



Northern Ireland  
Assembly

Committee for the Environment

# OFFICIAL REPORT (Hansard)

Planning (2011 Act) (Commencement No. 2)  
Order (Northern Ireland) 2014:  
Department of the Environment

11 December 2014

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**

Ms Anna Lo (Chairperson)  
Mrs Pam Cameron (Deputy Chairperson)  
Mr Cathal Boylan  
Mr Ian Milne  
Lord Morrow  
Mrs Sandra Overend  
Mr Peter Weir

**Witnesses:**

Mr Brian Gorman	Department of the Environment
Ms Irene Kennedy	Department of the Environment
Mr Angus Kerr	Department of the Environment
Mr Simon Kirk	Department of the Environment

**The Chairperson (Ms Lo):** I welcome Angus Kerr, director of planning; Simon Kirk, planning manager; Irene Kennedy, principal officer, planning service; and Brian Gorman. You know that the Committee is very interested in the planning function being transferred, and we want to know the details before we proceed with making the rules. Perhaps you will walk us through the issues.

**Mr Angus Kerr (Department of the Environment):** Thank you very much, Chair, and good morning. Thank you for the opportunity to speak to the Committee on some of the detail of the proposed subordinate legislation underpinning the reform and the transfer of planning to the new councils. As you know, this builds on our earlier discussions on the synopsis of responses to the phase 1 public consultation exercise and the engagement with the Minister last week, which focused primarily around capacity-building issues in relation to the broader reform programme.

I appreciate the fact that the Committee has received a large number of planning-related SL1s over recent weeks, and some of them are very lengthy. The bulk of the new subordinate legislation under the Planning Act (Northern Ireland) 2011 simply carries forward existing subordinate provisions that will now be administered by councils rather than by the Department, so they are fairly straightforward. As I go through the overview of the four pieces that you highlighted today, I will highlight the key areas that are new to the system to make sure that they come through clearly.

I will start with the Planning (2011 Act) (Commencement No. 2) Order (Northern Ireland) 2014, which is subject to the affirmative resolution procedure. Normally, commencement orders are not required to be laid before the Assembly. However, during the Consideration Stage of the 2011 Act, the Committee tabled an amendment so that any order commencing Part 3, which is the —

**The Chairperson (Ms Lo):** That was Cathal's fault. Did you hear that, Cathal?

**Mr Boylan:** Sorry, Chair, what was that?

**Mr Kerr:** I was just making the point that, during the Consideration Stage of the 2011 Act, the Committee tabled an amendment to make sure that the commencement order here today required affirmative resolution. It is in relation to commencing the key bits of the Act in relation to planning control and development management.

Part 3 of the 2011 Act sets out the framework for processing and determination of planning applications for planning permission in the reformed system. The then Committee's amendment was to ensure that the appropriate governance measures will be in place when responsibility for the majority of planning decisions transfers to councils. Members will be aware that the Local Government (Northern Ireland) Act 2014 has introduced a new modern statutory framework for governance for the 11 councils and a new ethical standards framework, which includes a mandatory code of conduct for councillors. Part 9 of the code, which includes the planning element, will come into effect in April 2015 with the transfer. That, associated with the ongoing capacity-building, will equip councillors with the knowledge and the skills to carry out their new role and to have the confidence as well as the competence to make sound planning decisions from day one.

The commencement order will initially commence Part 3 of the 2011 Act for the purposes only of conferring powers to make regulations and orders. That will ensure that the Department has the enabling powers required to put in place the detailed proposals for the subordinate legislation necessary to introduce the reforms to the planning system. However, the order will also commence Part 3 of the 2011 Act, as we have discussed, for all other purposes from 1 April 2015, thus enabling the transfer of responsibility for the majority of planning decisions from central government to the new councils.

The second SL1 relates to development management regulations, which provide the detail on a number of reforms within the Planning Act that are aimed at improving efficiency and developing and determining planning applications. They also enhance community involvement at appropriate points in the planning process.

The regulations will establish a hierarchy of development based on a three-tier classification of developments, consisting of regionally significant applications, major applications and local applications. Under the Planning Act, applications that are deemed to be regionally significant will be made to, and determined by, the Department. Councils will be responsible for determining major and local development applications, which will account for the vast majority of application numbers.

The regulations differentiate between the major and local categories of development by establishing three clear thresholds. Potentially regionally significant development applications within the major category are also identified in the thresholds. Applications that are of regional significance form a top slice of the major category.

