning officers may site inspect ongoing developments for other planning purposes. Post transfer there will also be opportunities to link with council building control functions and inspections. 6. The issue of fees etc. will be considered in wider discussions, in advance of the transfer of planning powers to

	(5) In Article 72 of the 1991 Order (offence where enforcement notice not complied with), in paragraph (8)(a) for "£30,000" substitute "£100,000". (6) In Article 73 of the 1991 Order (stop notices), in paragraph (7C)(a) for "£30,000" substitute "£100,000". (7) In Article 76 of the 1991 Order (enforcement notice to have effect against subsequent development) in paragraph (5) for "level 5 on the standard scale" substitute "£7,500". (8) The amendments set out in this section do not have effect in relation to any offence committed		7. Penalties need to be imposed with widespread publicity. **(HCG)** 8. introduce fixed penalties", "there are many examples of people who think		councils. 7. The Department regularly reports the outcome of prosecutions on its website. 8. Noted.

	before the coming into operation of this section.				
17	**Conservation areas [j50]** **17.** In Article 50 of the 1991 Order (conservation areas), for paragraph (5) substitute— "(5) Where any area is for the time being designated as a conservation area, special regard must be had in the exercise, with respect to any buildings or other land in that area, of any powers under this Order, to the desirability of— (a)preserving the character or appearance of that area in cases where an opportunity for enhancing its character or	Clause 17 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.	1. Welcome **(SCNI, CP, ABC, BBC, HCG, NIEL, BCT, WT)** 2.What are the implications of using the word 'an' instead of 'any' (line 23) **(DG)** 3. What is the risk of omitting the word 'special'? (line 24) **(DG)**		1. Noted 2. This reflects existing wording in Article 50 of the Planning (Northern Ireland) Order 1991 and section 104 of the Planning Act (Northern Ireland) 2011. Implications would appear minimal. This may be a matter of drafting style. The Department will discuss with Legislative counsel. 3. Again this reflects existing wording in Article 50 of the Planning (Northern Ireland) Order 1991 and section 104 of the Planning Act (Northern Ireland) 2011 and places added emphasis on the duty reflecting the

	appearance does not arise; (b)enhancing the character or appearance of that area in cases where an opportunity to do so does arise.".		4. What are the implications of omitting the term 'with respect to any buildings or other land in that area' ?**(DG)** 5. Areas of Townscape character must also be included. **(LVG, SBRG)** 6. Concerned that 'established residential areas' will no longer be considered of value especially if there is to be a revision of all PPS documents into a single document. **(LVG)**		Conservation Area status. Omitting "special" could weaken the provision. 4. This could widen the impact beyond buildings or land. 5. Policies ATC1 and 2 of PPS 6 : Planning, Archaeology and the Built Heritage (Addendum – August 2005) set out the Department's policy in relation to ATCs. These are reflective of the conservation area proposals. 6. The Department remains committed to safeguarding the quality of residential areas and is committed to its existing policies on PPS7 – Quality residential Environments Policy will not be diluted

			7. When dealing with planning applications in conservation areas the Department should consider including these application in a streamlined process to allow applicants who wish to comply with the notice to obtain the necessary planning permissions quickly. **(ABCNM, ABC)** 8. All planning decisions in the conservation areas must consider how the development will affect the area. The presumption has to be that the only development allowed are ones which enhance the area and must be in keeping with the existing architectural style **(SBRG)** 9.Thought should be given to including applications in such areas within the parameters of the streamlined consultation process to enable applicants to respond more quickly to the regulations of, and ensure compliance with, Dangerous Structures Notices. **(NILGA)** 10. Clause should not be included. It is a poorly worded and ill-conceived		7. The Department will expedite applications where the building is dangerous. Applications for conservation area consent are included in the extended streamlining list. 8. It may not always be possible to enhance the area. In those cases the presumption must be to preserve. 9.See comment 7 above6. 10 to 17. Inclusive: The proposed amendments in clause 17 are not bringing forward any new policy.

