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The Planning Act 2011 and Review Regulations

1 Introduction

The following paper gives a brief overview of the Planning Act 2011, and the main changes it brought about the planning system in Northern Ireland (NI). It also gives a brief account of SL1: The Planning Act 2011 (Review) Regulations 2020 in terms of its context, proposals and suggests a number of considerations.

2 Planning Act 2011: an overview

The following section considers the new planning system and functions that have transferred to councils since April 2015 under the Planning Act 2011.

2.1 New two- tier system

On the 1st April 2015 a new 2-tier planning system came into force under the Planning Act 2011 introducing a sharing a planning responsibilities between councils and the Department of Environment. This replaced the old system under the Planning Order

1991 where the Department of Environment held responsibilities for planning in Northern Ireland. Under the 2011 Act most responsibilities have been transferred to local councils, according to NI Direct these include:

- local development planning – creating a plan which will set out how the council area should look in the future by deciding what type and scale of development should be encouraged and where it should be located
- development management – determining the vast majority of planning applications
- planning enforcement – investigating alleged breaches of planning control and determining what action should be taken¹

However, a certain number of responsibilities have been retained by the Department, these include:

- determination of regionally significant applications and 'called-in' applications
- regional planning policy
- planning legislation
- oversight and guidance for councils
- performance management²

2.2 New Hierarchy of Development

The Minister announced, in January 2014, a new development management approach incorporating a 3-tier hierarchy of development of local, major and regionally significant development would be introduced under the new planning system (as illustrated in Figure 1). All major and local developments are to be dealt with by councils and major developments will be subject to pre-application consultation with the community³. Regionally significant development proposals will also be subject to pre-application community consultation and will be determined by the Department.⁴ The hierarchy of development is legislated for under Section 25 and 26 of the Planning Act 2011.⁵ Further detail on categories and thresholds are provided in Regulation 2 and the Schedule of the Planning (Development Management) Regulations 2015.⁶

¹ NIDirect [online] Changes to Planning <http://www.nidirect.gov.uk/changes-to-planning>

² *ibid*

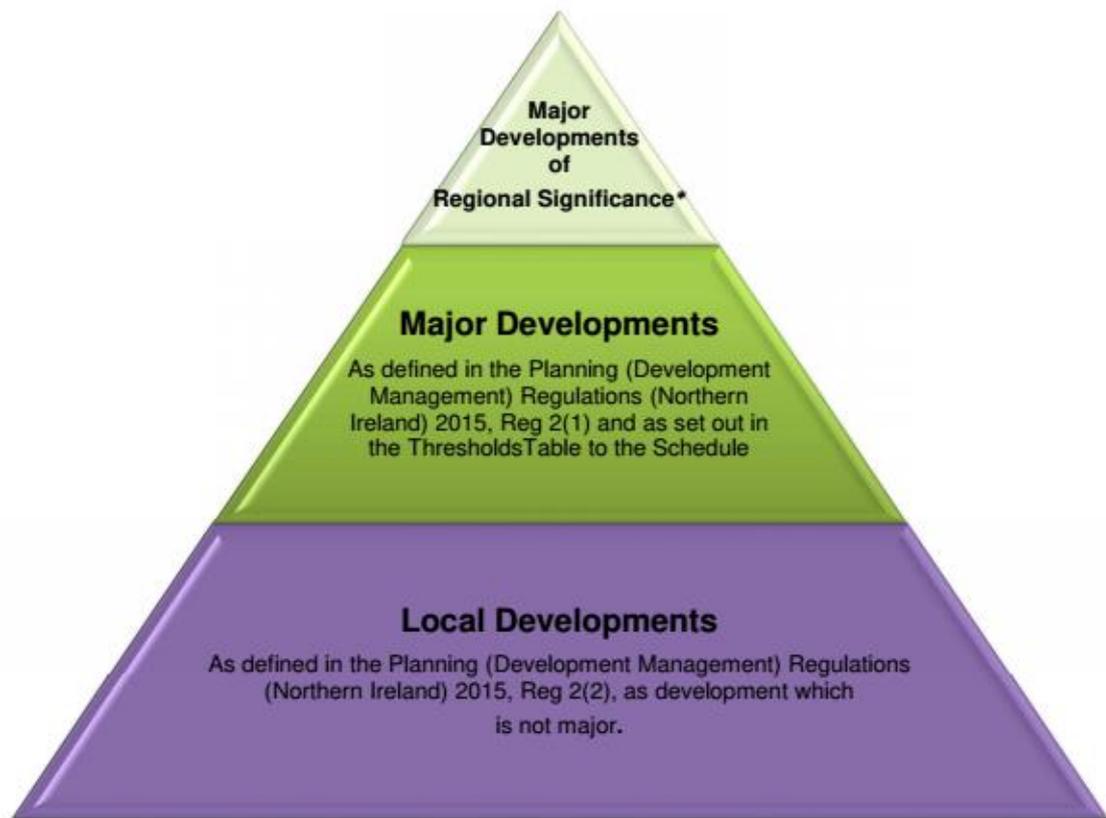
³ For more information on pre-application community consultation see the DOE *Practice Note 10* http://www.planningni.gov.uk/index/advice/practice-notes/dm_practice_note_10_pacc-2.pdf

