

Title of Report:	Review of the Implementation of the Planning Act (NI) 2011 Report January 2022
Committee Report Submitted To:	Planning Committee
Date of Meeting:	23 February 2022
For Decision or For Information	For Noting

Linkage to Council Strategy (2021-25)	
Strategic Theme	Improvement and Innovation
Outcome	Council maintains its performance as the most efficient of NI's local authorities
Lead Officer	Head of Planning

Budgetary Considerations	
Cost of Proposal	N/A
Included in Current Year Estimates	
Capital/Revenue	
Code	34001
Staffing Costs	

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	N/A	Date:
	EQIA Required and Completed:	N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	N/A	Date:
	RNA Required and Completed:	N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

FOR NOTING

1.0 Background

- 1.1** This Report is to provide Members with details on the Report issued by the Department for Infrastructure on 27 January 2022 on the Review of the Implementation of the Planning Act (Northern Ireland) 2011 following the 'Call for Evidence'.

2.0 Details

- 2.1** Section 228 of the planning Act (Northern Ireland) 2011 requires the Department to review and issue a report on the implementation of the Act 3 years after the commencement of Part 3 of the Act, and at least once in every 5 years after that.
- 2.2** The requirement to review and publish a report on the implementation of the Act is to ensure the Department monitors and reports on the coming into operation of the provisions within the Act, to provide a level of assurance that the legislative framework for the delivery of a reformed two-tier planning system has been implemented and in a timely fashion.
- 2.3** The Planning Act 2011 (Review) Regulations (Northern Ireland) 2020 specify that the review must
- Consider the objectives intended to be achieved by the Planning Act;
 - Assess the extent to which those objectives have been achieved; and
 - Assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the Act, in order to achieve those objectives.
- 2.4** To assist the review and to better understand stakeholders views on how the Act has been implemented, the Department issued a Call for Evidence in February 2021, attracting 55 response.
- 2.5** The Department has considered the objectives intended to be achieved by the Planning Act and is satisfied that the stated objectives have been achieved.
- 2.6** Tables at Annex A of the Report sets out the department's detailed consideration of proposals for changes to existing legislation and guidance informed by the call for evidence.
- 2.7** The department has considered whether amendments to legislation have the potential to make the system more efficient and in turn, bring forward performance improvements.
- 2.8** Key recommendations are set out in the table of recommendations/Actions at page 28 of the Report as follows:

Table of Recommendations/Actions

Part 2 - Local Development Plans	
Issue Ref	Action
PT2-2	<p><u>Local Development Plan Guidance</u></p> <p>The Department will add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs.</p>
PT2-4	<p><u>Consultation Bodies in Plan-Making</u></p> <p>The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant / appropriate to local planning authorities.</p>
PT2-6 PT3-17 PT5-2	<p><u>Digitization in the Planning System</u></p> <p>The Department will work with councils and other stakeholders to determine whether there are ways in which to enhance online / digital means of communication in plan-making, development management, and in the planning system generally to improve accessibility for citizens.</p>
Part 3 - Planning Control	
Issue Ref	Action
PT3-1	<p><u>Categories of Development</u></p> <p>The Department will review existing thresholds and categories of development to determine the need for revisions.</p>
PT3-3	<p><u>Pre-Application Community Consultation (PACC) and Notice</u></p> <p>The Department will bring forward proposals to provide for both in-person and on-line/electronic PACC public engagement. This will include consideration of any recommendations to emerge from the work of the Planning Engagement Partnership. Clarity on the PAN process could be provided in expanded guidance if appropriate.</p>
PT3-4	<p><u>Call-In Applications</u></p> <p>The Department will review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward.</p>
PT3-5	<p><u>Incomplete Applications and Validation Check-Lists</u></p> <p>The Department will bring forward proposals to introduce statutory 'validation check-lists' and will seek to advance policy development at the earliest opportunity.</p>

PT3-7	<u>Time period for consultation responses</u> The Department will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes.
PT3-10	<u>Pre-Determination Hearings (PDH)</u> The Department will bring forward proposals to make PDH discretionary for councils in the exercise of their functions.
PT3-14	<u>Matters Raised at Appeal</u> The Department will bring forward proposals to supplement existing s.59 provisions which would disallow the variation of a development proposal at appeal.
PT3-19	<u>DFI Directions</u> The Department will undertake a general review of current departmental directions.

PT3-20	<u>Commencement of Development</u> The Department will review this provision to establish if any technical amendments are appropriate.
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Part 4 – Additional Planning Control

Issue Ref	Action
PT4-3	<u>Tree Preservation Orders (TPO)</u> The Department will review current requirements around TPOs with a view to bringing forward proposals to permit councils to vary or revoke TPOs. The Department will also consider whether there is a need for guidance to clarify certain TPO terms or definitions.
PT4-4	<u>Review of Old Mineral Permissions (ROMPs)</u> The Minister is to consider options on the way forward with regards to ROMPs early in 2022.

