

Report on	Call for Evidence of the Implementation of the Planning Act (NI) 2011
Date of Meeting	2 nd March 2020
Reporting Officer	Dr Chris Boomer, Head of Development Plan
Contact Officer	Dr Chris Boomer, Planning Manager

Is this report restricted for confidential business?	Yes	
If 'Yes', confirm below the exempt information category relied upon	No	x

1.0	Purpose of Report
1.1	To inform members of the review of the implementation of the Planning Act (NI) 2011 and to agree a submission on behalf of the Council.
2.0	Background
2.1	Under Section 228 of the Planning Act the Department is required to review and publish a report on the implementation of the Act no later than 3 years after the commencement of Part 3 of the Act and at least once every five years thereafter.
2.2	The review is very broad brush in nature and poses questions that ask whether you believe there is a need to retain, amend or repeal any provisions of the Act or associated subordinate legislation in relation to the preparation and implementation of the local development plan, planning control and enforcement. It also asks if there is a need to change planning procedures in general to safeguard in terms of emergencies, such as experienced during the Covid 19 epidemic. It also asks if there is a need to retain, amend or repeal any other parts of the act or legislation.
2.3	The call for evidence is over a very limited time period, launched on 15 th February and closing on 15 th March.
3.0	Main Report
3.1	In general, the planning system is working to achieve the objective of leading and controlling development in the wider public interest. Rather than legislation, it is normally policy that creates the issues. This said there are areas, which I believe the legislation creates unnecessary delays and results in undue resource burden on planning authorities.
3.2	In relation to development plan making it is clear with only two plans to date submitted to the Department, Plan making is proving both protracted and

3.2	<p>cumbersome. In part this is due to the form of the plan documents and the consultation process. It is therefore suggested the Department look at changes to reform the plan system to facilitate:</p> <ul style="list-style-type: none"> • A greater number of plan documents rather just the Plan Strategy and Local Policies Plan. • A reduced role for the he Plan strategy document to focus on the objectives of the plan, the strategy for achieving it and establishing any housing or industrial allocations, • Strategic Policies to be brought forward as separate plan documents allowing for existing PPS's to be retained as plan policy where no need for change has been identified. • Allow for local policies documents to be brought forward single or groupings of settlements • Revisions in the site outlined in red to facilitated revisions to make a proposal more sustainable • Allow for more than one plan document to be brought forward at a time • The timetable to set out the priorities for bringing plan documents forward within a foreseeable time frame i.e. five years.
3.3	<p>There should also be a review to explore whether the consultation processes can be reduced to</p> <ul style="list-style-type: none"> • Specifically remove the requirement for a counter objection period at Plan strategy/ strategic policy stage • Reduce the number of statutory consultees as it is clear we are sending out lots of letters to people such as electricity generating licence holders who have no interests in the plan • Promote the use of ICT and switch to a system based on electronic publication of plan documents and submission of representations. In short promote a paperless environment which will reduce costs and save time. <p>In relation to Development management, the main cause for frustration for applicants is delay in decision making, and for planning officials delays in getting information needed to make a decision. It is therefore recommended that the system be streamlined to:</p> <ul style="list-style-type: none"> • To explicitly allow for an application to be held as invalid until such time as additional information required to determine the application is provided. This would include information required by policy such as flood risk assessments, wildlife surveys, noise reports, transport assessments, etc. This allows the applicant to decide whether they want to provide the information to proceed with the application. • Increased flexibility in order to allow applicants to make changes to the site and proposals, reducing the need to re-apply. • Remove the requirement for pre determination hearings where the local authority has already allowed for representations at the planning committee before formulating its initial opinion. If the Department feels