⁴ NIA Official Report (January 2014) *Written Ministerial Statement – Department of Environment -Planning- Preparing for 2015* <http://www.niassembly.gov.uk/assembly-business/official-report/written-ministerial-statements/department-for-the-environment--planning--preparing-for-2015/>

⁵ Planning Act 2011 <http://www.legislation.gov.uk/niu/2011/25/contents>

⁶ The Planning (Development Management) Regulations 2015 <http://www.legislation.gov.uk/nisr/2015/71/contents/made>

Figure 1: Illustration of the Hierarchy of Developments



*As defined in section 26 of the 2011 Act and the Planning (Development Management) Regulations (Northern Ireland) 2015, Reg 3 and as set out in the Thresholds Table to the Schedule.

Source: DfI (2018) Development Management Practice Note 1⁷

2.3 New Process

Each council has established a planning committee to consider and decide applications, however not all applications will come before the planning committee for decision. Under Section 31 of the Planning Act 2011, councils are required to publish a Scheme of Delegation determining which applications will be dealt with by the planning committee and which will be delegated to officers. According to a *Practice Note on Schemes of Delegation*, local applications are likely to be delegated to officers, with

⁷ DfI DfI (2018) Development Management Practice Note 1: Hierarchy of Developments
<https://www.planningni.gov.uk/index/advice/practice-notes/common-newpage-10.htm>

large developments, contentious applications and those that receive a number of objections likely to come before the committee for decision.⁸

2.4 New Planning Policy

The new system involves the move away from the existing suite of PPSs to a single [Strategic Planning Policy Statement](#) (SPPS). This provides an overarching framework from which councils will prepare their first round of local development plans (LDPs) and manage development.⁹ The SPPS is also material to individual planning decisions and appeals.

However, a transitional period is currently in operation until councils develop their own planning policies under their LDPs (see section 2.5). This means that during this time the new councils will apply the policy of some of the old PPS together with the new SPPS when determining planning decisions. However, where there is difference between the two, the SPPS takes precedence. Once councils have developed and published their own policies, the old PPS will cease to have effect. For more detail on the transition period, refer to the SPPS.

2.5 Local Development Plans

Section 6 (4) of the 2011 Act provides for a new plan led system meaning that the local development plan will be the primary consideration in the determination of applications.¹⁰

Local Development plans set out how the council area should look in the future by deciding what type and scale of development should be encouraged and where it should be located.

According to NIDirect,

Through the development plan, councils should be able to identify the best locations for new homes, businesses and infrastructure while also protecting places of value to people or wildlife. The plans are an important consideration in dealing with planning applications and should help guide decision making.¹¹

However, since April 2015 responsibility for development plans transferred from the Department of the Environment (now Department for Infrastructure) to local councils.