Part 5 – Planning Enforcement

Issue Ref	Action
PT5-3	<u>Fixed Penalty Notices (FPN)</u> The Department will explore the possibility of applying FPNs to advertisement control.

Part 13 – Financial Provisions

Issue Ref	Action
PT13-1	<u>Planning Fees</u> The Department will undertake a general review of planning fees including an automatic annual inflationary uplift, and multiple fees for retrospective applications as part of a wider review of planning fees.

2.9 The Department will seek to develop these policy proposals with a view to bringing forward proposals for public consultation at the earliest opportunity. Actions which require amendment to current primary legislation will be taken forward through the NI Assembly Bill process. Actions which require secondary/subordinate legislation will be undertaken in accordance with best practice, in conjunction with the Committee for Infrastructure and Assembly where appropriate. Other actions may be addressed through new or revised guidance. Actions falling to the next mandate will be subject to the views of an incoming Minister.

3.0 Recommendation:

3.1 IT IS RECOMMENDED that the Committee notes the Report from DfI on the Review of the Planning Act (Northern Ireland) 2011.

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

Report
January 2022

This review of the implementation of the Planning Act (Northern Ireland) 2011 (the Planning Act) has been carried out in accordance with section 228 of the Act.

It deals with the implementation of the Act and is not a detailed examination of the operation or performance of the overall new two-tier planning system. A separate Planning Monitoring Framework has been developed in conjunction with councils which includes a series of indicators to provide a more comprehensive assessment of the planning system.

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EXECUTIVE SUMMARY

The enactment of the Planning Act (NI) 2011 provided the legislative basis for the most significant reforms of the Northern Ireland planning system in a generation. These reforms impacted 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 reforms set out to deliver the complete overhaul and redesign of the development plan and development management systems with the aim of improving efficiency and effectiveness. Significant changes were also made in relation to planning appeals and enforcement.

Overall, the aim of the Act is to create a planning system which is quicker, clearer and more accessible, with resources better matched to priorities. The Act also gives effect to local government reform changes which transferred the majority of planning functions and decision making responsibilities for local development plans, development management plus planning enforcement to locally accountable councils. This provides a framework for locally elected politicians to shape the areas within which they are elected based on an enhanced understanding of the needs and aspirations of local communities.

The majority of the Act came into operation for departments and councils in April 2015 and it was supported by a significant and comprehensive programme of subordinate legislation and guidance.

Section 228 of the Act requires the Department to review and issue a report on its implementation 3 years after the commencement of Part 3 and once in every five years thereafter. The requirement to review and publish a report on its implementation is to ensure the Department monitors and reports on the coming into operation of the provisions within the Act, to provide a level of assurance that the legislative framework for the delivery of a reformed two-tier planning system has been implemented, and in a timely fashion.

The Terms of Reference for the review are set out in The Planning Act 2011 (Review) Regulations (Northern Ireland) 2020¹ which specify that it must consider: the objectives intended to be achieved by the Planning Act; assess the extent to which those objectives have been achieved; and assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.

To assist the review and to better understand stakeholders views on how the Act has been implemented, the Department issued a Call for Evidence (CfE) in February 2021, which ran for over an 8 week period. The CfE was part of the process of gathering additional information to help inform the preparation of the review report and the evidence submitted aided the Department's understanding of the outworking of the Act and associated subordinate legislation.

The review found that the vast majority of provisions within the Planning Act have been implemented and that the transfer of responsibility for the majority of

¹ <https://www.legislation.gov.uk/nisr/2020/218/made>

planning functions to locally accountable councils has been achieved, together with the establishment of the two-tier planning system. A small number of provisions have yet to be commenced including the Review of Mineral Planning Permissions, the Correction of Errors, and section 63(1)(d) with regard to permission deemed to be granted under the Electricity (NI) Order 1992.

Councils are preparing local development plans for their areas, have published statements of community involvement and now determine the vast majority of planning applications. Changes to the decision making process including pre-application community consultation and pre-determination hearings have further enhanced community engagement and have allowed greater public involvement and transparency in the determination of planning applications. Councils are also exercising their planning enforcement duties, investigating alleged breaches of planning control and taking action as appropriate.

The Department is determining applications for 'regionally significant development' under section 26, or applications 'called-in' under section 29 of the Planning Act. Since the commencement of the Act, the Department has also published the Strategic Planning Policy Statement for Northern Ireland setting out the Department's regional planning policies in a shorter more focused document, and has published extensive guidance by way of Practice Notes on the reformed planning system.

