

Regional Planning Governance
& Legislation Directorate



Department for

Infrastructure

An Roinn

Bonneagair

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Infrastructure

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Council Chief Executives

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26th May 2023

Dear Chief Executive,

Review of the Planning (Development Management) Regulations (Northern Ireland) 2015 – Initial Stakeholder Engagement

Following the Review of the Implementation of the Planning Act (NI) 2011, and the recommendations made in the NI Audit report and the Public Accounts Committee report on Planning in Northern Ireland, a planning improvement work programme, agreed by local and central government, encompassing regulatory improvements and legislative changes to the planning system, is being taken forward.

One of the agreed legislative actions is a review of the **Planning (Development Management) Regulations (NI) 2015 (S.R. 2015 No.71) (*the Regulations*)**. The review is considering the current Hierarchy of Developments, pre-application community consultation and mandatory pre-determination hearings. This includes a review of the classes and thresholds in the Schedule of 'Major Development Thresholds' and the jurisdictional criteria prescribed for the purposes of section 26(1) of the Planning Act (NI) 2011 (*the Act*). The aim is to ensure that the current classes and thresholds remain relevant, fit for purpose and take account of future development requirements.

To assist with the ongoing review, and in advance of a wider public consultation, the Department would invite you to share your operational experiences of the Regulations and the major development Schedule, along with your recommendations and supporting evidence for any changes. This feedback will be important in helping us understand stakeholder views and shape any proposed revisions, in order that the Regulations are practical and appropriate for current and future development trends.

E-mail: planning@infrastructure-ni.gov.uk

Website: www.infrastructure-ni.gov.uk/topics/planning

The feedback provided by all Councils on the Regulations, as part of the Call for Evidence for the Review of the Implementation of the Planning Act (NI) 2011, has been noted and is being considered as part of this review.

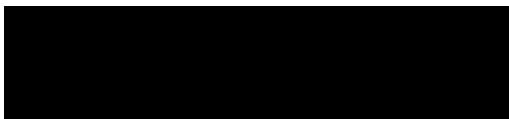
A feedback form is attached at Annex 1, with some questions under each class of development which may help structure your information return. Annex 2 provides some background and supporting information for each class which you may find useful. We would be grateful if you could complete and return Annex 1 on or before 7th July 2023. In addition, if you would like to meet with the Department to provide feedback verbally or discuss aspects of the review, please contact the legislation team to arrange a suitable date and time.

Following the review, DfI intends to consult with the public and wider stakeholders on the proposed revisions to the Regulations and the major development schedule. It is anticipated that this public consultation will take place in early autumn 2023. The Council will have a further opportunity to provide feedback on the proposed revisions during this public consultation.

There will also be an opportunity to provide input into other potential legislative changes in relation to other regulations in due course.

If you have any questions, or you would like to discuss further, please do not hesitate to get in touch by emailing myself (kathryn.mcferran@infrastructure-ni.gov.uk) or the Legislation team on Legislation.Planning@infrastructure-ni.gov.uk.

Yours sincerely



DR KATHRYN McFERRAN
(Acting) Director

Cc. Heads of Planning

Enc

Annex 1

Refer to separate Feedback Form.

electricity generating station proposal, any MW capacity from the exempt facility cannot contribute to the overall MW capacity of the proposal to determine NSIP thresholds.

- In Wales, proposals for electricity generating stations with a capacity of between 10-350MW are considered Developments of National Significance (*DNS*) and are consented by Planning and Environment Decisions Wales (Welsh Government). Projects involving electricity generation stations (excluding wind and exempt electricity storage facilities) in Wales with a capacity greater than 350MW are considered NSIPs and processed by the Planning Inspectorate. The definition of electricity generating stations for the purposes of DNS does not include electricity storage facilities, which are consented by local authorities.
- In the Republic of Ireland, wind energy proposals comprising more than 25 turbines or with a total output greater than 50MW are considered Strategic Infrastructure Development (*SID*) and are consented by An Bord Pleanála. Similarly, industrial installations for the production of electricity, steam or hot water with a heat output of 300 MWs or more are also considered SID.

Electrical power lines create an important network of connections between electricity generating stations, the grid, and the consumer. There may be merit in revising the thresholds for major development, which currently align broadly with Schedules 1 and 2 of the EIA Regulations.

- In England and Wales, overhead lines less than 132kV or less than 2km in length are consented by the Department of Business Energy & Industrial Strategy (BEIS). Proposals greater than 132kV or more than 2km are considered as NSIPs and processed by the Planning Inspectorate.
- In Scotland, proposals for overhead lines greater than 20kV are processed by the Energy Consents Unit (Scottish Ministers).
- In the Republic of Ireland, proposals for overhead lines with a voltage of 220 kV or more can be considered as SID. The forthcoming Planning and Development Bill 2022 allows proposals for electrical power lines not less than 220 kV and longer than 15km to also be considered SID and processed by An Bord Pleanála.

