

**Planning Reform and Transfer to Local
Government: Proposals for Subordinate
Legislation**

**Response to Phase 1 Public Consultation
May-August 2014**



Department of the
Environment

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Response to the Phase 1 Planning Reform Consultation Paper Synopsis

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Introduction

- I. To facilitate the successful transfer of planning powers, under the provisions of the Planning Act (Northern Ireland) 2011 (the 2011 Act), to the 11 new district councils on 01 April 2015, the Department sought views on a range of proposals for subordinate legislation under the 2011 Act.
- II. The proposals in the Phase 1 public consultation document "*Planning Reform and Transfer to Local Government: Proposals for Subordinate Legislation*" set out how the Department proposes to introduce improvements in the planning process and establish a new two-tier planning system in Northern Ireland. The proposals provide the detailed mechanisms to support the transfer of planning powers and are part of the wider reforms to the planning system intended to deliver:
 - improved access to and increased participation in the planning process;
 - faster and more predictable outcomes;
 - fairer and faster appeals; and
 - stronger and more effective enforcement.
- III. The first phase of consultation essentially dealt with those issues which are necessary to ensure that the new councils inherit a functioning planning system immediately following the transfer of planning functions from central to local government. These "day one essentials" should ensure that there are no interruptions to the management of applications, enforcement cases etc. already in the system and that work initiated by the Department can be continued by the relevant new councils through to conclusion.
- IV. The proposals relate to the following elements of the planning process:
 - preparation of local development plans;
 - statements of community involvement;
 - the new three-tier hierarchy of development applications i.e. local, major and regionally significant;
 - the new and revised procedures for managing applications through the system;
 - the management of applications relating to land of interested parties e.g. council owned land; and
 - listed buildings.
- V. The Department received 60 responses to the consultation paper. The representations came from a wide range of interests including the public, councils, business groups and environmental groups. An overview of the questions asked in the consultation paper along with a statistical summary of the responses received and the Department's response, is set out in the Annex.

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Reponses received by category		
Agent	1	1.5%
Business	13	22%
Community	8	13%
Council/councillor	12	20%
Developer	6	10%
Environment	5	8%
Public	1	1.5%
MLA/MP/MEP	0	0
Other	14	24%
Total	60	100%

VI. The 12 council representations were made by:

- Armagh, Banbridge and Craigavon District Council
- Fermanagh and Omagh District Council
- Causeway Coast and Glens District Council
- Castlereagh Borough Council
- Mid & East Antrim District Council
- Mid Ulster District Council
- North Down and Ards District Council
- Antrim & Newtownabbey District Council
- Derry City & Strabane District Council
- Belfast City Council
- Lisburn City Council
- Newry and Mourne District Council

VII. The wide range of responses indicated broad support for reform of the planning system with many respondents welcoming the proposals. A detailed synopsis of the responses received and the Department's consideration and responses of the issues raised are set out below.

Consultation Analysis

VIII. The questions posed in the consultation paper were intended to help establish the extent to which consultees either agreed or did not agree with the proposals for subordinate legislation. Consultees were also invited to comment where they believed improvements could be made.

IX. This paper provides a general overview of the main findings of the Phase I public consultation exercise. It is not intended to be a comprehensive report on every comment received, but rather a summary of the key issues raised in the responses. Subsequent analysis of the consultation returns is therefore presented showing the total number of responses to each question (including its percentage of the overall total of 60 responses), together with a numerical and percentage breakdown of those who responded in terms of whether they agreed or did not agree with the proposals. The analysis further provides a synopsis of the responses to each question, extracting the salient issues

raised, followed by the Department's consideration and response and ultimately whether the Department, taking account of the comments made, intends to either amend the proposals or to proceed as set out in the consultation document and the legislation as drafted. Issues raised by respondents which fell outside the scope of the consultation have been addressed where appropriate. The Department would like to take this opportunity to thank all those who contributed to the consultation exercise.

Future Review

- X. The Department is committed to reviewing the implementation of the 2011 Act and how it operates in practice. If, on the basis of the experience of operating the new system, evidence emerges that there are better or more efficient ways of operating, then the Department is open to considering any necessary amendments. Equally, the performance management arrangements to be put in place for the overall planning system may identify areas of good practice or areas where amendments are required. As these proposals are being brought forward through subordinate, rather than primary, legislation there is a degree of flexibility for future amendment, should the experiences of councils and the Department under the new two-tier system identify areas for improvement.

Local Development Plans - An Effective Plan-led System

Advertisement of the local development plan

1. Councils will be responsible for preparing local development plans for their districts. At various stages in the local development plan process, the council will be required to advertise the steps it is taking in the local development plan preparation process. For example, the council will be required to advertise:
 - the fact that it is publishing for consultation its preferred options paper, its plan strategy and its local policies plan;
 - that it is submitting the plan strategy or local policies plan to the Department for independent examination; and
 - that it is adopting its plan strategy or local policies plan.
- 1.1. At present, the Department is required to place an advertisement for two successive weeks in at least one newspaper circulating in the area affected by the development plan. This ensured that where any area covered by a development plan was not covered by one newspaper then the Department was required to use as many papers as necessary to ensure coverage of all the plan area.

Consultation paper proposal

- 1.2. The consultation paper proposed that the current minimum requirement for advertising a local development plan should be retained and that this should apply to the new councils after the transfer of planning powers. It is therefore left to the discretion of each council to advertise in as many newspapers as it considers necessary to ensure the whole plan area is covered. The councils are of course free to go beyond this requirement including the use of social media networking which, if adopted, should be reflected in the council's statement of community involvement.

Consultation response

Question 1	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 1: Do you agree that local advertisement should mean that a council must place an advertisement for two consecutive weeks in at least one local newspaper circulating in its district?	43	72%	27	63%	16	37%

- 1.3. Overall, most of those who responded (63%) were generally in favour of the retention of the current minimum advertisement requirements. Of the 16 responses which did not agree with the proposal, 10 were based on a misunderstanding that the council could only use one newspaper which may

not cover the entire plan area. The responses also considered that the regulations should be extended to require the councils to also advertise their local development plans on their websites. One respondent suggested that the minimum requirement should be extended to include advertisement in at least one regional newspaper. Some of the responses were mindful of the associated costs of newspaper advertising. In this context some questioned the effectiveness of the printed press in bringing such matters to the attention to the wider public and references were made to the possible use of social networking media for such purposes.

- 1.4. Some responses suggested that the need to publicise the local development plan in the press should be dropped entirely in favour of a more electronic centred approach with the costs of advertising seen as disproportionate to the benefits.

Department's consideration and response

- 1.5. The Department considers that the printed press remains an important tool to notify persons with an interest in planning, of the local development plan. The removal of newspaper advertisement could possibly adversely impact on those members of the public who do not have access to the internet. The Department is aware of the risk of "digital exclusion" as this technology has yet to penetrate all layers of Northern Ireland society. For example, an OFMDFM report "A Profile of Older People in Northern Ireland – 2013 update" ([Link to the Report](#)) published in November 2013, found that access to the internet was nearly universal for those under forty, but dropped to 28% for those aged 70 and over. The report said "These differences give rise to notions of 'digital exclusion' among older people, which potentially puts them at risk of missing out on digital content and services".
- 1.6. For the purposes of the regulations local advertisement means "an advertisement for 2 successive weeks in **at least 1 local newspaper** circulating in the whole of the district of the council." The Department's opinion is that the definition as drafted would allow the councils to use more than one newspaper to ensure the whole district is covered when advertising the key stages of the local development plan. For clarity, however, the Department intends to refine the definition of local advertisement to read: "local advertisement" means an advertisement for two successive weeks in at least one newspaper circulating in the district of the council. This will allow the council to use as few or as many newspapers, either local or regional, as it considers necessary to ensure proper publicity/coverage for the local development plan in its district. Whilst there are costs involved with the duty to advertise, the Department considers that the benefits of the continued use of the printed press significantly outweigh any financial burden on advertising which is a very small proportion in the overall financing of the preparation of a local development plan. Whilst the costs involved in the preparation of the council local development plans are outside the purpose of this public consultation, which is solely to agree the procedures and duties to be included in the local development plan process, the Department has made it clear that

it intends to transfer a fit for purpose planning system to councils, that is adequately resourced.

- 1.7. On the use of social networking media, councils are also free to use any other additional method(s) in order to bring such matters to the attention of local communities. The use of social media should be set out in the council's statement of community involvement . [See paragraph 17 onwards on the council's statement of community involvement]
- 1.8. Regulations 8,10,15,17,19, 22-24 and 27 of the draft Planning (Local Development Plan) Regulations (Northern Ireland) 2015 will require the council to place a notice on its website at the same time as it is placing the newspaper notices to advertise the key stages of the local development plan. As previously stated, after considering the responses to question one the Department has decided to amend the definition of "local advertisement" to mean an advertisement for two successive weeks in at least one newspaper circulating in the district of the council. The Department considers that the dual minimum requirement to advertise the local development plan in the press and on the council's website will ensure everyone in the council district with an interest in local development plan is made aware of its progress.

Statutory consultees

2. In the preparation of its development plans, the Department consults a wide range of bodies whose specific roles may influence future development in the development plan area. For example the Northern Ireland Environment Agency (NIEA) in relation to key environmental issues, NI Transport in relation to transport infrastructure and Rivers Agency in relation to flood plains. While not statutorily required to do so, the input and engagement of such bodies is integral to meaningful and effective plan preparation.

Consultation paper proposal

- 2.1. The Department proposed that the statutory consultees to be consulted by councils in the preparation of a local development plan should be:
 - all Northern Ireland government departments;
 - the council for any district which adjoins that of the council undertaking the consultation exercise;
 - any water or sewerage undertaker;
 - the Northern Ireland Housing Executive;
 - the Civil Aviation Authority;
 - any person to whom the electronic communications code applies by virtue of a direction given under section 106(3) of the Communications Act 2003;
 - any person to whom a licence has been granted under Article 10(1) of the Electricity (Northern Ireland) Order 1992; and
 - any person to whom a licence has been granted under Article 8 of the Gas (Northern Ireland) Order 1996.

- 2.2. The Department in the regulations has as far as possible included all the bodies it would expect all the councils to consult in the preparation of a local development plan. Because specific important consultees such as NIEA, Transport NI, Rivers Agency are executive agencies of Northern Ireland departments they have no separate legal identity from their department and cannot therefore be named expressly in the regulations. The Department therefore intends to set out in guidance the details of all the specific bodies, which are to be consulted.

Consultation response

Question 2	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 2: Do you agree with the list of statutory consultees for local development plan preparation and are there any bodies/persons we have missed?	42	70%	35	83%	7	17%

- 2.3. Overall most respondents (83%) agreed with the proposed list of statutory consultees and as expected some respondents highlighted the fact that the bodies discussed above such as NIEA, Transport NI, Rivers Agency and others such as NI Tourist Board, Invest NI and NICCY should be consulted by the council when preparing a local development plan.
- 2.4. Others put forward proposals to include as statutory consultees, organisations such as Translink, NI Water, Education and Health and Social Services Boards, Northern Ireland Fire and Rescue Service, Sustrans, Chambers of Commerce, The National Trust, Foyle and Carlingford Fishery Conservancy Boards, NIIRTA, the Institute of Directors, Historic Buildings council, Historic Monuments council and forthcoming Community Planning Partnerships. One respondent queried the need to consult with all Northern Ireland departments in the preparation of the local development plan.
- 2.5. In relation to the telecommunications industry, it was further suggested that the list of consultees should include provision similar to England where the statutory consultee is defined as “any person to whom the electronic communication code applies by virtue of a direction given under section 106(3) of the Communications Act 2003 and who also owns or controls electronic communications equipment situated in the area of the local planning authority”.
- 2.6. It was also suggested that memorandums of understanding should be drawn up between the councils and the statutory consultees eg. in relation to the link between terrestrial and marine planning.

Department's consideration and response

- 2.7. The Department wants to ensure that the list of statutory consultees is manageable and focuses on the key bodies with a statutory interest in spatial planning. There are bodies that the Department can prescribe in the regulations and it has done so as practically as possible to ensure that the list of consultation bodies includes all of the principal undertakers for statutory/public services undertaken within any given council district. There are bodies such as NIEA, Transport NI, Rivers Agency, who the councils will also need to consult but as these cannot be prescribed, for the reasons above, the Department will include these in the local development plan guidance to which, under the provisions of section 20 of the 2011 Act, the council must have regard in preparing its local development plan.
- 2.8. In considering other bodies suggested in the consultation replies such as Sustrans, Chambers of Commerce, National Trust, the Department accepts that their views and participation in the development plan preparation process will be valuable, such bodies will be given the opportunity to participate in the local development plan process during the various public consultation exercises. They will also be afforded the opportunity to be heard at the independent examination if they have made representations and seek to be heard by the Planning Appeals Commission (PAC).
- 2.9. With regard to comments on the owners/controllers of telecommunications apparatus situated in any given district, the Department is of the view that to include the provision suggested, would actually act to narrow the scope of consultation to those under regulation 2(1)(f). This would rule out any telecommunications operators who do not own or control equipment in the council district but may have plans for future telecommunications that would impact on the council's district. The current provision as drafted will therefore ensure that those operators who do not currently own/control telecommunications apparatus within the subject council area, but who may have operational plans to install such apparatus in the district over the plan period, will be consulted by councils.
- 2.10. In response to the suggestion that a memorandum of understanding should exist between the councils and the statutory consultees, the Department understands that discussions are ongoing on their respective roles in the transferred planning system. Those discussions will cover both the local development plan and development management functions.
- 2.11. With regard to the suggestion to include forthcoming 'Community Planning Partnerships' as a statutory consultee, the Local Government (Northern Ireland) Act 2014 amended section 8 of the 2011 Act to require councils, in the preparation of local development plans to do so having taken account of any current 'Community Plan' for the area. As this statutory obligation will be tested at independent examination, it is not considered necessary to include within the statutory list of consultees, forthcoming community planning partnerships.

- 2.12. In summary, given that in Northern Ireland a significant number of bodies or organisations cannot be defined in legislation separately from their departments, and that the Department's local development plan guidance will set out a comprehensive list of consultees which will include NIEA, Rivers Agency, Transport NI, the Department intends to proceed with the proposed list of prescribed consultees. The Department will keep the list under review as the new system is established and may review the list if experience and evidence suggest amendments are required.

Timetable

3. Section 7 of the 2011 Act places a statutory requirement on a council to prepare and keep under review a timetable for the preparation and adoption of its local development plan. The timetable will specify the indicative dates from the commencement of the local development plan process through to its conclusion at the adoption of the local policies plan. It must set out the indicative timings of the public consultations for the preferred options paper and the draft development plan documents. The timetable will help ensure that the plan process is efficiently managed and that anyone who has an interest in the local development plan process is aware of the forthcoming local development plan preferred options paper, plan strategy or local policies plan and the dates at which they can become involved in the public consultation exercises if they so wish. The timetable, including any subsequent revision must be submitted to, and approved by, the Department.
- 3.1. It will also allow other key stakeholders such as the local development plan consultees (see paragraph 2.1 above) and the PAC to manage their own resources during the local development plan process.

Consultation paper proposal

- 3.2. The Department proposes that the council's timetable should contain:
- the indicative dates for the publication of the preferred options paper, the plan strategy, the local policies plan and the sustainability appraisal report; and
 - indicative dates for the independent examinations and adoption of the plan strategy and the local policies plan.
- 3.3. The timetable must also be approved by resolution of the council prior to submission to the Department for its agreement and:
- that the Department must respond within four weeks of receipt of the timetable or notify the council that it requires more time; and
 - if the Department does not respond within four weeks then the timetable is deemed to be agreed.
- 3.4. After the timetable is agreed by the Department the council must:

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- make their agreed timetable available for inspection during normal office hours at their principal office and such other places as the council considers appropriate;
- publish the agreed timetable on its website; and
- give notice of the above by local advertisement (see paragraph 1).

Consultation response

Question 3	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 3: Do you agree with the preparation, content, agreement and publicity arrangements for the development plan timetable? If not, can you identify amendments which would offer greater benefits?	36	60%	27	75%	9	25%

- 3.5. Overall most respondents (75%) were content with the proposals in relation to the preparation, content, agreement and publicity arrangements for the development plan timetable. Some qualified their comments suggesting, for instance, that further safeguards should be in place to notify participants to a plan where a timetable is amended through review, or that councils should be free to delegate responsibility for resolution of the timetable to a council committee.
- 3.6. Some respondents suggested that detailed proposals with regard to the timetable were 'excessive' given the indicative nature of the document when considered within the context of the 'significant variables' often at play in the development plan preparation process. One response proposed that consultation bodies should have no more than 21 days in which to respond to a consultation request on the timetable, and that the Department should hold a central register for agreed council timetables. It was also suggested that some form of penalty should apply to those councils which do not adhere to the agreed timetable (without apparent reason) and again resourcing issues were raised.

Department's consideration and response

- 3.7. The purpose of the timetable is to identify, for all those who will be or wish to be involved in the preparation of the local development plan, the key stages and indicative dates in the plan preparation process including adoption of the plan strategy and local policies plan. The reason for using indicative dates is reflective of the nature of plan making taken within the context of other external and internal factors which have the potential to delay various stages in the process. The Department is firmly of the view that it would be unreasonable for a council to accurately predict an exact date for the commencement and conclusion of any stage of any part of the process. Nonetheless, to ensure the efficient delivery of the local development plan, the

timetable, following resolution by the council, is to be submitted to and agreed by the Department which in turn will scrutinise the document to ensure it is reasonable in its overall approach.

- 3.8. The preparation of the timetable will by necessity, require dialogue between the council and the consultation bodies to ensure there is synergy with for example, future resource needs and capacity within the context of other local development plans under preparation at or around the same time. To require consultation bodies to respond within a defined period to requests for comments around the preparation of the timetable may only serve to curtail such dialogue, which would not be in the interests of plan making.
- 3.9. It is also open to the council to review its timetable. Any subsequent amendment must also be approved by resolution of the council prior to its submission to the Department for agreement. While councils should seek to ensure their plans are in place as expeditiously as possible, this flexible approach is reflective of the nature of plan making. Within this context it would not be reasonable to seek to impose any penalty on councils where timetables slip as a consequence of unforeseen or external circumstances.
- 3.10. With regard to calls for a central register of agreed timetables, the Department is of the view that a statutory requirement is not needed for such a register but the Department will place a central database of the progress of council local development plan, on its website.
- 3.11. Finally, it is open to any council to delegate the function of approval of its timetable to a committee of the council prior to its submission to the Department for agreement.
- 3.12. In light of the broad support the Department intends to proceed as indicated in the consultation paper and it is currently engaging with councils on setting performance management indicators for development plan preparation as part of a wider performance management framework.

The Preferred Options Paper

4. A key new feature of the local development plan system is consultation at an early stage on 'preferred options' for growth and development of the council area. A preferred options paper will contain:
 - a series of options for dealing with the key issues in the local development plan area;
 - evidence to appraise the different issues and options; and
 - the council's preferred options and their justification.
- 4.1. The preferred options paper will be used as the basis for consulting with the public and it is envisaged that this will help them to become involved in a more meaningful way at this earlier stage of plan preparation and provide them with an opportunity to put forward views and influence the local development plan.

Preparation of the Preferred Options Paper

4.2. The statutory consultees' participation at the start of the process of preparing a new local development plan is crucial in identifying relevant issues and views on the plan from the outset. The draft regulations propose that councils for the purpose of generating strategies and options, prior to preparing the preferred options paper must engage with the local development plan statutory consultees in order to generate alternative options for growth and development, as it is important that the statutory consultees are able to input at this early stage of the plan preparation process.

Consultation response

Question 4	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 4: Do you agree with this approach in relation to the involvement of statutory consultees in the preparation of a preferred options paper?	43	72%	34	79%	9	21%

4.3. Overall most respondents (79%) were content with the approach to the involvement of statutory consultees in the preparation of the preferred options paper. Some respondents qualified their general support suggesting for instance, that the regulations should follow the English approach and require councils to demonstrate how consultee representations have been taken into account. Others were concerned about the apparent lack of a 'process' for stakeholder engagement and that the absence of a specified period for statutory consultees to respond may have a possible knock-on effect on plan preparation.

Department's consideration and response

4.4. The regulations will require councils to engage with statutory consultees and to take account of any representation received. Some respondents suggested that the regulations should follow the approach in England, and require councils to demonstrate how such representations have been taken into account. As with the approach in the regulations in England¹ draft regulation 9 requires the council to take account of any representation received from the statutory consultees in preparing its preferred options paper. The Department's view is that the regulation as drafted achieves the desired result that councils are required to take account of representations. In practice, a council's explanation as to why they have arrived at their preferred options will

¹ The Town and Country Planning (Local Planning) (England) Regulations 2012 replaced the Town and Country Planning (Local Development) (England) Regulations 2004

satisfactorily explain their rationale without imposing a legislative requirement. The Department therefore believes that no change is necessary.

- 4.5. While some expressed concern about the lack of a timeframe within which statutory consultees should respond to requests in relation to the preferred options paper, and the potential 'knock-on' effect to plan preparation, the Department is of the view that the imposition of specified periods may only serve to inhibit proper engagement and open discourse between the councils and consultation bodies at this stage.
- 4.6. When agreeing the timetable for the preparation of the local development plan the council and the statutory consultees will have already allowed for and agreed suitable timeframes. Councils are free to liaise and work with the consultees to seek prompt and timely responses to ensure there is no delay to publication of the preferred options paper for consultation. Therefore within that context and in light of the clear majority in support of this proposal, the Department intends to proceed as indicated in the consultation paper.

Availability of the Preferred Options Paper

5. It is intended that the preferred options paper will stimulate public comment and views that will inform the content of the council's local development plan. Before the council commences preparation of its local development plan, it must publicise and make its preferred options paper available for public consultation.
 - 5.1. It is proposed that the council should do the following:
 - make available for inspection during normal working hours a copy of the preferred options paper and associated documents at its principal office and such other places as the council considers appropriate;
 - make a statement that representations can be made on the preferred options paper and the address to which the representations can be sent;
 - send this information to the statutory consultees which were engaged in the preparation of the preferred options paper;
 - give notice by local advertisement and on its website setting out that the preferred options paper has been prepared and the places and times at which it can be inspected;
 - give a brief description of the content and purpose of the preferred options paper; and
 - give details of how further information may be obtained.

Public consultation on the Preferred Options Paper

- 5.2. The preferred options paper should be subject to public consultation and it is proposed that:
 - any person who wishes to make a representation must do so within the period specified by the council;

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- the representation must be sent to the address specified by the council;
- the consultation period must be a period of not less than eight weeks or more than 12 weeks; and
- the council must take account of representations received before it prepares its development plan documents.

5.3. The proposed publicity requirements are a statutory minimum and councils are free to do more to publicise the availability of their preferred options paper if they so choose. Such an approach should be set out in the statement of community involvement and if council give a commitment to go beyond these minimum requirements it must comply with that commitment or the development plan document may be found not to be sound at independent examination.

Consultation response

Question 5	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 5: Do you think that the proposed publicity and consultation arrangements for the preferred options paper are appropriate / adequate?	38	63%	30	79%	8	21%

5.4. Overall most respondents (79%) were content with the proposed consultation and publicity arrangements for the preferred options paper. Some respondents were of the view that councils should utilise wider social media to publicise the preferred options paper in addition to holding public meetings / displays specifically with regard to the proposed strategic options.

5.5. There were contrasting views around the period for public consultation with some suggesting that it should be no more than 8 weeks, with others proposing a standard 12 week period across all council districts. One respondent questioned whether councils would have discretion to consider late responses to public consultation around the preferred options paper.

Department's consideration and response

5.6. In light of the broad support for this proposal, the Department intends to proceed as indicated in the consultation paper. The Department would reiterate that the proposed regulations set out the statutory **minimum** requirements to be applied to the publicity and consultation arrangements for the preferred options paper. As such, councils will be at liberty to go beyond these minimum requirements in the exercise of their functions, including the use of wider social networking media, posting documents online and carrying out public meetings etc with the proviso, that such measures, should they be adopted, should also be set out in the councils statement of community involvement.

- 5.7. With regard to the period for public consultation, the regulations propose not less than 8 weeks or more than 12 weeks which is an established and accepted period for most public consultation exercises. The flexibility within this approach will enable councils to specify a period tailored to the circumstances particular to their own district taking account of the complexity of the issues raised. The consideration of late responses to a public consultation will be a matter for each council.