⁸ DOE (April 2015) *Development Management Practice Note: Schemes of Delegation*

http://www.planningni.gov.uk/index/advice/practice-notes/dm_practice_note_15_sod_complete.pdf

⁹ DOE (April 2015) *Development Plan Practice Note 1 – Introduction: Context for Local Development Plans* p.7

http://www.planningni.gov.uk/index/advice/practice-notes/dp_practice_note_1_intro.pdf p.8

¹⁰ DOE (April 2015) *Development Plan Practice Note 1 – Introduction: Context for Local Development Plans* p.7

http://www.planningni.gov.uk/index/advice/practice-notes/dp_practice_note_1_intro.pdf

¹¹ NIDirect [online] *Development Plans* <https://www.nidirect.gov.uk/articles/development-plans>

Each council is responsible for preparing a development plan for the council area, based on consultation with the local community.

The following diagram illustrates the role of the LDP:

Figure 2: The role of the local development plan



Source: DOE (2015)¹²

2.6 New concept

The Planning Act 2011 moved the emphasis away from planning as simply regulatory practice which was more focused on land use, to planning as an activity that is both integrated with other local government services and is focused on delivery. In this context, the new LDP provides, what the Department has described as,

*a unique opportunity for a council to genuinely shape places for local communities and will enable them to adopt a joined up approach, incorporating linkages to other functions such as regeneration, local economic development and community planning.*¹³

This change is to be encouraged through the introduction of community planning under Part 10 of the Local Government Act 2015.¹⁴ Under the 2015 Act, according to the Department, the duty of community planning requires a Council to create a long term

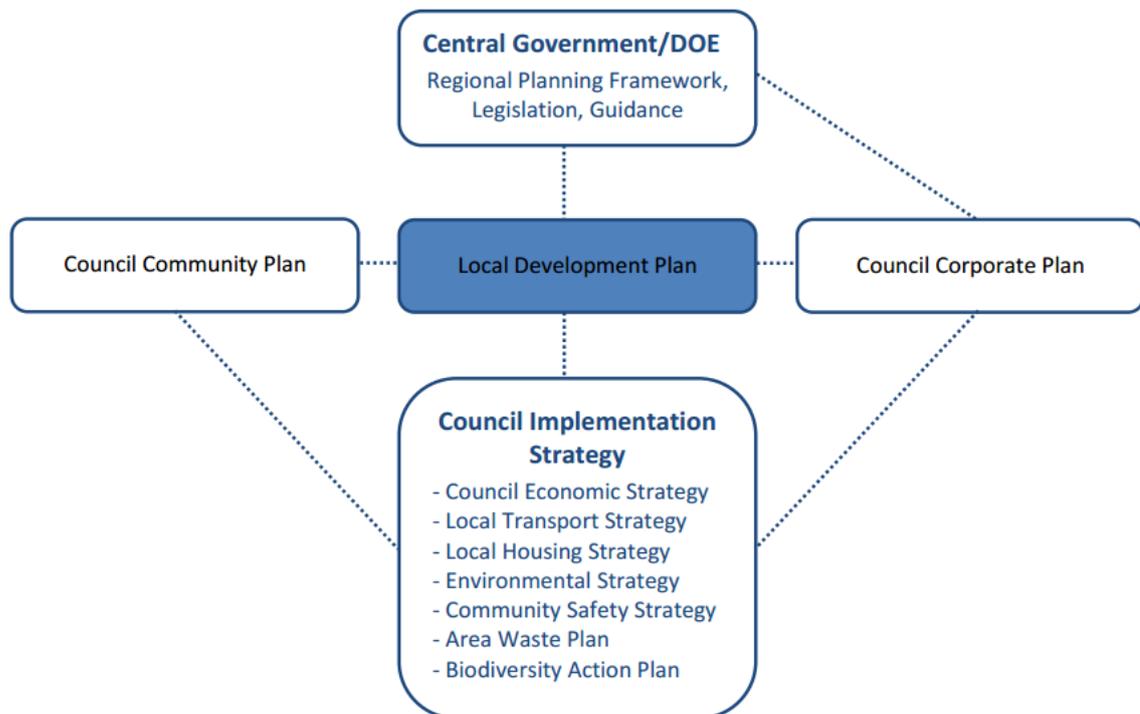
¹² DOE (April 2015) *Development Plan Practice Note 1 – Introduction: Context for Local Development Plans* p.6 http://www.planningni.gov.uk/index/advice/practice-notes/dp_practice_note_1_intro.pdf

¹³ DOE (April 2015) *Development Plan Practice Note 1 – Introduction: Context for Local Development Plans* p.9 http://www.planningni.gov.uk/index/advice/practice-notes/dp_practice_note_1_intro.pdf

¹⁴ Local Government Act 2014 <http://www.legislation.gov.uk/nia/2014/8/contents/enacted>

vision for the social, environmental and economic wellbeing of their community, in partnership with community and service providers in their area. This is to be identified in the Community Plan which is to inform the development of councils' LDPs.¹⁵ Figure 3 shows how the LDP should link with other council plans.