The schedule of regulations sets out nine classes of major developments and five classes of regionally significant development, each with a description and a relevant threshold or criteria. Transitional arrangements provide that article 31 planning applications, which the Committee will be familiar with in the current system, will be treated as regionally significant development under section 26 of the Planning Act and will, therefore, be retained by the Department for determination.

Section 27 of the Planning Act places a statutory duty on applicants for planning permission to consult the community in advance of submitting a major planning application. That is really pre-application community consultation. The regulations set out the information that should be contained in the proposal of application notice, which a developer must submit before formally submitting a major planning application. They also prescribe the minimum pre-application community consultation that an applicant will have to undertake. That requires holding at least one public event, which must be advertised in a local newspaper at least seven days in advance.

Transitional arrangements provide that pre-application community consultation will not apply to planning applications received before 1 July 2015. That will allow a lead-in time for applicants to prepare for the new pre-application community consultation arrangements. It will also allow major applications that are close to submission, including those that are regionally significant, to be made in the interim period.

Turning to pre-determination hearings, the regulations also sets out a mandatory requirement for pre-determination hearings for major developments that have been subject to notification. That is, those referred to the Department for call-in consideration but have been returned to a council for determination. They also detail who is to be given an opportunity to appear before the committee of the council, namely the applicant and those who have made representations on the application.

Section 31 of the Planning Act requires a council to prepare a scheme of delegation, where decision-making for local and generally non-contentious applications is delegated to an appointed officer rather than the council. That enables speedier decision-making, improves efficiency and allows the planning committee to concentrate efforts and resources on larger and more complex or contentious applications.

A scheme of delegation cannot include major or regionally significant applications. The regulations make provision in relation to the content of the scheme of delegation and prescribe the circumstances that prohibit an appointed officer from determining an application for planning permission. The circumstances are that the application is made by the council or an elected member of the council or that the application relates to land in which the council has an interest. They also set out arrangements for the Department to approve the scheme and for publicising it. Councils will be required to prepare a scheme of delegation at intervals no greater than every three years.

Moving on to the third SL1 before us, which is for the new planning general development procedure order (GDPO), this statutory rule essentially provides the mechanics for managing applications for planning permission through the system, such as the requirements for submitting an application, publicity arrangements, consultation requirements, retention of information on planning registers etc. A significant change for anyone familiar with the 1993 GDPO is the absence of permitted development provisions, which will be set out in a separate self-contained order. This order carries forward a range of existing processes and procedures, which will be administered by the councils and will be familiar to the planning staff who are transferring from the Department as well as to users of the system. The procedure order also contains a number of new provisions, notably, a statutory neighbour notification process, new requirements for the submission of a design and access statement, and arrangements for a new duty to respond for statutory consultees. That said, the statutory neighbour notification process continues. The existing process and procedures are currently being delivered on an administrative basis. The Department believes that there is merit in the system continuing after transfer and that the best way to ensure clarity and consistency is to establish a clearly defined minimum statutory requirement on the basis of the existing criteria. That also reflects the wishes of the former Environment Committee to have the system made statutory.

The duty to respond to statutory consultation requests is another new element of the proposed legislation, which does a number of things. It extends the list of statutory consultees to include those bodies that have historically dealt with the majority of consultation requests; it specifies the circumstances when consultation is required; it specifies the standard 21-calendar-day time period for providing a substantive response, unless an extension has been agreed with the planning authority; it sets out the criteria for substantive response; and it requires each consultee to publish a report on their performance in meeting the duty to respond.

It is worth noting the position of the NIEA and its role in providing environmental information. The NIEA has no separate legal identity from the Department and, therefore, reference in the legislation is to the Department of the Environment where a council requires environmental input. It should be recognised that the proposal represents a statutory minimum requirement for consultation and that, in practice, councils may want to go beyond that minimum based on particular circumstances of certain applications, and so forth.

The final bit of the SR deals with design and access statements. The 2011 Act requires certain descriptions of applications for planning permission and all listed building consent applications to be accompanied by a design and access statement. The statement 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.

The procedure order provides the administrative arrangements for the submission and consideration of a design and access statement. It also defines a designated area within which design and access statements apply as being a conservation area, an area of outstanding natural beauty, a world heritage site or an area of townscape or village character.

The Department will produce 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.

The fourth and final SL1 relates to the planning general regulations. These provide that applications for planning permission made by a council, either on its own or with another person, or made in relation to the development of land in which the council has an interest, shall be managed by the council, unless the Department calls it in under powers set out in section 29 of the 2011 Act.