Development Plan Documents

6. The local development plan will consist of two development plan documents, the plan strategy and the local policies plan which taken together will form the local development plan. The 2011 Act requires that in preparing the plan strategy or local policies plan the council:
- must take account of the Regional Development Strategy (RDS) and any policy and advice contained in guidance issued by the Department; and
 - may have regard to such other information and considerations as appear to the council to be relevant.
- 6.1. The plan strategy will be prepared first and subject to public consultation and independent examination before adoption by the council. Only after the council has adopted its plan strategy can the preparation of the local policies plan be completed and subject to public consultation and independent examination before adoption by the council.

Form and content of a development plan document

- 6.2. It is proposed that:
- a development plan document's title must give the name of the council and indicate whether it is a plan strategy or a local policies plan and if the development plan document is adopted, then a sub-title which must indicate the date of the adoption of the development plan document;
 - it must contain a reasoned justification of the policies contained in the document; and
 - that the policies in the document and the associated reasoned justification must be readily distinguishable.

Proposals map

- 6.3. To assist users of the planning system the local development plan should contain maps, which give clarity to the plan proposals. The local development plan may also contain or be accompanied by any other maps, diagrams, illustrations or other descriptive matter that the council thinks appropriate and the Department's local development plan guidance will assist the council in this respect. Although highly unlikely, if a council fails to accurately transpose written policies and proposals from the development plan document into its

accompanying maps, it will be the written statement which prevails for the purposes of making a determination on any proposal for development.

- 6.4. The draft regulations propose that the development plan document must:
- contain proposals maps describing the policies and proposals set out in the development plan document so far as it is practicable to illustrate such policies or proposals spatially;
 - ensure the maps should be sufficiently detailed to enable the location of proposals for the development of land to be identified; and
 - in the case of any contradiction between the written statement and the maps the written statement will prevail.

Additional matters to be taken into account

- 6.5. The Department wishes to ensure that the council take account of the control of major accident hazards in compliance with EU council Directive 96/82/EC (the Seveso Directive). The draft regulations therefore propose that the council must have regard to this directive in preparing its development plan document.

Availability of development plan documents

- 6.6. As with availability requirements for the preferred options paper, discussed earlier in this document, similar requirements will be placed on the development plan document for public consultation.
- 6.7. The Department proposes that the council should:
- make available for inspection during normal working hours a copy of the development plan document and associated documents at its principal office and such other places as the council considers appropriate;
 - make a statement that representations can be made on the development plan document and the address to which the representations can be sent;
 - send this information to the statutory consultees which were engaged in the preparation of the development plan document; and
 - give notice in the Belfast Gazette and by local advertisement and on its website setting out:
 - that the development plan document has been prepared and the places and times at which it can be inspected,
 - a brief description of the content and purpose of the development plan document, and
 - details of how further information may be obtained.

Public consultation on a development plan document

- 6.8. The development plan document will be subject to public consultation and the regulations will therefore propose that:
- the consultation period must be a period of eight weeks;

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- any person who wishes to make a representation must do so within the eight week period;
- the representation must be sent to the address and person (if any), specified by the council; and
- the council must take account of representations received before it submits its development plan document for independent examination.

6.9. The proposed publicity requirements are a statutory minimum and a council is free to do more to publicise the availability of its development plan document if it so chooses. Such an approach should be set out in its statement of community involvement.

Handling and availability of representations

6.10. The council must make the representations received during the public consultations available for inspection by the public as soon as practically possible after the close of the consultation.

6.11. The Department proposes that councils should:

- make the representations available for inspection at the same places it made the development plan document available for inspection;
- publish the representations on its website;
- give notice by local advertisement and in the Belfast Gazette that the representations are available for inspection and the time and places they can be viewed; and
- notify its statutory consultees of the above.

Consultation response

Question 6	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 6: Do you agree with the form, content, publicity and consultation arrangements for the development plan documents?	43	72%	33	77%	10	23%

6.12. Overall most respondents (77%) were content with the proposals regarding the form, content, publicity and consultation arrangements for the development plan documents. A number of respondents queried the 8-week period for public consultation for the plan strategy and local policies plan, and whether this should be in line with that for the preferred options paper (between 8-12 weeks), or that it should be open to the council to prescribe such a period.

6.13. With regard to the plan strategy, it was suggested that the requirement to take account of higher regional policy / strategies was not strong enough, while

some sought clarity regarding the “strong link” between the development plan documents and any Community Plan. In this regard, it was also suggested that the Department should provide a comprehensive list of relevant policies / strategies to which councils should have regard to in the preparation of their development plan documents or alternatively that the Department and councils should jointly scope such other strategies. [Such issues were also echoed in response to the draft SPPS public consultation earlier this year, particularly around the approach to delivery of spatial planning].

- 6.14. A few respondents queried the sequential approach to preparation of the plan strategy and local policies plan as described in the consultation paper, and considered it not to be in line with the 2011 Act to achieve timely preparation of the plans. It was felt that the plan strategy and local policies plan could be prepared in parallel, while acknowledging that the independent examination of both would need to be consecutive.
- 6.15. Some considered it would be helpful if the Department regularly updated councils as to the scope and status of any associated guidance / advice, with others expressing views that regulations should align with those in other UK jurisdictions to achieve a greater consistency of approach. The statutory basis for advertising in the Belfast Gazette was also questioned.

Department’s consideration and response

- 6.16. In light of the clear majority in support of this proposal, the Department intends to proceed as indicated in the consultation paper. The 8-week period for public consultation of the development plan documents is considered reasonable and appropriate as it is in line with established Departmental practice and provides sufficient time within which interested parties can formulate representations to the plan proposals. This will be consistent across all council areas. The period for consulting on the preferred options paper (between 8-12 weeks) is reflective of the various strategy options which will likely be set out in the document and the time needed to consider such alternatives.
- 6.17. Sections 8 and 9 of the 2011 Act require councils, in the preparation of development plan documents to take account of the RDS, any policy or advice contained in guidance issued by the Department, and other matters prescribed or directed by the Department. Councils may also have regard to other information and considerations as appear to be relevant. Within this context it will be for a council to satisfy itself as to the matters which it must and should take account of, and have regard to in the plan-making process beyond that which is mentioned in the 2011 Act e.g the Sustainable Development Strategy. The council will be required to take account of its own **current** community plan (as required by section 77 of the Local Government Act (Northern Ireland) 2014).
- 6.18. The sequential approach to preparation of the plan strategy and local policies plan is clearly set out in the 2011 Act, in that the local policies plan can only be consulted upon following adoption of the plan strategy. This is not to say

however that the council, could not undertake background preparatory work on the local policies plan during the process leading up to the adoption of the plan strategy.

- 6.19. Regarding the provision to advertise in the Belfast Gazette. The Belfast Gazette along with the London Gazette and the Edinburgh Gazette is one of the official [journals of record](#) of the [British government](#). The Department considers that this established procedure of advertising development plans in the Belfast Gazette should be retained as the local development plan will bring forward important policy changes and many of these policy changes are linked to and may have effect upon or be affected by other existing government policies and legislation. With regard to the costs, current advertising in the Gazette costs in the region of £50 and is a relatively minor element of the overall cost of plan preparation.

Counter representations on site-specific policy representations

7. Site-specific policies are those that identify a site or sites for a particular use or development. As with the current development plan process, site-specific policy representations received during the public consultation period will be made available for inspection and the council must invite counter representations.
- 7.1. The draft regulations propose that:
- the consultation period must be eight weeks;
 - any person may make a counter representation on a site specific policy representation;
 - any person who wishes to make a counter representation must do so within eight weeks;
 - counter representations must not propose any changes to the development plan document;
 - the council must give notice by local advertisement and in the Belfast Gazette that the representations are available for inspection;
 - the council must state the address to which the counter representations can be sent;
 - the council must also publish the notice on its website; and
 - the council must take account of any representations before submitting the development plan document for independent examination.

Consultation response

Question 7	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 7: Do you agree with the arrangements for making representations and counter representations?	37	62%	30	81%	7	19%

- 7.2. Overall most respondents (81%) were content with the proposed arrangements for making representations and counter representations. Most respondents either agreed with, or saw merit in the retention of proposals regarding 'counter-representations'. Others however considered this to be complex, confusing, unnecessary and adding additional burden onto councils.
- 7.3. From an administrative perspective, the 8-week period for consultation is considered by some not to be sufficient, with some respondents requesting either 12 weeks or allowing further detailed submissions to be permitted at a later stage. Again, the issue of the need to advertise in the Belfast Gazette was also raised, as too was a request that all relevant documents be made available on-line and clarification of whether representations could be made electronically. The admissibility of late representations was also raised.
- 7.4. It was suggested that a flow-chart setting out the process for making representations and counter-representations may be helpful, along with clarity as to how and at what stage relevant assessments such as Appropriate Assessment (AA), Strategic Environmental Assessment (SEA), and Sustainability Appraisal (SA) should be factored into the plan-making process.
- 7.5. At a more fundamental level, one respondent suggested that counter-representations should be restricted to those who can demonstrate a 'reasonable interest' in a plan policy proposal.

Department's consideration and response

- 7.6. In light of the clear majority in support of this proposal, the Department intends to proceed as indicated in the consultation paper. The 8-week period for public consultation on the development plan documents is considered reasonable and appropriate, in line with established practise and provides sufficient time within which interested parties can formulate counter representations to the plan proposals. This will be consistent across all council areas.
- 7.7. The principle of inviting 'counter-representations' to plan proposals following an initial round of of public consultation is an established part of the plan-making process, allowing interested parties to test the veracity of stated positions regarding plan policies / proposals. The Department is satisfied that it is appropriate and does not prejudice anyone to restrict counter-representations solely to the issue(s) raised, and not to consider those which either give support to a site specific policy or, which propose alternatives / changes to the draft development plan document. The Department remains of the view that this approach strikes the right balance in allowing interested parties to make representations on site-specific issues without unduly restricting the efficiency of the plan-making process.
- 7.8. Equally, the Department does not believe it would be appropriate to seek to restrict counter-representations to persons who can demonstrate 'reasonable interest' to the matters raised at public consultation as it is considered that all

members of the community should be given the opportunity to be included fully in the local development plan process regardless of their interest in the proposal, policy or indeed the site. The ability to differentiate between what might be a reasonable or unreasonable interest could pose unnecessary difficulties in the system.

- 7.9. Regarding the admissibility of 'late representations', regulations 17(2) and 19(2) direct that the council 'need not' comply with the requirement to make available representations made after the specified period. This provision is discretionary and it will therefore be a matter for each council to decide on a consistent approach to be taken on this matter.
- 7.10. In relation to the other issues raised, the Department's consideration and response of advertising in the Belfast Gazette is set out above. Finally, the Department's local development plan guidance will assist councils in the plan-making process.

Independent examination

8. Section 10 of the 2011 Act requires the council to submit its development plan document for independent examination. The independent examination will determine if the development plan document has been (i) prepared in accordance with the 2011 Act and regulations/guidance; and (ii) if it is sound.

Submission of documents for independent examination

- 8.1. In addition to the development plan document to be examined the regulations propose that the council must also submit the following documents as part of the process for independent examination:
- the development plan document Sustainability Appraisal Report;
 - the council's statement of community involvement;
 - the council's timetable;
 - a statement setting out:
 - a summary of the main issues raised in the consultation on the preferred options paper and how these have been taken into account in the proposed development plan document; and
 - the number of representations and a summary of the main issues raised in the representations submitted on the proposed development plan document; or
 - that no representations were made on the development plan document;
 - copies of all representations made to the proposed development plan document;
 - such supporting documents that in the opinion of the council are relevant to the preparation of the development plan document; and
 - in the case of an independent examination of the local policies plan, the adopted plan strategy.

Publicity and availability of the submission documents

- 8.2. The draft regulations will require that as soon as practically possible after submitting the documents for independent examination the council must:
- make the documents submitted available for inspection during normal office hours at the same places it made the development plan document available for inspection;
 - notify the statutory consultees that the documents have been submitted to the Department for independent examination and of the availability of the documents;
 - notify any person who has made (and not withdrawn) a valid representation;
 - publish a notice by local advertisement and in the Belfast Gazette of the fact that the documents have been submitted to the Department for independent examination and of the availability of the documents; and
 - publish the above statement on its website.

Publicity of the independent examination

- 8.3. The draft regulations propose that the council, at least four weeks before the opening of the independent examination, must:
- notify the statutory consultees that the independent examination will be opening;
 - publish a notice by local advertisement and in the Belfast Gazette that the independent examination will be opening and the venue of the examination and the name of the person who will be conducting the examination;
 - publish the above notice on its website; and
 - notify any person who made a representation of the above matters.

Consultation response

Question 8	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 8: Do you agree with the publicity requirements and other arrangements for independent examination?	41	68%	31	76%	10	24%

- 8.4. Overall most respondents (76%) were content with the publicity requirements and other arrangements for independent examination. A number of respondents suggested that the 4-week period of notice under Regulation 22(1) should be extended to either 6 or 8 weeks, with some questioning whether responsibility for advertising and other arrangements should not rest with either the PAC, or the independent examiner appointed by the Department), or the Department, rather than the council.

- 8.5. On the availability of relevant documents, a number suggested that in the interests of minimising costs and delay, these should be readily available online, and also on the Department's website in addition to that of the council. The requirement to advertise in the Belfast Gazette was again questioned, as too was the need to re-submit the council's statement of community involvement and local development plan timetable as part of the body of documents to be submitted to the Department for independent examination.
- 8.6. A few respondents queried why the proposed arrangements for independent examination only referred to 'representations' and not also to 'counter-representations' and suggested that such reference should be included, with one respondent proposing that notice such be afforded to anyone who made a representation to the development plan document.
- 8.7. Several respondents were of the opinion that only the PAC should be appointed to undertake independent examination of new development plan documents, with others questioning whether it or other independent examiners had the capacity and available resources for independent examinations should most council plans come forward around the same time. There were also calls for a consistency of approach to independent examination undertaken by either the PAC or other independent examiners.

Department's consideration and response

- 8.8. In light of the majority of support for the independent examination proposals and given the clarification provided below, the Department intends to proceed as indicated in the consultation paper. Regulation 22(1) requires the council to give 'at least' four weeks notice prior to the opening of an independent examination to consultation bodies, and those who made representations to the plan. The council will have already given these bodies prior notice that the development plan document has been submitted for independent examination and therefore the 4 week minimum notice is considered adequate.
- 8.9. With regards to the appointment of independent examiners, the Department has previously made a commitment that the PAC will continue to be the first 'port of call' to conduct the independent examination of local development plans. The Department will only seek to appoint examiners other than the PAC, where, following discussion and taking account of the Commission's available resources and capacity to undertake the role, it is not in a position to conduct the examination within the framework of the agreed plan timetable. This is to ensure plans are progressed as expeditiously as possible and without undue delay.
- 8.10. The Department agrees that there needs to be conformity in the approach to independent examination. The purpose of the independent examination will be to test the soundness of the local development plan and the associated guidance will clearly set out the various tests of soundness that the PAC or independent examiner should carry out. However, it is imperative that the process of independent examination is transparent and that no party,

including the Department, fetters the discretion of the examiners in the exercise of their duties. Consequently, it will ultimately be a matter for the PAC or independent examiner to decide upon the overall approach to the independent examination, set within the twin objectives of determining if the plan is 'sound' and which also satisfies the requirements as to the preparation of the plan under the 2011 Act.

- 8.11. On the issue of representations to a development plan document, for the purposes of the independent examination the regulations **do not** make a distinction between representations or counter-representations. Regulations 21(d) and 22(3) in addressing this issue for independent examination, refer to representations made under regulations 16(2) (that made to a development plan document), and 18(2) (a counter-representation). Within this context the regulations are appropriate.
- 8.12. On the various administrative issues raised, the Department considers it is sufficient that the council make available on its website, the development plan documents and all relevant supporting documents and that it is not necessary for the Department to duplicate this effort. The use of electronic means of communication is increasingly seen as a valuable and cost effective means of informing interested parties. However, as discussed at paragraph 1.5, not everyone may have access to online communication, and in the interests of ensuring that all with an interest are kept informed, the Department remains firmly of the view that more traditional methods will continue to be utilised in parallel.
- 8.13. The Department does not consider the requirement for the council to include its statement of community involvement and plan timetable as part of the body of documents to be submitted to the Department for independent examination, as onerous. The 'soundness tests' for development plan documents will include assessment of whether the plan has been prepared in accordance with the statement of community involvement and timetable, and in this context it is imperative that the council includes its current documents.

The Independent Examination

9. To speed up and improve the independent examination process, the new local development plan system will move away from the objection-based examination process towards one which tests the soundness of the plan strategy and local policies plan. The Department considers that the introduction of a soundness based approach will permit a greater concentration on strategic issues and lead to a speedier delivery of local development plans, a more effective basis for testing plans and ultimately better and more robust plans. The Department **does not** intend to make regulations in respect of these tests but took the opportunity to seek public opinion on the principles of the independent examination and what the soundness tests should be.

Consultation response

Question 9	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 9: Do you agree with the proposed soundness tests which will be elaborated upon in guidance? Are there other tests that you feel should be applied to the examination of the development plan document?	44	73%	31	70%	13	30%

- 9.1. Overall most respondents (70%) were content with the proposed soundness tests for local development plans. Some respondents were of the view that legislation should include a requirement for local development plans to adhere to other regional and European energy strategies in the tests of soundness, while others considered that the requirement to take account of and have regard to other policies / strategies was ‘too weak’ in nature, and should offer a more robust test. In contrast, some were of the opinion that councils may be fettered by regional policy which they did not support.
- 9.2. One response commented that the proposed soundness tests, (to be elaborated upon in the Department’s guidance), appear to incorporate considerable flexibility and uncertainty and that this flexibility and uncertainty could lead to the plan strategy or local policies plan failing the soundness tests.
- 9.3. Within this context several respondents welcomed the proposal to bring forward further guidance regarding the tests for soundness, which some suggested should be accorded weight at independent examination.

Department’s consideration and response

- 9.4. Sections 8 and 9 of the 2011 Act set out that in preparing the plan strategy and local policies plan, a council is to take account of the RDS, policy or advice contained in guidance issued by the Department, other matters which the Department may prescribe, and have regard to other information and considerations as appear to the council to be relevant. Within this legislative context, it will be a matter for each council to decide which other information, including regional or European strategies it should consider in the plan-making process. The assessment of these matters will be determined at independent examination.
- 9.5. The tests of soundness will be elaborated upon in the Department’s local development plan guidance. This is not intended to be a tick-box exercise and the Department considers that a certain amount of flexibility is needed as plans will vary from council to council. The independent examination will test if the fundamental requirements of plan-making have been undertaken in accordance with legislative requirements, and test whether account and regard has been had to relevant considerations. The test for soundness will

ultimately be taken in the round, taking account of all relevant procedural, legislative and policy considerations.

- 9.6. In light of the majority in support of this proposal the Department intends to proceed as indicated in the consultation paper. The Department will set out more details on the soundness tests in the local development plan guidance.

Withdrawal of a development plan document

10. A council may withdraw its development plan document anytime before it is submitted to the Department for independent examination. Once the development plan document is submitted, it can only be withdrawn if
- either the PAC or the independent examiner appointed by the Department after carrying out the independent examination recommends that it is withdrawn (and the Department agrees with the recommendation); or
 - the Department directs that the development plan document must be withdrawn.
- 10.1. All interested parties are to be made aware of the withdrawal of a development plan document and the proposed regulations will require that as soon as reasonably practicable following withdrawal of its development plan document the council must do the following:
- publish a notice by local advertisement and in the Belfast Gazette that the development plan document has been withdrawn;
 - publish a statement of that fact on its website;
 - notify the statutory consultees;
 - notify any persons who made representations on the development plan document; and
 - remove any copies, documents, representations, matters and statements that were made available for inspection.

Consultation response

Question 10	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 10: Do you agree with the withdrawal arrangements for a development plan document?	35	58%	26	74%	9	26%

- 10.2. Overall most respondents (74%) were content with the proposed withdrawal arrangements for development plan documents. Some respondents did express concern about such a provision given the implications of delay in delivery of an adopted development plan document. Others expressed the view that such a measure should only be used as a last resort and consequently, that there should be regular liaison between the Department

and the council to avoid such action. It was also suggested that if a development plan document is to be withdrawn the community should be consulted.

- 10.3. A number of respondents suggested that councils should be given more discretion and that regulations should provide a mechanism to correct / amend a draft development plan document in order to salvage work already done, rather than facilitating a complete withdrawal of the documents and necessity to begin again. Further guidance in this regard was considered necessary.
- 10.4. Clarification was sought on a number of issues including responsibility for advertising requirements, notification to relevant parties and publication of reasons for withdrawal of a development plan document.

Department's consideration and response

- 10.5. In light of the clear majority in support of this proposal, the Department intends to proceed as indicated in the consultation paper. The council and the Department's power to withdraw a development plan document is set out in section 11 of the 2011 Act. The council may prior to submitting its development plan document to the Department for independent examination withdraw the development plan document, and the Department may direct the council to withdraw the development plan document after it has been submitted to the Department for independent examination. The Department would only use this power:
 - if after independent examination the development plan document is found not to be sound; or
 - in the unlikely event that the Department before causing an independent examination has serious concerns about the soundness .
- 10.6. If a development plan document is to be withdrawn then the council will be required to (i) give notice of the withdrawal setting out in the notice the reasons for the withdrawal; and (ii) notify all who made representations/counter-representations to the development plan document that it has been withdrawn.
- 10.7. Following the withdrawal of a development plan document the council will then prepare a new development plan document, incorporating the proposed changes that it considers will make the plan ready for independent examination. The nature and degree of liaison between a council and the Department in the lead up to independent examination should assist a council in preparing its development plan document against the legislative requirements and limit the likelihood that a plan would be found not to be sound at independent examination. The guidance produced by the Department will also provide support to councils in their plan preparation.

Adoption of a development plan document

11. After the conclusion of the independent examination, section 12 of the 2011 Act requires the examiner to submit recommendations to the Department which it will consider, and in doing so will undertake one of three options at this stage:
- direct the council to adopt the development plan document as originally prepared;
 - direct the council to adopt the development plan document with such modifications as may be specified in the direction; or
 - direct the council to withdraw the development plan document (see above).
- 11.1. If the development plan document is sound and can be adopted by the council then the regulations will require:
- the council to adopt the development plan document as soon as reasonably practicable after the receipt of the Department’s direction;
 - on the date on which the council adopts the development plan document, it must make available for inspection during normal office hours at its principal offices and the places at which the development plan document was made available for consultation:
 - the development plan document;
 - a statement prepared by the council specifying the date on which the development plan document was adopted;
 - the sustainability appraisal report (SAR);
 - the recommendations of the person appointed and the reasons for those recommendations; and
 - the Department’s direction.
 - the council to publish the documents and statements mentioned in paragraph (ii) above on its website;
 - the council to notify any person who has asked to be notified of the adoption of the development plan document; and
 - the council to give notice in the Belfast Gazette and by local advertisement of:
 - the statement prepared by the council specifying the date on which the development plan document was adopted;
 - the fact that the development plan document is available for inspection and the places and times at which it can be inspected; and
 - send to the Department a copy of the development plan document, the statement prepared by the council specifying the date on which the development plan document was adopted and the SAR.

Consultation response

Question 11	Total of 60 who responded to question	Total of responses that agreed with the proposal	Total of responses that disagreed with the proposal
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Question 11	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 11: Do you agree with the adoption arrangements for a development plan document?	34	57%	31	91%	3	9%

- 11.2. Overall the vast majority of respondents (91%) were content with the proposed adoption arrangement for development plan documents. Some respondents were, however, of the view that any modifications to the development plan document arising from recommendations contained in an examiner's report, should either be subject to consultation or for discussion between the Department and the council prior to a direction to adopt. In this regard, it was also proposed that the Department in its direction, should set out its position on all recommendations in an examiner's report, and the associated reasons in its direction to adopt the development plan document.
- 11.3. Several respondents expressed the view that the move to adoption of the development plan document should be timely and efficient, and that notification should include statutory consultation bodies and anyone who made a representation or counter-representation. Again, the requirement on the council to advertise in the Belfast Gazette was questioned.

Department's consideration and response

- 11.4. In light of the clear majority in support of this proposal the Department intends to proceed as indicated in the consultation paper.
- 11.5. Following receipt of the examiner's report the regulations require the Department to consider any recommendations and will either direct the council to: adopt the development plan document as originally prepared; adopt it with such modifications; or direct it to withdraw the development plan document. This direction is binding on the council and the 2011 Act further requires the Department to give reasons in its direction. The Department does not consider that any modification to the development plan document as a result of the independent examination should be subjected to a further public consultation as those modifications would only be made as a result of the rigorous independent examination by the planning appeals commission or appointed person and its consideration of representations during the examination.
- 11.6. Regulation 24(3)(f) sets out that notification as to an adopted development plan document is to be given to any person who has asked to be notified. This requirement places the onus of responsibility on any person to inform the council (at any stage in the plan-making process) that they wish to be notified of the adoption of the development plan document. At adoption, the council will be required to make all relevant documents available for inspection to the public, including on its website, and to give notice of such in the Belfast

Gazette and local press. In these circumstances and given the wide circulation in the local press and council website, it is not considered necessary to specify others person/bodies engaged at previous stages in the plan-making process.