The review also found that 162 sections of the Act, or just under two-thirds of its provisions had not been remarked upon in the CfE and the Department has, therefore, drawn the conclusion that these should largely be retained as structured. Key issues emerging from the responses to the CfE included the timeliness of councils bringing forward their local development plans and delays in processing times for some planning applications, particularly major applications. Many respondents pointed to potential legislative changes which might address perceived obstacles in the system.

In seeking to address the findings from the review the Department has made 16 recommendations / actions covering aspects of the Planning Act governing, development planning, development management, planning enforcement and additional planning control. These include recommendations, on reviewing the consultation requirements in plan-making, on improving the quality of planning applications submitted, increasing the use of digital technology in the planning system, reviewing: categories of development; Departmental Directions and the Department's approach to call in notifications; and aspects of the appeals system around restricting new material at appeal and the variation of proposals at appeal. A summary list of the actions/recommendations is provided at paragraphs 12.12 of this report.

Background

1. In 2007 the then Minister of the Environment, Arlene Foster MLA, announced a programme to reform the Northern Ireland planning system. Following extensive stakeholder engagement, the Department of the Environment consulted in 2009 on a wide range of proposals to ensure a modern, efficient and effective planning system to support the Northern Ireland Executive in delivering on its key priorities. The consultation also outlined the changes required to implement the decisions taken under local government reform which would see responsibility for the majority of planning functions returning to local government. Taken together the proposals would represent the most fundamental change to the planning system in Northern Ireland in over 30 years.
 - 1.1. The Planning Act paved the way for implementing the reforms. In parallel with local government reform, many of the provisions of the Act came into operation on 1 April 2015 when responsibilities for the majority of planning functions transferred to the newly formed councils.
 - 1.2. In addition, in May 2016 The Departments Act (Northern Ireland) 2016, reduced the number of government departments from 12 to 9. This was the culmination of discussion going back a number of years on the shape and size of the Northern Ireland Executive.
 - 1.3. As part of this restructuring, the majority of departmental planning functions of the former Department of the Environment were transferred to the Department for Infrastructure, while responsibility for the Planning Appeals Commission under Part 9 of the 2011 Act was transferred from the Office of the First and deputy First Ministers to the Department of Justice. In addition a number of historical built environment functions of the 2011 Act were transferred to the Department for Communities. These included the:
 - power to list buildings under sections 80 to 84;
 - power to designate conservation areas under section 104; and
 - listed building enforcement powers under sections 158 to 161.
 - 1.4. While the Planning Act received Royal Assent in May 2011, the operation of the vast majority its provisions did not commence until 2015, in parallel with the reform of local government and transfer of planning functions. This occurred via the following orders:
 - The Planning (2011 Act) (Commencement No.1) Order (NI) 2011;
 - The Planning (2011 Act) (Commencement No.2) Order (NI) 2015; and
 - The Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) Order (NI) 2015 (as amended).

The aim / objectives underpinning the Planning Act

2. The key aims of the reform of the planning system were to:-

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

2.1. The main objectives were:-

- the continued formulation and co-ordination of planning policy by the Department;
- councils preparing local development plans;
- councils determining the majority of planning applications for development and additional planning related consents; and
- councils taking appropriate enforcement action where a breach of planning control may have taken place.

2.2. The main reform objectives were further underpinned by actions to:-

- further sustainable development;
- enhance community involvement in the planning process;
- make more timely decisions in ways which are transparent and demonstrably fair;
- allow higher fines for planning offences; and
- bring forward reforms to the planning appeals system.

Introduction

Review of the Implementation of the Planning Act

3. Section 228 of the Planning Act (Northern Ireland) 2011 (the Planning Act) requires the Department to review and issue a report on the implementation of the Act 3 years after the commencement of Part 3 of the Act, and at least once in every 5 years after that. Part 3 commenced on the date of transfer of planning functions to district councils on 1 April 2015. The Department is required to make regulations setting out the terms of the review.
- 3.1. The delay in meeting the initial timeframe set out in the Act for making the regulations and publication of the associated report, stems from decisions (not to proceed) made under the NI (Executive Formation & Exercise of Functions) Act 2018. These decisions determined that in the absence of a Minister or functioning Assembly, it would not be appropriate to make the regulations, and to publish the subsequent report on the implementation of the Planning Act. The Regulations were, however, subsequently made in October 2020.

The Planning Act 2011 (Review) Regulations (Northern Ireland) 2020

- 3.2. The Planning Act 2011 (Review) Regulations (Northern Ireland) 2020² specify that the review must:-
 - consider the objectives intended to be achieved by the Planning Act;
 - assess the extent to which those objectives have been achieved; and
 - assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.