All applications for development that are significantly contrary to the development plan and that the council does not propose to refuse must be notified to the Department under a direction made by the Department. This provides an opportunity for the Department to consider whether to exercise its call-in powers. It is not anticipated that the Department would want to use these powers in any but the most exceptional circumstances, but it provides an appropriate level of assurance in relation to how the system will operate generally.

Finally, I would like to reassure the Committee that the legislative proposals do not sit in isolation as we prepare for the transfer next April. As the Committee is aware, the Department is taking forward a broad range of strands under the wider reform and transfer project. As discussed earlier in your agenda this morning, the Department has consulted on guidance on the planning element of the councillors' code of conduct. That guidance is to advise councillors on how they should apply the principles and rules of the code when it comes to dealing with planning. It is also there to provide protection for councillors by advising them of what they can and cannot do in relation to taking planning decisions.

As well as the code of conduct, the Committee is aware of the capacity-building work. A key strand of that preparatory work has focused on capacity building and training of the new councillors. The Department developed four different modules, the first three of which have now been completed. Each module has incorporated a practical element. For example, in module three, members were given a planning application with relevant background information and asked for their views on how it should be determined. That was followed by discussions with practitioners on the real-life outcomes.

Module 4, which is on propriety and outcomes, started last week and is continuing into early January. In the main, that covers the application of the councillors' code of conduct in relation to planning matters. It also incorporates a practical element looking at potential scenarios that a councillor might encounter when dealing with planning decisions, and how the code assists in making decisions on those issues.

To date, the feedback from all modules has been very positive. However, we are keen to continue to address any issues raised that will make the training more meaningful and effective. The Department will continue to play a supporting role for the new councils after the point of transfer, recognising their ongoing and new role as key decision-makers. Thank you very much. I am now happy to take any queries that the Committee may have.

**The Chairperson (Ms Lo):** Thank you for your presentation, Angus. It was a very comprehensive briefing. You mentioned the training and that you are now into the final module of four. How confident are you that the councillors are really well prepared for 1 April?

**Mr Kerr:** It is a good question. I am reasonably confident, although I am not unrealistic enough not to know that this is a big undertaking. In many ways, it is probably through the ongoing operation of the system that councillors will develop the experience and expertise they need to operate the system as well as could be expected. It is all new to many of the councillors. We have put a tremendous amount of work into trying to prepare them. That is not just the work that we have done on the planning side but the finances that are being allocated to each of the councils to allow them to bring forward their own capacity-building and training efforts.

As the Minister said to the Committee last week, we are also keen to support the councils not just with capacity-building and so on now but once the powers transfer over and they begin to operate them. One of the key things to remember is that, at the point of transfer, it will be the same planning staff and officials who are operating the system now who will be operating it for the councils and providing the advice and guidance to councillors on how to move forward. I think that that is some reassurance.

**The Chairperson (Ms Lo):** OK. Before this session, we had one with departmental officials on the January monitoring round. We have been told that the councils have not taken up the offer of financial assistance for the IT system convergence. Are you sure that the IT system is properly installed and functional for the councils? I know that the portal had a lot of teething problems when it was first set up but is now running really well. Are you confident that the IT system will be OK from 1 April?

**Mr Kerr:** I am confident about that, because we have done a lot of work on it over the past couple of years. IT was a key strand in the transfer programme. We have made a lot of progress, some of it hard fought, over the past year or two in obtaining agreement in the sector. That has not necessarily been easy as time has progressed, because the sector was originally 26 and we have now moved to 11. However, we do have agreement around the continued use of the planning portal. We commissioned quite a lot of work on the IT side to upgrade the portal so that it would work both for the reforms and changes that we have talked about here on many occasions and given the simple fact that it is no longer going to be the Department but the council that operates it.

There has also been work done on how the portal will be managed into the future. Governance arrangements have been set up incorporating the Department as an ongoing planning authority for regionally significant applications and then each of the 11 councils in their roles as planning authorities to continue the management of the planning portal. The contract has been extended to 2019 for that to operate. That is a tremendous reassurance for us in Northern Ireland. We actually have a better system than the other jurisdictions do. They do not have that single system across the piece. For me, the big challenge is what happens post 2019. There is work to be done to encourage councils to make sure that they improve and bring forward a better system that still applies across the region as a whole, as opposed to the temptation to produce a system for individual councils or a grouping of councils.

**The Chairperson (Ms Lo):** After 1 April, will people still go to the planning portal? Will they find individual councils there?

**Mr Kerr:** Yes, that is right. The whole idea of this was that there would be no discernible difference for the user. Obviously, there are a lot of changes going on in the background so that, if consultations and decisions are issued, they are not issued from the DOE any longer but from the relevant council. However, as far as the user experience is concerned, the forms are still the same and you will fill them in as before and you will go to the portal and use it. There should not be a huge difference.

