



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Planning Bill: Research and Information
Service Briefing

11 April 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Ms Suzie Cave Research and Information Service

The Chairperson: I welcome Suzie Cave, who will give a briefing on the Planning Bill.

Ms Suzie Cave (Research and Information Service): Thank you very much, Chair. The purpose of the paper is to give an overview of the proposals under the Planning Bill 2012. The aim of the Planning Bill is to accelerate the introduction of a number of reforms to the planning system contained in the 2011 Act. It is intended as an interim measure until the 2011 Act is fully commenced in 2015 in line with the transfer of planning functions to the councils, at which point the 2012 Bill will be repealed. However, the new additions to the Bill will apply only post-transfer and, as a consequence, will come into action only after 2015.

As many of the provisions are similar to those in the 2011 Act, this briefing will look at those that show difference, in particular the new additions not included in the 2011 Act.

The first table in the paper illustrates the corresponding clauses brought forward from the 2011 Act. The section following that gives detail on the clauses and, where appropriate, raises the issues discussed around the 2011 Act that may still apply. I will just give a quick overview of those: they include enhanced community involvement through the production of a statement of community involvement within one year of commencement of the clause; faster processing of planning applications by streamlining processes to speed up the decision-making, such as the requirement in clause 22 for statutory consultees to respond to the consultation within the time frame agreed by the Department — however, it has been suggested that response times should reflect the scale of the proposed development to allow for adequate consideration; a faster and fairer appeals system, which includes a reduction in the time limit from six to four months for submitting appeals to the Planning Appeals Commission (PAC); a restriction on the introduction of new material at appeal stage; and the

awarding of costs by the PAC where the unreasonable behaviour of one party has meant that an agreement has not been met and left the other party out of pocket.

There is also the idea of simpler and tougher enforcement under clauses 15, 19 and 23, with an increase in the maximum level of fines; the use of fixed penalty notices; the power to charge multiple fees for development that commenced before the planning application was made; and the enhancement of the environment by amending the Department's sustainable development duty to include promoting well-being, achieving good design, ensuring the enhancement of the character of an area and an extension to the aftercare conditions in relation to mineral planning permission under clauses 8 and 13.

A few provisions have been modified slightly since the 2011 Act. They include the production of a statement of community involvement within one year of commencement of the clause. In the 2011 Act, under section 4, the timescale had not been stated.

Clause 5 reiterates the provision under section 27 of the 2011 Act on pre-application community consultation, the difference being that the 2012 Bill confers the duties on the Department rather than the councils, as was the case under the 2011 Act.

Under measures to enhance the environment, clause 18 amends section 125 of the 2011 Act, making dying trees no longer exempt from a tree preservation order.

Clauses 8 and 13 extend the aftercare conditions that apply to mineral planning permission. Clause 13 extends provisions in section 53 of the 2011 Act, allowing the Department to impose aftercare conditions where mineral planning permission has been revoked or altered.

The paper also looks at other areas that may be of interest for further consideration. On the independent examiners for major planning applications, clause 10 brings forward a provision on the appointment of persons other than the PAC to conduct inquiries and hearings into major planning applications only. The Department will be responsible for the appointment of examiners, and its response to the consultation stated that they would come from the Planning Inspectorate for England and Wales or the Scottish Reporters Office. However, an issue raised during the consultation may still apply, namely that respondents may question whether an independent examiner appointed by the Department would be considered truly independent, given that the final decision on regionally significant planning applications is taken by the Department.

The Department stated that it does not intend to bring forward any provisions for third-party appeals and indicated that they could be a competitive economic disadvantage to Northern Ireland, given that they have not been introduced in England, Scotland or Wales. However, given the great support for the introduction of those proposals during the consultation, the Department said that further consideration of third-party appeals should be deferred until the extensive changes to the planning system under planning reform and the implementation of the review of public administration (RPA) have settled down and are working effectively.

Another area that may be of interest is the use of fixed-penalty notices, in clause 20, as an alternative to costly and lengthy prosecutions through the courts. The level of fixed penalty will be prescribed in subsequent regulations, the details of which have yet to be disclosed. However, the Bill offers a 25% reduction in the amount of the fixed penalty if it is paid within 14 days. During consultation on the 2011 Act, respondents wanted a mechanism that would stop continued breach. It was felt that payment of a one-off fine may not be enough to stop continued breaches of planning and that it should be made clear that a fixed penalty is a first step in enforcement, as offenders are subject to further prosecution if the breach is not remedied.

The final section of the paper looks at the new additions to the Bill. According to the Department, the policy underpinning the 2012 Bill is the same as the 2011 Act, which has already been subject to an equality impact assessment, public consultation in 2009 and Assembly scrutiny in 2010-11, suggesting, therefore, that there is no need for further consultation. However, additions to the Bill that were not contained in the 2011 Act have not undergone the same level of scrutiny: the promotion of good design and economic development in clause 2; and an amendment to section 45 of the 2011 Act in clause 6, stating that when determining planning applications, consideration should include any economic advantages or disadvantages likely to result from the decision.

Although the Department considers these to be welcome additions to the Bill, concern was expressed in the past about similar issues. Previous Environment Ministers Mr Sammy Wilson and Mr Edwin

Poots attempted to underpin the role of planning and promoting economic development, particularly through the introduction of PPS 24, which is detailed in the paper. However, their efforts were not met with support from stakeholders, who felt that it prioritised economic development over the other elements of sustainable development that should all equally underpin planning decisions. Hence, in 2011, Minister Attwood announced that he would not take PPS 24 forward. With similar wording being presented this time round, those concerns could be raised again. Any opposition similar to that voiced in the past has the potential to delay the passing of the Bill through the Assembly, especially if it is considered the main mechanism for stakeholders to express their views on the new additions.

One of the main purposes of the 2012 Bill is to bring forward elements of the 2011 Act and have them in operation before 2015. However, should there be any delay, it will give the Department less time to put those into operation in sufficient time before 2015. Thank you for listening. Do you have any questions?

The Chairperson: Thank you very much, Suzie. That was a very comprehensive paper, and I liked the way in which you set out the tables so clearly.

I remain very concerned about the new clauses. I spent last week reading submissions from individuals and organisations, and there are certainly many objections to them. Members, you will receive the synopsis of responses. A huge number of objections have been raised to clauses 2, 6 and 10, mostly to clause 6. As a Committee, we need to look into this seriously.

Members have no questions, so thank you, Suzie.