Purpose and Scope

- 3.3. The requirement to review and publish a report on the implementation of the Act is to ensure the Department monitors and reports on the coming into operation of the provisions within the Act, to provide a level of assurance that the legislative framework for the delivery of a reformed two-tier planning system has been implemented and in a timely fashion.
- 3.4. The focus of the review is, therefore, on the implementation of the legislative provisions of the Act itself and the extent to which the original objectives of the Act have been achieved. This will then inform whether there is a need to **retain, amend or repeal** any provisions of the Act. The review also provides an opportunity to consider any improvements or 'fixes' which may be required to the way in which the Planning Act has been commenced and implemented in subordinate legislation. Issues with the planning system that have surfaced as a result of the Coronavirus pandemic will also be examined as part of this review.

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

- 3.5. It is important, however, to highlight that the review is not envisaged as a fundamental root and branch review of the overall two-tier planning system or the principles behind the provisions. It is still relatively early days in the delivery of the new system, compared with other jurisdictions. The review will look at how the provisions of the Act are working in practice and whether there are any changes that could be implemented to further improve the system for all stakeholders – including councils, developers, and the wider public. The focus is not just on planning decisions, but also on the delivery of new local development plans which will provide certainty for the longer term. Changes and ‘fixes’ may not always require legislative change.
- 3.6. The Review Report is structured in two parts:
- **Part I** deals with the technical and legislative implementation of the Planning Act, and its supporting subordinate legislation and directions against the stated aim / objectives to determine if what was intended to be achieved, has indeed been accomplished; and
 - **Part II** examines and assesses the outworking of the Act, and its supporting subordinate legislation and directions, to determine whether, in considering the objectives, it is appropriate **to retain, amend or repeal** any of the provisions of the Act to better achieve those objectives. This includes examination of potential amendments or ‘fixes’ to various elements of the planning system.

Call for Evidence

- 3.7. To assist the review and to better understand stakeholders views on how the Act has been implemented, the Department issued a Call for Evidence (CfE) in February 2021. The CfE formed part of the process of gathering additional information which helped to inform the preparation of the review report, particularly the assessment under **Part II**. The evidence submitted improved the Department’s understanding of where there may be a need to retain, amend or repeal particular parts or sections of the Act, or associated subordinate legislation. The questions in the CfE were structured within the context of the terms of the review set out in the associated Review Regulations.
- 3.8. The CfE sought to target and engage with key stakeholders in the planning system including, councils, statutory consultees, professional bodies, community, business and environmental interests, however, it was open to anyone to respond. It was undertaken over an 8 week period ending 16 April 2021 and attracted 55 responses. While comments were principally sought on those parts of the Act covering local development plans, development management and enforcement, the Department was happy to receive comments on any element of the Act, or associated subordinate legislation.

3.9. In summary, almost two-thirds of the Act (162 sections) were not remarked upon. As had been anticipated, the vast majority of comments focused on sections with regard to Local Development Plans (LDPs), development management and planning enforcement. Comments were also received with regard to the functioning of the planning system within the context of the COVID 19 pandemic and post pandemic recovery. Following analysis of responses, the broad themes to emerge included calls:

- for the planning system as a whole, to take account of other strategies on for example: climate, environment, renewable energy;
- to streamline, and address perceived obstacles / inefficiencies in local development plan-making;
- for greater clarity in the role of the Department in plan-making, development management / decision-taking, and planning enforcement;
- for quicker and more streamlined decision-taking on planning applications and to address perceived obstacles at various stages including, pre-application consultation, and pre-determination hearings;
- to better utilize digitization across the planning system, including a review of planning application and advertising requirements;
- to uplift and broaden the scope of planning fees to better match costs;
- for greater and more regular use of powers to assess a council's performance;
- to future-proof planning against potential emergencies, for example: extending extant planning permissions, and suspending in-person engagement;
- for greater powers to councils in relation to conservation areas and trees;
- to commence the Review of mineral planning permissions;
- to prioritise 'green infrastructure' projects in post-COVID 19 recovery.

3.10. While the above comments provide a broad summary of the responses received to the individual CfE consultation questions, a more detailed consideration of individual proposals, from respondents is set out at Part II of this report. It aims to address the primary issues raised and proposed actions where appropriate, while recognising more detailed consideration of the issues raised will be necessary as policy responses are considered and developed. While we have made every effort to reflect the broad range of opinion, the analysis of evidence gathered from the CfE is not intended to be a comprehensive examination on every single comment received; rather it aims to provide a broad indication of the level and diversity of representations made.

