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Research and Information Service Bill Paper

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Planning Bill 2012

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This paper gives an over view of the clauses of the 2012 Planning Bill, and will return to some of the issues that were discussed during the consideration of equivalent provisions within the 2011 Act. It will also give a brief account of the new additions to the 2012 Bill that are not included in the 2011 Act.

Key Points

The aim of the Planning (Northern Ireland) Bill 2012 (the 2012 Bill) is to accelerate the introduction of a number of reforms to the planning system contained within the 2011 Act.

It brings forward amendments to The Planning (Northern Ireland) Order 1991 (the 1991 Order) which reproduce provisions in the 2011 Act and is intended as an interim measure until it is possible to fully commence the 2011 Act at which point it will be repealed.

The 2012 Bill reproduces key reforms contained within the 2011 Act which will lead to:

- Enhanced community involvement through the production of a statement of community involvement.
- Faster processing of planning applications provided for in Clauses 9 and 22.
- Faster and fairer appeals system which is brought about by Clauses 10, 11 and 20.
- Simpler and tougher enforcement under Clauses 15, 19 and 23.
- Enhancement of the environment by amending the Department's sustainable development duty to include promoting well-being and achieving good design (Clause 2).
- Other measures include giving the Department power to grant aid non-profit organisations, power to decline to determine subsequent or overlapping applications, and the power to repeal provisions within the Bill.

Importantly the 2012 Bill introduces two new measures that are not included in the 2011 Act:

- promotion of good design; and
- promotion of economic development.

Executive Summary

The Department of Environment (the Department) began a major programme to reform the Northern Ireland planning system with the introduction of the Planning (Northern Ireland) Act 2011 (the 2011 Act) which received Royal Assent on 4 May 2011.

The 2011 Act gives effect to the whole process of local government reform which includes the transfer of the majority of planning functions and decision making responsibilities to district councils. The 2012 Bill reproduces key reforms contained within the 2011 Act which will lead to:

- 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 decision making and deliver development; provided for in Clauses 9 and 22.
- Faster and fairer appeals system which is brought about by Clauses 10, 11 and 20; for example, allowing the Planning Appeal Commission to award costs where the unreasonable behaviour of one party has left another out of pocket.
- Simpler and tougher enforcement under Clauses 15, 19 and 23, with an increase in maximum level of fines, the use of fixed penalty notices, and the power to charge multiple fees for development that commenced before the planning application was made.
- Enhancement of the environment by amending the Department's sustainable development duty to include promoting well-being and achieving good design (Clause 2), ensuring the enhancement of the character of an area (Clause 19), and extension in the aftercare conditions in relation to mineral planning permission under Clauses 8 and 13.

Other measures include giving the Department power to grant aid non-profit organisations who promote understanding of planning policy, power to decline to determine subsequent or overlapping applications, and the power to repeal provisions within 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 to 2011; therefore suggesting that there is no need for further consultation.

There has also been the recent introduction of two new measures that are not included in the 2011 Act; these are the promotion of good design, and the promotion of economic development. Due to the time constraint in relation to the last minute addition of these two measures and the proximity to the introduction date of the 2012 Bill to the Assembly, the usual consultation process has not been conducted with regards to these two new elements. The Department proposes to use the scrutiny process of the Assembly, in particular the call for evidence that is conducted by the Environment Committee so as not to delay the process.

While the Department considers the new introductions to be welcome additions to the Bill, there has been concern expressed in the past over similar issues. Previous Environment Ministers such as Mr. Sammy Wilson and Mr. Edwin Poots (through PPS 24) attempted to underpin the role of planning in promoting economic development, however their efforts were not met with support from stakeholders and hence were not taken forward. There is a risk that if similar views are expressed this time round, and with the Assembly being the main mechanism for stakeholders to voice their views on these new additions, this could cause some delay in the passing of the Bill through the Assembly.