			provision. The concept of requiring 'enhancement' of anything through planning proposals is a difficult one, especially as the planning system is founded upon the principle that development should be approved unless harm will be caused. The existing 'no harm' test in conservation areas is well established in UK law. If this provision is included then investors are likely to strenuously avoid conservation areas, with the result that they will stagnate, with a consequent increase in dereliction and decay. There is also a strong likelihood that any development proposals which do come forward could become mired in legal challenges in relation to whether or not an opportunity exists to 'enhance' the area. **(DP, RTPI)** 11. The shift from the 'no harm' approach to 'must enhance' creates the risk that the areas will stagnate and the planning policy will have a negative rather than a positive impact. **(QUB)** 12. Where in law is 'enhancement' defined? **(QUB)** 13. How will 'enhancement' be		They do however reflect the Department's established long standing policy on development in conservation areas as set out in PPS 6 "Planning, Archaeology and the Built Heritage" and in particular policies BH12 and BH14. The Department's presumption that development should preserve or enhance a conservation area was affected by the outcome of the High Court case of South Lakeland District Council v Secretary of State for the Environment and Carlisle Diocesan Parsonages Board [1992] 2 WLR 204, which held that local planning authorities could not insist that developments are beneficial to conservation areas, merely that they do not harm them. The Department does not wish to stifle development in

			assessed? **(QUB, DP)** 14. Will guidance on 'enhancement' be provided? **(QUB)** 15. Introduces a level of ambiguity into the statutory planning process, and this has the potential to cause further delays, rather than improve its efficiency and effectiveness **(QUB, UWT)**. 16.Careful consideration must be given to the implication of these changes and how this will impact on the inward investment and development within many of the Conservation Areas within Northern Ireland, in particular within City Centres. **(RTPI)** 17.Causes tension with the concept of promoting economic development, as it is suggesting that a new development that does not enhance the character or appearance of the area will be refused in favour of preserving existing buildings. **(RTPI)**		conservation areas. The emphasis will be on the careful control and positive management of change, to enable the area to remain alive and prosperous, but at the same time to ensure that any new development accords with the area's special architectural or historic interest, and where the opportunity arises to seek to enhance its character / appearance. Designation as a conservation area puts an onus on prospective developers to produce a very high standard of design, which respects or enhances the particular qualities of the area in question. 'Enhancement' is not defined in law. In these circumstances its normal everyday meaning will apply.

18	**Control of demolition in conservation areas [j51]** **18.** In Article 51 of the 1991 Order (control of demolition in conservation areas), after paragraph (6) add— "(7) For the purposes of this Article, any reference to demolition, in relation to a building to which this Article applies, includes a reference to any structural alteration of that building where the alteration consists of demolishing part of the building.".	Clause 18 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.	1. Welcome **(LVG, CBC, ABC, BBC, NILGA, UWT, WT)** 2. Where demolition is approved in conservation areas it is considered the timescale for the rebuilding should be included to ensure the preservation of the overall amenity of the area, and be rigorously enforced. **(CBC, ABCNM, ABC, NILGA)** 3. All planning decisions in the conservation areas must consider how the development will affect the area. The presumption has to be that the only development allowed are ones which enhance the area and must be in keeping with the existing architectural style. Recommend that Areas of Townscape Character be included. **(SBRG)**		1. Noted 2. Where demolition is approved in a conservation area, under BH14 of PPS6 "Planning, Archaeology and the Built Heritage" it will normally be conditional to prior agreement for the redevelopment of the site. Where consent is granted for demolition of building, conditions will normally be imposed prohibiting the demolition of the building until planning permission for redevelopment has been granted and contracts have been signed for the approved redevelopment of the site. All approvals granted are given a time period to commence development. 3. See comments 5 and 10 to 17 on clause 17 above.