Within the Energy Infrastructure sub-class of **Storage**, the threshold for major development for the storage of petroleum, petrochemicals, chemical products and natural gas is 30,000 tonnes or more. The threshold for consideration under S.26(1) of the Act is 200,000 tonnes or more. The latter broadly aligns with the thresholds in Schedule 1 of the EIA Regulations for the same type of development.

These thresholds originally aligned with the equivalent NSIP development thresholds in England and Wales, however these have since changed. Currently, the NSIP threshold for gas storage is 43million m³ or a maximum daily flow rate of 4.5million standard m³.

In the Republic of Ireland, surface storage of natural gas and oil or coal are considered as SID and consented by An Bord Pleanála, where the threshold meets 200,000 tonnes (natural gas) and 100,000 tonnes of oil or coal.

All proposals for underground storage including compressed air energy storage are major development and require consideration under Section 26(1) of the Act. In England and Wales, proposals for underground storage of gases where the storage is 43million m³ or a maximum daily flow rate of 4.5million standard m³ are considered NSIP. In the Republic of Ireland underground storage of combustible gases, where the storage capacity would exceed 200 tonnes area considered SID.

In respect of **Extraction**, there are two sub-classes and thresholds for major development in the Regulations relating to specific materials. In respect of unconventional hydrocarbons, all proposals are deemed major development and require consideration under Section 26(1) of the Act. Thresholds for the extraction of petroleum and natural gas reflect, in part, the requirements of the EIA Regulations and the controversial nature of this activity. In the Republic of Ireland, all installations for the onshore extraction of petroleum or natural gas are considered SID and consented by An Bord Pleanala.

In respect of proposals for **Pipelines**, the current thresholds for major development broadly reflect the thresholds in the current EIA Regulations. The Gas to the West project (LA08/2016/1328/F) was a regionally significant project and provided a useful benchmark for informing these thresholds. In the Republic of Ireland, the thresholds for consideration under SID are pipeline proposals more than 20km.

In England and Wales, a gas pipeline must be either more than 800mm and more than 40km, or likely to have a significant effect on the environment. In addition, it must have a design operating pressure of more than 7 bar gauge and supply gas (directly or indirectly) to at least 50,000 customers, or potential customers, to qualify as an NSIP. In Scotland, all gas and oil pipelines and associated development are processed and consented by the Energy Consents Unit on behalf of the Scottish Ministers.

Class 3: Transport Infrastructure

The strategic transport network is an essential component in the everyday movement of people and goods to, from and within Northern Ireland. Class 3 development identifies the various elements of transport infrastructure and provides thresholds for major development and S.26(1). These broadly align with the thresholds in Schedule 1 and 2 of the EIA Regulations. The exception is the road proposals under Schedule 1 Para 7(b) and (c) of the EIA regulations which are normally consented via the Roads (NI) Order 1983.

In Scotland, all Schedule 1 EIA transport development and proposals involving lengths exceeding 8km are considered major development. Proposals for the Rapid Transit Networks, High Speed rail facilities, certain Port/Harbours infrastructure works in certain specified locations qualify as National Development.

In England and Wales, the NSIP and DNS thresholds for development proposals for airports are based primarily on passenger numbers and air cargo movements, while new/replacement railway facilities have a 2km threshold. NSIP thresholds

for new port and harbour facilities relate to the handling capacity/quantities for various materials including cargo and containers.

In the Republic of Ireland, development proposals for harbour and port installations which involve enclosure of more than 20ha of water, reclamation of more than 5ha land, quay construction greater than 100m in length, and able to accommodate vessels greater than 1350T meet the thresholds for SID.

Class 4: Waste Infrastructure

The planning system plays an important role in supporting the delivery of waste infrastructure throughout Northern Ireland, ensuring that it meets the needs of the growing population and economy, as well as the targets for sustainable management of waste resources. Waste facilities can be of interest to local communities and must be carefully planned to ensure that their potential environmental impacts are properly assessed/considered.

The major development thresholds for waste management in the Regulations align broadly with the thresholds for the same facilities in Schedule 1 of the EIA Regulations. The thresholds prescribed for the purposes of Section 26(1) align broadly with the criteria for SID in the Republic of Ireland and NSIP in England and Wales.

In Scotland, all waste management or disposal facilities which are Schedule 1 EIA Development and facilities where capacity exceeds 25,000 tonnes per annum (except sludge facilities) are considered major development. In England and Wales, all waste development is considered major development.

In England, proposals for disposal of hazardous waste by land fill or deep storage meet the threshold for consideration as an NSIP, if their capacity will be more than 100,000T per year. Proposal for disposal by other methods will be considered NSIP projects, where their capacity exceeds the threshold of more than 30,000T per annum.

In terms of **wastewater**, the current major development threshold is a facility with a capacity exceeding 50,000 Population Equivalent (PE). Proposals for facilities with a capacity exceeding 150,000 PE meet the criteria for consideration under S.26(1) of the Act, and also align with criteria in Schedule 1 EIA Regulations.

In Scotland, wastewater proposals which meet the thresholds for Schedule 1 EIA development are considered major development. The threshold for wastewater proposals to be considered as SID in the Republic of Ireland are facilities with a capacity of more than 10,000 PE. The NSIP and DNS thresholds for wastewater proposals in England and Wales are facilities with a capacity exceeding 500,000 PE.