Accordingly, this paper will give an over view of the clauses of the 2012 Bill, and will return to some of the issues that were discussed during the consideration of equivalent provisions within the 2011 Act. It will also give a brief account of the new additions to the 2012 Bill that are not included in the 2011 Act.

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1 Introduction

The Department of the Environment (the Department) is delivering a major programme to reform the Northern Ireland planning system. This began with the introduction of the Planning (Northern Ireland) Act 2011 (the 2011 Act) which received Royal Assent on 4 May 2011.

In brief the 2011 Act sets the legislative framework for a reformed planning system in Northern Ireland with the promise of a “speedier, simpler and more streamlined” decision-making process along with more effective enforcement controls. The reform proposes a “development management” rather than a “development control” process, introducing a shift to spatial planning which moves the emphasis away from planning as simply regulatory practice narrowly focused on land use, to planning as an activity that is both integrated with other local government services and is focused on delivery.¹

It also gives effect to the whole process of local government reform which includes the transfer of the majority of planning functions and decision making responsibilities to district councils, with the exception of regionally significant proposals, which will remain with the Department of the Environment. Planning applications will be dealt with by Councils and the “Planning Service” as it was known will be replaced by five “Planning Areas” designed around the proposed 11 council clusters.²

As explained by the Department in the explanatory notes, the transfer of planning functions to councils is intended in 2015 in line with the Executive’s commitment to reform local government. However, in the interim, the Executive has agreed to the drafting of this Bill to accelerate the introduction of a number of reforms to the planning system contained within the 2011 Act. The Department informs that the 2012 Bill will make legislative changes to improve the efficiency and effectiveness of the planning system, agreed by the previous Assembly, available to the Department in advance of the transfer of planning functions to councils. It therefore brings forward amendments to The Planning (Northern Ireland) Order 1991 (the 1991 Order) which reproduce provisions in the 2011 Act.

The 2012 Bill also amends the Planning Northern Ireland Order 1991 and the 2011 Act by introducing additional provisions that highlight planning’s duties in relation promoting economic development. The Department clarifies **that the 2012 Bill is intended as an interim measure until it is possible to fully commence the 2011 Act at which point it will be repealed. However, the new amendments made to the 2011 Act will only apply post transfer of the planning functions to councils and as a consequence will only come into action after 2015.**³

¹ NIA, Research Paper: Planning Bill (1) Departmental Functions and Local Development Plans

<http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/environment/2011/cave0611.pdf>

² DOE, *Planning restructured for a new era* (April 2011) http://www.planningni.gov.uk/index/news/news_releases/planning-deagentisation.htm

³ DOE, Planning Bill 2012 Explanatory and Financial Memorandum

For clarification this paper refers to:

- The Planning (Northern Ireland) Order 1991 as ‘the 1991 Order’;
- The Planning (Northern Ireland) Act 2011 as ‘the 2011 Act’; and
- The Planning (Northern Ireland) Bill 2012 as ‘the 2012 Bill’.

2 Overview

The intention of the Bill is to strengthen the planning system by providing faster decisions on planning applications, enhanced community involvement, faster and fairer appeals, tougher and simpler enforcement as well as a strengthened Departmental sustainable development duty.

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 to 2011; therefore suggesting that there is no need for further consultation.

Accordingly, this paper will give an over view of the clauses of the 2012 Bill, and will return to some of the issues that were discussed during the consideration of equivalent provisions within the 2011 Act.