- 3.11. In some instances contributors in their responses to the CfE made comparisons between the planning systems here with those in other jurisdictions. While there are similarities across the various jurisdictions, there are also significant differences in how each planning system works, how performance is measured, and the political and administrative contexts. It is, therefore, difficult to assess the functionality and performance of the planning system in the North against that of other parts of this island or in GB.
- 3.12. It is important to mention however that the performance of the system has been impacted by the COVID 19 pandemic. Nevertheless, the Department has continued to bring forward a number of work streams to address process improvements. A Planning Forum has been established, the key focus of which is to oversee the implementation of recommendations made in an independent report on the role of statutory consultees in the planning process. This work has a particular focus on improving processes and timeframes for major and economically significant planning applications. Statutory consultees have a legislative requirement to respond to planning consultation requests within 21 calendar days and the latest annual statistics show that they responded to 76% of all planning application requests in 2020-21 within 21 days, which was an improvement of 7% over the previous year, despite the impacts of the pandemic.
- 3.13. Furthermore, the Minister convened a Planning Engagement Partnership (PEP) whose purpose is to look at enhancing the quality and depth of community engagement in the planning process at both regional and local planning authority levels. The Partnership is currently preparing its report with recommendations for improvement, which is due to be published early in 2022.
- 3.14. Officials also regularly meet council heads of planning to discuss matters of policy and practice which may be affecting performance in various areas of the planning system. In addition, the Department and 10 councils are working together to take forward a new regional Planning IT system to provide a more modern planning service to the public, consultees and staff, including the ability for the public to submit planning applications on-line. This is expected to be operational in late summer 2022.

PART I

The Legislative Implementation of the Planning Act

4. The Planning Act, which received Royal Assent on 4 May 2011, is the primary legislative vehicle for the modernisation and reform of the planning system. It made the necessary provision for the transfer of responsibility for the majority of planning functions from central government to the newly formed district councils on 1 April 2015. The Act and the Explanatory Notes are available on the government's legislation website (www.legislation.gov.uk).

Commencement of the Planning Act

- 4.1. The Act consists of 15 Parts, 255 sections and seven schedules. Amendments to timeframes for taking enforcement action and also a number of increased penalties were introduced from 1 December 2011, however, as previously indicated, the majority of provisions came into operation on 1 April 2015. The provisions of the Act which have been implemented are:
 - Part 1 Functions of the Department for Infrastructure with respect to the development of land
 - Part 2 Local development plans
 - Part 3 Planning control
 - Part 4 Additional planning control (except Chapter 4)
 - Part 5 Enforcement
 - Part 6 Compensation
 - Part 7 Purchase of estates in certain land affected by planning decisions
 - Part 8 Further provisions as to historic buildings
 - Part 9 The Planning Appeals Commission
 - Part 10 Assessment of council's performance or decision making
 - Part 11 Application of Act to crown land
 - Part 13 Financial provisions
 - Part 14 Miscellaneous and general provisions
 - Part 15 Supplementary
 - Schedule 1 Simplified planning zones
 - Schedule 4 Amendments to the Land Development Values (Compensation Act (Northern Ireland
 - Schedule 5 The Historic Buildings Council
 - Schedule 6 Minor and consequential amendments
 - Schedule 7 Repeals

4.2. A small number of the provisions of the 2011 Act have not yet been commenced, these are:

- Part 4 – Chapter 4 Review of Mineral Planning Permissions;
 - Schedule 2 – Review of old mineral planning permission;
 - Schedule 3 – Periodic review of mineral planning permissions;
- Part 12 – Correction of Errors; and
- Section 63(1)(d) – permission deemed to be granted under paragraph 3(1) of Schedule 8 to the Electricity (NI) Order 1992³.

Review of Old Minerals Permissions

4.3. Whilst the introduction of the legislation relating to the Review of Minerals Permissions (ROMPs) in Northern Ireland has not been commenced, no decision has been taken not to implement ROMPs. Officials are continuing to examine a number of options in relation to the commencement of ROMPs legislation. The Minister intends to consider options on the way forward early in 2022. In the meantime, councils have a broad range of enforcement powers available under the Planning Act where they believe a developer is operating outside the terms of a permission. Councils remain best placed to investigate such planning matters and have a responsibility to do so. The planning system together with other environmental and pollution control legislation will continue to facilitate improvements in the operational requirements of mineral facilities as well as limiting potential adverse environmental effects.