Annual Monitoring Report

12. Section 21 of the 2011 Act requires councils to report annually to the Department on whether the objectives set out in the local development plan are being achieved. Annual monitoring of local development plans is seen as an essential element in establishing how the local development plan is being implemented and whether any revisions are required and it will play a critical role in the successful delivery of the objectives of the local development plan. The proposed regulations will require that:
- the AMR must cover the period from 01 April to 31 March;
 - the report must specify:
 - the housing land supply at the beginning and end of the AMR period;
 - the number of net additional housing units built in the council's area during the AMR;
 - the number of net additional housing units built in the council's area since the local policies plan was adopted;
 - the supply of land for economic development purposes; and
 - other issues which appear to the council to be relevant to the implementation of the local development plan;
 - the report must be submitted to the Department on or before a date set out in guidance or within a timeframe agreed with the Department; and
 - if a policy specified in a local development plan is not being implemented then the council must identify that policy and include a statement of:
 - the reasons why the policy is not being implemented;
 - the steps (if any) that the council intends to take to secure the implementation of that policy; and
 - whether the council intends to prepare a revision of the local development plan or development plan document to replace or amend the policy.

Review of the Local Development Plan

- 12.1. In addition to annual monitoring the council must carry out a detailed review of its local development plan, the review will go much further than the annual monitoring and should be carried on a regular basis. The review should include reconsideration of the sustainability appraisal, including the Strategic Environmental Assessment (SEA) and ultimately whether the council is satisfied as to the overall soundness of the plan. The SEA should provide information as to how environmental considerations have been addressed in the early stages of the local development plan.

- 12.2. The review will be used as the basis for making any revisions necessary to the plan strategy and/or local policies plan. This will enable councils to bring forward any revisions to the plan, as circumstances require, which will facilitate a more up to date local development plan.
- 12.3. The regulations also propose that the council must carry out a full review of their local development plan at least once every five years and it must send the Department a report on the findings of the review.

Availability of the Annual Monitoring Report and the review

- 12.4. All those with an interest in the monitoring and review of the local development plan are to be made aware of the content of the annual monitoring report (AMR) and the review. Therefore, the regulations propose that as soon as reasonably practicable after the council sends its AMR or report of the review to the Department, the council must:
- make it available for inspection during normal office hours at its principal office and such other places as the council considers appropriate,
 - publish it on its website; and
 - give notice by local advertisement that the AMR or review is available for inspection and where it can be viewed.
- 12.5. If the council needs to make a revision to the local development plan it must comply with the preparation requirements of the 2011 Act and regulations.

Consultation response

Question 12	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 12: Do you agree with the arrangements for the monitoring, review and revision (if required) of the local development plan?	42	70%	38	90%	4	10%

- 12.6. Overall the vast majority of the respondents (90%) were content with the arrangements for monitoring, review and revision of the local development plan and in light of the clear majority in support of this proposal the Department intends to proceed as indicated in the consultation paper. Although most respondents agreed with the proposed review period i.e. no later than 5 years from adoption of the local policies plan, one respondent was of the view this should be reduced to 3 years, while another considered this was too prescriptive. Another respondent suggested that the regulations should specify the date at which a review was to be completed. Some sought clarification on whether a decision to revise a plan was open only to the council, or whether the Department could direct the council to do so.

- 12.7. With regard to the AMR, respondents from the renewables industry expressed the view that it should include consideration of the council's contribution to regional renewable energy targets and others that the AMR should deal with more than just housing and economic development and should include matters such as social /affordable housing, amenity and listed buildings. One response suggested the AMR should also address the council's biodiversity duty and the 5 year review should include a reconsideration of the sustainability appraisal and the SEA. Some respondents were of the view that annual monitoring should align with overall performance management framework, and should also inform the Sustainability Appraisal Report (including SEA).
- 12.8. Some respondents raised issues around the resources needed to undertake the AMR and review processes, and to minimise costs, that advertisement in the council's website regarding such matters should be sufficient.

Department's consideration and response

- 12.9. The monitoring and review of plans are seen as essential elements in establishing how plans are being implemented and whether any revisions are required during the life of the local development plan. In this respect, the proposed 5 year period allows sufficient time for the local development plan to 'bed down' and for implementation of its policies /proposals over a meaningful period. The successive AMRs over the 5 year review period will also inform the review process. The Department does not consider a lesser period to be adequate.
- 12.10. Regarding completion of the review report, regulation 26(1) specifies that the council must 'carry out' the review no later than 5 years from adoption of the local policies plan. It is therefore implicit that the review must be completed within the 5 year period specified. In respect of any subsequent revision to a plan, section 14 of the 2011 Act directs that the council may revise its plan strategy or local policies plan at any time; or as directed by the Department.
- 12.11. In relation to the form and content of the AMR, councils will be required to monitor all the policies in their local development plans. A council's local development plan will include among others the council's conservation, countryside, housing and settlement policies.
- 12.12. If a policy in the local development plan is not being implemented then the council's AMR must include a statement of (a) the reasons why the policy is not being implemented, (b) the steps (if any) the council intend to take to secure the implementation of the policy, and (c) whether the council intend to prepare a revision of the local development plan to replace or amend the policy. The AMR will therefore be a comprehensive review of the plan as a whole taking account of the policies which are and are not being implemented, together with future steps to ensure the plan remains sound over time.
- 12.13. The duty to carry out the annual monitoring of the local development plan does not absolve the council of any other statutory duties. In relation to the

Sustainability Appraisal (incorporating SEA), regulation 16 of the Environmental Assessment of Certain Plans and Programmes 2004 requires the responsible authority to monitor the significant environmental effects of implementation of the plan to identify any unforeseen adverse effects and to be able to undertake remedial action. The plan AMRs will likely inform the SEA monitoring process.

- 12.14. As the plan AMR and review processes are statutory requirements, the council will need to ensure that adequate resources are available to fulfil these functions.

Intervention by the Department

13. The Department, similar to central government in England, Wales and Scotland may, in exceptional circumstances, under section 15 of the 2011 Act, intervene in a council's plan preparation process. For instance, in the highly unlikely event that the Department considers that a draft plan strategy or a draft local policies plan is unsatisfactory, it may wish to intervene and direct the council to modify the draft plan strategy or draft local policies plan. If it decides upon this course of action the Department must state its reasons for doing so.
- 13.1. It is proposed that where the Department intervenes and gives a direction then the council must:
- make the direction available for inspection during normal office hours at its principal office and such other places as the council considers appropriate;
 - publish the direction on its website;
 - at the time the council adopts its development plan document, it must make available the Department's statement that it has withdrawn its direction or issued a notice that the council has complied with the direction; and
 - publish the above on its website.
- 13.2. The regulations will also require the council to make the modification available for inspection during normal office hours at its principal office and such other places as the council considers appropriate and publish this on its website.

Department's default power

- 13.3. The Department, similar to central government in England, Wales and Scotland may, in exceptional circumstances, under section 16 of the 2011 Act, take over the preparation or revision of a council's development plan document if it thinks the council is failing to properly carry out these functions itself. The council must reimburse the Department for any expenditure it incurs in exercising these powers.

- 13.4. In the highly unlikely circumstances that the Department did take over the preparation of a council's local development plan then the Department must comply with the preparation requirements as if it was the council.

Consultation response

Question 13	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 13: Do you agree with the Department's intervention/default powers?	40	67%	38	95%	2	5%

- 13.5. Overall the vast majority of respondents (95%) were content with the proposed intervention and default powers available to the Department. While acknowledging that such powers were only likely to be used in exceptional circumstances, some respondents re-stated that these provisions should only be used as a last resort, and within this context it was important for there to be continuous dialogue between councils and the Department, so as not to undermine a council as planning authority.
- 13.6. In addition to the default powers open to the Department, some respondents were of the opinion that provisions should allow for the council to appeal or make representations in circumstances where the Department exercised such powers. Others sought clarification on the circumstances when the Department may decide to intervene.
- 13.7. From an administrative perspective, some respondents expressed the view that councils should be reimbursed the costs of advertising etc. arising from any Departmental intervention, while others felt that Regulation 28 should include a requirement to advertise the availability of the Department's direction on intervention in the Belfast Gazette and local press.
- 13.8. It was also suggested that if the Department takes over the preparation of a councils plan strategy/local policies plan then it must give publicity that it has done so.

Department's consideration and response

- 13.9. As has previously been stated, the intervention and default powers available to the Department will only be used in exceptional circumstances, for instance where it considers that a draft plan strategy or draft local policies plan is unsatisfactory, or where in the opinion of the Department the development plan document raises issues of regional significance or, crosses over an adjoining council boundary and no joint working arrangement has been made.

- 13.10. Section 15(3) of the 2011 Act compels the council to comply with a direction by the Department under section 15(1) and there is no additional provision in primary legislation open to the council to appeal or make representations in such instances. Given the 'exceptional' circumstances envisaged where such powers would likely be used, the Department remains of the view that any intervention / default mechanism must seek a timely resolution so as not to delay further progress in preparation of the development plan document. Any further appeal mechanism would likely cause unnecessary delay in the plan-making process.
- 13.11. In light of the strong support of the Department's intervention/default powers the Department, intends to proceed as indicated but has amended the regulations to place a statutory requirement, (as suggested in the consultation response), that the **Department** must give publicity by local advertisement that it has used its intervention/default powers and taken over the preparation of a council's plan strategy/local policies plan, or directed a council to amend its plan strategy/local policies plan.

Joint plans

14. Section 17 of the 2011 Act enables two or more councils to prepare one joint plan strategy covering all of the joint council districts or one joint plan strategy and one joint local policies plan covering all of the council districts. It also sets out the arrangements which are to apply in such a case. The procedures for the preparation of a joint local development plan are the same as those for a single local development plan. If any council withdraws from an agreement to prepare a joint plan strategy or a joint plan strategy and a joint local policies plan, it will still be possible for the remaining councils to continue with the preparation of a corresponding plan strategy or corresponding local policies plan and any work undertaken will still be valid. If, however, a council withdraws from joint working and an independent examination has been scheduled to take place, or has indeed begun, then the independent examination must be suspended.
- 14.1. If an independent examination has been suspended then the work undertaken up to that point is not lost. Therefore the remaining council(s) should be allowed a suitable period of time to review its plan strategy or local policies plan to determine if it still considers that the plan strategy or local policies plan is satisfactory and can proceed to independent examination.
- 14.2. The regulations propose that if a council withdraws from the preparation of a joint plan then the other council or councils must make a request that the suspended independent examination is recommenced within a period of three months from the date the other council withdrew from the agreement.
- 14.3. The regulations also propose the definitions of the joint plan strategy or joint local policies plan, retained after the withdrawal that will be tested at the independent examination. The retained plan strategy or local policies plan:

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- will not include any part of the district of the council that has withdrawn from the agreement; and
- must have substantially the same effect on development in the remaining council areas as the original joint plan strategy or joint local policies plan would have had before the council withdrawal.

Consultation response

Question 14	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 14: Do you agree with the provisions relating to joint plans?	38	63%	38	100%	0	0%

- 14.4. Overall all the respondents (100%) were content with the proposed provisions for joint plans, which were considered by some to be very important within the context of riverine, coastal and mountainous regions and for joint vision setting and direction.
- 14.5. Several respondents suggested that further guidance would be helpful particularly around possible governance arrangements between councils. Such guidance may touch on: joint committees; the approach to be taken in the event that councils cannot agree on a joint plan or where there has been a breakdown in working relationships; and the possible financial liabilities where a council decides to withdraw from a joint working arrangement.
- 14.6. Such issues were also echoed in response to the draft SPPS public consultation earlier this year, particularly around the approach to the delivery of spatial planning and the importance for joint working across council boundaries.

Department's consideration and response

- 14.7. All who responded to this question saw the merits in joint-working, particularly where there are issues of common interest such as geographical or land-use challenges or strategic development which spans council boundaries. In light of the overwhelming support of this proposal, the Department intends to proceed as indicated in the consultation paper. This will be further supported by ongoing liaison and discussions between the Department and councils. Section 17 of the 2011 Act facilitates arrangements where two or more councils **agree** to prepare a joint plan strategy or local policies plan. It also sets out the arrangements which are to apply in such instances. In these cases it will be a matter for the councils concerned to reach their own conclusions as to the merits and benefits of joint working which do not require the endorsement of the Department.

- 14.8. It is open to a council to withdraw from an agreed arrangement to joint working under section 17 of the 2011 Act. The remaining council(s) can continue with the preparation of the plan strategy / local policies plan subject to conditions required as to a 'corresponding document' under section 17(5)-(7) of the 2011 Act. Neither the 2011 Act or the regulations propose any financial penalties / liabilities where a council(s) withdraws from joint-working.
- 14.9. A council(s) cannot, however, withdraw from joint working arrangements which have been directed by the Department under section 18 of the 2011 Act (see below). The Department's local development plan guidance will include a section on joint working.

Power of the Department to direct councils to prepare joint plans

15. Section 18 of the 2011 Act enables the Department to direct two or more councils to prepare either (i) a joint plan strategy; or (ii) a joint plan strategy and joint local policies plan. Any such direction given by the Department may relate to the whole or part of the councils' districts.
- 15.1. The public and interested parties should be made aware of the Department's direction for councils to work jointly and the direction should be made available for inspection. The regulations will therefore require that if the Department issues a direction then the council must make that direction available at its principal offices and such other places it considers appropriate and also publish the direction on its website.

Consultation response

Question 15	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 15: Do you agree with the provisions relating to the Department's power in relation to joint local development plans?	37	62%	36	97%	1	3%

- 15.2. Overall the vast majority of respondents (97%) were satisfied with the provisions relating to the Department's powers for joint working on local development plans which are viewed as essential and beneficial. A number of respondents did however express the view that the Department should only seek to use such provisions as a last resort. In addition, some indicated that further guidance might be helpful particularly to outline the possible scenarios where the Department might direct councils to joint working and the benefits to be gained from it, including possible governance arrangements between councils in such instances. The importance of joint working to assist in the delivery of spatial planning also emerged through the public consultation on the draft SPPS.

- 15.3. Several respondents were of the opinion that the Department should clearly set out the rationale to joint-working in any direction under Regulation 31, which should be more than on the grounds of efficiency and cost savings, but where considered appropriate for planning reasons. Some also felt that the direction should be published in the Belfast Gazette and the local press.
- 15.4. A number of respondents expressed the view that regulations should permit councils to make representations or submissions where they are directed to joint working by the Department, and that any direction should not cause undue delay in the plan-making process. Furthermore, some felt that any direction for joint working from the Department should occur early in the process to inform the preparation of the timetable under Part 2 of the regulations (section 7 – 2011 Act), so as not to fail any subsequent soundness tests at independent examination.
- 15.5. Several respondents queried whether a direction to joint working in respect of part of a council's district would result in more than one plan strategy / local policies plan to cover the whole of the district.
- 15.6. It was also suggested that where the Department issues a direction for two or more councils to prepare a joint plan strategy or a joint plan strategy and local policies plan then the Department should be responsible for publicising that it has done so.

Department's consideration and response

- 15.7. Section 18(1) of the 2011 Act empowers the Department to direct two or more councils to prepare a joint plan strategy or local policies plan for all or part of their respective districts. It is envisaged that this provision would only be used where the Department considers there is merit in doing so and where an agreement to joint working under section 17 of the 2011 Act is not already in place on the particular issue(s). Equally, any direction, which could occur at any time, should not cause undue delay in plan-preparation, as this would follow the same processes and procedures as individual plans.
- 15.8. The power to prepare a plan strategy or local policies plan for part of a council district only applies to a direction to prepare a joint plan strategy or local policies plan under section 18 of the 2011 Act, therefore the situation could arise that if the Department directs two or more councils to prepare a joint plan strategy or a joint plan strategy and local policies plan for parts of the district then those councils, under sections 8 and 9 of the 2011 Act, will still be required to prepare a separate plan strategy or local policies plan for the rest of their districts. This would then result in two plan strategies or two plan strategies and two local policies plans for that council district.
- 15.9. If the Department issues a direction under section 18(1) it will clearly set out its reasons for that direction, which would also be made publicly available on the council's website.

- 15.10. The possible scenarios where joint working might be beneficial have been touched upon in response to Question 14 and may include such matters as geographical or land-use challenges or strategic development which spans council boundaries. It will usually be clear to relevant councils where issues of common interest or concern lie, and consequently where joint working may be appropriate to establish an overall and common policy approach / position.
- 15.11. Whilst a council must comply with a direction given to it under section 18, it is highly unlikely that the Department would issue such a direction without having communicated with the relevant councils. Such a direction would only be issued where the Department considered that an issue of significant importance was raised that could only be addressed through a joint plan strategy/local policies plan.
- 15.12. In response to the suggestion that where the Department issues a direction to two or more councils to prepare a joint plan strategy or a joint plan strategy then the Department should be responsible for publicising that it has done so, the Department has decided to accept that suggestion and has amended the regulations to require:
- the Department to publish the direction by local advertisement;
 - the Department to also publish the direction on its website; and
 - the councils to also publish the Department's direction on their websites.

Transitional arrangements

16. After the transfer of responsibility for the majority of planning functions to councils, section 6(4) of the 2011 Act will require that in making any determination under the Act, where regard is to be had to the local development plan, the determination must be made in accordance with the local development plan unless material considerations indicate otherwise. Section 45 of the 2011 Act requires that in determining a planning application regard must be had to the local development plan so far as it is material to the application. This is known as a plan-led system.
- 16.1. An adopted council local development plan will not be formally in place until such time as the council has prepared and adopted both the plan strategy and local policies plan in accordance with the 2011 Act and the proposed regulations. It is therefore necessary to put in place transitional arrangements to ensure that there is an appropriate planning policy framework against which to assess the suitability of development proposals in the period until the council have adopted their plan strategy and local policies plan. As such policies contained in a development plan adopted by the Department under Part 3 of the Planning (Northern Ireland) Order 1991 are to be retained until such time as they are replaced by a new policy contained in an adopted plan strategy and an adopted local policies plan.

- 16.2. It is proposed regulations will provide that during the transitional period any reference to a local development plan in the 2011 Act will be construed as a reference to:
- the Department’s development plan for the district made under Part 3 of the 1991 Order; or
 - where a plan strategy has been adopted or approved, that plan strategy together with any policies forming part of the development plan for that area made under Part 3 of the 1991 Order which have not been expressly replaced by a policy in the plan strategy.

Consultation response

Question 16	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 16: Do you agree with the transitional arrangements for a local development plan. If not, can you identify amendments which would offer better arrangements?	39	65%	24	62%	15	38%

- 16.3. Overall most respondents (62%) were satisfied with the proposed transitional arrangements for local development plans, which were described by some as sensible, clear and appropriate. In contrast, a number of respondents expressed the view that the transitional provisions would lead to confusion especially where a council’s plan strategy is adopted and is in tension with or ‘runs counter’ to the policies or designations in a ‘co-existing’ departmental development plan (some of which are past their notional end dates).
- 16.4. Within this context, some felt that sections 6(4) and 45 of the 2011 Act should not be enacted until a council’s local development plan is adopted and in place, or that further guidance would be needed to clarify certain matters such as the weight to be attached to relevant policies in new and existing plans in the decision-making process. In addition, others expressed the view that new councils would benefit from capacity training on existing development plans.
- 16.5. Several respondents felt that councils should seek to have their local development plans in place within 12-18 months following the transfer of planning powers to introduce greater certainty into the planning system.
- 16.6. One respondent queried whether guidance would be forthcoming to advise on any proposed amendment to an existing development plan during the transitional period up to adoption of a council’s development plan documents.

Department’s consideration and response

- 16.7. In light of the clear majority in support of this proposal, the Department intends to proceed as indicated in the consultation paper. By way of clarification, the transitional provisions within the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 propose that a departmental

development plan adopted under the Planning (Northern Ireland) Order 1991 will be retained until such time as it is replaced by a new policy contained within an adopted plan strategy and adopted local policies plan. Existing development plans, irrespective of whether they are past their notional end dates, remain valid and material planning considerations, alongside other extant policy documents in the decision making process, until such time as they are superseded by new council local development plans.

- 16.8. In line with established planning practice, emerging planning policy and plans can be accorded 'weight' as they progress from draft form towards final adoption. Within this context a council's plan strategy when adopted, will be a material consideration. Where there is a 'tension' between an adopted plan strategy and an extant departmental plan the regulations provide that any conflict between a policy contained in an existing development plan and those of the plan strategy must be resolved in favour of the plan strategy.
- 16.9. It will not be possible to amend an existing Departmental development plan during the transitional period. The power to make/alter a plan under the Planning (Northern Ireland) Order 1991 will be repealed. In any event the Department would consider that amending an existing plan and going through the necessary engagement with consultees and the public consultation exercises only to have the amended plan replaced by a council plan would be a nugatory exercise given that the councils will be working on their own plans at the same time.

Council’s Statement of Community Involvement

17. Engaging communities is an essential part of an effective and inclusive planning system. Section 4 of the 2011 Act requires a council to prepare a statement of community involvement setting out its policy for actively involving the community from the outset in the making of local development plans and in the carrying out of its development management functions. Section 4(3) of the 2011 Act places a requirement on the council and the Department to attempt to agree the terms of the statement of community involvement, however, under section 4(4) of the 2011 Act if agreement cannot be reached the Department may direct the terms of the statement.

17.1. The proposed Planning (Statement of Community Involvement) Regulations (Northern Ireland) 2015 will apply only to statements of community involvement to be prepared by councils and will attempt to ensure a common general approach across councils. The council statement of community involvement will set out its policy and procedures for involving the local community in the council’s local development plan functions and its planning control functions. For the purposes of the statement of community involvement the term community should be taken in the widest sense to include: the general public; the business community; public bodies; voluntary groups; environmental and amenity groups; government departments; groups identified under section 75 of the Northern Ireland Act 1998; and all those with an interest in development in an area.

Content of the statement of community involvement

17.2. The regulations are intended to provide a light regulatory touch and will cover both local development plan and planning control functions. They will therefore provide that the statement of community involvement should include the following matters:

- how the council will involve the public in the preparation of its local development plan and how it will handle representations to the local development plan;
- how the council will handle representations on planning applications;
- how the community can become involved in the new pre-application community consultation process; and
- the principles of the process for involving the public in its planning control functions including the method by which the community may comment on and input to the determination of planning applications.

Consultation response

Question 17	Total of 60 who responded to question	Total of responses that agreed with the proposal	Total of responses that disagreed with the proposal
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Question 17	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 17: Do you agree with the proposed content of the statement of community involvement?	41	68%	38	93%	3	7%

- 17.3. Overall the vast majority of respondents (93%) were satisfied with the proposed content of the statement of community involvement, which is described by many as proportionate, appropriate and a key part of the delivery of councils' strategic planning and development management functions.
- 17.4. Some respondents acknowledged that the regulations in offering a 'light regulatory touch' were needed to ensure a consistent approach was adopted across the 11 new councils. Others, however, suggested that they could go further by prescribing the manner in which the community could make representations and how these should be considered. One respondent felt that the statement of community involvement regulations represented an additional administrative burden which guidance alone could have addressed. Another respondent suggested that the statement of community involvement should be combined with the preparation of the council's Community Plan (Part 1- Local Government Act 2014) to maximise community participation and avoid consultation overload.
- 17.5. Some respondents considered that the content of the statement of community involvement should be viewed as minimum requirements and that it should be supplemented with more 'on-line' participation. Another proposed that the regulations should set out how the results of participation through the statement of community involvement will influence the local development plan process. A number of respondents suggested that the Department should also prepare a statement of community involvement for its retained planning functions and will make it available for councils and the wider community on the transfer of planning powers.
- 17.6. The importance of meaningful community engagement in the new planning system was also echoed in the responses to the draft SPPS consultation.

Department's consideration and response

- 17.7. In light of the strong support for this proposal, the Department intends to proceed as indicated in the consultation paper. The purpose of the statement of community involvement regulations in offering a light regulatory touch, is to set out the general approach to the form, content, and publicity arrangements for the statement of community involvement, and to achieve effective and inclusive participation in the planning system. This should not present a significant administrative burden as it will simply set out a council's policies for actively involving the community in the exercise of its development plan and

development management functions. Another objective is to ensure there is a general consistent approach across the 11 new councils to community participation.