19	**Tree preservation orders: dying trees [j65]** **19.**—(1) In Article 65 of the 1991 Order (tree preservation orders), in paragraph (3), omit the words "dying or". (2) In Article 65B of the 1991 Order (replacement of trees), in paragraph (1)(b), omit the words "dying or". (3) In section 125 of the 2011 Act (replacement of trees), in subsection (1)(b), omit the words "dying or".	Clause 19 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.	1. Welcome **(NIEL, SCNI, LINI, RSPB, MRG, BBC, LVG, BCT, UWT, WT)** 2. How will planners know that a dying tree with a TPO has been felled? **(LVG)** 3. It is noted that trees that are dying are now going to be included in tree preservation orders. This then raises an issue of where some trees have diseases, such as the recent ash die back situation. The application of this clause would mean that those trees could not be felled. This would be contrary to policies in other Departments that would be seeking to preserve the integrity of the healthy trees in the locality. It would appear		1. Noted 2. Local Planning Offices have dedicated tree officers who maintain and update a detailed schedule of TPO's. In addition to this, tree officers in liaison with the Local Planning Offices Enforcement teams respond and investigate unauthorised felling of protected trees which are reported by the public and other departments / agencies. 3. The legislation will require the Department's consent to fell dying trees – each application will be considered on its own merits and circumstances. The Department acknowledges that there may be situations where trees that are dying may pose a serious health and

			that this scenario has not been taken into account and there are practicalities in the application of such legislation that would require further consideration. It may be helpful to have clarification and possibly some exemptions listed that would cover the situation already mentioned. **(CBC, ABCNM, ABC, NILGA)**		safety risk. In these situations the Department takes a pragmatic approach.
21	**Power of planning appeals commission to award costs [j205]** **21.** After Article 111 of the 1991 Order insert— **"Power of planning appeals commission to award costs** 111A.—(1) The appeals commission may make an order as to the costs of the parties to an appeal under any of the provisions of this Order mentioned in paragraph (2) and as to the parties by whom the costs are	Clause 21 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.	1. Welcome clause as it should help reduce the likelihood of vexatious of frivolous delaying tactics. **(CEF, LVG, SBRG, AN, ABC, ASDA, PAC, RSPB)** 2. Strongly object as it creates further obstacles for small voluntary groups to raise objections to major projects by large developers **(HCG)** 3. Costs should only apply to the developer who initiates the proceedings. **(SBRG)**		1. Noted 2 and 3. This clause does not put obstacles in the way of objectors participating in an appeal. It is intended to ensure that all parties involved in an appeal act reasonably. The PAC may expect that:- • all those involved in the appeal process behave in an acceptable way, whether in terms of timeliness or in quality of case. • appeals are not

	to be paid. (2) The provisions are— (a)Articles 32, 33, 57, 69, 78, 82A, 83E and, in Schedule 1, paragraphs 7 and 8; (b)in Schedule 1, paragraphs 7 and 8 (as applied by Article 51(6)); (c)in Schedule 1A, paragraph 6(11) and (12) and paragraph 11(1); (d)in Schedule 1B, paragraph 9. (3) An order made under this Article shall have effect as if it had been made by the High Court. (4) Without prejudice to the generality of paragraph (3), the		4. Enabling powers should be included to introduce a standard formula for awarding costs to allow developers to better predict costs and ensure appellants are fully aware of the penalties for failed appeals. **(ASDA)**		entered into lightly or as a first resort, without prior consideration to making a revised application which meets reasonable planning authority objections. • The Department (and the councils after the transfer of planning powers) properly exercise their development management responsibilities, and rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason. 4. The power to award costs applies were one or more parties behaved unreasonably. A party may be ordered to meet the costs of another party, wholly or in part, where it has behaved

	Master (Taxing Office) shall have the same powers and duties in relation to an order made under this Article as the Master has in relation to an order made by the High Court. (5) Proceedings before the appeals commission shall, for the purposes of the Litigants in Person (Costs and Expenses) Act 1975, be regarded as proceedings to which section 1(1) of that Act applies. **Orders as to costs: supplementary** 111B.—(1) This Article applies where— (a) for the purpose of any proceedings under this Order—		5. Requires clarification and guidance in order to ascertain a benchmark or threshold of cost. **(BBC)**		unreasonably. 5. Award of costs should be the exception and case specific. They will only apply were the unreasonable behaviour of one party has left another out of pocket.