Correction of Errors

4.4. Part 12 of the Planning Act is intended to allow a council to correct minor miscellaneous and typographical errors in certain planning decision documents that it has issued. For example, where the name of the applicant has been misspelt. Correctable errors are errors which do not form part of any reason given for the decision and cannot change the decision. The Department did not commence Part 12 because of an anomaly at section 221, where the effect of a correctable error would change the original date of the decision document to the date of the correction. If commenced in its current form, this would be problematic in that it would affect the date on which planning permission was granted or refused and would have an effect on the duration of the planning permission or the time within which an appeal may be made to the Planning Appeals Commission. The Department proposes to make a minor technical amendment at an appropriate legislative opportunity to remove this anomaly and subsequently commence Part 12.

³ <https://www.legislation.gov.uk/nisr/2015/25/article/3/made>

- 4.5. However, in the meantime as in other jurisdictions, a council can correct minor errors administratively providing there is a clear and recorded audit trail of that correction.

Deemed Permission under the Electricity (NI) Order 1992

- 4.6. Section 63(1)(d) of the Planning Act has not yet been commenced because the provision to which it relates, namely, paragraph 3(1) of Schedule 8 to the Electricity (NI) Order 1992 has itself not yet been commenced.
- 4.7. Paragraph 3(1) of Schedule 8 to the 1992 Order was inserted by Article 2 of the Electricity Consents (Planning) (NI) Order 2006. This Order amends the Electricity (Northern Ireland) Order 1992 to enable the Department for the Economy (DfE) to grant deemed planning permission and deemed hazardous substances consent on an application for its consent under Schedule 8 to that Order. Article 2 of the 2006 Order is to be commenced on such day as is appointed by DfE. No such day has been appointed by DfE, and as such the Department does not consider it appropriate to commence a provision that does not have any effect.
- 4.8. Once a policy decision is taken by DfE to commence the relevant provisions of the 2006 Order this Department will make a further order under the Planning Act to commence this section.

Subordinate Legislation

- 4.9. The Department initially made 22 statutory rules and four directions under the Planning Act to facilitate the transfer of planning powers and the introduction of the two-tier planning system in 2015. This subordinate legislation was the subject of two public consultations during 2014 and may be viewed on the [Planning Portal](#). It underpins the Planning Act and sets out the detailed statutory requirements for key processes such as the preparation of local development plans and the submission of planning applications. These ensure certain statutory functions are carried out and provide a level of conformity throughout the NI planning system. There are currently almost 40 statutory rules in place.

Legislative Directions

- 4.10. The Department currently has six [Legislative Directions](#) in place which are a means of modifying the detailed application of the legislation. For example The Planning (Notification of Applications) Direction 2017 requires councils to notify the Department of certain applications which allows the Department to consider if the application should be called-in for the Department's determination.

Other Legislation

4.11. The planning system is also supported by a substantial amount of extant legislation relating to matters such as planning blight, compensation, etc.

Legislative Implementation

4.12. The vast majority of provisions within the Planning Act have been commenced and are being implemented, resulting in the successful introduction and operation of the reformed two-tier planning system, in parallel with local government reform.

4.13. The following sections of this review, will report on how the transfer and reform objectives are being delivered in the key areas of formulating policy, preparation of local development plans and in the exercise of development management.

Functions of the Department for Infrastructure

Planning Policy

5. Part 1 of the Planning Act sets out the Department's functions with respect to the development of land. In anticipation of the two-tier planning system the reforms proposed that Departmental planning policy should move away from providing detailed operational guidance and advice and concentrate on providing strategic direction and regional policy advice to be interpreted locally in the preparation, by councils, of local development plans and in decision-taking. The aim was to move to shorter, more focused documents prepared in a shorter timescale. Under section 1 of the Planning Act the Department must carry out its policy formulation functions with the objective of furthering sustainable development and promoting or improving well-being.

The Strategic Planning Policy Statement

- 5.1. In September 2015 the Department of the Environment published The Strategic Planning Policy Statement, prepared under section 1 of the Act. This sets out the Department's regional planning policies for securing the orderly and consistent development of land in Northern Ireland under the reformed two-tier planning system. The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of local development plans and are material to all decisions on individual planning applications and appeals. The Department keeps the SPPS under review and brings forward updated policy as required. It is currently taking forward a review of strategic planning policy for renewable and low carbon energy and a separate review in relation to oil and gas development.

Departmental Guidance

- 5.2. As well as developing policy the Department provides additional advice and guidance to assist the effective and efficient operation of the planning system as appropriate. This includes DFI Rivers Guidance, DFI Roads Guidance, Chief Planner's letters as well as Planning Practice Notes (PPN) for councils and the public. The PPNs relate to advice and guidance post-April 2015. They are designed to guide planning officers and relevant users, including the community, through the drafting of a Local Development Plan, the legislation and procedures associated with development management and planning enforcement. To date a series of PPNs have been produced and published which can be added to or amended as and when required. The PPNs can be viewed at the links below.