- 17.8. The statement of community involvement will include the methods, approaches and timing by which participation will occur. It may set out how the council envisages such approaches will influence the local development plan and development management processes, however, its effectiveness will depend on stakeholder buy-in and delivery of the functions. The Department will be issuing guidance in relation to the council's statement of community involvement and in accordance with section 2 of the 2011 Act it will publish its own statement of community involvement for retained planning functions within one year of the commencement of the 2011 Act.
- 17.9. The preparation of a council's statement of community involvement focuses primarily on spatial planning and land use issues and while for legislative purposes this is distinctly separate from the council's community plan, there may be opportunities for work and engagement on the community planning process to inform the statement of community involvement and vice versa.
- 17.10. The statement of community involvement regulations set out the minimum requirements. Consequently, councils are free to enhance their participatory process beyond these requirements, bearing in mind that part of the tests for soundness of a development plan document will be whether it has been prepared in accordance with the statement of community involvement.

Public consultation in the preparation of the statement of community involvement

18. The Department considers it is appropriate to allow a council to decide if it wishes to consult with the public on the preparation of a statement of community involvement. If the council decides to consult the public then it would also be required to take into account any representations received in the preparation of the statement of community involvement.
- 18.1. It is therefore proposed the regulations will provide that the council may, if it considers it appropriate:
 - consult anyone who the council considers to have an interest in development in the council's area and invite representations on the content of the statement of community involvement;
 - in inviting such representations make such arrangements as it considers appropriate; and
 - consider the representations in preparing its statement of community involvement.

Agreement of the statement of community involvement

- 18.2. Section 4(3) of the 2011 Act requires that the Department and the council should attempt to agree the statement of community involvement. The Department's role will be to ensure it is robust, realistic and covers the main local development plan and planning control functions of the council. To facilitate this, the council must submit its statement of community involvement to the Department for agreement. There may be instances where a revision to a statement of community involvement is required, for example, the statement of community involvement does not cover all the statutory public consultation requirements that the council must comply with. In this case, a revision to the statement of community involvement must be prepared and should follow the same procedure for preparation and agreement as that of a full statement of community involvement.
- 18.3. The 2011 Act states that where agreement cannot be reached, then the Department can direct the council to prepare the statement of community involvement in accordance with its direction. The regulations therefore propose that:
- the statement of community involvement must be adopted by resolution of the council prior to submission to the Department for its agreement;
 - the Department must respond within 4 weeks of receipt of the statement of community involvement unless it has, before the expiry of the 4 weeks, notified the council in writing that it requires more time to consider the statement of community involvement;
 - if the Department fails to respond within the 4 weeks the statement of community involvement will be deemed to be agreed;
 - until such time as the Department approves the statement of community involvement the council must not take any steps to advertise the statement of community involvement; and
 - the council must keep its statement of community involvement under regular review and any revision must comply with the regulations.

Publicity and availability of the statement of community involvement

- 18.4. All those with an interest in planning should be made aware of the statement of community involvement. The regulations therefore propose that the council must:
- make the agreed statement of community involvement available for public inspection at its principal offices and on its website; and
 - advertise that fact on at least one occasion in a local newspaper circulating in the district of the council and on its website.

Consultation response

Question 18	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 18: Do you agree with the publicity, consultation and agreement requirements for the statement of community involvement?	43	72%	26	60%	17	40%

- 18.5. The majority of respondents (60%) agreed with the overall approach to the publicity and agreement processes for the statement of community involvement which a number of respondents considered would help achieve a consistent approach across all the councils, and enhance established practices for community participation. Regarding the availability of the statement of community involvement, a small number of respondents suggested that notice should also be placed in the Belfast Gazette to allow wider notice of its availability. Similarly, it was felt that resolution of the statement of community involvement should not be restricted to the council, but that it should be open to it to delegate the function to a committee of the council instead.
- 18.6. Regarding the consultation arrangements, while some respondents welcomed the discretionary power available to the council to consult publicly on the statement of community involvement, of the 43 who responded, 18 expressed the view that public consultation of the statement of community involvement must be mandatory if it was to reflect the actual rather than the presumed needs of the community.
- 18.7. The commitment to further Departmental guidance was generally welcomed, which some considered should offer a definition of ‘community’, and indicate a timeframe and key stages for local development plan preparation.
- 18.8. Differing views were expressed on the timing for publication of the statement of community involvement with some indicating that it should be in place at the point of transfer of planning powers, or at least within the first year given its relevance and importance to local development plan preparation. Within the context of the local development plan, some felt that the statement of community involvement should also be subject to periodic review so as to remain relevant over time.
- 18.9. On the issue of agreement of the statement of community involvement, some felt that the period for consideration of the document by the Department under regulation 5(b) should be reduced to 2 weeks, and that, in the event that the Department requires more time to consider the statement of community involvement, that the regulations should oblige the Department to specify a period within which it must respond.

Department's consideration and response

- 18.10. In light of the majority in support of this proposal, the Department intends to proceed as indicated in the consultation paper. A purpose of the statement of community involvement regulations as proposed, in giving expression to section 4 of the 2011 Act, is to ensure that a consistent approach is employed across all the 11 new councils regarding preparation, form, content, consultation and publicity arrangements. This will be helpful to all stakeholders in the planning system irrespective of whether they live or work within a specific district council area as it ensures a commonality in statement of community involvements across the region.
- 18.11. As the statement of community involvement will set out the council's policies for engaging communities in the exercise of its planning functions, which will likely restate and / or enhance existing and established practices for public participation, the Department remains of the view that it is appropriate to allow a council to decide if it wishes to consult the public on this matter. If it decides to do so it must take into consideration any representation made before seeking the Department's agreement.
- 18.12. The Department is also content with the proposed publication arrangements for the statement of community involvement which will ensure it comes to the attention of all stakeholders with an interest in planning in the relevant district. Within this context, advertising publication of a council's statement of community involvement in the Belfast Gazette is not considered necessary.
- 18.13. With regard to agreement of the statement of community involvement, the regulations as proposed do not prohibit a council from delegating such a function to a committee of the council, if it so decided. In addition, the 4 week period set out in regulation 5(b) is considered sufficient for the Department to decide on the statement of community involvement, and within the overall timeframe for preparation is not adding significantly to the process. A two-week period as suggested may simply not prove to be a long enough period to fully consider the matter. Any period sought by the Department beyond the 4 weeks specified in regulation 5(b) will be agreed with the council.
- 18.14. The timing for publication and availability of the statement of community involvement will ultimately be a matter for each council, taking into account the commencement of work on the local development plan and the obligation for the local development plan to be prepared in accordance with the council's statement of community involvement. It may not be practicable for a new council to have its statement of community involvement in place at the time of transfer however, preparatory work could be well advanced to facilitate formal agreement on transfer.
- 18.15. The Department intends to publish guidance on the preparation of the council statement of community involvement. For the purposes of these draft regulations, the consultation paper offered a generic definition of 'community' as including: the general public; the business community; public bodies;

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voluntary groups; environmental and amenity groups; government departments; section 75 groups; and all those with an interest in development in an area. The Department is satisfied that this broad definition encapsulates the relevant stakeholders in any given district.

Development Management – A New Hierarchy of Development

19. The 2011 Act requires the Department to categorise developments as “major” or “local” development. Through the Planning (Development Management) Regulations (Northern Ireland) 2015, the Department has proposed a hierarchy of development based on a 3-tier classification consisting of regionally significant development, major development and local development. The hierarchy is intended to ensure that application procedures are proportionate and responsive to the three different types of development category, with appropriate resources and decision making mechanisms. Regionally significant development (RSD) applications will be submitted to, and be determined by the Department, with all remaining applications being submitted to the relevant council to be determined.

Consultation paper proposal

Major Developments

- 19.1. Major developments are those developments which have the potential to be of significance and interest to communities and will be subject to processes such as pre-application community consultation, possible pre-determination hearing and determination by a committee of the council. They will have important economic, social and environmental implications for a council area. With potential to deliver important benefits for the local community, these applications will be given priority to avoid undue delay and risk investment decisions.
- 19.2. The Schedule to the Planning (Development Management) Regulations (Northern Ireland) 2015 sets out nine 'classes' of major developments, each with a description and relevant threshold or criteria.

Developments of Regional Significance

- 19.3. Under section 26 of the 2011 Act major developments will also include a top tier of developments to be known as regionally significant developments. The Act sets in place arrangements for consultation with the Department on classes of major development which have the potential to be of regional significance i.e. to the whole or a substantial part of Northern Ireland.
- 19.4. A development is not automatically classed as regionally significant, however if a development is above specified thresholds then the Department will consider if it should be considered regionally significant development. If so, the application for that development should be submitted to and determined by the Department. If not, it should be submitted to and determined by the relevant council. Like major applications, RSD proposals will be subject to pre-application consultation with the community.

19.5. The Schedule to the Planning (Development Management) Regulations (Northern Ireland) 2015 sets out five 'classes' of RSD, each with a description and relevant threshold or criteria. These developments have the potential to make a critical contribution to the economic, social and environmental success of Northern Ireland as a whole, or a substantial part of the region. They also include developments which could potentially have significant effects beyond Northern Ireland.

Local Development

19.6. Local developments are the remaining smaller scale developments. Applications for local developments will be determined by a council, often by an appointed officer under delegation arrangements. They will comprise the majority of developments that do not fall within the classes described for major or for RSD including the majority of residential and minor commercial applications likely to be received.

Consultation response

Questions 19 to 21	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 19: Do you agree with the proposed classes and thresholds for major developments indicated in the Schedule at Annex C?	53	88%	24	45%	29	55%
Question 20: Do you agree with the definition for determining local developments?	35	58%	25	71%	10	29%
Question 21: Do you agree with the proposed classes and thresholds for regionally significant developments indicated in the Schedule at Annex C?	47	78%	18	38%	29	62%

19.7. As the issues raised in questions 19-21 are interrelated the Department has grouped these 3 questions together and will analyse the responses to the proposed classes of thresholds for RSD, major and local development below.

Regionally significant development

19.8. Views were mixed on question 21 with 62% of those who responded disagreeing with one or more of the RSD thresholds. The majority of respondents who stated they were not in agreement mostly raised concerns about a particular threshold rather than the full proposals. A number of respondents recommended that there should be a few extra classes added for RSD such as:

- housing, retailing, business/industry storage & distribution and “all other development”;

- onshore works associated with offshore electricity generating development; and
 - development/ intensification of airports.
 -
- 19.9. A number of respondents suggested amendments to the proposed RSD thresholds. These centred on electricity generating stations (including wind farms) and major electricity substation infrastructure. Proposals suggested:
- including wind farms generating greater than 5 megawatts;
 - threshold for electricity generating stations be reduced to 10 megawatts;
 - including major electricity substation infrastructure; and
 - making specific reference to regional energy objectives.
- 19.10. A number of general issues were also raised by respondents and these included:
- concern around the cumulative impact and incremental approach of developments; and
 - suggestions that the legislation should establish a set of criteria and cite examples of developments deemed to constitute RSD.

Major Developments

- 19.11. Of the 53 respondents who commented on Question 19 (major development) 45% were in agreement with the proposed thresholds while 55% were against. The majority of respondents who stated they were not in agreement again mostly raised concerns about a particular threshold rather than the full proposals.
- 19.12. Comments were mixed, with respondents from different sectors suggesting different additional major classes. These included:
- specified areas;
 - EIA developments under Schedule 2 to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 where an environmental statement is required; and
 - listed buildings and/or developments in conservation areas.

However, there was no consensus on any one extra class and only one or two respondents commented on each of these issues.

- 19.13. Views also varied as to whether the various thresholds for major development should be higher or lower. Comments were received on a number of the classes of development often suggesting that the thresholds should be varied. Issues raised included:
- energy generating stations with an output of 5 megawatts or more should be RSD and not major applications;
 - no restriction on length or size of connection (power lines) to a substation, transmission grid or individual windfarm;
 - housing threshold is perhaps too restrictive (change to 100);

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- housing threshold should be lowered to 10 or more dwellings and a site of 0.5 hectares or more;
- Class 6 (Retailing) – major applications in relation to retail should be increased to 2,500 sq. metres;
- Class 7 - Business, Industry (Light and General), be doubled to 10,000 sq. metres or exceeds 2 hectares;
- Class 9 (all other developments) – increase to 2 hectares;
- hazardous waste threshold doubled to 50,000 tonnes per acre;
- thresholds for housing and retail development should vary depending on location and existing development;
- thresholds for housing, business/industry, minerals and “all other development” considered too high; and
- “all other development” class needs to be clarified.

19.14. A number of general issues were also raised by respondents and these included:

- cumulative impacts and extended developments;
- need to ensure suitably qualified and experienced planning officers transfer to councils;
- mechanism to review the hierarchy, in partnership with councils, once the system has had an opportunity to ‘bed in’ e.g. after 12 months;
- ability for councils to re-categorise certain development proposals in exceptional circumstances or where ‘local’ proposals have a greater impact due to site-specific issues or local context;
- thresholds should be reviewed in respect of rural locations; and
- applications relating to listed buildings or development within conservation areas should require some element of pre-application consultation.

19.15. Overall the key issues raised by respondents were similar to those raised under Question 21 on RSD with the main concerns centering around: the threshold for energy generating development; the handling of extended developments/cumulative impact; and variations for local/rural developments. Concerns were expressed about how cumulative issues would be taken into account particularly if developers submitted a series of applications just below the threshold for major development. A number of respondents also recommended lower thresholds for specific local or rural developments as they viewed they would have a greater impact depending on their location.

Local Development

19.16. The majority of those that responded (71%) to question 20 on local developments agreed with the definition of local developments. As with major development, the main area of concern was the cumulative effects of local development which it was suggested could result in an avoidance of pre-application community consultation. The issues raised included:

- no mechanism in place to monitor the cumulative effects of local developments, which in combination could have a ‘major’ impact;

- no definition of local development has been offered, beyond what a local development is not;
- anything that requires an Environmental Impact Statement should be included within the 'major development' definition; and
- councils/Department should have discretionary powers to direct pre application community consultation for some local developments which they consider are close to the threshold criteria, or where development has been phased.

Department's consideration and response

- 19.17. The establishment of a hierarchy of development based on a 3-tier classification of developments (consisting of regionally significant, major and local) is intended to provide a framework for identifying and classifying developments so that they can be dealt with in the most appropriate way. This will allow resources to be prioritised on the management of those applications with greater economic, social and environmental significance through more proportionate decision-making mechanisms tailored according to the scale of the proposed development. The hierarchy approach, in itself, was accepted by respondents, however, there were varying views on where the thresholds for each classification should be defined. In setting the thresholds the Department has considered practices in other jurisdictions and also reached a judgement on the scale of applications which are major or regionally significant for Northern Ireland.
- 19.18. The Department has considered carefully the representations from the renewable energy sector on the RSD and major thresholds for electricity generation. The Department is content that the proposed RSD thresholds for electricity generating stations are clearly defined and meaningful.
- 19.19. In terms of setting the thresholds the Department analysed the capacity volumes of existing applications for energy generating stations both received and determined. While in other jurisdictions the thresholds for their equivalent RSD range from 50-100 megawatts, a threshold of 30 megawatts was judged appropriate for the Northern Ireland context. Applications at and above this would be considered regionally significant in Northern Ireland terms and likely to have an impact beyond a single district council area on a sub-regional or regional basis.
- 19.20. To reduce the threshold for RSD to 10 or even 5 megawatts, as was suggested by some respondents, would mean many smaller scale schemes would be included for which it would be difficult to argue would be of regional significance. In application number terms a reduction to 10 megawatts would mean approximately 75% of wind farm applications being dealt with by the Department. A further reduction to 5 megawatts would mean nearly all applications potentially being dealt with by the Department. While many respondents from the renewable energy sector argued the Department was best placed to determine these types of application, the Department would maintain that to do so in the potential numbers suggested would be against

the spirit of local government reform and the devolution of the majority of planning functions to the local level. It is important to note that while the Department is confident councils will process such applications appropriately and expeditiously, under section 29 of the 2011 Act the Department can direct that certain applications be referred to it instead of being dealt with by a council. This would allow applications which would not be over the proposed regionally significant thresholds to be called in and determined by the Department, if appropriate. The Department believes this provides appropriate checks and balances in the system.

19.21. The Department has considered carefully the suggestion put forward in relation to onshore works associated with offshore electricity generating development. Having considered the views of the industry, the Department accepts that all elements of onshore works associated with offshore development that would, but for the fact it is offshore, be deemed regionally significant development (i.e. its capacity is or exceeds 30 megawatts), should be regarded as potentially regionally significant development. The Department intends to amend the draft Planning (Development Management) Regulations (Northern Ireland) 2015 to add an additional threshold for both major and RSD developments to take account of onshore development associated with the construction of an off-shore generating station.

Description of Development	Major Developments – Threshold or Criteria	Major Developments prescribed for the purpose of section 26(1) of the Planning Act (Northern Ireland) 2011
2. Energy Infrastructure: Electricity Generating Stations	All onshore development associated with the construction of an off-shore electricity generating station.	All onshore development associated with the construction of an off-shore electricity generating station where its capacity is or exceeds 30 megawatts.

19.22. The Department has also considered carefully representations from Northern Ireland Electricity (NIE) and Supply Operators Northern Ireland (SONI) in regards to the thresholds for electrical power lines. The Department met with representatives from NIE and SONI to discuss the thresholds and related issues and as a result the Department intends to make a minor amendment to the threshold for electrical power lines as detailed below:

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Description of Development	Major Developments – Threshold or Criteria	Major Developments prescribed for the purpose of section 26(1) of the Planning Act (Northern Ireland) 2011
2. Energy Infrastructure: Electrical Power Lines	The installation of an electrical power line where the voltage exceeds 33 kilovolts if the purpose of the line is the provision of a supply to more than one customer.	The installation of an electrical power line where the voltage: <ul style="list-style-type: none"> • is 110 kilovolts double circuit overhead line; or • is or exceeds 275 kilovolts, and a length of more than 15 kilometres.

19.23. In terms of other development categories, the Department considers that councils would be best placed to determine all major development proposals for the classes 5 (Housing), 6 (Retailing.), 7(Business) and 9 (all other development). These developments are likely to have an impact more generally restricted to within a council area rather than on a sub-regional or regional basis, therefore no regionally significant thresholds are included for these development types. The Department however, would exercise its call-in power if any such applications were to raise issues of regional significance or a significant departure from planning policy. As major applications these development proposals will also have been subject to pre-application community consultation requirements.

19.24. In terms of the cumulative impact of changes or extensions, the Department considers that in most cases changes or extensions to major or regionally significant developments are unlikely to be of the scale of the original development. The legislation therefore clarifies that the scale of an extension or change alone will determine which classification the applications falls into. This follows a similar approach in Scotland and this provision is included to confirm the position for stakeholders and avoid existing floorspace or site areas being taken into account in classifying the application.

19.25. It is the responsibility of the applicant to assess the scale of their proposed development and comply with the regulations when preparing an application for planning permission. It will be the responsibility of the council to ensure an application falling to it as the appropriate planning authority is then processed in accordance with the regulations. There is always the risk with any threshold, regardless of the level set, that some developers will submit proposals which fall just below the qualifying criteria.

19.26. It is recognised that it may be possible within the current proposals for an applicant to sub-divide a major development into separate applications for local development and avoid additional regulatory requirements, such as pre-application community consultation.

- 19.27. The Department does not support the dividing up of proposals to avoid requirements applying to major development, such as pre-application community consultation. However, the Department does not believe that there will be significant numbers of applicants who find these practices desirable, whether in terms of cost, uncertainty of outcome on multiple applications or indeed missing the opportunity to get positive public consensus around a project. The Department has considered possible changes to the legislative requirements to remove the opportunities for such avoidance. However, a number of problems were identified, for example: increasing complexity; increasing uncertainty for applicants and the public; and penalising applicants for smaller developments (e.g. by reducing thresholds for major development). Giving councils the discretion to require pre-application community consultation or to apply other procedural requirements would not necessarily offer a clear and consistent solution. Ultimately, however, it is for the applicant to decide on the content of their application. It should be noted that all planning applications will be subject to advertisement and neighbour notification. Even in an instance where an application is not treated as a major development, it will be subject to public notification providing the opportunity for representations. In addition, councils may hold pre-determination hearings in order to invite wider representations before decisions are reached.
- 19.28. The Department notes the concerns raised in a number of consultation responses on cumulative impact for both major and local developments by applicants. In the event that a change or extension to a major or indeed local development or cumulative development generally, raises issues which are considered regionally significant then the Department, under section 29 of the 2011 Act, may call in the application for its own determination. Provision also exists within the 2011 Act for the Department to direct that a particular local development is to be dealt with as if it were a major development. In all cases, the cumulative environmental or other impacts of the development will still be assessed in the consideration of the application. The Department will, however, monitor this area closely to see how the hierarchy works in practice.
- 19.29. One respondent considered that the development or intensification of use at airports should continue to require proposals to be considered at the very highest level in the system and where necessary, referral of an application to a public inquiry. The Department recognises that airports may submit small scale development applications associated with their operations, but more significant applications may emerge which raise issues which should be considered at the regional level. If these fall below the proposed thresholds then the Department may call in the application and hold a public inquiry to consider representations, if appropriate.
- 19.30. The Department also recognises that the impact of a development may be different depending on whether it is built in a large city, rural town or other area, however, the key consideration is the scale of the proposal rather than location. As regards the suggestion that councils should set their own thresholds or be able to re-categorise certain development proposals or specific thresholds for different sizes of settlement, the Department considers

that there should be consistent thresholds across the region, rather than introduce different hierarchy provisions for different geographical areas, to avoid complexity and regional variations. Notwithstanding this, even if a development is submitted which has the potential to cause significant impact councils may hold pre-determination hearings before decisions are reached.

- 19.31. The Department is content that there is no specific threshold for listed buildings and conservation areas. Development proposals affecting listed buildings and conservation areas, if they are above the local threshold, will require pre-application community consultation and the Department will encourage pre-application consultation for those proposals which are not. As stated previously, the Department retains a call-in power if any such applications were to raise issues of regional significance.
- 19.32. In relation to EIA developments, in the interests of providing certainty from the outset, it was the Department's intention that all development as specified under Schedule 1 to the Environmental Impact Assessment regulations will fall within the major development category. In addition, some of these development types (effectively a top slice) will fall within the category of RSD. However, Schedule 2 development would not automatically be classed as major since for those types a judgement is required about whether or not a proposal would be classified as EIA development.
- 19.33. Finally, a number of other general issues were raised outside the range of the hierarchy consultation regarding improved processes, timeframes for decisions, resourcing and transfer of planning expertise. The Department has made it clear that it intends to transfer a fit for purpose planning system that is adequately resourced as well as establishing a Performance Management Framework. This will identify areas for improvement, drive up performance and establish a consistent basis for comparison purposes. The Department intends to work closely with councils in establishing the framework and in helping to drive continuous improvement through advice, guidance and support.

Pre-application Community Consultation

20. The commencement of section 27 of the 2011 Act will place a statutory duty upon applicants for planning permission to consult the community in advance of submitting an application, if the development falls within the major category as prescribed in the Planning (Development Management) Regulations (Northern Ireland) 2015. This includes those major developments which the Department will determine because they are of regional significance.

Consultation paper proposal

- 20.1. Sections 27 and 28 of the 2011 Act set out the requirements with which pre-application community consultation must comply. These include notice of the intention to submit an application, minimum requirements for the timing and notice given for public consultation events, and the requirement for additional consultation to take place if the council or Department sees fit.
- 20.2. Once the community consultation event has taken place, an applicant must submit a 'pre-application community consultation report' to show what has been done to comply with the pre-application community consultation requirements.
- 20.3. If pre-application community consultation requirements have not been complied with, the council or Department has the power to decline to determine an application. Before deciding whether an application must be declined, the council or the Department can request additional information in order to decide whether to decline the application.
- 20.4. At the date of transfer of planning powers to councils, sections 27 and 50 of the 2011 Act will commence. However, as prospective applicants will not have had an opportunity to submit a proposal of application notice to the relevant council, (or the Department in the case of regionally significant development) it is the Department's intention that this requirement will not apply to planning applications received before 01 July 2015. Therefore, any such application received between 01 April 2015 and 01 July 2015 will not have to comply with the statutory pre-application community consultation requirement. However, from 01 July 2015, it will not be possible to submit an application for planning permission for a major development until at least 12 weeks have elapsed from the date that the applicant served the proposal of application notice on the relevant council or the Department and the applicant has complied with the requirements of the 2011 Act and regulations.