	<p>the council has erred in its opinion the Department can call it in or alternatively set out what it wishes the Committee to consider which it has not already considered,</p> <ul style="list-style-type: none"> • Promote the use of ICT and retain the similar to those brought in with regards to the Covid regulations. • Move to go completely paperless in relation to consultation and plan documents. should not be required to be subject to a counter objection, which should only apply to local policy documents. <p>In relation to Enforcement it is suggested that the system could be stream lined to avoid the unnecessary expense of taking court action by:</p> <ul style="list-style-type: none"> • Introduction of Fixed Penalty Notices for advertisement offences. • Allowing fixed penalty notices to be served on more than one occasion if a planning breach is not remedied • Increasing fines in relation to notices, particularly in relation to breach of condition from £1000 to £5000 <p>In relation to the Fees Regulations, the Departments attention is drawn to the need for a fee review which should take account of:</p> <ol style="list-style-type: none"> (i) Inflation since 2015 (ii) The need to review fees for certain categories such as wind turbines which are expensive for Local authorities to process (iii) The benefits of reintroducing a concessionary where an application was recently refused because additional information is required and the application has now reapplied provided that information. (iv) Greater flexibility to alter or transfer fees.
	Other Considerations
4.1	Financial, Human Resources & Risk Implications
	<p>Financial: No cost to mid ulster</p>
	<p>Human: The suggestions are to make administration of the Planning system easier</p>
	<p>Risk Management: None identified.</p>
4.2	Screening & Impact Assessments
	None for the Council

	Rural Needs Implications: None for the Council. N/A
5.0	Recommendation(s)
5.1	That the planning manager responds to the Department making the suggestions contained in the report, together with any other suggestions raised by the Committee:
6.0	Documents Attached & References
	Call for Evidence of the Implementation of the Planning Act (NI) 2011 (Department of Infrastructure 15 th February 2021)

Call for Evidence

Review of the Implementation of The Planning Act (NI) 2011

Issued: 15 February 2021

Respond by: 15 March 2021

Contents

Introduction	3
How to Respond.....	3
Background.....	4
Why undertake a review?	5
Purpose and scope.....	8
Key Questions.....	9
Next steps.....	11

Introduction

The Department for Infrastructure is currently undertaking a review of the implementation of the Planning Act (NI) 2011 (the Act) as required by section 228 of the Act. This Call for Evidence will help inform the consideration of this review.

How to Respond

You are invited to submit your views in response to this Call for Evidence **by 4.00pm on 15 March 2021**. Comments after this deadline will not be accepted.

Please respond using the Response Form attached to this document.

Responses should be emailed to the Department at the following address:

Legislation.Planning@infrastructure-ni.gov.uk

Please note that your response may be made public by the Department. For example, information people provide in response to this targeted engagement exercise, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality.

Background

1. In Northern Ireland, the planning system was fundamentally reformed in 2015 with the transfer of responsibility for most local planning decisions and plan making going to councils as well as significant reforms to the development management and plan making processes. The reforms represented the most fundamental change to the planning system in Northern Ireland in over 30 years.
2. This also involved commencement of significant new primary legislation in the form of the Planning (NI) Act 2011, together with a raft of other supporting subordinate legislation, which all came into effect on 1st April 2015. This new legislation paved the way for implementing the reforms.
3. The key aims of the reform of the planning system were to:
 - deliver Northern Ireland Executive decisions to transfer the majority of planning functions to the newly formed councils thus creating a two tier planning system; and
 - bring forward short, medium and long term process improvements to modernise the system.
4. The main objectives for reforming and transferring planning were:-
 - the continued formulation and co-ordination of planning policy by the Department;
 - councils preparing local development plans;
 - councils determining the majority of planning applications for development; and
 - councils taking appropriate enforcement action where a breach of planning control may have taken place.
 - further sustainable development;
 - enhance community involvement in the planning process;
 - make more timely decisions in ways which are transparent and demonstrably fair;
 - allow higher fines for planning offences; and
 - reform the planning appeals system.
5. In addition, in May 2016 the Departments Act (Northern Ireland) 2016, reduced the number of government departments from 12 to 9. This was the culmination

of discussion going back a number of years on the shape and size of the Northern Ireland Executive.