- [local development plans;](#)
- [development management; and](#)
- [planning enforcement.](#)

Department's Statement of Community involvement

- 5.3. The objective of enhancing community involvement in the planning system has seen significant gains since the transfer of planning powers. Section 2 of the Act required the Department to prepare and publish a Statement of Community Involvement (SCI) setting out its policy as to the involvement of the community in the Department's planning functions under Part 3: Planning Control. The Department first published its SCI on the Planning Portal in March 2016 with a revision in 2021.
- 5.4. The publication of Departmental and council SCIs fully enables the community to understand how they can become involved in the planning system. Commentary on council SCIs is included at paragraph's 6.2-6.3.

Department's oversight and intervention powers

- 5.5. As is the case in GB, the Department has a number of powers to oversee and intervene in the planning system if, for example, it believes a council is failing or omitting to carry out its planning functions. These include powers to intervene in the preparation of development plans, the determination of planning applications, exercising other planning controls and assessing council's performance or decision making. The Department has consistently indicated that it intends to use the powers only in exceptional circumstances and this has been the position to date.

Local Development Plans

6. Part 2 of the Act transferred development planning to councils and aims to provide an effective, up to date development plan system. The Planning Act sets the framework for a new development plan system with provisions to:
- speed up the development plan preparation process (programme management);
 - ensure more effective participation from the community and other key stakeholders early in plan preparation (statements of community involvement, Preferred Options Paper);
 - create a faster more effective approach to examining plans at independent examination moving away from objection based examination to testing the soundness of the plan; and
 - create a more flexible approach that is responsive to change and capable of faster review (sustainability appraisal, annual monitoring and review).
- 6.1. This is intended to provide more clarity and predictability for developers, the public and other stakeholders. In conjunction with community planning it will also assist the new 11 district councils to target action to tackle social need and promote social inclusion.

Councils Statements of Community Involvement

- 6.2. Under section 4 each council is required to prepare and publish a statement of community involvement (SCI). The council SCI is a statement of the council's policy for involving interested parties in matters relating to development in its district. The statement applies to both the preparation and revision of a development plan and to the exercise of a council's functions in relation to planning control. A council must prepare its local development plan in accordance with its SCI.
- 6.3. All 11 councils have published their SCIs in accordance with section 4 of the 2011 Act. The SCIs can be viewed on the council websites through the links below.
- [Antrim and Newtownabbey](#)
 - [Ards and North Down](#)
 - [Armagh, Banbridge and Craigavon](#)
 - [Belfast](#)
 - [Causeway Coast and Glens](#)
 - [Derry City and Strabane District](#)
 - [Fermanagh and Omagh](#)
 - [Lisburn and Castlereagh City Council](#)
 - [Mid and East Antrim](#)
 - [Mid Ulster](#)
 - [Newry, Mourne and Down](#)

Preparation of Local Development Plans

- 6.4. Each council is required to prepare and adopt a local development plan (LDP) for its district. The LDP is made up of two development plan documents (DPD), the Plan Strategy and the Local Policies Plan. When adopted these DPDs will replace the extant development plans adopted by the Department under the Planning (Northern Ireland) Order 1991.
- 6.5. The preparation of a LDP consists of three main processes:
- publication and public consultation of a Preferred Options Paper;
 - publication, public consultation, independent examination and adoption of the Plan Strategy; and
 - publication, public consultation, independent examination and adoption of the Local Policies Plan.
- 6.6. The Department's Development Plan Practice Notes for LDPs are available on the [Planning Portal](#).

Local development plan progress by the councils

- 6.7. Each council's progress with its LDP can be viewed on its website (web links are provided below). Each council must also publish the following documentation on its website:
- LDP timetable for the preparation and adoption of the LDP;
 - the Preferred Options Paper;
 - the DPDs;
 - copies of valid representations received during the public consultations;
 - details of the independent examination;
 - the report of the independent examiner; and
 - the Department's Direction to adopt the DPD.
- 6.8. All 11 councils are advancing new local development plans and the Department has oversight of the LDP programme. As of the date of this report, 7 councils have now published and consulted upon their draft Plan Strategies which is the first formal stage of the LDP preparation process. Draft Plan Strategies will be subject to Independent Examination (IE) before the PAC (or independent examiner) prior to being adopted.
- 6.9. The PAC forwarded the IE Report of Belfast City Council's Draft Plan Strategy to the Department on 29th September 2021. Officials are in the final stages of considering the recommendations. Fermanagh and Omagh District Council draft Plan Strategy is now with the PAC for IE, and hearing sessions commenced on 18th January 2022 for 2 weeks, with further sessions scheduled for February and March 2022. The Department has also caused the IE's for Antrim and Newtownabbey Borough Council, Mid and East Antrim Borough Council and Lisburn and Castlereagh City Council. It is anticipated hearing sessions for these three Councils will be conducted by the PAC during 2022, and Commissioners for all have now been appointed. The Department are currently in receipt of the Mid Ulster draft Plan Strategy submission, and it is anticipated Derry City and Strabane District Council will

submit a draft Plan Strategy for Independent Examination in line with the Council's agreed timetable in February 2022.