	(i)the appeals commission is required, before a decision is reached, to give any person an opportunity, or ask any person whether that person wishes, to appear before and be heard by it; and (ii)arrangements are made for a hearing to be held; (b)the hearing does not take place; and (c)if it had taken place, the appeals commission would have had power to make an order under				

	Article 111A requiring any party to pay any costs of any other party. (2) Where this Article applies the power to make such an order may be exercised, in relation to costs incurred for the purposes of the hearing, as if the hearing had taken place.".				
22	**Grants [j120]** **22.** In Article 120 of the 1991 Order (grants to bodies providing assistance in relation to development proposals)— (a) in paragraph (1), for sub-paragraph (a) substitute— "(a) furthering an	Clause 22 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.	1. Welcomes this clause **(SCNI, LVG, CBC, CP, ABCNM, BBC, CNCC, NEIL, BCT, NILGA, RSPB, UWT)** 2. Criteria and clarification should be provided on who can avail of this support.**(CBC, ABCNM)** 3. Will Councils be required to continue such funding arrangements? **(CBC, ABCNM, ABC, NILGA)**		1. Noted 2. Grant funding may be available (to not for profit bodies) from the Department on application – subject to budget allocation. 3. No. Grants will continue to be provided by the Department under

	understanding of planning policy proposals and of the planning and other technical aspects of other proposals made by anybody or person for the development, redevelopment or improvement of land;"; (b)in paragraph (2), omit the words ", with the approval of the Department of Finance and Personnel,".		4. What level of funding will be required? **(CBC, ABCNM)**		Section 225 of the Planning Act (Northern Ireland) 2011. 4. See comment 3 above. The level of funding will be subject to the terms and conditions as set by the Department.
24	**Fees and charges [j223]** **24.** In Article 127 of the 1991 Order (fees and charges)— (a)after paragraph (1) insert—	Clause 24 amends Article 127 of the 1991 Order to enable the Department to charge multiple fees for retrospective planning applications.	1. Welcome **(SCNI, CBC, CP, BCC, AN, ABC, BBC, NEIL, BCT, NILGA, QPANI, RSPB, SBRG)** 2. Retrospective planning applications should not be an option at all.**(LVG)** 3. The fee should be proportionate to the level of the development and the		1. Noted 2. Retrospective applications are an established part of the planning system and

	"(1A) Without prejudice to the generality of paragraph (1), regulations made under that paragraph may provide for the payment of a charge or fee in respect of a function mentioned in paragraph (1B)(a) to be a multiple of the charge or fee payable in respect of a function mentioned in paragraph (1B)(b). (1B) The functions are— (a) functions relating to the determination of an application for planning permission for development begun before the application was made; (b) functions relating to the determination of		level of uncertainty surrounding the form of development and associated provision for permitted development. **(BCC)** 4. Would welcome clear clarification of what the department means by "multiple". **(QPANI)**		provide an opportunity to regularise unauthorised development. 3. & 4 The Department will through subordinate legislation set out what the levels of fees shall be for these types of applications. The forthcoming subordinate legislation will be issued for public consultation and Assembly scrutiny.

	an application for planning permission other than an application referred to in sub-paragraph (a). (1C) Without prejudice to the generality of paragraph (1), regulations made under that paragraph may provide for the payment of a charge or fee in respect of a function mentioned in paragraph (1D)(a) to be a multiple of the charge or fee payable in respect of a function mentioned in paragraph (1D)(b). (1D) The functions are— (a)functions relating to the determination of an application for an approval under a				

	development order for development begun before the application was made; (b) functions relating to the determination of an application for an approval under a development order other than an application referred to in sub-paragraph (a). (1E) Article 36(1) shall apply in determining for the purposes of this Article when development shall be taken to be begun."; (b) after paragraph (2) insert— "(2A) Without prejudice to the generality of paragraph (2),				

	regulations made under that paragraph may provide for the payment of a charge or fee in respect of an application mentioned in sub-paragraph (a) of that paragraph to be a multiple of the charge or fee to be paid under regulations made under paragraph (1) in relation to the determination by the Department of an application for planning permission for development not begun before the application was made.".				
25	**Duration [j41]** **25.**—(1) The Department may by order repeal any of sections 1, 2(1), 3 to 5, 6(1), 7 to 18, 19(1) and (2) and 20 to 24.	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.	1. Will the Department provide examples of what it may include as incidental, consequential or transitional provisions or savings in under Clause 20? **(DG)**		1. This clause provides a useful flexibility to put in place arrangements to deal with any unforeseen circumstances which arise in association with the provisions come into operation. The subordinate legislation