6. As part of this restructuring, the majority of departmental planning functions of the former Department of the Environment were transferred to the Department for Infrastructure¹, while the functions of the Planning Appeals Commission under Part 9 of the 2011 Act were transferred from the Office of the First and Deputy First Ministers to the Department of Justice. In addition a number of historical built environment functions of the 2011 Act were transferred to the Department for Communities. These included:
 - the power to list buildings under sections 80 to 84;
 - the reserve power to designate conservation areas under section 104; and
 - the reserve listed building enforcement powers under sections 158 to 161.

While these functions are the responsibility of the respective Departments, DFI will engage with both Departments as parts of the overall review of the implementation of the 2011 Planning Act.

Why undertake a review?

7. Section 228 of the Act requires the Department to review and publish a report on the implementation of the Act no later than 3 years after the commencement of Part 3 of the Act (Planning Control), and at least once in every 5 years thereafter. The Department is required by section 228(2) to make regulations setting out the terms of the review. The regulations were made on 12th October 2020 and came into operation on 2nd November.
8. The delay in meeting the initial timeframe set out in the Act for making the regulations and publication of the associated report, stems from decisions (not to proceed) made under the NI (Executive Formation & Exercise of Function etc.) Act 2018. These decisions determined that in the absence of a Minister or functioning Assembly, it would not be appropriate to make the regulations, and to publish the subsequent report on the implementation of the Planning Act.

¹ [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016](#)

9. The Planning Act 2011 (Review) Regulations (Northern Ireland) 2020² specify that the Review must:-

- consider the objectives intended to be achieved by the Planning Act;
- assess the extent to which those objectives have been achieved; and
- assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.

The Planning Act (NI) 2011

10. The Act consists of 15 Parts, 255 sections and seven schedules³.

Amendments to timeframes for taking enforcement action and also a number of increased penalties were introduced from 1 December 2011, however the majority of provisions came into operation on 1 April 2015. The provisions of the Act which have been implemented are:

- Part 1 Functions of the Department for Infrastructure with respect to the development of land
- Part 2 Local development plans
- Part 3 Planning control
- Part 4 Additional planning control (except Chapter 4)
- Part 5 Enforcement
- Part 6 Compensation
- Part 7 Purchase of estates in certain land affected by planning decisions
- Part 8 Further provisions as to historic buildings
- Part 9 The planning appeals commission
- Part 10 Assessment of council's performance or decision making
- Part 11 Application of Act to crown land
- Part 13 Financial provisions
- Part 14 Miscellaneous and general provisions
- Part 15 Supplementary
- Schedule 1 Simplified planning zones
- Schedule 4 Amendments to the Land Development Values (Compensation Act (Northern Ireland
- Schedule 5 The historic buildings council
- Schedule 6 Minor and consequential amendments
- Schedule 7 Repeals

11. A small number of the provisions of the 2011 Act have not been commenced to date:

- Part 4 – Chapter 4 Review of Mineral Planning Permissions

² <https://www.legislation.gov.uk/nisr/2020/218/made>

³ <https://www.legislation.gov.uk/nia/2011/25/contents>

- Part 12 – Correction of Errors
- Schedule 2 – Review of old mineral planning permission
- Schedule 3 – Periodic review of mineral planning permissions.

Subordinate Legislation

12. The Department has made around 40 statutory rules and six directions under the Planning Act to facilitate the transfer of planning powers and the introduction of the two-tier planning system. This subordinate legislation may be viewed on the Department's website⁴. This raft of subordinate legislation underpins the Planning Act and sets out the detailed statutory requirements for key processes such as the submission of planning applications, and the preparation of local development plans. These ensure certain statutory functions are carried out and provide conformity throughout the planning system.