**The Chairperson (Ms Lo):** Information is always quite easy to find on that. So, well done. You have certainly set the ground work that councils can follow-up on. It is whether they can manage it and update it, frequently and speedily.

**Mr Boylan:** Thank you very much. We are here at last. Thank God for that. Some of the things that were cited brought back memories. Obviously, I appreciate having neighbour notification in statute.

I have just a couple of points. From the feedback I have got, there are one or two concerns but, generally speaking, the training is going very well. We will not know. It will proceed on a trial-and-error basis; hopefully, not so much by error as by trial, when we get into assessment for the councillors.

When you mention the scheme of delegation, I think that that is a good thing, to be honest with you.

In the whole application process and pre-application discussions, there are still a few wee things that need to be teased out; for example, about somebody bringing forward a business plan that is viable and stands up — the way you use the green book or some test to see whether a business plan or funding project will stand up. What about the issues around that? Have you done any training in relation to that? Angus, you talk about regionally significant applications, but some of those will be large enough for a council to deal with and there is going to have to be a call made on that, especially when they are developing area plans and all that. Do you have any experience in relation to that? How are councils getting advice in relation to dealing with the likes of those things?

**Mr Kerr:** Business plans, economic viability and economic consideration have been a live issue now for quite a while in the planning system. They have featured in some of the debates that we have had here, and even in some that we have had on the Floor of the Assembly.

We have done quite a bit of work with staff to try a number of training events to get councils up to speed with some of the more realistic aspects of proposals which maybe, as planners, through the planning education system, has not been high enough on the agenda. We have done a lot of work on how you actually consider the economic impacts of applications and work around them an understanding of the impact on the financial viability of schemes when planning applications are delayed or when different types of conditions are put on them. It is so that there is an understanding and a reasonableness of approach from officers. That work will not be lost when we transfer to councils, because those people are transferring across and will continue to do that work.

**Mr Boylan:** Especially as some of the new councillors get used to the system, they need someone there who is experienced and has been through some of it. That is one of the problems that I foresee. However, as I have said to you, people are receiving the training programmes well and are asking plenty of questions in relation to them.

At the minute, economic weighting still counts in a planning application, and I suppose that that is where most of the arguments come: whether proposals are viable. I wonder whether, as we move forward, that will still be the process. In an earlier briefing, I was talking about the code of conduct, and I believe that, if the policy is not right, there is no point in saying that a councillor can opt in or opt out, make a decision, or sit on a committee one-day, when he or she is experiencing a conflict of interest or might be afraid of falling out with some of his neighbours or constituents in relation to making a decision. I know that you are still looking at the draft strategic planning policy statement (SPPS), but that is a key element for me in all the training and all the things that we are trying to do. Proper policy in criteria is a major thing, and the economic weighting is one element of it.

**Mr Kerr:** Absolutely. You are quite right. I probably should have mentioned this earlier, but the SPPS is a key document in cementing our position on such issues as economic weighting, economic considerations and how they should be brought forward. We have badged that in under the sustainable development approach, where we have suggested a balanced approach between economic, environmental and social considerations.

You are right: the SPPS will be key in determining the approach taken in some of those issues. That said, and going back to some of the discussions we have had, there is that opportunity for councillors and councils to get their policy right in respect of how they interpret those higher level policies in the SPPS, be they about rural or economic development, or whatever, and reflect them properly and accurately for their local area, so that the development plan becomes — to use your expression — the right policy. Then, councillors will sign up to that. It will represent their vision and view of how planning should go forward for their area, and they will make decisions within that.

**Mr Boylan:** In the plan-led system?

**Mr Kerr:** Yes.

**The Chairperson (Ms Lo):** When will councillors get training on the SPPS? I know that you have not finalised it yet.

**Mr Kerr:** The first session of the capacity-building training concentrated on the big picture elements, such as legislation, the regulations [*Inaudible.*] and the implications of that, and the strategic policy in the regional development strategy and the SPPS. So, there was quite a lot of discussion. There was also a presentation from the DRD on the regional development strategy. At that time, we were at the draft stage of the SPPS — I suppose we still are — but that was also explained in discussions around the sort of issues we have talked about here, such as the implications of the SPPS for development plans, the weighting to be given to it in those processes and decision-making.

**The Chairperson (Ms Lo):** I know that councillors are being trained. What about the planners, your workforce? How has that transition been progressed? Are people happy going to councils? Are they moving offices? A lot of them are probably in their current planning offices.