	(2) An order under subsection (1)— (a) may include incidental, consequential or transitional provisions or savings, (b) shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.		2. No objection to the clause. **(ABC)** 3. Endorse the clause **(BBC)**		will be subject to Assembly scrutiny. 2. Noted. 3. Noted.
26	**Interpretation [j2]** **26.** In this Act— "the Department" means the Department of the Environment; "the 1991 Order" means the Planning (Northern Ireland) Order 1991; "the 2011 Act"	This clause contains interpretation provisions and defines a number of terms used throughout the Bill.	1. No objection to the clause. **(ABC)**		1. Noted

	means the Planning Act (Northern Ireland) 2011.				
27	**Commencement [j4]** **27.**—(1) This Act, apart from this section and sections 1, 15, 16, 22, 26 and 28, comes into operation on such day or days as the Department may by order appoint. (2) An order under subsection (1) may contain such incidental, consequential or transitional provisions or savings as the Department thinks appropriate.	This clause concerns the commencement of the Bill and enables the Department to make commencement orders. Clauses 1, 15, 16, 22, 26, 27 and 28 shall come into operation on Royal Assent.	1. Can commencement be linked to an actual date and/or sunrise clause to ensure prompt commencement? **(DG)** 2. Will the Department provide examples of what it may consider appropriate incidental, consequential or transitional provisions or savings under this clause? **(DG)** 3. Could the Department explain why it has chosen this level of certainty for this sub-section? **(DG)**		1 & 2. Where possible commencement is on Royal Assent, however, some provisions will require a range of subordinate legislation and/or guidance to be drafted, scrutinised and be in place to accompany commencement of those provisions. A sunrise clause is not appropriate or useful here. The Department is keen to ensure the provisions are commenced as soon as possible to enable key reforms to be put in place and tested before powers transfer to councils in 2015. 3. This clause provides a useful flexibility to put in place arrangements to deal with any unforeseen circumstances which arise in association with the provisions come into operation. The

			4. Provision should be included for strategic elements of the planning system to be carried out by Local Councils prior to full transfer of functions, e.g. area planning functions prior to 2015. **(BCC)** 5. No objection to the clause. **(ABC)**		subordinate legislation will be subject to Assembly scrutiny. The issues raised are matters of judgement for the Department. 4. The Department does not intend to transfer powers until the necessary council structures, including ethical standards regime, governance arrangements etc are in place. The Minister has agreed that officials engage with transition committees in taking forward preliminary development plan work in preparation for the transfer of planning functions. 5. Noted
28	**Short title [j1]** **28.** This Act may be cited as the Planning Act (Northern Ireland) 2012.	This clause provides a short title for the Bill.	No objection to the clause. **(ABC)**		Noted

Other Comments			**1 - Resourcing the transfer of planning powers** The transfer of planning powers to new councils and community planning must be properly resourced. Capacity building must be a crucial part of this process **(SCNI, NEIL, BCT)**		1 - Agreed - this is a priority task of the Department's Reform programme. High level foundation work in the form of awareness raising seminars/conferences has already taken place and will continue to do so up to the point of transfer. In addition, scoping exercise currently underway to identify capacity building and training needs for councillors and all affected staff. Scoping exercise will inform a full capacity building and training action plan for roll out later this year.
			2 - Power to reject partial applications We would like to see the Department given the power, indeed being obliged to reject applications for which all the required material is not submitted, even after the Department has requested the additional, missing information. If the applicant does not submit all sought or relevant materials within two months		2. Currently at the outset, the Department requires the following information for an application to be considered valid: • Correct Fee • Correct forms completed fully

			of tendering his /her initial application, the application should be automatically rejected and the fee retained. This class of rejections should not be eligible for referral to the PAC. **(BMRG)**		• Site clearly identified • Accurate description provided • Appropriate/ relevant drawings to be provided • Ownership clarified • Signature on forms If this information is not provided, normally there will be one opportunity to provide it. If it is not provided then the application is considered invalid, and is returned to the applicant along with the fee. When an application is valid then the Department endeavours to be reasonable in terms of requesting additional information and the deadlines that it sets. For example some reports and surveys may require to be undertaken at certain times of the year