⁴ <https://www.infrastructure-ni.gov.uk/articles/current-planning-legislation>

Purpose and scope

13. The requirement to review and publish a report on the implementation of the Act is to ensure the Department monitors and reports on the coming into operation of the provisions within the Act, to provide a level of assurance that the legislative framework for the delivery of a reformed two-tier planning system has been implemented and in a timely fashion.
14. The focus of the review is, therefore, on the implementation of the legislative provisions of the Act itself and the extent to which the original objectives of the Act have been achieved. This will then inform whether there is a need to **retain, amend or repeal** any provisions of the Act. The review will also provide an opportunity to consider any improvements or 'fixes' which may be required to the way in which the Planning Act has been commenced and implemented in subordinate legislation. It is likely that issues with the planning system that have surfaced as a result of the Coronavirus pandemic will be considered as part of this review.
15. It is important, however, to highlight that the review is not envisaged as a fundamental root and branch review of the overall 2 tier planning system or the principles behind the provisions. It is still relatively early days in the delivery of the new system, compared with other jurisdictions, and there is no evidence to suggest this is the time for another fundamental re-examination of the system here, which would take considerable time. However, the Minister is keen to look at how the provisions of the Act are working in practice and whether there are any changes that could be implemented to further improve the system for all stakeholders – including councils, developers, and the wider public, not just in planning decisions, but also in the delivery of new local development plans which will provide certainty for the longer term. This may not always require legislative change.

COVID-19

16. The COVID-19 crisis has had an impact on everyone, and every sector across NI, and the planning system is no exception. To address this, the Department has and continues to issue guidance to councils and the public by way of Chief Planner's Updates providing information and advice on the ongoing operation of the planning system through this time, including support for practical measures to keep delivering local planning services whilst observing the latest health advice.
17. The Department has introduced emergency legislation and associated practice guidance which temporarily suspends the requirement for a Pre-application Community Consultation public event for major planning applications.
18. The Department has also worked with the Department for Communities in bringing forward Regulations enabling councils to put in place arrangements for holding Planning Committee meetings remotely and allowing council business, including taking planning decisions, to proceed during the COVID-19 emergency.
19. While we all continue to work through the current emergency period this review could provide an opportunity to examine how and in what ways the Department can future-proof / shield the planning system from potential future adverse impacts arising from similar events.

Key Questions

20. Whilst the Department welcomes comments on any aspect of the Act, (together with other information and evidence that may assist in the forthcoming review) it is particularly keen to hear views on the provisions for Local Development Plans (Part 2), Planning Control (Part 3), Additional Planning Control (Part 4) and Enforcement (Part 5), as set out in the following key questions:

Part 2 – Local Development Plans

Q.1. Do you believe there is a need to retain, amend or repeal any provisions of Part 2 of the Act or associated subordinate legislation with regard to the delivery of Local Development Plans?

Q.2 Do you believe there are any improvements which may be made to the way in which local development plans are implemented?

Parts 3 & 4 – Planning Control and Additional Planning Control

Q.3 Do you believe there is a need to retain, amend or repeal any provisions of Part 3 or Part 4 of the Act or associated subordinate legislation with regard to the Planning and Additional Planning Control?

Q.4. Do you believe there are any improvements which may be made to the way in which planning control is implemented?

Part 5 - Enforcement

Q.5 Do you believe there is a need to retain, amend or repeal any provisions of Part 5 of the Act or associated subordinate legislation with regard to the Enforcement?

Q.6. Do you believe there are any improvements which may be made to the way in which planning enforcement is implemented?

COVID-19 Recovery

Q.7 Do you believe there are any changes to planning procedures in general which could safeguard the system against potential future adverse impacts associated with emergency situations, such as that currently being experienced as a result of COVID-19 pandemic?

Other Parts of the 2011 Planning Act.

Q.8 Do you believe there is a need to retain, amend or repeal any provisions of other parts of the 2011 Planning Act, or associated subordinate legislation?

Please provide information or evidence to support your answers.

Next steps

21. Responses to this Call for Evidence should be made to the Department by 4.00pm, Monday 15 March 2021.
22. The information gathered as a result of this Call for Evidence will be considered by the Department and will help inform the first review.
23. Any recommendations emerging from the first review which might involve legislative changes will follow the normal policy development process including public consultation on any draft proposals and Assembly scrutiny where appropriate.