Figure 3: LDP links with other council plans and strategies



Source: DOE (2015)¹⁶

2.7 New role for councillors

The new planning system has brought about a change in role of councillors from lobbying and representing developers/objectors, to becoming the decision makers. According to the Department, while councils will have professional planners to give advice, it will be the councillors who will make the decisions.¹⁷

The introduction of a new mandatory Code of Conduct for councillors was introduced by Section 53 of the Local Government Act 2014.¹⁸ This will have a bearing on how councillors make decisions on planning applications, which is provided under section 9 of the Code.¹⁹

¹⁵ DOE (April 2015) *Development Plan Practice Note 1 – Introduction: Context for Local Development Plans* p.9 http://www.planningni.gov.uk/index/advice/practice-notes/dp_practice_note_1_intro.pdf

¹⁶ Ibid p.10

¹⁷ DOE *Fact Sheet :Changing Role of the Councillor –Post 2015* http://www.doeni.gov.uk/local_government_reform_inform_fact_sheet_-_may_2013.pdf

¹⁸ Local Government Act 2014 <http://www.legislation.gov.uk/nia/2014/8/contents/enacted>

¹⁹ DOE Councillor Code of Conduct http://www.doeni.gov.uk/index/local_government/code_of_conduct.htm

2.8 Community Involvement

Section 2 of The Planning Act 2011 introduces a new requirement for councils to produce a Statement of Community Involvement (SCI).²⁰ According to a Practice Note from the Department, an SCI should:

- outline how a council proposes to engage the community and stakeholders when carrying out its planning functions, particularly with respects to development management and local development plan preparation;
- Inform the community/stakeholders how and when to get involved;
- Present a vision and strategy for involving the community and stakeholders; and
- Set out the standards to be met by the council.²¹

For a more detailed description of the planning system please refer to the following:

[*A comparison of the planning systems in Ireland and Northern Ireland*](#)

(December 2018) by RaISe and Oireachtas Library.

Summary available at Research Matters Blog article (April 2-19) [*A comparison of the planning systems in Northern Ireland and the Republic of Ireland*](#)

[*Comparison of the planning systems in the four UK countries*](#)

(January 2016) by RaISe, House of Commons Library, National Assembly Wales and SPICe.

3 SL1 the Planning Act 2011 (Review) Regulations 2020

3.1 Context

The SL1 regulations (the Regulations) are required under section 228 of the 2011 Act (Review of Act). This requires the Department (DfI) to review and issue a report on the implementation of the Act 3 years after the commencement of Part 3 of the 2011 Act, and at least once every 5 years after that.

²⁰ Planning Act 2011 <http://www.legislation.gov.uk/nia/2011/25/contents>

²¹ DOE (April 2015) *Development Management Practice Note 2: Statement of Community Involvement* http://www.planningni.gov.uk/index/advice/practice-notes/dm_practice_note_2_sci_complete-2.pdf

According to supporting documents to the SL1, section 228 was an amendment made Consideration Stage of the Planning Bill in early 2011. This was added to require the Department to monitor and report on the operation of the provisions within the Act to ensure that the legislative framework for a reformed two-tier planning system has been implemented and in a timely manner.

According to the supporting background to the SL1, the initial review was due in April 2018. However, this was not met due to tests made under the NI (Executive Formations and Exercise of Functions etc.) Act 2018. This was to determine whether it would be appropriate for officials (in the absence of a Minister at the time) to make regulations specifying the terms of the review, and to publish a subsequent report on the implementation of the Planning Act. It was concluded that, for the purpose of public interest, it would be best to defer this for a locally elected Minister to take forward.