Consultation response

Question 22	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 22: Do you agree with the proposed consultation, publicity and information requirements for pre-application community consultation?	45	75%	31	69%	14	31%

- 20.5. Overall there was general support for pre-application community consultation proposals with 69% of those who responded in agreement.
- 20.6. There were opposing views on the proposal to prescribe only the minimum requirements to be placed on the prospective applicant in relation to consultation with the public. Concerns were raised that this may not provide sufficient scope for all members of the community to be involved in the consultation process and it was recommended that the requirements should be standardised to ensure consistency across the board. Other respondents welcomed the fact that consultation and publicity requirements were to be kept to a minimum and that it was open to applicants to consult more widely and in innovative ways to enhance community engagement. A number of respondents commented that the 7 days notice of a public event is inadequate. There was also some concern that the process might create another ‘tick-box’ exercise for developers and will be no more than a paper exercise unless there is specific guidance and criteria set out.
- 20.7. Some respondents recommended that pre-application community consultation should be carried out by an independent facilitator rather than the developer. It was also argued that tests should be developed to evaluate the quality of the consultation process. A number of respondents also commented that the pre-application consultation report should be made publicly available so that communities could comment on it and assess how comments raised during the engagement had been taken into consideration.
- 20.8. A common theme in many of the responses was the need for further guidance to be issued by the Department to secure a consistent approach. Clarification was sought on the definition of ‘community’, the relevant groups that should be consulted with, what constitutes a public event and the council’s / Department’s role on receipt of a notice of application. The issue of capacity building for all participants (the council, communities and applicants/agents) was also raised by respondents. A number of respondents commented on the need for the early publication of Departmental guidance with one council proposing a public consultation on any guidance.
- 20.9. Two respondents sought clarification around the status of the determination for an environmental statement especially in circumstances where the

proposal had changed during the pre-application consultation process.

- 20.10. A number of respondents from the council and business sectors raised issues around the transitional arrangements. The concern being that there may be a rush of applications to try to avoid having to undertake the statutory pre-application community consultation requirement.

Department's consideration and response

- 20.11. The Department believes that applicants and agents are increasingly recognising the benefits that pre-application community consultation can bring in terms of the smoother, faster processing of applications. The requirements for pre-application consultation will vary for specific developments. However, in order to maintain consistency, the minimum requirements proposed in the draft legislation are to ensure that any consultation engages as much of the affected community as possible (for example, at least one public meeting will be required to take place, with a period of at least 7 days notice). The Department or council will also be able to request the applicant carry out additional notification and consultation within 21 days of receiving the proposal of application notice in order to provide flexibility for local circumstances.
- 20.12. The Department does not consider that it should be a legislative requirement for developers to employ independent facilitators to conduct pre-application community consultation, although they are free to do so if they wish. It is of the opinion, that direct involvement between applicants and the community will have benefits for both parties and enrich the planning process.
- 20.13. The legislative requirements will be supplemented with guidance on how the consultation should be carried out and reported on, who should be involved and what issues the consultation should address. The emphasis is very much on the provision of advice but where specific legislative requirements must be followed these will be made clear. There is no statutory requirement to undertake public consultation on this advice which is based on the outworkings of the public consultation exercise. This will also draw on existing guidance, published in June 2014 and will provide sufficient flexibility for varying the extent and requirements of pre-application consultation, depending on the nature of the application itself. The public will be able to view the consultation report as part of the planning application and the planning authority will consider the report. It will be able to decline to determine an application if it is of the opinion that the developer did not fully meet the statutory requirements for pre-application community consultation.
- 20.14. As regards the proposal of application notice, clarification was sought on the inclusion of confirmation of the council's or the Department's determination on the need for an environmental statement. If the applicant has sought a determination on the need for an environmental statement then they must include it in the application notice. The applicant need only submit a copy of any such determination by the Department if one has been sought. If the

proposals evolves during the process, then the applicant can seek a further determination on the need for an EIA if required.

- 20.15. The Department notes the concern of some respondents on the issue of transitional arrangements and a potential influx of applications before the requirement formally comes in. However, this would still be an issue regardless of the date chosen for commencement, as there will always be a need to have a lead-in time. The Department by proposing these transitional arrangements i.e. that section 27 (pre-application community consultation) of the 2011 Act applies only to applications made on or after the 01 July 2015, provides a lead in time for applicants to prepare for the new pre-application community consultation arrangements while at the same time still permitting major applications (including regionally significant) to be made in the interim period. The Department is content this provides a balanced way forward and is confident applicants will see the benefits of pre-application community consultation.
- 20.16. Therefore due to the high level of support received for these proposals in the consultation responses, the Department intends to proceed with the proposals for pre-application community consultation as indicated in the consultation paper.

Pre-determination hearings

21. Section 30 of the 2011 Act makes provision for hearings prior to the determination of certain types of planning application. Pre-determination hearings are aimed at making the planning system more inclusive, allowing the views of applicants and those who have made representations to be heard before a planning decision is taken. Councils will have discretion over how they wish pre-determination hearings to operate.

Consultation paper proposal

- 21.1. The Department's March 2010 response to the 2009 consultation paper 'Reform of the Planning System in Northern Ireland – Your Chance to Influence Change', indicated that the Department intends to proceed as outlined in the 2009 consultation paper.
- 21.2. Regulations would set a mandatory requirement for pre-determination hearings for those major developments which have been subject to notification i.e. referred to the Department for call-in consideration but which have been returned to a council for determination. In addition to the applicant, the persons to be given an opportunity of appearing before and being heard by the council are those who have submitted representations to the council in respect of the application.
- 21.3. Under section 30(4) of the 2011 Act, the council may decide to hold a hearing for any development not covered by the requirements of section 30 and to give the applicant and any other person an opportunity of appearing before and being heard by the committee. This will be at the discretion of each council, as circumstances will vary from council to council.

Consultation responses

- 21.4. Although no specific question was asked in the consultation document, 11 respondents provided comment on pre-determination hearings. The main concern was that there should be a consistent approach across all councils and that the Department should set out guidelines and basic procedures which each council must follow for such hearings, including associated timeframes.

Department's consideration and response

- 21.5. The 2011 Act provides that pre-determination hearings will be held by a committee of the council, in whatever format adopted by the council. Given the comment's received councils may wish to consider developing, consulting on and publishing standard procedures for pre-determination hearings. Any hearing should take place after the expiry of the period for making representations on the application but, before the council determines the application.

- 21.6. The Department is also working with councils to develop best practice advice in the form of a protocol for the operation of planning committees. This protocol outlines the circumstances in which councils may wish to hold a pre-determination hearing, where it is not a mandatory requirement. The scope of these hearings is likely to apply only to those applications for major developments which have attracted a significant body of relevant planning based objections. Councils when considering other types of planning applications for which they could hold pre-determination hearings, may also wish to include applications such as those subject to an environmental statement or developments within sensitive areas, such as conservation areas or areas of townscape or village character.

Schemes of Delegation

22. Section 31 of the 2011 Act requires a council to prepare a scheme of delegation where decision-making for local, generally non-contentious, applications is delegated to an appointed officer rather than the council thereby enabling speedier decisions, improved efficiency and allowing planning committee's to concentrate on key or contentious applications.

Consultation paper proposal

- 22.1. It is proposed that a scheme of delegation must include provision that prohibits an appointed officer from determining an application for planning permission in the following circumstances:

- the application is made by the council or an elected member of the council; or
- the application relates to land in which the council has an interest.

Consultation response

Question 23	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 23: Do you agree that applications made by the council or an elected member and applications relating to land in which the council has an interest should not be delegated to an appointed officer?	39	65%	34	87%	5	13%

- 22.2. The vast majority (87%) of those who responded agreed with the approach set out in the consultation paper, however, a small number of issues were raised. These fell into two areas; those who sought clarification and guidance on the restrictions on the types of applications subject to delegated decision-making and those who sought amendments in relation to which applications should or should not be included within the scheme depending on the applicant.
- 22.3. Some respondents sought early publication of Departmental guidance on how applications by council members or officers should be dealt with. Other respondents sought clarification on very specific points. For example does the reference to council-owned land apply to council-owned buildings as well; do small-scale mobile telecommunications apparatus on the public highway, fall into the category of 'land in which the council has an interest'?
- 22.4. Two councils were of the view that there should be a 'relaxation' of proposed restrictions on the types of applications included within schemes of delegation. They thought that applications made by elected members should not be excluded where there is no conflict of interest. An opposing view sought to extend restrictions on the types of applications included. One response

proposed all applications by councils should be referred to the Department for determination. A further response sought that delegated authority should not be permitted where an application involves land in which a council officer has an interest or for applications relating to listed buildings or buildings in a conservation area.

Department's consideration and response

- 22.5. The Department is currently developing guidance for schemes of delegation, which will be issued to councils at the earliest opportunity. This will guide elected representatives and council officials through the contents of the scheme, the adoption of it and the process for determination of applications. It is envisaged that this will draw closely on the Department's existing streamlining guidance which has already proved successful in speeding up the decision making process for the least contentious types of applications. The emphasis is very much on the provision of advice but where specific legislative requirements must be followed these will be made clear.
- 22.6. In relation to the specific points raised, by section 45 of the Interpretation Act (Northern Ireland) 1954, references in any enactment to "land" include references to houses or other buildings or structures. As such, references to council-owned land would include council-owned buildings. It is considered that small-scale mobile telecommunications apparatus on the public highway, are unlikely to fall into the category of 'land in which the council has an interest' in relation to schemes of delegation, as unlike GB, responsibility for roads infrastructure rests with central government. Indeed most of these types of development are so small in scale, they are likely to be considered as 'permitted development' under the Planning (General Development) Order (Northern Ireland) 1993.
- 22.7. It is also recommended that applications which raise levels of public interest and objection, as well as generating objection from statutory consultees, should not be determined under a scheme of delegation. While the Department considers applications for example affecting listed buildings or conservation areas should not be specifically excluded from schemes of delegation, these will tend to have greater potential to be excluded from a scheme of delegation through raised public interest or objection.
- 22.8. The Department considers that a scheme of delegation will provide the opportunity for the processing of local, non-contentious applications in a speedier and more efficient manner. However a balance must be struck in the interest of openness and transparency and to avoid the potential where the decision-making process is open to allegations of conflicts of interest. The Department remains of the view that there are circumstances where the application should be determined by the planning committee rather than the appointed officer. These include where an elected member or council makes the application or where the application relates to land in which the council has an interest. The Department does not consider it appropriate to exclude applications where council officers have an interest, as this would potentially

burden a council planning committee with a significant volume of applications which would otherwise be considered non-contentious.

- 22.9. The Department considers that the proposed restrictions provide the most appropriate solution for the efficient determination of local applications, together with the avoidance of conflicts of interest and the consideration of more contentious applications in an open and transparent fashion. Therefore due to the high level of support received for these proposals in the consultation responses, the Department intends to proceed with the proposal on the restrictions on the types of applications subject to delegated decision making.

Preparation and adoption of a scheme of delegation

23. The Planning (Development Management) Regulations (Northern Ireland) 2015 will provide that where a council proposes to adopt a scheme of delegation they must send a copy to the Department to be approved. Once approved by the Department and adopted by the council, the council must make a copy of the scheme of delegation available for inspection at an office of the council. The approved scheme must then be published on the relevant council's website.

Consultation paper proposal

- 23.1. A council will be required to prepare a scheme of delegation at intervals of no greater than every three years. The procedure for doing so will mirror that of preparing the original scheme.

Consultation response

Question 24	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 24: Do you agree with the proposed approach to preparing and adopting a scheme of delegation?	42	70%	34	81%	8	19%

- 23.2. The vast majority (81%) of those who responded, agreed with the approach set out in the consultation paper, however a number of issues were raised. Most frequently concerns were raised regarding preparation of schemes of delegation. For example the potential for inconsistency, due to each council formulating their own schemes of delegation. One council was concerned that it had to seek approval from the Department after it had prepared its scheme and there was an absence of a timeframe for Department approval. One respondent was concerned that schemes of delegation were too inflexible in circumstances where urgent modification was required and that amendments

should be able to be made without prior permission from the Department. A number of respondents thought that each scheme should be renewed not greater than every 2 years, while another thought this should be not greater than every 4 years.

- 23.3. Other issues were raised regarding the content of the scheme. One respondent saw no reason why major applications should not be included, if there was little objection and the proposed development was in accordance with the local development plan. Another respondent suggested that applications should be included within the scheme irrespective of levels of public interest, while another asked how a council would decide what a non-contentious application is. A further respondent was concerned that the right of appeal to applications determined under a scheme of delegation should not be affected and that input from a professional planning officer should be sought.
- 23.4. Some concerns were also expressed on how the effectiveness of schemes of delegation will be monitored in terms of public interest or quality of results as opposed to speed or efficiency.

Department's consideration and response

- 23.5. The Department considers that the proposed approach to preparing schemes of delegation is the most appropriate in balancing the need for consistency, while at the same time allowing the schemes to be responsive to local circumstances and administrative procedures. Councils will be able to fine-tune the content, while Departmental guidance and ultimately approval will ensure that each scheme accords with the Planning (Development Management) Regulations (Northern Ireland) 2015. Although there is no statutory timeframe for the Department to consider and approve schemes of delegation, it proposes to work closely with councils to develop them and will consider and approve each scheme in as short a timeframe as possible. Similarly the Department will be responsive to councils where modifications to schemes are required at short notice. The Department considers that the interval for preparing a scheme of delegation, no greater than every 3 years achieves an appropriate balance. Councils may wish to consider the preparation of schemes of delegation in advance of the transfer of planning powers in April 2015.
- 23.6. As set out in section 31 of the 2011 Act, the only classification of application to be included within a scheme of delegation will be local developments. All major developments are excluded from the scheme.
- 23.7. The Department is currently developing guidance for councils, and is currently working with councils to develop best practice advice in the form of a protocol for the operation of planning committees. The protocol outlines the restrictions on which applications can be delegated to officers and provides examples of further restrictions which councils themselves can include within their schemes of delegation as they see fit.

- 23.8. If an application is considered contentious, and excluded from the scheme, it will be subject to debate and determination by the council. As in all circumstances, input from a professional planning officer will still be taken into account as part of the council determination. Any appeal against the outcome of an application, whether determined under a scheme of delegation or by the council will be subject to the normal appeals procedures as set out in sections 58 and 60 of the 2011 Act.
- 23.9. As part of the performance management framework targets and indicators will be set for the processing of local development applications which will be covered by schemes of delegation. It will also be apparent from the percentage of local applications being determined through the scheme how it is performing. Furthermore the amount of appeals allowed on applications determined through schemes of delegation will provide a useful indicator in determining quality of results.
- 23.10. Due to the high level of support received for these proposals in the consultation responses, the Department intends to proceed with the proposals for preparing and adopting a scheme of delegation.

Call-in of Certain Applications to the Department

24. In addition to the power to determine regionally significant applications under section 26 of the 2011 Act, section 29 of the 2011 Act allows the Department to direct that certain applications be referred to it instead of being dealt with by a council. This provision allows the Department to call-in **any** planning application for its determination.

Consultation paper proposal

- 24.1. The call-in provisions are provided for in primary legislation (the 2011 Act) and no subordinate legislation is required, therefore no specific question was put forward in the consultation document.

Consultation responses

- 24.2. Although no question was asked, a small number of respondents did provide comment. The respondents felt that any guidance associated with call-in should be available for consultation prior to adoption. A number of respondents also raised concerns that the call-in of applications may be open to political interference. Two respondents suggested call-in should be used if councils make decisions that are inconsistent with regional policy, while one suggested that call-in should be considered, if a proposed development within an adjoining authority could have a significant impact on another authority.
- 24.3. Respondents from the renewable energy sector also suggested that clear and timely call-in procedures should be proactively utilised by the Department if councils make decisions that are inconsistent with for example, the Regional Development Strategy and Strategic Energy Framework.

Department's consideration and response

- 24.4. The Department does not propose a definitive list of criteria to decide whether to call-in a planning application; each case will be considered on its own merits. Applications may be called-in by the Department at any point during a council's consideration of that application, up to the date at which the council formally records a decision on the grant or refusal of planning permission.
- 24.5. The Department, however, will normally only exercise this power when planning issues of more than local importance are involved. In practice, applications will be called-in by exception, as the Department recognises the important role of councils in decision making on the future development of their areas. It is not the Department's intention to interfere in the council's determination of planning applications. However, there may be circumstances where the proposed development raises issues of such importance and creates the potential for significant impact, regardless of not meeting the threshold for regionally significant development that warrant call-in.

- 24.6. The Department is developing good practice advice to support councils in the implementation of call-in procedures. The emphasis is very much on the provision of advice but where specific legislative requirements must be followed these will be made clear. There is no statutory requirement to undertake public consultation on this advice. There has already been extensive public consultation on the planning reform proposals contained in the 2011 Act and supplemented by the current consultation on the subordinate legislation.

Notification Direction - Potential Call-in of Applications by the Department

25. Under section 56 of the 2011 Act the Department is empowered to give directions to councils restricting the grant of planning permission and requiring the council to send information to the Department in instances where it proposes to grant planning permission for certain types of development. This is in addition to the general power to call-in a planning application and will be set out in the new Planning (General Development Procedure) Order (Northern Ireland) 2015 (GDPO).

Consultation paper proposal

- 25.1. The consultation paper proposed that councils will be required to notify the Department of certain applications they are intending to approve under a notification direction. The proposed details of such notification requirements are where the council intends to approve:
- a major development application which would significantly prejudice the implementation of the local development plan's objectives and policies, including land in which councils have an interest;
 - a major development application which would not be in accordance with any appropriate marine plan adopted under the Marine Act (Northern Ireland) 2013; or
 - a government department or statutory consultee has raised a significant objection to a major development application.

Consultation response

Question 25	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 25: Do you agree with the proposed call-in criteria for a Notification Direction? Should any other classes of development be included and, if so, why?	37	62%	27	73%	10	27%

25.2. Overall most of the respondents (73%) agreed with the proposed call-in criteria for a notification direction. Two councils commented that this approach undermines the principle of local decision making and the fundamental role of the planning authority, which is to reach a balanced decision on a planning application having regard to the local development plan, so far as material to the application and to any other material considerations. They argued it is for the planning authority to decide what weight to give to comments from statutory consultees in reaching a decision and suggested there is a lack of understanding by many consultees of the role that they play in the process. It was suggested criterion (c) be reworded.

- 25.3. A number of respondents sought clear and concise guidance so it could be easily identified which applications could potentially be called in, as well as clarification as to what would comprise a '*significant*' objection to a major development application.
- 25.4. A number of respondents also requested that clarification is provided regarding the timeframe for a decision on whether an application is called-in by the Department. One respondent stated there should be a legislative timescale for determining a planning application called-in by the Department.
- 25.5. One respondent raised the issue of staffing and resources within the Department in relation to the specialist minerals, energy and waste teams, which have built up considerable experience. It considered their continued input to be essential, whether as consultee or decision-maker.
- 25.6. Some respondents also suggested that further criteria be included in the notification direction such as:
- speed of decision making if a council is widely perceived to be holding up an application's progress for no clearly apparent reason;
 - where a council intends to approve an application which is inconsistent with regional policy;
 - windfarm applications which straddle council boundaries;
 - that the reference in criterion (c) to 'significant objection' be replaced with 'objection';
 - land to which the councils have an interest irrespective of whether it is regarded as major development; and
 - all proposed approvals relating to listed buildings and conservation areas.

Department's consideration and response

- 25.7. The Department considers that the notification direction does not undermine the principle of local decision-making and the role of the local authority. In terms of criterion (c), it is only applications subject to significant objection that will be notified to the Department, who will then take a balanced view of these comments. The role of the consultee has been clearly set out in existing protocol, which states that it is not their role to advise or recommend that applications should be granted or refused. Their view will continue to be only part of a range of material considerations.
- 25.8. The Department does not want to create a situation where a significant volume of planning applications are being routinely notified to the Department. The Department therefore intends for the notification direction to introduce a proportionate system of Departmental involvement in planning applications. The notification direction will retain an appropriate level of scrutiny in circumstances where the Department should rightly be involved, but does not include a large number of applications which raise no real significant issues. This will allow the councils to issue their planning decisions without

unnecessary delay. Therefore the Department does not propose adding any further categories to the notification direction.

- 25.9. The Department is developing good practice advice to support councils in the implementation of the notification direction process. The emphasis is very much on the provision of advice but where specific legislative requirements must be followed these will be made clear. The notification direction itself will provide information on what constitutes a significant objection, essentially an extensive or important challenge or disagreement and the circumstances where councils will be required to notify the Department of a planning application. The direction will also set out the relevant information the council is required to provide to the Department and the timescale in which the Department has to decide whether to call-in the application or not.
- 25.10. It is not the Department's role or intention to micro-manage council decision making on planning applications and it is anticipated that applications for call-in are likely to be small in number. Consequently, the list of applications subject to notification should remain as concise as possible. The Department does not consider it appropriate to expand this to include all approvals relating to listed buildings or conservation areas or for wind farm applications which straddle council boundaries. Indeed intended approval of applications for listed building consent will routinely be notified to the Department under powers set out in section 89 of 2011 Act.
- 25.11. Due to the nature and complexity of the applications that will ultimately be called-in by the Department, it considers that it is not appropriate to identify a timeframe for their subsequent determination. However the Department is committed to the efficient and timely processing of such planning applications and will ensure that it has the adequate specialist staffing and resources in place to process the applications. This will also be the case in circumstances where the Department fulfils a consultee role.
- 25.12. The Department intends to remove reference to land to which councils have an interest from this notification direction. A separate notification direction is being proposed for councils' own applications for planning permission (see paragraphs 37-37.10) which will apply to both local and major planning applications. Therefore there is no requirement to include major applications which a council has an interest in within this notification direction. Apart from this minor change and due to the high level of support received for these proposals in the consultation responses, the Department intends to proceed with the proposals for call-in criteria for a notification direction.

New Development Management Procedures

26. Current users of the planning system will be familiar with the current Planning (General Development) Order (Northern Ireland) 1993 (the GDO) which, among other things, provides the basis of the process of development management. Essentially, it provides the foundation of the administrative operating system for proposals regarded as constituting **development** as opposed to other **consent** regimes relating to advertising or listed buildings. This is a useful distinction to bear in mind as development requires an application for planning permission, unless it is regarded as development which is deemed to be granted permission without the need for a planning application e.g. permitted development (PD).

Revised Publicity Arrangements for Applications for Planning Permission

Neighbour Notification

- 26.1. Since 1985, in addition to meeting its statutory requirements, the Department has also carried out a non-statutory policy of sending neighbour notification letters to occupiers of premises who are most likely to be affected by a proposed development. This is in keeping with policy outlined in paragraph 9 of planning policy statement (PPS) 1 *“In addition to advertising applications as required by law, the Planning Service will continue to implement a neighbour notification scheme”*.
- 26.2. Currently the approach to neighbour notification is to notify those occupiers of premises situated on neighbouring land (i.e. land adjoining the application site or which would adjoin it but for a road or entry of less than 20 metres) and whose premises are also within 90 metre of the boundary of the application site. The consistent application of these criteria has been reinforced through operational guidance and staff training. The proposed legislation within the draft General Development Procedure Order, will provide clarity for the new councils by establishing these two definitions, “neighbouring land” and “affected occupier”, in statute.
- 26.3. The Department regards neighbour notification as an important element of the planning system and believes that there is merit in the system of neighbour notification continuing after the transfer of powers to local councils.
- 26.4. If the system was to continue on a non-statutory basis there would be scope for confusion and variation in practice within and across council areas. The Department believes that the best way to ensure clarity and consistency is to establish a clearly defined and unambiguous statutory requirement.

Consultation paper proposal

26.5. The Department proposes to make neighbour notification statutory.

Consultation response

Question 26	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 26: Do you agree that the current neighbour notification process should be made statutory?	43	72%	36	84%	7	16%

26.6. The majority of those who responded (84%) to this question agreed that neighbour notification should be made statutory.

26.7. Many of those who agreed with the proposal provided additional comments and a number of themes were apparent. The most commonly expressed was the advantage of neighbour notification being applied consistently across all the council areas. It was noted that this was an important part of the community engagement in the planning process, which is often “a cause of consternation when the system fails”. It was also pointed out that this consistency would “avoid public confusion” and “should safeguard councils against potential legal challenges”. It was stated that “such an approach would also assist in delivering a fairer, more inclusive and participatory planning system”.

26.8. Some respondents who agreed with the proposal also pointed out that neighbour notification was only part of a system of publishing planning applications and it was noted that it would also be working in conjunction with newspaper advertising. Those who disagreed with the proposal were concerned that a statutory neighbour notification process would increase the possibility for judicial review and other legal challenges and that such challenges had the potential to delay the planning system.