					e.g. .bat surveys, and others such as contamination reports may require continual monitoring over a period of time. Therefore it is not realistic to put a standard period for receipt of additional information and to refuse at the end of that period if the information is not received. Also unless a detailed Pre Application Discussion has taken place on the application the applicant may not be aware of all the additional information that may be required to be submitted as part of the application. Case officers will provide timeframes under the Good Practice Guide and actively manage cases. Ultimately the Department has the power to refuse applications if there is insufficient information to determine it. However this is only likely to be used when the Department has exhausted all options to

					obtain the required information. Once an application has been made valid or when a refusal is issued the applicant is not entitled to a fee refund. There is a right of appeal to both applications deemed invalid by the Department and those where permission has been refused.
			3 - Community Planning The Planning Bill must reflect the concept of Community Planning. The development of neighbourhood plans in England is a positive development. This is based on the principal of communities having the right to influence planning decisions, with communities having the ability to advise where they want new developments such as commercial developments to be built. Following this process, neighbourhood plans are submitted for independent examination and then submitted to a local referendum. These carry weight in final planning decisions. Let's ensure the Planning Bill puts communities first. **(FT)**		3 - The Department intends to provide a statutory link between community plans and local development plans through the forthcoming Local Government Reorganisation Bill. In addition the Department and councils will be required to prepare Statements of Community Involvement setting out their policies for involving the community in planning functions, including preparing local development plans.

			4 - Coherence between terrestrial and marine planning This legislation could and should take the opportunity to place on a statutory basis the arrangements for coherence between terrestrial development plans and the marine planning process. **(NIBG)** 5 - Terrestrial and marine planning administration should be as seamless and consistent as possible. However, clauses 2 and 6 in the Planning Bill are at odds with the sections of the proposed Marine Bill. This will lead to confusion and difficulty when considering coastal developments that involve approval from both planning systems. **(NIEL, BCT)**		4 – The Bill does not bring forward development plan arrangements, however under Part 2 of the Planning Act (Northern Ireland) 2011 councils will be required to prepare local development plans for their areas. Under the powers of Sections 8 and 9 of the 2011 Act the Department may prescribe matters that the councils must have regard to in preparing their plans. 5- The Dept does not consider that Clauses 2 and 6 are at odds with the Marine Bill. Under clause 6 of the Marine Bill a public authority must take any authorisation or enforcement decision in accordance with the marine plan (unless

					relevant considerations indicate otherwise) and must have regard to the marine plan when taking other types of decision. The term "relevant considerations" can include economic considerations as well as social or environmental.
			6 - Lack of consultation on new policies NIEL would like to register its discontent that the Planning Bill did not follow the normal process of public consultation that would be expected to accompany changes with such far-reaching implications. We appreciate that there are time constraints with the transfer of planning powers to local councils looming - however, fast law does not necessarily mean good law.		6. See comment at clause 1.
			7 - Amending the grounds of appeal against a submission notice		7. Subject to the views of the Committee, the

			The Commission recommends that a new clause is inserted in the Bill to amend the grounds of appeal against a submission notice in the 1991 Order and the 2011 Act to the following:- (a) that the matters alleged in the notice have not occurred; (b) that at the time when the notice was issued those matters did not constitute development; (c) that the development alleged in the notice was not carried out without planning permission, if such permission was required in accordance with this Part, or without any approval of the Department/council, if such approval was required under a development order; (d) that the period of five years referred to in Article 23(2)/section 43(2) had elapsed at the date when the notice was issued; (e) that at the time when a copy of the notice was served on him, the appellant was neither the owner nor the occupier of the land to which the notice relates. **(PAC)** **8 - Extension of permitted development rights to the mineral industry** QPANI have been lobbying for many years for the extension of recognised Permitted Development rights for our		Department intends to engage with Departmental Solicitors and Legislative counsel to consider this as a potential amendment. 8. - The Department continues to explore options for providing permitted development rights for development ancillary to a mine but is conscious of the potential