The Bill reproduces key reforms contained within the 2011 Act which will lead to:-

Enhanced community involvement

Clause 1 of the 2012 Bill puts a requirement on the Department to prepare and publish within one year of commencement, a statement of its policy for involving the community in the delivery of its development plan and planning control functions. This addresses the fact that the 2011 Act did not contain any measure under s.4, stipulating a time frame for the production of a Statement of Community Involvement.⁴

Clause 5 requires Developers to consult the community before submitting major planning applications and demonstrate through the production of a report that they have done so. 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. It is proposed that Regulations will dictate the minimum consultation requirements placed on the applicant. Additional requirements may be placed on a particular development if the Department considers it appropriate. During the consultation of the 2011 Act, under s.27 (Pre-application consultation), respondents expressed concern over the lack of

⁴ Planning (Northern Ireland) Act 2011 s.4 <http://www.legislation.gov.uk/nia/2011/25/section/4/enacted>

requirements specified, especially in comparison with other jurisdictions.⁵ It would appear that Clause 5 of the 2012 Bill attempts to address this issue.

For more information on issues in relation to community involvement in the Planning Act 2011, please refer to the Research paper entitled [Planning Bill \(3\): Community Involvement](#)

Faster processing of planning applications

This to be achieved by streamlining processes to speed up decision making and deliver development. Clause 9 includes the appointment of persons other than the Planning Appeals Commission (by the Department) to conduct inquiries and hearings into major planning applications and a duty in Clause 22 for statutory consultees to respond to consultation within a prescribed timeframe as agreed by the Department. However the issue that was raised during the consultation still applies, where respondents questioned whether an independent examiner, appointed by the Department, would be considered truly independent considering the final decision on regionally significant planning applications is taken by the Department.⁶

Faster and fairer planning appeals system

Clause 11 restricts the introduction of new material at appeal stage, so that any matter that was not before the Department when it made its decision cannot be raised. This allows the Planning Appeal Commission (PAC) under Clause 20 to award costs where the unreasonable behaviour of one party has left another out of pocket.

Clause 10 reduces the time limit for submitting appeals to the PAC from six to four months. While 65% of responses to the consultation were in support of this reduction, those opposed, including the PAC, referenced the experience in England where a reduction from six to three months was implemented and subsequently changed back due to an increase in appeals.⁷

While these proposals were suggested (and met with support) in the consultation of the 2011 Bill, concerns could be related to the cost systems in the rest of GB. The systems in England and Scotland are accompanied by extensive separate guidance which provides examples of unreasonable behaviour which can extend to the planning authority as well as to appellants. In its response to the consultation, the Department stated that it intended to introduce the award of costs into Northern Ireland and to issue guidance to accompany the

⁵ NIA, Research Paper: Planning Bill (3) Community Involvement

<http://assist.assemblyni.gov.uk/services/rsrclib/products/researchpubs/dept/environment/2011/cave0911.pdf> and

Government Response to the Planning Reform Public Consultation July - October 2009:

http://www.planningni.gov.uk/index/about/government_response_final.pdf

⁶ NIA, Research paper: Planning Bill (2):Development Management, Planning Control and Enforcement

<http://assist.assemblyni.gov.uk/services/rsrclib/products/researchpubs/dept/environment/2011/cave0811.pdf> and

Government Response to the Planning Reform Public Consultation July - October 2009:

http://www.planningni.gov.uk/index/about/government_response_final.pdf

⁷ Ibid (p.15)

commencement of the provisions;⁸ however it appears that the production of guidance has not been clearly put forward in the 2012 Bill, therefore further clarity around the suggestion is needed.

Simpler and tougher enforcement

Clause 15 aims to introduce this through raising fines for a series of offences, some of which include:

Raising the maximum fine for breaches of planning control or consents from £30,000 to £100,000;

Raising the fine for damage caused to listed buildings to the statutory maximum;

For continued failure to prevent damage, or further damage, the fine has increased to one tenth of a level 5 fine⁹ for each day it continues

Another approach is the use of fixed penalty notices, in Clause 19, as an alternative to costly and lengthy prosecutions through the Courts. The level of fixed penalty will be prescribed by subsequent Regulations, for which details have yet to be disclosed, however, the Bill offers a reduction of the amount by 25% if paid within 14 days.