26.9. The view was also expressed that neighbour notification was “an onerous and unnecessary” process, particularly when other publicity methods and pre-application community consultation would be available. This concern also led others to fear that a statutory system would result in “added costs for applicants and councils”. Indeed a number of those in overall favour of the proposal qualified their support with concerns that additional resources would be needed to meet its requirements.

26.10. Some respondents who disagreed with the proposal also stressed possible practical difficulties with a statutory system. These centred around the difficulty in identifying affected neighbours where ownership was unclear, the requirement to recheck the processing of an application “as new properties are constructed/occupied adjoining the application site” and the possible hazards of relying on the postal delivery system.

- 26.11. Some also favoured the continuation of the current non-statutory process because it is already “part of best practice” and a “statutory approach” appeared to be “a little excessive” given that the application of current guidance means that it appears to be working satisfactorily. Some also favoured the current approach because of its flexibility, with one respondent stating, “variation in practice between councils is not necessarily a disadvantage”.
- 26.12. Some respondents promoted alternatives, for example, the use of site notices and placing the onus for publicising a planning application on the applicant.

Department’s consideration and response

- 26.13. The Department notes the majority support for this proposal and wishes to address some of the issues and concerns expressed. The present non-statutory system is indeed working well and this has been achieved on the basis of considerable effort and refined guidance on established criteria. This clarity has greatly supported the consistent operation of the process which limits the scope for complaint.
- 26.14. The Department stresses that this proposal was the continuation of existing practice, albeit on a statutory basis. This approach is intended to support the ongoing, effective operation of the neighbour notification process across all council areas on a consistent basis and to limit the scope for error or confusion at the point of transfer of planning functions to the new councils. The continued application of established criteria will therefore not lead to an enhanced catchment or increased administrative workload or costs. The financial transfer to councils to support the transfer of planning functions is being calculated on the basis of how the development management system currently operates so will take account of the resources applied to the neighbour notification process. As one respondent pointed out, this approach merely enshrines best practice and gives statutory backing to what should already be normal procedure.
- 26.15. The Department does not agree that a statutory requirement to neighbour notify could result in additional legal challenges. As stated previously, the existing process is generally accepted as good practice and complaints to date have been based on the inconsistent application of the process. It is not considered that placing this on a statutory basis increases the risk of challenge. Indeed as one respondent pointed out, if councils operate consistently to meet the statutory minimum standard of notification this could actually be a safeguard against legal challenge.
- 26.16. The current system operates on the basis that neighbour notification letters are sent to qualifying postal addresses on neighbouring land. Occupants or landowners are not individually identified by name. The use of the postal system has been seen as a reasonable approach to the delivery of notification letters and evidence of the identified addresses to which notifications have been sent is a sensible record of actions taken in meeting the requirement.

- 26.17. The Department notes calls for the deployment of site notices and placing the onus for application publicity on the applicant. The Department does not believe there is merit in following this route at present. The aim of the proposal is to maintain a steady state as far as possible by transferring an existing process to councils, one that is well understood by existing planning staff who will become council staff under the new regime. Site notices would require additional resources in terms of new guidance and training with the extra burden on the councils of ensuring that any notices have been correctly displayed for the required duration. The Department is aware of practice in the Republic of Ireland placing the burden of posting site notices (and also that of newspaper advertising) on the applicant. However, the Irish system can rely on the sanction that a planning application will be invalidated if the publicity process is not followed requiring the submission of another application and accompanying fee. Similar legal powers are not available under the 2011 Act.
- 26.18. The Department regards neighbour notification as an important element of the planning system and believes that there is merit in its continuation after the transfer of planning powers to councils on 01 April 2015. In combination with newspaper advertising, the Department believes that this provides for the most effective process to highlight applications which will be of most interest to citizens. However, it is possible, following transfer, that there could be scope for variation in practice within and across council areas if the current neighbour notification scheme was to continue in its current non-statutory basis.
- 26.19. A minimum statutory requirement is the best way to ensure clarity and consistency. Also basing it on the current criteria applied by the Department will provide for a steady state at the point of transfer; thereby limiting the scope for error and confusion. As the proposal represents a statutory minimum, there will be no restriction on councils going beyond it, although the Department would caution that this should be done on a consistent basis within each council area.

Statutory Definitions in Neighbour Notification Process

27. Through the statutory neighbour notification scheme, the Department intends to reinforce an already existing process and provide clarity for both users of the planning system and the new councils by establishing clearly the definitions of “neighbouring land” and “affected occupier”.

Consultation Paper Proposal

- 27.1. The proposed definition for “neighbouring land” is “land which directly adjoins the application site, or which would adjoin it but for an entry or road less than 20 metres in width”.

27.2. The proposed definition for “affected occupier” is “the occupier of premises within a 90 metre radius of the boundary of the proposed application site”.

Consultation response

Question 27	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 27: Are you content with the proposed definitions of “neighbouring land” and “affected occupier”? If not, please suggest an alternative explaining what additional benefits this would bring by way of enhanced engagement in the planning system.	42	70%	21	50%	21	50%

27.3. There was an equal split between those who agreed with the proposal and those who did not across the 42 respondents who commented on this question.

27.4. Those who offered unqualified support for the whole proposal made comments such as “the definitions proposed are clear and unambiguous and can be applied consistently across all council areas”. Some also considered the proposals acceptable because “it reflects the basis on which the Planning Service currently neighbour notifies and therefore delivers a consistent approach to all stakeholders as the service is transferred”.

27.5. A number of respondents disagreed with the definition of neighbouring land and believed that the system as proposed was too inflexible and did not take account of the scale and perceived impact of a development proposal.

27.6. However, the main issue raised by those not in agreement with the proposals related to the definition of affected occupier, in particular the stipulation that this would be “the occupier of premises within a 90 metre radius of the boundary of the application site”. However, opposition to this was itself split and took a number of forms.

27.7. Some considered that a 90 metre radius was too small, particularly for rural areas. One suggestion was that a neighbour could be someone who lived within a half mile radius of the site.

27.8. Others considered the 90 metre radius too big, with a restricted radius of 20 or even 5 metres suggested as alternatives. This aspect caused some to comment that a 90 metre radius could encompass a large number of potential neighbours in an urban area, and “the administrative implications of dealing with a 90 metre radius in an urban area would be significant and for the vast majority of applications entirely inappropriate”. It would appear, however, that this may have been considered on the basis of applying only the 90 metre radius criterion and not also applying the neighbouring land criterion as well.

- 27.9. Some suggested alternatives that removed the 90 metre radius and notifying only “occupiers of buildings on sites which adjoin the boundary of the application site”. A number of suggestions were based on the principle that the 90 metre radius was inflexible and appeared to assume that occupiers of premises beyond this limit would not be affected by a development and that they could “miss out on the opportunity to be notified and provide comment and representation to the proposed development”. Some suggested adding flexibility to the system by tailoring neighbour notification to the scale or type of the development. It was proposed for example that “separate definitions need to be identified based on the hierarchy of development”.
- 27.10. One development type which raised particular comment was that of individual wind turbines. It was pointed out that the 90 metre radius was apparently in conflict with policy RE1 of PPS 18 (Renewable Energy) which “generally requires a separation distance of 10 times rotor diameter to an occupied property” so that, for example a 30 metre turbine could have a separation distanced of 300 metres. Alternatively, others suggested replacing “affected occupier” with “neighbouring occupier” as “the use of the term “affected” implies a negative impact which may not be the case”.
- 27.11. Some raised concerns about the practical operation of the process e.g. whether the 90 metre radius was from the centre of the application site or from the boundary of the site. Concerns were also expressed about potential issues where neighbours could not be easily identified. Others requested clarity on whether it was sufficient for notification to be made by post or if personal service or recorded delivery would be necessary.

Department’s consideration and response

- 27.12. There appeared to be some misunderstanding of the proposal and clarifying the position may be helpful. Neighbouring land is that which adjoins the boundary of the application site, or would adjoin it but for an entry or road 20 metres in width. This is the first criterion that a planning officer would apply. The second criterion is to identify premises on that neighbouring land which also fall within a 90 metre radius of the boundary of the application site. The application of **both** criteria mitigates concerns that a 90 metre radius would encompass an excessive number of possible “neighbours” in an urban environment. The premises thus identified, following the application of both criteria, would provide the list of identified occupiers to whom notification should be sent.
- 27.13. As was stated in the response to Question 26, the aim of the proposal is to ensure that what is existing good practice is maintained once planning powers are transferred to councils. Placing the requirement in statute will establish a consistent requirement across the council areas. As this reflects current practice, placing it on a statutory basis will not lead to an increased catchment or a resultant increased financial or administrative burden.
- 27.14. Adopting changed practices as suggested by some respondents, such as tailoring neighbour notification to the scale of developments, would

alternatively result in resource issues such as additional training. This would increase the scope for confusion or error in applying a different process at a time when the new system is bedding in. This does not mean that councils cannot go beyond the statutory minimum if experience in their own areas eventually indicates that this would be helpful to them. Thus they could adopt additional non-statutory processes to neighbour notify those likely to be impacted by, for example, wind turbines. Clearly, though, it would be desirable for them to apply any such additional notification on a consistent basis across their council area to avoid any differentiation in the delivery of service.

- 27.15. A further issue raised in responses was that occupiers living beyond 90 metre are in some way considered to be unaffected by a proposed development. The Department is not of this view and believes that the neighbour notification proposals are in general likely to identify those people most likely to be affected by a development proposal. The consideration of the potential impact of a development proposal considers the likely impact beyond simply those identified under the neighbour notification process. The procedural requirements in relation to publicity in local newspapers and relevant websites and pre-application community engagement provide further mechanisms through which individuals are made aware of the opportunity to make representations. However, the Department accepts that the phrase “affected occupier” may convey an unintended impression that others are not affected and thus, it intends to change the reference from “affected occupier” to “identified occupier”.
- 27.16. The Department notes that there is general acceptance of the benefits of neighbour notification, but accepts that there are differing opinions regarding the specific details of the current criteria. However, there was no clear support for any alternatives.
- 27.17. On this basis (with the exception of replacing “affected occupier” with “identified occupier”), the Department proposes to bring forward the proposals as set out in the consultation document.
- 27.18. This is intended to support the smooth running of the system and avoid the scope for confusion and error which could interrupt the operation of the planning system at the point of transfer. The Department would also point out that moving publicity requirements from primary legislation to subordinate legislation introduces greater flexibility for future change. The Department is open to amending the subordinate legislation on the basis of councils’ experience of delivering the system in order to achieve more effective service delivery. Wind turbines might present a possible area where councils may wish to test out options beyond the statutory minimum, possibly informed by any pre-application community engagement.

Newspaper advertising

28. Currently, the Department is required under primary legislation (article 21 of the 1991 Order) to publish notice of applications for planning permission in at least one local newspaper circulating in the local area. In practice, the

Department goes beyond one local newspaper largely to meet its equality duties.

- 28.1. Under the 2011 Act, publicity requirements will be set out in subordinate, as opposed to primary, legislation which provides greater scope for future amendment of statutory requirements. This will enable the Department to review the proposed level of newspaper advertising. It is therefore possible that in the future, the requirement to advertise all planning applications in at least one newspaper may be amended, or potentially removed completely, on the basis of the experience of councils, stakeholders and users of the planning system.

Consultation paper proposal

- 28.2. The Department proposes to maintain the current advertising requirement to publish notice of applications for planning permission in at least one newspaper circulating in the local area. To date this approach has ensured effective publicity of applications and engagement of citizens in the planning process. It also reflects the approach of maintaining a steady state of affairs at the point of transfer, to ensure the continued operation of the system and to limit the scope for confusion and error in the handling of applications under the new two-tier system.

Consultation response

Question 28	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 28: Do you believe that councils should be required to advertise all applications for planning permission in at least one newspaper circulating in the local area?	43	72%	32	74%	11	26%

- 28.3. There was majority support for the proposal with 74% of those who commented in favour of maintaining the existing requirement.
- 28.4. Those who gave clear support recognised that the proposal was a continuation of existing statutory practice with comments including “this should be easily complied with, given that advertisements are already undertaken on such a locality basis” and “this requirement is well understood and has been operational for many years”.
- 28.5. Many of those who disagreed with the proposal, did so on the basis that they thought the requirement to advertise in at least one newspaper was too weak and that the provisions should require advertising in at least two local newspapers to ensure that councils will adequately address equality issues.
- 28.6. Further opposition was also expressed by those who regarded newspaper advertising as inadequate or outdated on the basis that “not everyone buys or

reads a newspaper” and that newspaper advertisements were of “very limited impact”.

- 28.7. The cost of newspaper advertising was another issue and was frequently cross referenced with the concern that reaching all sections of Northern Ireland society could require advertising in multiple newspapers. Concern was expressed regarding “the extortionate cost of this proposal” and that “there are more effective and efficient ways of notifying the public in today’s modern society”.
- 28.8. One proposed method of reducing costs put forward by two respondents was to limit the types of applications that would be subject to press advertising. For example by removing the need to advertise smaller applications, but retaining the advertising requirements for major applications or applications that are deemed contrary to policy or a significant departure from an area plan.
- 28.9. A number of respondents highlighted the benefits of digital and on-line media, although this was also highlighted as being possibly premature and something for the future when issues of digital exclusion are better understood. Some called for alternative methods, e.g. respondents drew attention to site notices and the option of placing lists of applications in libraries. There was support for the use of social networks, with some pointing to their use in England. One respondent disagreed with the argument made in the consultation paper that “pushing councils towards the use of online media is premature” and considered that “there is an excellent opportunity for government and councils to champion user-friendly on-line services through the changes in planning and encourage greater public engagement in the long run”. Some, on the other hand, recommended that this technology could supplement, but not replace newspaper advertising.
- 28.10. The issue of financial cost associated with newspaper advertising was also raised by a number of respondents, stating “we would make the argument that the cost of advertising may be prohibitive and is not necessarily the most effective way of reaching an audience. We would recommend that electronic means are better in this regard both in terms of cost effectiveness and coverage”.
- 28.11. The importance of the Planning Portal was recognised, although there appeared to be some confusion as to how it would work post transfer.

Department’s consideration and response

- 28.12. The Department’s aim is to ensure over the point of transfer that there is a continued high level of service delivery. It believes that maintaining existing practice in relation to newspaper advertising will ensure that all councils start with a well understood statutory minimum on day one of the new regime. The requirement to advertise all applications in at least one newspaper circulating in the locality and publish notice on a website (where one is maintained for

that purpose) will be familiar to all existing planning staff who transfer to the new councils.

- 28.13. As a number of respondents called for an explicit requirement to publish in more than one newspaper, the Department accepts that it had not sufficiently stressed that the proposal was to require the publication in **at least** one newspaper which would not limit councils going beyond this statutory minimum. Indeed, as noted above, the Department frequently advertises in more than one newspaper. The financial transfer to councils as part of RPA reflects this current situation and its associated costs.
- 28.14. The Department will be open to any suggestions relating to changes to the statutory minimum of advertising, based on the evidence of councils' experiences as local planning authorities.
- 28.15. In relation to requests for more widespread use of digital communication and social media, the Department would point to the risk of "digital exclusion", as such technology has yet to penetrate all layers of Northern Ireland society. For example, an OFMDFM's report "A Profile of Older People in Northern Ireland – 2013 update" ([Link to the Report](#)) published in November 2013 found that access to the internet was nearly universal for those under forty, but dropped to 28% for those aged 70 and over. The report said "These differences give rise to notions of 'digital exclusion' among older people, which potentially puts them at risk missing out on digital content and services".
- 28.16. Finally, the Department wishes to make it clear that the NI Planning Portal will continue to operate and provide citizens with direct access to the broad range of services currently available. Councils will also be required to publish planning applications on a website where they maintain one for that purpose as an additional publicity channel with citizens.
- 28.17. The Department intends to continue the statutory requirement to advertise all planning applications in at least one newspaper circulating in the locality.
- 28.18. The Department does not believe it would be beneficial to introduce a legislative requirement to promote digital methods at this time. Nevertheless, councils may explore this medium and the Department would be open to learn of councils' experiences in relation to further advantages to be gained in this area. If so, then the move to setting out publicity requirements in subordinate legislation gives the Department greater flexibility to make future changes if required.

Duty to respond to consultation

29. Section 229 of the 2011 Act establishes for the first time a statutory duty for consultees to provide a substantive response to a consultation request within a prescribed timescale. The detail of how the new duty will operate, and on whom the duty will be placed, will be set out in the GDPO which will:
- extend the list of statutory consultees;
 - specify the circumstances when they should be consulted on applications for planning permission;
 - set out the criteria for a substantive response;
 - specify the time period for providing a substantive response; and
 - set out the requirements for a consultee to publish a report on their performance in meeting their duty to respond.

Extending the list of statutory consultees

- 29.1. Currently, in determining an application for planning permission the Department is statutorily required to consult with the council in whose area the development is situated and, in certain circumstances, the Health and Safety Executive for Northern Ireland (HSENI). These two statutory consultees are not under a legal obligation to respond to such consultation requests from the Department.
- 29.2. In reality, the Department also consults with a much wider range of bodies, which have a particular expertise that can help in the consideration and determination of planning applications. The basis on which the Department and each of these bodies deliver services to each other is established in a series of individually negotiated agreements, but the process is conducted on an administrative basis. These bodies are non-statutory consultees.
- 29.3. Despite the generally effective operation of the planning system the consultation process can, on occasion, involve significant delays in the processing and determination of applications.

Consultation paper proposal

- 29.4. The Department proposes to extend the list of statutory consultees to include the bulk of those bodies who are consulted routinely in relation to planning applications. This will help ensure those consultees perform their statutory duty, increasing the speed and efficiency with which planning applications are dealt with.
- 29.5. The circumstances and/or the type or scale of development which would require a statutory consultation request have also been set out. There may be instances where additional consultation beyond this statutory minimum is required. However, it is envisaged that planning officers will discuss with relevant consultees, whether such non-statutory consultation is necessary.

Consultation response

Question 29	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 29: Are the proposed lists of new statutory consultees set out in Annex D appropriate?	46	77%	39	85%	7	15%

29.6. The majority of those who commented (85%) expressed satisfaction with the proposed list of statutory consultees.

29.7. Those who did not accept the proposals, did not object to those bodies identified but suggested certain additional bodies being added to it. Alternatively others, while expressing overall satisfaction, also made suggestions regarding possible additions. Some suggested adding additional bodies to the list, while some wished to see more extensive consultation duties for some that were already included.

29.8. Suggestions included:

- NI Housing Executive
- DRD in relation to signs that could create traffic hazards
- DRD in relation to applications from airports
- DOE in relation to airports
- DOE in relation to trees
- Northern Ireland Tourist Board
- DETI and DARD in relation to applications that do not quite meet the major application threshold
- HSENI
- DETI on all energy infrastructure projects
- DSD
- PSNI
- Health and education authorities
- Local building preservation trusts or regeneration charities
- Telecoms systems providers

29.9. Finally a number of respondents requested clarification on the position of NIEA as a statutory consultee under the new arrangements.

Department's consideration and response

29.10. The aim of the proposal is to establish a statutory **minimum** consultation requirement that will apply to the majority of planning applications. This is intended as an integral part of the drive to speed up consultee responses, by requiring them to make their input within a specified time limit. Thus there are two driving themes underlying the design of the legislation.

- 29.11. The bodies and individuals identified, are those that historically have dealt with the majority of consultation requests. DOE records show that in 2013-14 DRD Roads Service received in excess of four thousand consultation requests and NIEA who received around two thousand, while in contrast DCAL received 54. Imposing the duty to respond on bodies that only make a small number of responses may not deliver significant improvements in the development management system, yet may introduce a disproportionate burden on the consultee in terms of their administrative processes and the requirement to produce an annual report on their performance. This approach has also been informed by discussions with the key consultee bodies to assure that the system also addresses the need for information and advice to inform determinations.
- 29.12. Note that the list is a statutory minimum. In considering the detail of any particular application, there is nothing to stop councils consulting other bodies or individuals as they think fit. This would be done on an administrative rather than a statutory basis.
- 29.13. Some of the more detailed points raised by respondents can be dealt with individually. There were a number of suggestions to include HSENI, but this has already been included in the proposals
- 29.14. A requirement to consult DRD on advertisements that could impact upon roads is included in the draft Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 and consequently is not repeated in the draft Planning (General Development Procedure) Order (Northern Ireland) 2015.
- 29.15. A decision to consult DETI or DARD on applications that do not “quite meet the major application” threshold, would be a decision for individual councils based on the detail of the individual application. As identified above, there is no restriction on councils going beyond the statutory minimum requirement if this is considered to be appropriate.
- 29.16. With regards to planning issues related to airports, the Department would point out that statutory consultation arrangements will be linked to the new development hierarchy. The nature and scale of an application will in turn determine where it sits in the hierarchy, which will determine how any future applications will be managed through the system.
- 29.17. In relation to the role of NIEA, it is worth reinforcing that it is in a different position from other consultees, because it exists within the Department and has no separate legal identity. In circumstances where NIEA’s input is required to inform a council’s determination of an application for planning permission, the Department of the Environment (as the NIEA parent body) is identified as the statutory consultee and will be subject to the duty to respond.
- 29.18. In circumstances where the Department will be operating as the planning authority (i.e. for regionally significant applications or those applications that it calls in) and NIEA input is required, this will be done on an administrative

basis. This is the case currently, as the Department cannot be legally required to consult itself given NIEA's lack of a separate legal identity.

- 29.19. The legislation is intended to introduce improvements which will support overall improvement in the development management process. The proposed list of statutory consultees reflects the range of consultees who have historically been involved in providing the necessary information and advice to assist in the determination of the vast majority of consultation requests.
- 29.20. This is a statutory minimum, which will introduce clarity in relation to roles and responsibilities as well as the timeframes involved.
- 29.21. There may be circumstances where an application would sit outside of the proposed requirements of the legislation, but a council nevertheless thinks advice from a particular body would be necessary or desirable to inform its determination of an application. In such cases then there is no restriction on the council preventing it from seeking such input on an administrative basis, as is currently the case for the Department.
- 29.22. The Department believes that the proposals place a clear duty on consultees to respond in the circumstances identified (including a clear requirement placed on the Department itself in relation to environmental advice from NIEA) and present a workable and proportionate approach to introducing improvements to the consultation process.
- 29.23. As with the other proposals set out in subordinate legislation, the Department is open to future amendment on the basis of councils' experience of operating the development management process.
- 29.24. The Department notes calls for DETI to be made a statutory consultee for all energy applications, but would point out that the proposed arrangements for DETI to be consulted on all major energy applications have been agreed following discussion with DETI. It would be impractical and disproportionate to include all energy projects regardless of scale.

Circumstances for Consultation

30. As well as extending the list of statutory consultees, it is important to outline under what circumstances these bodies will be consulted, in order to guide councils', planning officers, statutory consultees and applicants alike.

Consultation Paper Response

- 30.1. Whilst the new legislative proposals extend the list of statutory consultees, they also set out the circumstances and/or the type or scale of development which would require a statutory consultation request. There may be instances where additional consultation beyond this statutory minimum is considered appropriate by a planning authority, however, it is envisaged that planning

officers will discuss with relevant consultees, whether such non-statutory consultation is necessary.

Consultation response

Question 30	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 30: Are the types of development or circumstances listed in the Schedule at Annex D sufficient? Can you suggest any additions or omissions along with the reasons for your suggestions?	39	65%	32	82%	7	18%

30.2. The majority of respondents (82%) who commented were in favour of the proposal as set out in the consultation document.

30.3. A limited number of other development types were suggested including:

- the Department's energy team within Strategic Projects Division should also be consulted on major energy related applications; and
- DARD in relation to applications affecting high quality nature value agricultural land.

30.4. Concern was expressed that the Health and Safety Executive for Northern Ireland might not be consulted in relation to small-scale developments.

30.5. A number of environmental groups suggested the requirement to consult DOE be extended from beyond “the use of land likely to have a significant effect on the marine environment” to cover shoreline or coastal development. They also expressed fears that consultation with NIEA would be limited to the high level sites and protected species, leaving other developments to be assessed by council staff who might not have the expertise to gauge impacts on the whole range of species and habitats. Concern was also expressed that the vulnerable species referenced in the proposals as requiring consultee input, also included local and regional lists and not just European ones. It was further suggested that there should be a mechanism for both local and central government to be involved in “horizon scanning” of future projects that may require specialist advice and in developing the evidence base to support that decision making.

30.6. Some environmental groups raised the issue of whether proposed consultation arrangements appropriately reflect the issue of protecting the coastal zones and the marine environment as coastal zone management was likely to become increasingly important, “as we face changing climate conditions”. Clarification was also requested on NIEA’s standing on the basis that it has no legal identity separate from the Department.