			sector, similar to those to those PD rights enjoyed by the quarrying industry in the rest of the UK. We would ask the Committee to raise the matter of Permitted Development Rights for the Mineral Industry as a matter of urgency as we are growing increasingly frustrated by the speed of progress on this matter in our discussions with Planning Service. **(QPANI)**		for adverse amenity impact on sensitive receptors, including dwellinghouses in the vicinity of mines, that could be affected by dust, noise etc. Careful consideration therefore needs to be given on what protecting limitations and conditions might be applied to future permitted development rights. The Department intends to bring forward proposals for new permitted development rights for this and other sectors during the forthcoming year."
			9. Extension of tree protection The welcomed reorganisation of local government in 2015 provides an excellent opportunity to enhance the increased protection afforded to trees in the 2011 Legislation. We have identified additional areas which are crucial enablers in ensuring legislative changes will have real impact when implemented in terms of enhancing Northern Ireland's natural		9. Each Local Area Planning Office currently has a designated tree officer who is responsible for overseeing the associated duties in relation to trees which are protected by Tree Preservation Order (TPO) status. Each Local Area Planning Office updates and maintains a public

			environment. Without these the legislation will have little impact and we urge consideration of their inclusion in the 2013 Legislation. We propose that a Tree Protection officer is appointed within each of the new authorities to oversee implementation of this strengthened tree protection regime. Without this important resource we are unsure how these important legislative changes will be policed and as such deliver intended benefits. Local Tree Registers could form an inventory of all trees covered by a TPO within each Local Authority Area as well as important historic trees. These will provide a crucial evidence base to ensure that the legislation is effectively policed and also ensure transparency of the new protection regime. **(WT)** **10. Flaws for peace building in the existing planning model** Following three decades of experience and expertise at different levels of the planning system – involving local regeneration projects; comprehensive development schemes; area and sub-regional plans, and the Regional Strategy – we would identify a set of problems with the existing planning model that impacts negatively on peace-building, including:		register of protected tree sites within their relevant council area. These registers include full details of each of the trees that are protected within a TPO site. Details of future arrangements are being considered as part of the wider planning reform and transfer project. 10. The Department is committed to proactively promoting shared, safer and welcoming places through the planning system on a number of fronts. As project partners in the QUB Peace III Project 'Planning for Spatial Reconciliation' the Department's Planning Policy Division and

			1. its tendency in the past to 'airbrush' out the relevance of division and segregation to the planning process; 2. its limited inclination to recognize openly the difference among ethnic, neutral, shared, and cosmopolitan spaces in a conflict-ridden society; 3. its limited capacity to challenge the 'diseconomies of conflict' that often sees the duplication of services and amenities within each sectarian bloc; 4. its concentration on 'land use planning' – a concern about where to zone particular development activity, and focus largely on the physical aspects of infrastructure and development; 5. its limited ability to nest local neighbourhood planning and regeneration strategies within the statutory and strategic planning framework to afford such local effort the appropriate authority; 6. the potential for major sectarian blocs to use planning to carve up 'spheres of influence', and thereby inhibit the evolution of a more integrated and shared society; and 7.the difficulty encountered in achieving inclusive and participatory forms of plan-making that embrace diverse voices that transcend barriers of gender, age, ethnicity, and disability. **(QUBPSR)**		Local Government Division are working closely with Queen's research staff to explore and exploit opportunities for connecting this research with the process of planning and local government reform as follows: Working with key stakeholders likely to be impacted by the transition process leading up to the transfer of planning powers to the new councils – this is particularly relevant to pilot projects being taken forward by LPD; Contributing to dialogue on the development and introduction of a new style of Spatial Planning legislated for in the Planning (NI)

					Act 2011; Channelling into work by PPD on the preparation of a single strategic planning policy statement and; In addition the Department will soon be consulting on new urban design and stewardship guidance. This guidance will aim to maximise the wider economic, cultural and community benefits of urban stewardship and design and promote inclusivity while maintaining, enhancing and celebrating the diversity and differences of each urban environment. The guidance will recognise the challenges and issues associated with shared and contested space, and also identify the 'qualities' of what makes good place, spaces, streets and urban areas. The guidance will

					demonstrate how well maintained, managed and designed urban infrastructure is a vital resource in social, economic and cultural terms and how it can be a main component of our public realm and a core element of our identity.