Clause 23 gives the Department the power to charge multiple fees for development that commenced before the planning application was made. This mirrors with s.219 of the 2011 Act, which states that the amount will be determined at a later stage and will be included in subordinate legislation, however, the 2012 Bill does not appear to provide any more detail on this. This measure received general support by respondents to the 2011 Act consultation, as it was seen as a deterrent to those who flagrantly disregard regulations and advice, at the same time, concern was expressed in relation to the risk that unwitting offenders could be unreasonably penalised.¹⁰

Measures to enhance the environment

It was suggested in the responses to the 2011 Act consultation, which provided for a sustainable development duty in relation to the development of land and local development plans (s.5), that this duty should be extended to the entire planning system, particularly development management, as it is in England, Scotland and Wales.¹¹

The 2012 Bill aims to address this by strengthening the planning system with an amendment to the Department's sustainable development duty, where Clause 2 requires the Department

⁸ Ibid (p.12)

⁹ A level 5 fine, as stipulated under article 5 of the *Fines and Penalties (Northern Ireland) Order 1984* (as amended by the *Criminal Justice (Northern Ireland) Order 1994*, article 3) equates to £5000.

¹⁰ Government Response to the Planning Reform Public Consultation July - October 2009:

http://www.planningni.gov.uk/index/about/government_response_final.pdf

¹¹ Ibid

to carry out its policy and plan making functions with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development, paying particular attention to the desirability of achieving good design.

Under Clause 18 the Department's consent must also be given to the felling of trees covered by a tree preservation order which are dying, this amends s.125 of the 2011 Act making dying trees no longer exempt from a tree preservation order.

Clause 16 strengthens the Department's responsibilities to conservation areas provided for in Article 50 of the 1991 Order by ensuring the enhancement of the character of an area, and where enhancement is not possible, the preservation of the character must be provided for, this is similar to s. 104 of the 2011 Act.

Clause 17 adds additional provision to the control of demolition in conservation areas, by extending it to include the partial demolition of buildings, which is similar to s.105 of the 2011 Act. This addresses the problems which emerged as a result of the landmark *Shimizu ruling* in the courts, which meant that partial demolition of non-listed buildings in conservation areas did not require consent.¹²

Clauses 8 and 13 extend the aftercare conditions in relation to mineral planning permission. Clause 8 (similar to s.53 of the 2011 Act) adds "use for ecological purposes" to the list of uses for restored land; while Clause 13 extends provisions within s.53 of the 2011 Act allowing the Department to impose aftercare conditions where a mineral planning permission has been revoked or altered.

Summary of remaining Measures

Clause 21, similar to s.225 of the 2011 Act, gives the Department power to grant aid non-profit organisations whose objectives include furthering an understanding of planning policy; this process will no longer require approval from DFP which was originally a requirement under s.120 of the 1991 Order.

Clause 4 amalgamates provisions provided under sections 41 and 45 of the 2011 Act, which requires a development order to stipulate the publicity requirements for applications, and that applications must not be considered if the requirements are not met. This Clause also allows for a development order to prescribe a certain period before the Department can determine an application. Similar amendments are made to Schedule 1 of the 1991 Order in relation to listed buildings consent.

Clauses 6 and 7 give the Department the power to decline to determine subsequent or overlapping applications. Clause 12 allows the Department to make a change to a planning permission already granted on application, and amend or remove conditions or impose new ones.

¹² Government Response to the Planning Reform Public Consultation July - October 2009 (p.70):
http://www.planningni.gov.uk/index/about/government_response_final.pdf

Clause 14 allows for any sum payable under a planning agreement to be made to any Northern Ireland department and not just the Department of Environment.

Clause 24 allows the Department to repeal provisions in the Bill; these must be approved by the Assembly. Please note that the explanatory notes refer to this provision as Clause 25, when in fact in the draft Bill it comes under Clause 24.¹³

Clauses 25 to 27 deal with the interpretation, commencement and short title.