3.2 Detail

The Draft SL1 sets out the terms of the review, these include assessing the extent to which the original objectives and provisions of the Planning Act have been achieved and what improvements could be made. For example the draft SL1 states:

For the purposes of section 228 of the 2011 Act, the review shall —

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

- The SL1 is to be made by negative resolution
- The Department is not required to consult on the draft Regulations.
- It is proposed that the Regulations will come into operation on October 2020.
- The review will be undertaken by Regional Planning Directorate of the Department for Infrastructure.²²

The SL1 does not explicitly list the objectives of the Planning Act that will form the ToR to the review. However, the policy objectives of the Planning Act are detailed in the [Explanatory Notes](#) accompanying the Act, which states that the Act provides the legislative basis for the reform of the planning system in NI:

This Act provides the legislative basis for the reform of the Northern Ireland planning system. The reforms are comprehensive, impacting on every aspect of planning, including how development plans are drawn up, how development proposals and applications are managed and the way in which these functions are delivered. The key reform changes relate to the

²² Email correspondence from DfI received 25/09/2020

complete overhaul and redesign of the development plan and development management systems which aim to improve efficiency and effectiveness. Significant changes are also proposed in relation to planning appeals and enforcement. Overall the aim is to create a planning system which is quicker, clearer, and more accessible and with resources better matched to priorities. The Act also gives effect to the local government reform changes which will transfer the majority of planning functions and decision making responsibilities for local development plans, development management plus planning enforcement to councils. This will make planning more locally accountable, giving local politicians the opportunity to shape the areas within which they are elected. Decision making processes will be improved by bringing an enhanced understanding of the needs and aspirations of local communities²³.

This closely mirrors the following information provided by DfI in relation to the objectives of the Planning Act that will underpin the ToR of the Review:

The principle aims of the reform of the planning system were to:- deliver Northern Ireland Executive decisions to transfer the majority of planning functions to the newly formed councils thus creating a two tier planning system; and bring forward short, medium and long term process improvements to modernise the system.

The main objectives were:

- the continued formulation and co-ordination of planning policy by the Department;
- the new role of councils preparing local development plans; determining the majority of planning applications for development (development management); and taking appropriate enforcement action against breaches of planning control.

According to DfI, these main reform objectives were further underpinned by actions to:

- further sustainable development;
- enhance community involvement in the planning process;
- make more timely, transparent and accountable decisions;
- allow higher fines for planning offences; and
- reform the planning appeals system.

²³ Planning Act 2011 Explanatory Notes – Policy Objectives <https://www.legislation.gov.uk/nia/2011/25/notes/division/2>

4 Other jurisdictions

There does not appear to be any equivalent requirement in planning legislation in other UK jurisdictions (England, Wales and Scotland) or the Republic of Ireland (RoI).

In some jurisdictions, a number of reviews of the planning system have taken place, but these are either legislative and not related to the whole planning system, or non-legislative where a review of policy has been considered necessary. For example:

England – the [Housing and Planning Act 2016](#) requires a review of planning legislation by the Secretary of State, but only in relation to sustainable drainage (s.171) and minimum energy performance requirements (s165).

There is also two live consultations: one on the white paper [Planning for the Future](#) (which proposes a radical overhaul of England’s planning system); and a [concurrent consultation](#) on changes to the current planning system. In neither case has the consultation come about because the Secretary of State is under a statutory obligation to review planning legislation, but rather because the Government considers the system to be in need of reform.

Wales - The Law Commission has reviewed planning legislation in Wales and recommended creating new a [Welsh Planning Code](#). Again, this was not conducted due to a legislative requirement in planning legislation.

RoI- There is no overall legislative planning review under the RoI’s planning legislation – [The Planning and Development Act 2000 \(as amended\)](#). However, the Planning and Development (Amendment) Act 2018 provides for the [Office of Planning Regulator \(OPR\)](#) to review local authorities with respect to their functions under the Planning and Development Act. It may also make suggestions to the Minister with regards to planning legislation, reviewing statutory plans and strategies.²⁴

(Dan- Just waiting on confirmation from Scotland – I can’t find any bit wanted to make sure.)

5 Other planning related reviews in NI

The first [NI Planning Monitoring Framework](#) was published in September 2019. This was developed along with local councils. It contains a set of indicators around which the new planning system in NI will be monitored.²⁵

Chief Planner’s report 2019 mentions a report conducted by John Irvine, which reviewed the efficiency and effectiveness of the planning system, with a focus on statutory consultees. This report was circulated around councils; however, the Committee may find it useful to request a copy.