**Mr Kerr:** You are right to highlight that. A lot of people have highlighted it to us because, in some sense, at public level, we have focused a lot on councils and councillor capacity-building and training. We have tasked each of the 11 new area planning managers, whom we have appointed across the region in preparation for the transfer, with taking responsibility for preparing, training and educating

their staff for the change. A lot of work has been done at local level. A lot of combined work has been done.

Some area managers have undertaken things such as mock planning committee meetings, and so on, and they have had their own staff and councillors at those events. So, there is training for both there. Once our four-phase councillor capacity-building programme is completed, we will start another phase of officer training. That will be from January onwards. It will be at a more comprehensive level. To be honest, a lot of the work that the area managers have done at local level is probably the most effective. It has worked well for our officers, council officials and councillors.

**The Chairperson (Ms Lo):** They are used to dealing with councillors.

**Mr Kerr:** They are.

**The Chairperson (Ms Lo):** They are dealing with larger groups of councillors now than they were previously.

**Mr Kerr:** Absolutely. It is difficult. When you are doing the bigger capacity-building events that we have had, and which I think have gone well and have been effective, you are not able to do everything that you would like to do. I think that the work that they have done at the local office level has enabled them to do some of the more beneficial stuff around role play and scenarios, for instance.

**The Chairperson (Ms Lo):** How many planners are being transferred?

**Mr Kerr:** I think that three hundred and ninety something planners are being transferred.

**Mr Weir:** I was able to look up the answer to the specific question I wanted to ask in the interim, so I do not need to ask it.

I have a comment to make. I disagree with Cathal slightly in that the feedback we have heard on the training has been a little bit more mixed. I appreciate the point you made about the wider context of 2019 and beyond, but I think that the first few months at least will be fairly crucial. I think that there is a certain level of nervousness, particularly among councillors, understandably, about getting this new role.

I suppose it will be crucial that that level of support and help is there, because it is difficult to determine how things will go in the initial period, and it may be that either certain problems will arise and we will see people, inadvertently, breaching codes of conduct and getting into difficulties or, I suppose, looking more positively, it might be, as I think Cathal mentioned earlier in the meeting, a little like the millennium-bug situation, when there was great fear that almost everything would go disastrously wrong for a period of days. Effectively, it turned out to be a damp squib. It may well be that some of the anticipated fears turn out to be unfounded.

It is crucial to ensure that, at least initially, almost like watching the young child take their first steps, there are people close to hand to be able to help. It will be a crucial period. I wanted to ask about the pre-application community consultation, but I was able to look up the legislation in the meantime during the questions.

**The Chairperson (Ms Lo):** There needs to be that hand-holding process for a while. I am glad that you are saying that some of the procedures for major applications will not start until July; the community consultation and all of that. That will give them a bit of time to prepare themselves as well.

**Mr Milne:** Thank you very much for your presentation, Angus. I want to ask about the SPPS, the policy regarding economic weighting and whether any tweaking is going on to accommodate non-farming rural dwellers. Do you anticipate that we will hear this in the Minister's statement at the time?

**Mr Kerr:** As the Minister indicated when he was here last week, we are looking at finalising the wording on rural PPS 21 issues in the SPPS and maybe highlighting some of the issues raised here. I think that we have undertaken to share the final version of the SPPS in advance of submitting it to the Executive, so you will get a chance to see that and comment.

**Mr Boylan:** I just want to follow up on the training element. Obviously, Peter and I are getting different feedback. I know that there is certainly an urban and rural issue. Most rural councillors I have talked to who have dealt with planning applications have dealt specifically with rural areas because the others are dealt with under area plans. Most in urban settings are about the types of buildings. Are you finding in the training that, as I would imagine, long-standing councillors, especially, who have dealt with planning for a number of years are content and are picking up the planning issues?

**Mr Kerr:** We have had a variety of responses. You are right that some councillors are quite familiar with planning. In all honesty, they tend to pick it up a little bit more quickly, although sometimes they are quite set in the old way of doing things as well. It is not always an advantage. Then, some councillors are completely new, either because they are completely new or because they have been working in an urban environment where they have not done as much planning. For them, it is a new exercise, so they are taking a bit longer and asking some of the more searching questions, and so on. Certainly, the feedback from the events has been positive and we have felt that they have gone well and that there has been a good level of interaction on the issues with all the councillors who have attended.

**The Chairperson (Ms Lo):** OK. There are no more questions. Are members content for the Department to proceed to lay the rules?

*Members indicated assent.*