Department's consideration and response

- 30.7. The range of development types included in Annex D of the consultation paper (schedule 3 of the GDPO) is intended to establish a statutory minimum for consultation with appropriate expert bodies. This includes consultation where a development proposal “involves the use of land likely to have a significant effect on the marine environment”. Councils will be able to consult on other development types if they believe that their individual circumstances require it to inform a council’s determination. Indeed a number of respondents to the consultation recognised this.
- 30.8. In relation to the proposals for consulting DARD on high value nature and agricultural land, the Department has already identified DARD as a statutory consultee in the local development plan through which it can advise on the zoning of land which might impact on the availability of appropriate levels of agricultural land.
- 30.9. Proposals for consultation with HSENI are considered appropriate with sufficient provisions for the majority of applications. In addition, this represents a statutory minimum. Councils will be free to engage with HSENI on smaller development proposals if they feel it is necessary.
- 30.10. With regards to the protection of local species and habitats, the Department would point out, that the proposals focus on the high level designations to ensure a statutory process and timeframe is followed for evaluating planning applications which are potentially of greatest impact for Northern Ireland. However, there is a range of other situations where environmental expertise in relation to biodiversity will be essential to ensure robust decision making by the councils. The Department is therefore developing operational guidance and standing advice on topics which will:
- explain procedures and trigger points, for example, on thresholds and how tests of likely significance should be applied in practice; and
 - provide additional advice on when the Department (in the form of NIEA) should be consulted.
- 30.11. The Department will also clarify its role and relationship with the councils and applicants in a service and standards framework. This will set out respective roles in the process and will be supported by formal agreements as appropriate. All these documents will be available at the point of transfer and drafts should be available in November.
- 30.12. The Department recognises the possible confusion regarding consultation requirements including local lists of flora and fauna, as well as European ones. The wording of the proposals will be amended to present a consistent approach in relation to legislative and policy contexts operating for the natural and historic environment and to minimise overlap between the planning and consultation arrangements in other regulations.

- 30.13. With regards to horizon scanning of future projects, the Department will continue to provide a discretionary advisory service and will work with local authorities and others to produce accessible guidance and information to assist in robust decision making. The Department's role will be set out in an overarching services and standards framework. In addition, the Department is currently engaging with the new district councils to investigate the establishment of a local government environmental support function. This would operate in support of councils and would be independent of the Department's ongoing environmental role as a statutory consultee provided by NIEA.
- 30.14. In relation to the linkages between terrestrial and marine planning, in addition to the proposals for consultation already addressing this area, further consideration is set out in the emerging draft Strategic Planning Policy Statement, which also proposes policy in relation to decision taking on coastal development. In particular it is proposed that development should not be permitted in areas of the coast known to be at risk from flooding, coastal erosion or land instability.
- 30.15. The Department recognises the broad acceptance of its proposals for statutory consultation. However, the Department accepts that the wording of its proposals in relation to consultation requirements in relation to "priority habitats or priority species" has led to a degree of confusion and will revise these requirements to improve their clarity.
- 30.16. As with other proposals, this establishes the **minimum** requirements to be placed on a planning authority, both councils and, where appropriate, the Department itself. Where the detail or particular circumstances relating to a development proposal raise issues which would not require statutory consultation, yet the planning authority believes that such input would be beneficial, then it can go beyond this minimum and engage with a particular body on a non-statutory basis, to better inform its determination of the proposal.
- 30.17. The Department believes that the proposals as they stand represent a solid basis for ensuring an appropriate level of engagement with the key organisations, whose expertise may be required to support sound planning determinations across a broad range of circumstances.
- 30.18. The Department recognises, however, that the experience of council's in their new role as local planning authorities may identify further circumstances, which might merit a revision to this proposed position and the Department remains open to such an approach.

Substantive response to consultation

31. In the past, consultees have responded to consultation requests with “holding replies”, pending later, fuller responses. This has contributed to delays in determining applications. Section 29 of the 2011 Act establishes for the first time a statutory duty for consultees to provide a substantive response within a prescribed timeframe.

Consultation paper proposal

31.1. The new legislation will require statutory consultees to make a ‘substantive response’ within a standard period of 21 calendar days of the consultation request being issued. The legislation will propose that a substantive response is one which:

- states that the consultee has no response to make;
- states that, on the basis of the information available, the consultee is content with the development as proposed;
- refers the planning authority to current standing advice by the consultee on the subject of the consultation; or
- provides advice to the planning authority to enable the determination of the application.

31.2. The draft Planning (General Development Procedure) Order (Northern Ireland) 2015 will also include provision for an alternative time period to be agreed in writing, where this is considered necessary. It is anticipated that the agreement of an extended period for response will be an exception, negotiated for a minority of cases where it is clear to both parties that the complexity of the issues to be considered will prevent the consultee from making a substantive response within the standard 21 day timeframe.

31.3. Where an agreement between the consultee and the planning authority cannot be reached, then the standard timeframe of 21 calendar days will be the period for response.

Consultation response

Question 31	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 31: Do you believe that the proposed standard timeframe of 21 calendar days is appropriate in order to provide statutory consultees with enough time to make a substantive response?	41	68%	35	85%	6	15%

- 31.4. The majority of those who commented (85%) agreed with the proposal. While most respondents accepted that 21 calendar days was an adequate time for response, the importance of ensuring that statutory consultees were sufficiently resourced was also stressed.
- 31.5. A small number believed that 21 calendar days did not provide sufficient time for a substantive response with 28 and 30 days suggested as alternatives. Others noted and welcomed the option of consultees agreeing an extension with planning authorities if both were content that this was necessary, for example, “where there are complexities in environmental considerations”. One respondent suggested 21 days was too long for minor applications and recommended 14 days instead.
- 31.6. One respondent requested clarification as to when the 21 day period (or any other agreed deadline) would commence, but more concern was expressed about what would happen if a substantive response was not received by the specified limit. Two respondents wanted penalties imposed, “potential fiscal penalties could also be considered for consistently poorly performing consultees” or “there requires to be some form of sanction against consultees that fail to respond substantively within the 21 day period if the deadline is to be meaningful”.
- 31.7. Others wanted an assumption of deemed approval if a substantive response was not made by the required time, “If a consultee fails to respond then it should be deemed that they have accepted the application as submitted” or “the council/Department will simply assume that no comment is forthcoming and that any subsequent response received outside the 21 day period will not receive weight or consideration in the decision making process”. Alternatively, some suggested a “reminder letter” from the planning authority to the consultee in order to clarify the reason for the delay.
- 31.8. A small number of respondents wanted non-statutory consultees to be placed under the same time limit as the proposed statutory consultees.
- 31.9. Finally, one respondent raised the possibility of delays being introduced to the process if consultees adopted the default position of making a “significant objection” to a development proposal instead of a substantive response. The possibility of a consultee making a significant objection arose from the respondents understanding of question 25 dealing with call-in arrangements.

Department’s consideration and response

- 31.10. The Department believes that 21 calendar days will be an adequate time period for the majority of consultee responses. This aligns with the 15 working days target in the majority of the existing service level agreements that currently govern the relationships between the Department and those consultees responsible for the majority of responses. Pre-consultation engagement with a range of proposed consultees has indicated that that they

believe the proposed 21 calendar days timeframe will be sufficient for the majority of consultation requests. Consultation on larger scale, more complex applications may also be addressed by the agreement of an extension between the planning authority and the consultee, although the planning authority would have the last word on this.

- 31.11. Some respondents raised the issue of the consequences should a substantive response not be made in time. The Department believes that any specified time limit should not be viewed in isolation, as it will act as a trigger that will require a consultee to explain why certain responses were late in their annual performance report. More will be said about this performance report in the Department's response to question 33, but the Department believes that the information provided by these reports will ultimately prove to be the driver behind identifying issues to support ongoing system improvement. These reports would also provide the explanation for delays that some respondents requested as part of their suggested reminder letters and so the Department does not believe that such letters would add to the process.
- 31.12. The Department does not accept that this time limit should be placed on non-statutory consultees, that councils may wish to consult. The proposed statutory consultees have been included because they have historically handled the bulk of all consultation requests (approximately 80%) and imposing this duty on those who only deal with a very limited number of requests would impose an administrative burden, while making little impact on the speed of the overall process.
- 31.13. The Department views the proposed amendments to the statutory consultation process as an area of significant potential benefit to the overall processing of applications. It is also a key area requiring a cultural shift, with each party involved in the planning system understanding and delivering against their responsibilities. This includes applicants, consultees and indeed the planning authority. An acceptance of those responsibilities and a commitment to discharge them will be more effective than any proposed sanction, financial or otherwise.
- 31.14. Equally, the Department does not believe that there should be some sort of "deemed approval" or the setting aside of a consultee's input should it be late. There is nothing to prevent a planning authority proceeding to determine an application in the absence of a consultee's response, but there cannot be a hard and fast rule or some form of statutory imperative to this end. A planning authority should only proceed if it was convinced that such an approach could be considered reasonable having carefully considered any likely risk or impacts. Each case should be considered on its individual merits. Provisions within the 2011 Act, provide some protection for councils who proceed to determine an application in the absence of a timely response to a statutory consultation request and who may face compensation claims if they subsequently need to revoke or modify that permission. In such cases the consultee's sponsoring department (if any) would be required to reimburse the council's compensation costs.

- 31.15. The term “significant objection” from a statutory consultee relates to the basis on which the Department would consider calling in an application and only then where a council is minded to grant permission even in light of the significant objection. Greater detail is provided in relation to proposed call-in procedures in relation to question 25 above, (paragraphs 25-25.12).
- 31.16. Finally, the Department wishes to clarify that the 21 calendar day period begins once the planning authority is satisfied it has supplied all necessary information that will allow a consultee to make a substantive response. It does not run from the date when the application is received.
- 31.17. The Department believes that the proposed 21 calendar day timeframe is appropriate for statutory consultees to make a substantive response in the majority of cases. This may pose some challenges in relation to larger and more complex applications, but there is provision in the proposals for a longer timeframe to be agreed between a consultee and planning authority.
- 31.18. Longer term the focus on performance against the duty to respond may identify areas where consultation requirements might be lightened or the detail of a response altered, e.g. a greater use of standing advice.
- 31.19. The Department believes that this longer-term focus on system improvement, is best supported through commitment by the various stakeholders in the planning system. To that end the Department does not support the approach of introducing sanctions against consultees who might not meet the specified timeframes for response. The Department believes that a consultee’s input, based on identified areas of expertise, should be considered by a planning authority in reaching its determination of an application. In addition, the Department believes that the compensation provisions, as well as reporting requirements, are sufficient to maintain an appropriate focus on consultee performance.

Definition of Substantive Response

32. When placing a statutory duty on consultees to supply a substantive response, it is important to clarify exactly what such a response constitutes.

Consultation paper proposal

- 32.1. The legislation will propose that a substantive response is one which:
- states that the consultee has no response to make;
 - states that, on the basis of the information available, the consultee is content with the development as proposed;
 - refers the planning authority to current standing advice by the consultee on the subject of the consultation; or
 - provides advice to the planning authority to enable the determination of the application.

Consultation response

Question 32	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 32: Do you believe that the above definitions of a substantive response are satisfactory or do you have other suggestions that the Department could consider?	38	63%	30	79%	8	21%

- 32.2. The majority of respondents who commented (79%) accepted the proposals, although some of them also made suggestions for minor amendments. Some of the comments supplied in response to question 31 included opinions on the nature of substantive responses.
- 32.3. All the suggested amendments to, or disagreements with the proposal can be grouped into a number of themes. The most common theme, expressed by 7 respondents was that a holding response from the consultee requesting further information, should be accepted as a substantive response; “statutory consultees should be provided the opportunity to request further information from an applicant and any such reasonable request should be considered a substantive response”. Alternatively, some expressed satisfaction that a holding response would not be taken as substantive.
- 32.4. Some made the point that a substantive response could only be made in a specified time, if all the necessary information was made available to the consultee. Others requested small amendments to the definition of substantive response. One suggested subsuming the reference to “current standing advice” in the third part of the definition within the fourth point. Thus standing advice would be more clearly associated with the advice that would enable the determination of an application.
- 32.5. One respondent was concerned that a substantive response would enable a consultee to advise a refusal of permission and saw this as a change of approach. Yet another objected to the proposal on the grounds that a right to recommend a refusal was *not* an option in a substantive response. “Failure to do so unnecessarily fetters the discretion of those who are consultees and the absence of such a provision may be considered unlawful”.

Department’s consideration and response

- 32.6. The Department does not believe that holding replies, whether to request more information or for any other reason, should be part of a substantive response. The duty to respond should be viewed not in isolation, but as part of a streamlined planning system in which front loading and pre-application discussions will be key functions. The Department’s vision is one where early engagement between applicants and consultees, aided by guidance from consultees clarifying the information they are likely to require, will result in a

better standard of application that can be processed with minimum delay. The need for consultees to request additional information following their formal consultation should be reduced.

- 32.7. However, there may well be occasions where a statutory consultee believes it requires additional information. In such cases, the clock will continue to tick. Consultees may be concerned that their performance figures will suffer because of something which either, could not have been foreseen, or which may have been the applicant's fault. Such cases may be reflected in that part of the performance report which will require explanations for late responses. The report will essentially allow consultees to have their say on how the overall system is operating and identify areas for future improvement. The Department sees this as a significant part of the duty to respond because should, for example, requests for information continue to slow the system then the report will provide the evidence that enables such problems to be identified, quantified and eventually addressed. This is seen as a key driver of future system improvements.
- 32.8. There appears to be misunderstandings around the question of substantive responses from consultees, including recommendations that consultees should be able to recommend that applications should be refused. Consultees can advise that certain applications would have a detrimental impact, but such advice is only to assist a planning authority when it determines an application. The planning authority will approve or refuse the application; this is the recognised and lawful procedure.
- 32.9. The Department wants the process to operate on the basis that a consultee's response, in relation to their identified area of expertise, informs the planning authority's determination of an application, rather than have a consultee provide its overall view of the merits of the grant or refusal of planning permission. That said, there is scope for a consultee to provide detailed information on particular barriers in relation to its area of expertise that it considers essential in determining the application.
- 32.10. The Department notes suggestion for minor amendments, but points out that the definition of substantive response, appropriately reflects the range of situations which it can be anticipated will support the determination of planning applications. The proposed criteria reflects those used in England and Wales and the Department understands that these are operating effectively. That said as with other areas the Department will be able to learn from the experience of councils.
- 32.11. The Department believes that the proposals as set out in the Phase 1 consultation document, represent a reasonable basis on which the new duty to respond should be delivered and proposes to take forward these proposals in subordinate legislation.

Duty on statutory consultees to report to the Department on their performance

33. Reporting data will help identify issues within the overall consultation process, for example, the number of occasions when response timeframes beyond the standard 21 calendar days are used. It also has the potential to become a key driver in supporting process improvement, by identifying areas which have experienced difficulties, and the underlying reasons. It will also identify areas of strong performance and provide an opportunity to share good practice.

Consultation paper proposal

33.1. The GDPO will place a duty on statutory consultees to report on their performance during the previous year. It is proposed that the report shall contain:

- a statement as to the overall number of occasions on which the consultee was statutorily consulted;
- a statement as to the number of times a substantive response was given within the prescribed default timeframe;
- a statement as to the number of times a substantive response was given within a period agreed between the planning authority and the consultee; and
- a summary of the reasons as to why the consultee failed to respond within any of the specified or agreed timescales.

Consultation response

Question 33	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 33: Do you consider that the proposed reporting requirements are appropriate or are there other requirements you believe would offer further benefits?	33	55%	27	82%	6	18%

33.2. The proposal had majority support (82%) amongst those who commented. Some of those who supported the proposal also acknowledged that these reports could play a significant role in improving the system, in that “they will enable trends to be established in response times, allow a meaningful review of the arrangements to be undertaken and changes made, if required, identify good practice and promote transparency and public confidence in the process”. Others referred to the identification of “bottlenecks that might be better addressed by procedure or guidance”.

33.3. The minority who rejected the proposal appeared to be more focussed on an approach to introduce sanctions or penalties should responses be late. For example one respondent called for “the introduction of a provision within the reporting requirements for the planning officer to proceed to make a

determination without the response of a statutory consultee who fails to respond within 21 days”.

- 33.4. Some other respondents felt that the annual reporting period was too long, “welcomes the principle of reporting arrangements but considers that an annual report, focusing on the previous year, should be supplemented by a monthly reporting arrangement”. Clarity was also requested on the format and scope of the reports, e.g. would they be Northern Ireland wide or broken down by council area. Concerns were also expressed about obtaining access to the reports, with respondents seeking assurance that they would be freely available, “consideration should also be given to information being published in an “annual report” on the consultee websites and scrutiny by relevant NI Assembly Committees on the basis that statutory consultees are, or form part of, government departments”.

Department’s consideration and response

- 33.5. The Department intends these performance reports to be a crucial part of the duty to respond, highlighting (as some respondents recognised) bottlenecks or examples of good practice so that statutory consultees can learn from each other’s experiences. They will allow the assessment of consultee performance to be based on quantifiable evidence and not preconceived opinions. Placing reports on an annual basis is intended to establish an ongoing performance system that will support ongoing and long-term system analysis and improvements.
- 33.6. Some respondents still called for penalties when consultees make late responses; however, there was no identification as to how this would improve the performance of the planning system nor a recognition that not all such delays are a consultee’s fault. The performance reports may reveal that some problems such as, for example poor quality applications, are actually the fault of others in the process. The Department expects to make these reports widely available bearing in mind any possible issues regarding confidentiality or freedom of information.
- 33.7. The format of the reports will be the subject of guidance, but the Department wishes to balance the scope and value of reporting requirements with the administrative burden on consultees. Thus it does not believe that imposing a requirement for monthly reports is realistic. However, the Department will have access to consultee performance data from the planning portal over much shorter timeframes in order that it can help identify any short term issues, as opposed to long-term system improvements.
- 33.8. The Department believes that its proposals for annual reports from statutory consultees (as set out in the consultation paper) on their performance in meeting their duty to respond to consultation requests, provides for a reasonable approach to overseeing the evolving performance of the consultation process within the new planning system. It provides a sound approach to enhancing consultee “ownership” of the new development

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management procedures and securing a long-term evidence base for analysis and system improvement. This will be supplemented by more immediate access to management data within shorter timeframes in order to identify issues that may require more immediate action.

- 33.9. The Department will provide more detail on the format and content of these reports, but its overall intention would be to use NI Planning Portal information as appropriate.
- 33.10. The Department would therefore propose to proceed with its legislative proposals for statutory consultee performance reporting, to be supported by guidance to future statutory consultees.

Design and Access Statements

34. A core planning principle of the reformed two-tier planning system is to encourage and support good design. Design is an important material consideration and planning permission may be refused solely on design grounds.
- 34.1. Sections 40(3) and 86(2) of the 2011 Act require certain descriptions of applications for planning permission and all listed building consent applications to be accompanied by a design and access statement (DAS). The DAS is essentially a communication tool to show that the objectives of good design and inclusive access have been considered from the outset of the development process.

Consultation paper proposal

- 34.2. The Department is proposing that the following planning applications be accompanied by a DAS:
- development which is major development; or
 - where any part of the development is within a designated area², development for the provision of one or more dwelling house or the provision of a building or buildings where the floor space created by the development is 100m² or more.
- 34.3. Planning applications that do not require to be accompanied by a DAS are:
- of the description contained in section 54 of the 2011 Act, i.e., applications to develop land without compliance with conditions previously attached, unless non-compliance specifically relates to a design or access issue;
 - for engineering or mining operations;
 - a material change in the use of land or buildings, provided that if the new use will necessitate access by an employee or involves the provision of services to the public or section of the public, with or without payment, then the article applies to the application for access only; or
 - for development which is waste development.
- 34.4. The proposed legislation will provide that where a planning application is submitted in parallel with an application for listed building consent, a single combined statement should address the requirements of both. The only exception is interior works to listed buildings where an access section is not required. If the access is amended, then an 'access only' statement would be required to accompany the application.

² A designated area is currently defined as a conservation area, an area of outstanding natural beauty, an area of special scientific interest, a National Park or a property appearing on the World Heritage List.

34.5. The legislative requirement will only apply to planning applications for outline or full planning permission and will not extend to applications in relation to reserved matters.

Consultation response

Question 34	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 34: Do you agree with the application categories and types of applications which should, and should not, be accompanied by a Design and Access Statement?	47	78%	39	83%	8	17%

34.6. The majority of those who responded (83%) were in agreement with the proposed types of applications that should and should not be accompanied by a DAS. Respondents from across the sectors welcomed the proposals and commented that they reflected the position in other UK planning systems.

34.7. A number of respondents highlighted the need for clarification of the proposals in relation to the categories of development applications that would need to be accompanied by a DAS. For instance, a number of respondents sought clarification as to whether telecommunications infrastructure would require a DAS, while some suggested that electricity infrastructure development should be added to the list of applications that do not require to be accompanied by a DAS.

34.8. A number of respondents from the renewable energy sector, although in agreement with the proposed application categories, raised concerns about consent for proposals being refused purely on design grounds, emphasising that planning decisions should take into account social, economic and environmental considerations. Comments were received that designated areas should include European designated areas such as Special Areas of Conservation (SACs), Special Protected Areas (SPAs), Ramsar sites, Marine Conservation Areas, monuments in state care and areas of special archaeological interest. Others suggested that a DAS should be required for development within areas of townscape/village character.

34.9. A small number of individual responses raised concerns that a DAS is not required for reserved matters submissions. Queries were also raised about the relationship between a DAS and design policy and guidance, as well as the amount of work associated with preparing the DAS. A useful suggestion was made that developers may wish to include a draft statement to inform the pre-application community consultation stage.

Department's consideration and response

- 34.10. A DAS is a helpful tool to explain and justify the objectives and concepts of good design on which a development proposal is based and how these have been reflected in the scheme. This would include justification of the proposals in terms of local and regional design policies and how environmental sustainability has been taken into account. It also includes demonstrating how inclusive design has been considered and to show how access arrangements make reasonable provision to ensure users have equal and convenient access. A proportionate approach based on the scale and type of development will be required. The DAS will assist the council, or as the case may be the Department, in the assessment of the application and local communities input to it. The legislation aims to 'front load' the system, by ensuring all information is submitted up front and requests that the applicant has demonstrated how they have reached their design conclusion. Failure to submit a DAS with the relevant planning application will invalidate the application at the outset.
- 34.11. It is important to highlight that all current planning design policy will still apply to planning applications and listed building consent applications. Therefore, there will be no difference in the assessment of the design of the particular application. The new proposals are simply putting into statute what is already good practice. The consultation paper proposal draws on experiences in other jurisdictions broadly replicating the new streamlined approach in England and is similar to the position in both Scotland and Wales. This streamlined approach removed what some considered as onerous work on the applicant to leave only those application types which benefit from an accompanying DAS.
- 34.12. In terms of the categories of applications for which a DAS is required, it is likely that developments such as telecommunications or electricity infrastructure would be considered local, or indeed permitted development and outside of designated areas would be excluded, as only major schemes would require to be accompanied by a DAS.
- 34.13. As regards the definition of designated areas, comments were received proposing the inclusion of a range of other designations including European sites such as SACs, SPAs and Ramsar sites. Other suggestions included providing for areas of townscape and village character within the meaning of a designated area. The Department has reconsidered the definition of a designated area for the purposes of DASs to focus mainly on the visual impacts of applications on the built, rather than the natural environment. The Department considers that most applications for which a DAS will apply will fall outside European sites, which are in any event afforded a high level of policy protection and have specific legislative protection under The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995. In addition, The Environment (Northern Ireland) Order 2002 provides legal protection for Northern Ireland's important habitats through its powers to

designate, protect and manage areas of special scientific interest (ASSI's). These powers are also used to complement or 'underpin' protection and management of our European sites (i.e. SACs and SPAs) and Ramsar sites. The Department therefore takes the view that as strong policy and legislative controls already exist for natural environment designations, European sites do not need to be included and that ASSIs should be removed from the list of designated areas within which smaller scale development proposals need to be accompanied by a DAS. The Department does not wish to over-regulate on the need to provide DAS or put unnecessary burden on the applicant, given that a DAS aims to help assess the visual impact on primarily the built environment rather than dealing directly with nature conservation issues. Also, as Northern Ireland does not have any designated National Parks, it is not considered necessary to retain reference to National Parks. The removal of ASSIs and National Parks from the list of designated areas would result in a balanced and targeted approach similar to that adopted in other jurisdictions. Importantly, it should be stressed that DAS will still be required for **all** major planning applications irrespective of where the development is proposed.