Class 5: Minerals

Minerals are valuable assets and vital to the growth of the Northern Ireland economy. They are essential raw materials, which underpin construction, housing, industry and infrastructure. The planning system has a key role to play in regulating extraction and ensuring no adverse impacts on the environment.

The Regulations specify thresholds for major development involving the extraction of mineral on a site exceeding 2ha, which aligns with the threshold for the same class in Scotland. The criteria for consideration under S.26(1) of the Act aligns with the criteria for quarries and underground mining in Schedule 1 of the EIA Regulations.

In England and Wales, any form of winning and working of minerals or the use of land for mineral working deposits is considered a major development. In the Republic of Ireland, the proposed Planning & Development Bill brings in a threshold for strategic development for the extraction of stone, gravel, sand or clay where the area of extraction would be greater than 5 hectares.

Class 6: Housing

Good quality, affordable housing in safe, sustainable communities is essential to ensuring health, well-being and a prosperous society¹. The planning system has a key role in ensuring new residential development is well designed and appropriately located.

The Regulations under Class 6 currently provide two sub-thresholds for establishing major development, which align closely with the thresholds for the same class of development in Scotland.

In England and Wales, major development is defined by the provision of dwelling houses where:

- a) 10 or more homes will be provided; or
- b) the site has an area of 0.5ha or more.

In the Republic of Ireland, the Strategic Housing Development thresholds are:

- a) development of 100 or more houses on land zoned for residential or mixed uses.
- b) the development of student accommodation units which, when combined, contain 200+ bed spaces, on appropriately zoned land.
- c) development that is a mix of the above.

¹ Source: 'Equality in Housing and Communities – Policy Recommendations' The Equality Commission for NI

Class 7: Retailing, Community, Recreation & Culture

The Regulations provide two sub-thresholds for major development for Use Classes A and D of the Planning (Use Classes) Order (NI) 2015 (S.R. 2015 No.40), which cover shops, financial professional and other services, community, and cultural uses, as well as assembly and leisure.

These thresholds were originally aligned with paragraph 36 of Planning Policy Statement 5 – Retailing and Town Centres (PPS5). The Strategic Planning Policy Statement (SPPS) supersedes PPS5 and indicates at paragraph 6.283 a similar threshold of 1000m² for out of centre development proposals.

No other jurisdiction has provided specific thresholds for this class of development.

In Scotland, development proposals within these Use Classes for retail, recreation and culture development are considered under the '*All Other Development*' category, and the relevant sub-thresholds are:

- a) where the gross floor space of any building, structure, or erection constructed as a result of such development is or exceeds 5000m²; or
- b) where the area of the site is or exceeds 2ha.

Similarly, in England proposed developments for these uses are considered under the general thresholds to determine major development namely:

- a) the provision of a building or buildings where the floorspace to be created by the development is 1000m² or more,
- b) or a site of 1ha or more.

Class 8: Business, Industry (Light & General) Storage & Distribution

Development proposals which fall under Part B Industrial and Business Uses of the Planning (Use Classes) Order (NI) 2015 are currently considered within this class, which covers B1 business use, B2 light industrial, B3 general industrial, and B4 storage and distribution.

In Scotland, there is a specific class and sub-thresholds for considering proposed developments for the same business and industrial uses. The sub-thresholds for establishing major development (excluding change of use), are:

- a) the gross floor space of any building, structure, or erection constructed as a result of the development exceeds 10,000m²; or
- b) the area of the site is or exceeds 2ha.

In England, proposals for development of business, industrial, storage and distribution uses would be considered under the general thresholds to determine major development, namely:

- a) the provision of a building or buildings where the floorspace to be created by the development is 1000m² or more, or
- b) a site of 1ha or more.

Class 9: All Other Development

Class 9 provides a general class for all other development which does not fall wholly within the Classes 1-8.

In Scotland, the relevant class for '*All Other Development*' has two sub-thresholds to establish major development, namely:

- a) where the gross floor space of any building, structure, or erection constructed as a result of such development is, or exceeds, 5000m²; or
- b) where the area of the site is, or exceeds, 2ha.

In England, there are general thresholds to determine major development for all other proposals, namely:

- a) the provision of a building or buildings where the floorspace to be created by the development is 1000m² or more; or
- b) a site of 1ha or more.

Following the judgment provided by Humphreys J in Judicial Review 2021/NIQB96², consideration is being given to clarifying the application of Class 9, in relation to composite or mixed-use development.

Composite proposals comprise multiple elements of development or a mixture of complimentary uses, which fall into more than one of Classes 1-8 of the Schedule Major Development thresholds.

In Scotland, Class 9 covers mixed use projects, whether the project involves a *combination of developments* described in Classes 1-8, or a mixed-use proposal with different uses which have not been listed in classes 1 to 8. In England and Wales, the threshold for major development is established where the proposal involves *any one or more* of the relevant five classes and thresholds described in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

² <https://www.judiciaryni.uk/judicial-decisions/2021-niqb-96>