3 New Additions to the 2012 Bill

As discussed under “Measures to Enhance the Environment” new additions to the 2012 Bill include the promotion of economic development, paying attention to achieving good design.

The Department has informed that due to the time constraint in relation to the last minute addition of these two measures and the introduction of the 2012 Bill to the Assembly, the usual consultation process conducted by the Department has not been performed with regards to the two new elements. The Department considers these to be welcome additions to the Bill and proposes to use the scrutiny process of the Assembly, in particular the call for evidence that is conducted by the Environment Committee, as an alternative so as not to delay the process.

However, similar actions have been suggested in the past in relation to the promotion of economic development in the planning system:

In 2009, the Environment Minister at the time Mr. Sammy Wilson announced the importance of ensuring that the planning system contributed to the growth of the economy, and made statements to the Assembly regarding the weight that should be given to the economic benefits of development proposals, allowing those proposals that may bring investment to be processed as quickly as possible

“The primary purpose of my earlier statement was to instil confidence in decision-makers to make judgements that give greater weight to economic considerations where it is appropriate to do so while continuing to protect and enhance the environment. I wanted to ensure that the planning system would play a full and positive role in encouraging investment”¹⁴

In September 2009 when addressing the Assembly on the proposals for the reform of the planning system, the Environment Minister Mr Edwin Poots reiterated Mr Sammy Wilson’s statements:

“I must stress the importance that should be attached to the economic benefits of a development proposal as a material consideration when a

¹³ DOE Planning Bill (Northern Ireland) 2012(p.15) and DOE Planning Bill (Northern Ireland) 2012 EFM (p.12)

¹⁴ Assembly Report 16th June 2009 <http://archive.niassembly.gov.uk/record/reports2008/090616.htm#a2>

*decision is being made on a planning application. My predecessor, Minister Wilson, made a statement on that matter shortly before leaving office.*¹⁵

In January 2011 Mr. Poots also launched a consultation on Draft PPS 24 which made it clear that full account shall be taken of the economic implications, as well as the social and environmental aspects of a proposal when making planning decisions. He added:

*“Draft PPS 24 makes it clear that where the economic implications of a proposal are significant then substantial weight should be afforded to them. In such cases, substantial weight can mean determinative weight.”*¹⁶

However, despite efforts, these suggestions were not taken forward. In fact in relation to PPS24, on 17th January 2011, Environment Minister Alex Attwood announced that he would not be introducing new planning policy after listening to the public, business groups and the commercial sector:

*“The majority of those who responded to the public consultation opposed the policy set out in draft PPS24. Many of those who were in favour considered that the content of the draft did not materially move the issue forward and that the content was imprecise and lacked definition. Many rightly argued that economic considerations are already a factor in planning decisions and are already dealt with in a balanced way alongside other material considerations, including social and environmental factors.”*¹⁷

It is clear that this issue was met with strong opposition back in 2011 and Minister Attwood announced he would not be taking PPS24 forward. With similar wording being presented this time round, similar concerns could be raised again, especially in relation to the idea of showing priority to economic development over the other elements of sustainable development:

*“Others who responded to the consultation feared that implementation of draft PPS24 could compromise sustainable development or conservation objectives, undermine existing planning policies, or prioritise short term financial gain over longer term sustainable growth.”*¹⁸

Should there be similar opposition as there was in the past, this could potentially cause delay in 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 the longer it takes for the 2012 Bill to pass through the Assembly the less time it gives the Department to put it into operation before 2015.

¹⁵ Assembly Report 14th September 2009 <http://archive.niassembly.gov.uk/record/reports2009/090914.htm#a10>

¹⁶ Assembly Report 17th January 2011 <http://archive.niassembly.gov.uk/record/reports2010/110117.htm#4>

¹⁷ ibid

¹⁸ Executive Press Release “Attwood not to adopt Planning Policy Statement 24 following consultation” (6/09/2011) <http://www.northernireland.gov.uk/news-doe-060911-attwood-not-to>