²⁴ For more information, refer to the OPR About section - <https://www.opr.ie/about/>

²⁵ DfI, [NI Planning Monitoring Framework](#), 19 September 2019

Chief Planner's update also mentioned that a review of the planning system would be conducted at local and central government level by the NI Audit Office, set to commence in 2020. According to information provided by DfI²⁶, a report is intended to be published in Spring/summer 2021. The review is not linked to the legislative requirements of the Planning Act and it is not solely focused on the implementation of its provisions. It appears to be more about the practical workings of the planning system, and includes matters such as: costs, pre and post transfer of planning functions (April 2015); staff allocations; local development plan preparation; quality and quantity of planning application decisions; and Departmental oversight role.

6 Impacts/considerations

The following section suggests some further considerations with respect to the SL1 and its impacts:

- Will a specific terms of reference based on the objective of the Planning Act be produced and published?
- How will objectives be measured? Will there be indicators?
- Is the review done in-house, not by an independent/external body?
- What will happen with outstanding policy/legislative updates e.g., Development in the Countryside, Renewable Energy²⁷, permitted development rights for mineral exploration²⁸, and review of old mineral permissions legislation²⁹ (ROMPs) be considered in this review? Or will they be developed separately, if so, when?
- Will impacts of Brexit, the Ireland/NI Protocol and common frameworks be considered in the review? It is understood that some aspects of planning, e.g. [Planning and Hazardous Substances](#) have been identified as an area for a non-legislative UK common framework³⁰. Therefore, any alteration to legislation as a result of a review may need to take agreements under a common framework into consideration.

6.1 Environmental governance

The Environment Bill³¹ was introduced to Parliament on the 30 January 2020, with 133 provisions and 19 schedules, of which approximately 57 provisions and 9 schedules extend to Northern Ireland (NI). The scope of the Bill is far-reaching with the first half

²⁶ Email correspondence from DfI received 25/09/2020

²⁷ DfI, [Hazzard announces planning review on renewable energy and countryside development](#), 27 September 2016

²⁸ DfI, [Review of Permitted Development Rights for Mineral Exploration](#).

²⁹ For more information see [AQW 6542/17-22](#) (answered 24/09/2020)

³⁰ For more information refer to the RalSe Research Paper *Committee for Infrastructure: Forward work planning discussion paper* (September 2020) Section 8.9. And the [draft outline framework for a UK-wide Common Framework for Hazardous Substances Planning](#)

³¹ [Environment Bill](#)

providing the legal framework for new environmental governance in the form of an Office for Environmental Protection in NI.

Essentially, the scope of the OEP's role is scrutiny, advice, complaints and enforcement. However, its functions in NI are determined by the definition of environmental law which may ultimately have an impact on the planning system.

The definition of 'NI environmental law' applies to a whole or any element of an Act or regulation that is considered to be "mainly concerned" with environmental protection.

- **How will the enforcement functions of the OEP run alongside the enforcement responsibilities of local councils and DfI provided for under the Planning Act?**
- **Will this relationship be included in this review, or any other reviews of the planning system?**

According to the [explanatory memorandum](#), this may include elements of planning legislation in relation to environmental impact assessment and strategic environmental assessment.

6.2 Waste and planning

It is DAERA's intention to revise its current Strategy -Delivering Resource Efficiency³². A consultation³³ on a new waste management plan (WMPNI) was held at the end of 2019. Its core aim is to bring current waste management policies under the umbrella of one national plan. This will also incorporate planning policies for determining suitable waste facility sites e.g. the SPPS, RDS, PPS11 and PPS 18.

The WMPNI and waste planning policy will be used by planning authorities who must have regard to these documents when deciding waste planning applications under the Planning Act (Northern Ireland) 2011.

- **How will the outcomes of a review be incorporated into other strategies under the responsibility of other Departments, such as DAERA for example?**

³² DAERA, [Delivering Resource Efficiency - Northern Ireland Waste Management Strategy](#), 28 April 2015.

³³ DAERA, [Waste Management Plan for Northern Ireland](#), 16 October 2019.