- 34.14. The Department does, however, consider there is merit in including areas of townscape/village character in the list of designated areas given the particular emphasis on ensuring that development proposals in these areas respect the appearance and qualities of each townscape area and maintain or enhance their distinctive character. Designation as an area of townscape/village character puts an onus on prospective developers to produce a high standard of design, which respects and is sympathetic to the particular qualities of the area in question. The Department will keep under review the types of application to be accompanied by a DAS as the new arrangements bed in.
- 34.15. In terms of the requirement for a DAS for outline and full planning applications, and not reserved matters, this reflects the position that a submission for reserved matters is not an application for planning permission and, as such, a DAS is not a statutory requirement. The Department, however, is keen for a DAS to follow a "living document" approach in that consideration of design and access matters should influence decision making throughout the life-time of a building project. Good practice suggests the statement should develop as key stages on the project are reached. Therefore, a progress statement should accompany a submission for reserved matters updating what changes have occurred since outline stage. It may also be appropriate for conditions relating to matters contained in the DAS to be imposed when the outline permission is granted. Therefore, the DAS would be required at an earlier stage if not submitting a full application. Submission at outline stage front-loads the process to allow a better-informed decision to be made. Guidance will emphasise the need for a proportionate approach.
- 34.16. In light of the strong support for the proposal, the Department intends to proceed as indicated in the consultation paper, however, it intends to add a paragraph to regulation 6 of the GDPO to define a designated area for the purpose of a DAS as; a conservation area, an area of outstanding natural beauty, a world heritage site and an area of townscape or village character.

Form and content of a Design and Access Statement

Consultation paper proposal

35. It is proposed that a DAS must:
- explain the design principles and concepts that have been applied to the development;
 - demonstrate the steps taken to appraise the context of the development and how the design of the development takes that context into account;
 - explain the policy adopted regarding access to, from and within the development and how policies relating to access in the relevant local development plan have been taken into account. It should also state what, if any, consultation has been taken into account on issues relating to access to the development for disabled people and what account has been taken of the outcome of the consultation; and
 - explain the design principles and concepts that have been applied to take environmental sustainability into account.
- 35.1. As well as the above, an application for listed building consent must also take account of:
- the special architectural or historical importance of the building;
 - the particular physical features of the building that justify its designation as a listed building; and
 - the building's setting.

Consultation response

Question 35	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 35: Do you agree with the proposals in relation to form and content and the requirement to take environmental sustainability into account in relation to design principles and concepts?	42	70%	39	93%	3	7%

- 35.2. The vast majority of those who responded (93%) were in agreement with the form and content for a DAS and the requirement to take environmental sustainability into account in relation to design principles and concepts.
- 35.3. A common thread in many of the responses was the need for clarity in relation to the status of design guides and that Departmental guidance will be crucial for ensuring the term 'environmental sustainability' has been understood.

Department's consideration and response

- 35.4. The Department will be producing new guidance for the procedures involved for design and access statements including the relationship with existing design policies and guidance, building on the experiences from the other jurisdictions. In the light of very clear majority in support of this proposal, the Department intends to proceed as indicated in the consultation paper.

Power to make non-material changes to existing grants of planning permission

36. Section 67 of the 2011 Act introduces a mechanism which would enable councils to agree non-material changes to planning permissions which have been granted. In deciding whether a change is material, the council must have regard to the effect of the change together with any previous changes which may have been made. The new power will also allow councils to impose new, related, conditions and remove or alter existing conditions.

Consultation paper proposal

- 36.1. The Department proposes that an application for a non-material change to planning permission shall be made in writing giving a description of the non-material changes sought and sufficient information to identify the previous grant of planning permission.

Consultation response

Question 36	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 36: Do you agree with the proposals for handling applications for non-material changes to a previous planning permission?	43	72%	35	81%	8	19%

- 36.2. The vast majority of those who responded (81%) were in agreement with the proposals for handling non-material applications. A number of respondents sought a clear definition of “non-material” and further clarification and guidance as to what constitutes a non-material amendment. One respondent suggested that applications for non-material changes should be subject to neighbour notification. Another respondent sought clarification as to whether there was a time limit for councils to reach decisions on non-material changes and suggested an additional test in relation to detrimental environmental impact, for determining whether a change is non-material or not.
- 36.3. A number of respondents recommended that there should be a standard application form that all councils should use so that there will be consistency across the board. It was also recommended by one respondent, that the application form becomes a statutory requirement that all councils will abide by. A number of respondents also sought clarification on whether there would be a fee for this type of application.

Department's consideration and response

- 36.4. There is no statutory definition of a “non-material” change. This is due to the fact that it is so dependent on the context of the overall scheme. The Department considers that the tests identified in the consultation document provide councils with a starting point for their assessment and determination of whether or not a proposed change would qualify as a non-material amendment. It will be the responsibility of the council to determine if a change to an existing planning approval is material or not. Given the very minor nature of the issues involved, the Department considers that there is no justification for neighbour notification and does not consider it appropriate to include a statutory time limit for their determination. Similarly, it also considers that it is not appropriate to include an additional test in relation to detrimental environmental impact given the minor nature of non-material changes. If the proposed change were to create detrimental environmental impacts, it would not be considered ‘non-material’.
- 36.5. Given that possible amendments sought to the original planning permission, the specific circumstances of the site and its surroundings, as well as the overall context of the development scheme, are some of the key determining factors, which will vary considerably from one application to another, it would not be possible to provide additional guidance to capture all these local variances and circumstances. However, the Department is developing good practice advice to support councils in the handling of non-material change applications. The emphasis is very much on the provision of advice but where specific legislative requirements must be followed these will be made clear.
- 36.6. The Department is in agreement that a standard application form should be used to help ensure a consistent approach across the board, enable applicants to be clear about the extent of the information required and ensure that sufficient information is provided at the start of the process to ensure a prompt decision can be made. Although it will not be a statutory requirement, the Department will produce a standard application form that may be used by all councils. The Department does not intend to introduce a fee for non-material changes at this time.
- 36.7. Due to the high level of support received in the consultation responses, the Department intends to proceed with the proposals for handling applications for non-material changes to previous planning permission.

Councils' Own Applications for Planning Permission

37. Section 79 of the 2011 Act, sets out the procedural framework for dealing with councils' own applications for planning permission.
- 37.1. The draft regulations (the Planning General Regulations (Northern Ireland) 2015) provide that an application for planning permission by a council itself, or by a council jointly with another person, shall be determined by that council unless the application is called in by the Department under a Direction made under section 29 of the 2011 Act for determination by it. To allow the Department sufficient time to reach a decision on whether or not to call in an application, a 28 day period shall apply from receipt of all the required information from the council, within which to reach that decision. This will provide both councils and the Department with the necessary safeguards and discretion to ensure adequate controls are put in place for dealing with councils' own applications involving council owned land or land in which they have a financial interest.

Consultation paper proposal

- 37.2. The draft regulations provide that any grant of planning permission by a council shall have effect only for the benefit of that council itself and not with the land, except in the case of an application for planning permission jointly with another person. In that case the permission shall have effect for the benefit of the applicant council and that other person. This is to ensure that a council cannot benefit from an increase in the value of land following the grant of planning permission without first carrying out such development prior to disposing of the site. The draft regulations also provide that no application for planning permission can be determined by a committee or sub-committee or officer of the council if that committee, sub-committee or officer has any responsibilities which include any aspect of the management of any land to which the application relates. By this process the public can be assured that there is no potential conflict of interest between a committee, sub-committee or officer in granting permission for land in which they have a direct management or other interest.
- 37.3. Councils will be required to notify the Department of planning applications for development in which the council is: the applicant or landowner; has a financial or other interest; in circumstances where:
- the proposal is significantly contrary to the local development plan;
 - the council intends to grant planning permission contrary to advice from a statutory consultee;
 - the proposals may have an adverse impact on a World Heritage Site; or
 - the proposals involve the loss of outdoor sports facilities.

Consultation response

Question 37	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 37: Do you agree that councils' own applications, in the circumstances outlined above, should be subject to notification to the Department for consideration?	39	65%	36	92%	3	8%

- 37.4. The vast majority of those who responded (92%), agreed with the Department's proposals for dealing with council's own applications. In agreeing with the Department's proposals a considerable majority of these respondees offered no additional comment or, where a comment was made, offered the opinion that, as a matter of principle, no planning authority should be permitted to determine its own application.
- 37.5. Only three councils, namely Belfast City Council, Lisburn City Council and Mid Ulster District Council, representing 8% of the consultation responses, disagreed to some degree with the Department's proposals. Generally, these three councils were opposed to the proposals for a least one or more of the following reasons:
- that the 28 day period within which the Department could decide to call in the application was too long;
 - that the council was best placed to decide the weight to be given to statutory consultees responses;
 - that in granting permission for it own applications the permission should be tied to the land and not the council, thereby allowing the council the benefit of disposing the land with the benefit of planning permission; and
 - one council queried why the loss of outdoor sports facilities, in particular, requires notification to the Department.

Department's consideration and response

- 37.6. The Department considers that 28 calendar days is a reasonable timeframe period within which to decide whether or not to call in an application and, in most cases would expect to take such a decision in a much shorter timeframe. Whilst noting the reservations expressed by these 3 councils, the Department intends to proceed as indicated in the consultation paper.
- 37.7. As regards the weight to be given to responses from statutory consultees, this applies not just to council's own applications but to all planning applications where the council is minded to grant planning permission against the advice given by a statutory consultee. The Department intends to proceed with this proposal.

- 37.8. The attachment of a planning permission to the council rather than the land, in circumstances where the council grants itself planning permission ensures that councils cannot benefit from the sale of land to a third party, with the benefit of planning permission, and therefore at an enhanced valuation, without first incurring the cost of developing the land in the first instance. This is in line with other UK planning jurisdictions. Having carefully considered the content of the responses received on this issue, the Department is not persuaded that a different approach in Northern Ireland is justified.
- 37.9. As for planning applications for council's outdoor sports facilities, the Department accepts that, at this point in time, there is little evidence to suggest that the loss of outdoor sports facilities is a particular problem in Northern Ireland. It is therefore proposed to remove this category of notification from the Direction.
- 37.10. The Department notes the particular concerns expressed by three respondents but feels that given the overwhelming positive response to the consultation exercise, which resulted in 92% of respondents that commented on this issue agreeing with the Department's proposals, there should not be any significant change in the Department's stated policies with regard to council's own applications for planning permission.

Listed Buildings

38. The Department is committed to the protection of the built environment in Northern Ireland and any person who wishes to demolish, alter or extend a listed building must first receive the written consent for the execution of those works from the council or the Department.
- 38.1. Any person who executes any such work without the express written consent of the council, or the Department, is guilty of an offence and shall be liable-
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £100,000, or both; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

Consultation paper proposal

- 38.2. The Department proposes that when a council receives an application for listed building consent it must consult with the Department's Northern Ireland Environment Agency (NIEA) and in making a decision on the grant or refusal of consent the council must take account NIEA's response.
- 38.3. If the council reaches the decision to refuse consent then it may issue its determination, however if it reaches the decision to grant consent then it must under the provisions of section 89 of the 2011 Act notify the Department of its intention.
- 38.4. The Department has 28 days to consider the council's notification and it may then:
- call in the application for its own determination; or
 - notify the council that it requires more time to consider the notification.
- 38.5. The council cannot issue a determination to grant listed building consent until the lapse of the 28 days. If after that period the Department has not notified the council that it requires more time or it intends to call in the application then the council may issue its determination to grant the consent.

Consultation response

Question 38	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal	
Question 38: Do you agree that councils should be required to consult the Department on all applications for listed building consent?	35	58%	34	97%	1	3%

- 38.6. There was strong overall support (97%) in responses to the consultation paper for the proposals on listed building consent. In the one objection

received, it was stated that this “approach is likely to cause difficulties for NIEA in relation to resources and an unnecessary administrative burden on the Department and councils.”

- 38.7. A number of respondents made additional comments relating to issues not raised specifically by the Department in the consultation paper:
- it was expressed that the Department should be under a similar duty as other statutory consultees to respond to consultation requests in relation to consultations on applications for listed building consent within 21 days;
 - concerns were raised that the requirement that councils must notify the Department where they intend to grant listed building consent:
 - will result in delays in the determination of applications;
 - will place additional demands on the Northern Ireland Environment Agency with a suggestion that there may be benefit in monthly monitoring reports to identify and resolve problems at an early stage;
 - it was highlighted that there is a need for the Department to provide guidance to clarify the respective roles and functions of those involved in making decisions on applications for listed building consent and enforcement;
 - that the legislation needs to provide for urgent cases where a listed building is unsafe and is a danger to the public; and
 - one response raised concern as to what happens when a council decides to make an order revoking or modifying existing listed building consent and that the consent should remain suspended until the planning appeals commission determines any appeal against such an order.

Department’s consideration and response

- 38.8. It is clear from the responses to the consultation that there was overwhelming support for the proposals on listed building consent. In particular, there was a recognition of the need for consultation with specialist staff in NIEA’s Historic Building’s Unit who have the necessary background, expertise and detailed knowledge of Northern Ireland’s buildings of special architectural or historic interest.
- 38.9. In relation to other issues raised, the Department accepts that it should be under a similar duty to other statutory consultees to respond to consultation requests, in relation to applications for listed building consent, within 21 days (or agreed extended period) and will include the necessary provision in the draft proposals for subordinate legislation. In addition, the Department will publish an annual performance report, which will measure its performance against the 21 day target. As regards notifications, in practice the Department expects responses to notifications by councils, where they intend to grant listed building consent, to issue much quicker than the 28 day period allowed for in the 2011 Act. In addition, the Department notes the concerns expressed regarding the additional demands placed on the NIEA and intends to publish an annual report detailing performance in relation to this notification

requirement. The Department acknowledges that there is a need for the Department to provide guidance on the respective roles and functions of those involved in making decisions on applications and enforcement and will provide this guidance. The Department considers that the current legislation is adequate to deal with unsafe listed buildings which pose a risk to the public and as such does not propose to amend the legislation. In particular, section 85(7) (control of works for demolition, alteration or extension of listed buildings) of the Act provides a defence that the works carried out were urgently necessary (and no more than the minimum required), and the owner had informed the council of their intention as soon as reasonably practicable. Finally, the Department acknowledges concerns regarding the procedure for making an order revoking or modifying listed building consent and confirms that further work can be carried out under the consent until the order has been either confirmed by the Department or rejected. The Department will monitor the number of orders made by councils, and the reasons for those orders, and consider whether any further legislative action is necessary.

Glossary

AMR	annual monitoring review
DAS	design and access statement
DPD	development plan document
EIA	environmental impact assessment
EU	European Union
GDO	Planning (General Development) Order (NI) 1993
GDPO	Planning (General Development Procedure) Order (NI) 2015
HSENI	Health and Safety Executive for Northern Ireland
LPA	local planning authority
NIEA	Northern Ireland Environment Agency
OFMDFM	Office of the First Minister and Deputy First Minister
PAC	Planning Appeals Commission
PD	permitted development
PPS	planning policy statement
RDS	Regional Development Strategy
RSD	regionally significant development
SAR	sustainability appraisal report
SCI	statement of community involvement
SEA	strategic environmental assessment
SR	statutory rule

ANNEX – Breakdown of responses received and Department’s response

Question from the consultation paper	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal		Department's Response
Question 1: Do you agree that local advertisement should mean that a council must place an advertisement for two consecutive weeks in at least one local newspaper circulating in its district?	43	72%	27	63%	16	37%	The Department will change the definition of local advertisement to require councils to place an advertisement for two consecutive weeks in at least one newspaper circulating in its district.
Question 2: Do you agree with the list of statutory consultees for local development plan preparation and are there any bodies/persons we have missed?	42	70%	35	83%	7	17%	The Department intends to proceed as proposed in the consultation paper.
Question 3: Do you agree with the preparation, content, agreement and publicity arrangements for the development plan timetable? If not, can you identify amendments which would offer greater benefits?	36	60%	27	75%	9	25%	The Department intends to proceed as proposed in the consultation paper.
Question 4: Do you agree with this approach in relation to the involvement of statutory consultees in the preparation of a preferred options paper?	43	72%	34	79%	9	21%	The Department intends to proceed as proposed in the consultation paper.
Question 5: Do you think that the proposed publicity and consultation arrangements for the preferred options paper are appropriate / adequate?	38	63%	30	79%	8	21%	The Department intends to proceed as proposed in the consultation paper.
Question 6: Do you agree with the form, content, publicity and consultation arrangements for the development plan documents?	43	72%	33	77%	10	23%	The Department intends to proceed as proposed in the consultation paper.

Response to the Phase 1 Planning Reform Consultation Paper Synopsis

Question from the consultation paper	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal		Department's Response
	Count	Percentage	Count	Percentage	Count	Percentage	
Question 7: Do you agree with the arrangements for making representations and counter representations?	37	62%	30	81%	7	19%	The Department intends to proceed as proposed in the consultation paper.
Question 8: Do you agree with the publicity requirements and other arrangements for independent examination?	41	68%	31	76%	10	24%	The Department intends to proceed as proposed in the consultation paper.
Question 9: Do you agree with the proposed soundness tests which will be elaborated upon in guidance? Are there other tests that you feel should be applied to the examination of the development plan document?	44	73%	31	70%	13	30%	The Department intends to proceed as proposed in the consultation paper.
Question 10: Do you agree with the withdrawal arrangements for a development plan document?	35	58%	26	74%	9	26%	The Department intends to proceed as proposed in the consultation paper.
Question 11: Do you agree with the adoption arrangements for a development plan document?	34	57%	31	91%	3	9%	The Department intends to proceed as proposed in the consultation paper.
Question 12: Do you agree with the arrangements for the monitoring, review and revision (if required) of the local development plan?	42	70%	38	90%	4	10%	The Department intends to proceed as proposed in the consultation paper.
Question 13: Do you agree with the Department's intervention/default powers?	40	67%	38	95%	2	5%	The Department intends to proceed as proposed in the consultation paper but will place a requirement on the Department to give notice by local advertisement if it uses its intervention/default powers and that it must publish the notice on its website.

Response to the Phase 1 Planning Reform Consultation Paper Synopsis

Question from the consultation paper	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal		Department's Response
	Count	Percentage	Count	Percentage	Count	Percentage	
Question 14: Do you agree with the provisions relating to joint plans?	38	63%	38	100%	0	0%	The Department intends to proceed as proposed in the consultation paper.
Question 15: Do you agree with the provisions relating to the Department's power in relation to joint local development plans?	37	62%	36	97%	1	3%	The Department intends to proceed as proposed in the consultation paper but will place a requirement on the Department to give notice by local advertisement if it has directed two or more councils to prepare a joint plan strategy or joint plan strategy and local policies plan and it must publish the notice on its website.
Question 16: Do you agree with the transitional arrangements for a local development plan. If not, can you identify amendments which would offer better arrangements?	39	65%	24	62%	15	38%	The Department intends to proceed as proposed in the consultation paper.
Question 17: Do you agree with the proposed content of the statement of community involvement?	41	68%	38	93%	3	7%	The Department intends to proceed as proposed in the consultation paper.
Question 18: Do you agree with the publicity, consultation and agreement requirements for the statement of community involvement?	43	72%	26	60%	17	40%	The Department intends to proceed as proposed in the consultation paper.
Question 19: Do you agree with the proposed classes and thresholds for major developments indicated in the Schedule at Annex C?	53	88%	24	45%	29	55%	The Department intends to add an additional threshold for all onshore development associated with the construction of an offshore electricity generating station.
Question 20: Do you agree with the definition for determining local developments?	35	58%	25	71%	10	29%	The Department intends to proceed as proposed in the consultation paper.

Response to the Phase 1 Planning Reform Consultation Paper Synopsis

Question from the consultation paper	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal		Department's Response
	Count	Percentage	Count	Percentage	Count	Percentage	
Question 21: Do you agree with the proposed classes and thresholds for regionally significant developments indicated in the Schedule at Annex C?	47	78%	18	38%	29	62%	The Department intends to add an additional threshold for onshore development associated with the construction of an offshore electricity generating station where its capacity is or exceeds 30 megawatts. The Department also intends to amend the threshold for electrical power lines to the installation of an electrical power line where the voltage: is 110 kilovolts double circuit overhead line; or is or exceeds 275 kilovolts, and a length of more than 15 kilometres.
Question 22: Do you agree with the proposed consultation, publicity and information requirements for pre-application community consultation?	45	75%	31	69%	14	31%	The Department intends to proceed as proposed in the consultation paper.
Question 23: Do you agree that applications made by the council or an elected member and applications relating to land in which the council has an interest should not be delegated to an appointed officer?	39	65%	34	87%	5	13%	The Department intends to proceed as proposed in the consultation paper.
Question 24: Do you agree with the proposed approach to preparing and adopting a scheme of delegation?	42	70%	34	81%	8	19%	The Department intends to proceed as proposed in the consultation paper.
Question 25: Do you agree with the proposed call-in criteria for a Notification Direction? Should any other classes of development be included and, if so, why?	37	62%	27	73%	10	27%	The Department intends to proceed as proposed in the consultation paper, except for the removal of the reference to 'land in which the council

Response to the Phase 1 Planning Reform Consultation Paper Synopsis

Question from the consultation paper	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal		Department's Response
							has an interest' from the notification direction.
Question 26: Do you agree that the current neighbour notification process should be made statutory?	43	72%	36	84%	7	16%	The Department intends to proceed as proposed in the consultation paper.
Question 27: Are you content with the proposed definitions of "neighbouring land" and "affected occupier"? If not, please suggest an alternative explaining what additional benefits this would bring by way of enhanced engagement in the planning system.	42	70%	21	50%	21	50%	The Department intends to proceed as proposed in the consultation paper with the exception of replacing the phrase 'affected occupier' with 'identified occupier'.
Question 28: Do you believe that councils should be required to advertise all applications for planning permission in at least one newspaper circulating in the local area?	43	72%	32	74%	11	26%	The Department intends to proceed as proposed in the consultation paper.
Question 29: Are the proposed lists of new statutory consultees set out in Annex D appropriate?	46	77%	39	85%	7	15%	The Department intends to proceed as proposed in the consultation paper.
Question 30: Are the types of development or circumstances listed in the Schedule at Annex D sufficient? Can you suggest any additions or omissions along with the reasons for your suggestions?	39	65%	32	82%	7	18%	The Department intends to clarify the wording for the circumstances when councils should consult NIEA regarding locally designated habitats.
Question 31: Do you believe that the proposed standard timeframe of 21 calendar days is appropriate in order to provide statutory consultees with enough time to make a substantive response?	41	68%	35	85%	6	15%	The Department intends to proceed as proposed in the consultation paper.

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Question from the consultation paper	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal		Department's Response
Question 32: Do you believe that the above definitions of a substantive response are satisfactory or do you have other suggestions that the Department could consider?	38	63%	30	79%	8	21%	The Department intends to proceed as proposed in the consultation paper.
Question 33: Do you consider that the proposed reporting requirements are appropriate or are there other requirements you believe would offer further benefits?	33	55%	27	82%	6	18%	The Department intends to proceed as proposed in the consultation paper.
Question 34: Do you agree with the application categories and types of applications which should, and should not, be accompanied by a Design and Access Statement?	47	78%	39	83%	8	17%	The Department proposes to add a paragraph at the end of Regulation 6 of the GDPO to define designated areas for the purpose of a DAS as; a conservation area, an area of outstanding natural beauty, a world heritage site, an area of townscape or village character.
Question 35: Do you agree with the proposals in relation to form and content and the requirement to take environmental sustainability into account in relation to design principles and concepts?	42	70%	39	93%	3	7%	The Department intends to proceed as proposed in the consultation paper.
Question 36: Do you agree with the proposals for handling applications for non-material changes to a previous planning permission?	43	72%	35	81%	8	19%	The Department intends to proceed as proposed in the consultation paper.
Question 37: Do you agree that councils' own applications, in the circumstances outlined above, should be subject to notification to the Department for	39	65%	36	92%	3	8%	The Department intends to proceed largely as proposed in the consultation paper. The requirement for councils to notify the

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Question from the consultation paper	Total of 60 who responded to question		Total of responses that agreed with the proposal		Total of responses that disagreed with the proposal		Department's Response
consideration?							Department of their own applications which will result in the loss of outdoor sports facilities will be removed from the notification direction.
Question 38: Do you agree that councils should be required to consult the Department on all applications for listed building consent?	35	58%	34	97%	1	3%	The Department intends to proceed as proposed in the consultation paper. In addition the Department will be required to respond to consultations on applications for listed building consent within 21 days or agreed extended period.