6.10. Current progress on each of the councils' LDPs can be viewed via their respective website provided at the following links:

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

6.11. Part 2 of the Planning Act also contains a number of departmental oversight and scrutiny powers as well as powers for the Department to intervene in the plan making process, if necessary. The preparation of the new local development plans by all councils is progressing and the Department has established a team to liaise with councils at various stages to review and where appropriate agree key documents such as plan timetables and, progression of development plan documents. Discussions have also been ongoing with the PAC as preparations move towards independent examinations.

Planning Control

7. Parts 3, 4 and 5 of the Planning Act set out a range of powers from processing planning and other consent applications through to enforcement against potential breaches of planning control. They also include powers for the Department to intervene, if appropriate.

Determination of planning applications by councils

7.1. As was the intended objective, councils now determine local and major planning applications, which represent the vast majority of all planning applications, while the Department determines a small number of regionally significant development proposals (RSD) and other 'call-in' applications. The thresholds for the three categories of development are set out in [the Planning \(Development Management\) Regulations \(Northern Ireland\) 2015](#). Performance targets for the determination of planning applications are set out in [The Local Government \(Performance Indicators and Standards\) Order \(Northern Ireland\) 2015](#).

7.2. The following table sets out the number of all planning applications, local, major and regionally significant determined each year from April 2015.

(Web-links to all planning statistics are available at paragraph 7.4 of this report):

Planning Applications Received and Decided⁴

2015/16	12,220	11,034	10,341	93.7%
2016/17	13,037	12,957	12,180	94.0%
2017/18	12,933	12,314	11,548	93.8%
2018/19	12,541	12,156	11,330	93.2%
2019/20	12,207	11,747	11,044	94.0%
2020/21	12,833	10,483	10,029	95.7%
Total	75,771	70,691	66,472	94.0%

Determination of planning consent applications by councils

- 7.3. In addition to the determination of applications for planning permission, councils are also responsible for determining applications for listed building consent, conservation area consent, hazardous substances consent, display of advertisement consent and applications for works to trees protected by tree preservation orders.

Access to Planning Statistics

- 7.4. The quarterly and annual planning statistics may be viewed on the Department's website at [Planning Statistics](#).

Department's Development Management Functions

Determination of regionally significant planning applications by the Department

- 7.5. Under [section 26](#) of the Planning Act the Department is responsible for determining regionally significant development (RSD) applications. RSD is development which if carried out would:
- (a) be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland, or
 - (b) involve a substantial departure from the local development plan for the area to which it relates.
- 7.6. If a developer proposes to carry out development which may fall into the RSD category then the developer must, before submitting an application, enter into discussions with the Department to determine if that proposed development is RSD. If the Department considers that the proposed development is RSD the application must be submitted to the Department, but if the Department considers that the proposed development is not RSD then the application should be submitted to the relevant council.

⁴ <https://www.infrastructure-ni.gov.uk/articles/planning-activity-statistics>

Determination of called in applications by the Department

- 7.7. Under Section 29 of the Planning Act the Department may call in planning applications for its own determination. Councils are required to notify the Department of certain applications in accordance with the Department's three notification directions. Once notified the Department will consider whether or not to call in the application for its own determination or allow the council to continue and determine the application itself.
- 7.8. The notification directions⁵ apply to applications where a council is of the opinion to grant planning permission, in the following cases:
- a government department or statutory consultee has raised a significant objection to a major development application;
 - a major development application which would significantly prejudice the implementation of the local development plan's objectives and policies;
 - a major development application which would not be in accordance with any appropriate marine plan adopted under the Marine Act (Northern Ireland) 2013;
 - planning applications for both major and local development in which the council has an interest and the proposal would be significantly contrary to the development plan for its district; or
 - where a council proposes to grant planning permission for petroleum development.
- 7.9. The Department may also receive requests from other interested parties that an application is called in. A small number of planning applications relative to the total number of applications have been called in by the Department since April 2015. The following table sets out the number of call-in applications, together with those for regionally significant development received and decided by the Department each year, since April 2015. [These figures do not include legacy applications retained by the Department at the point of transfer, details of which are available at the web-link provided at paragraph 7.4].

Departmental Planning Applications Received and Decided⁶

2015/16	6	8	14	0	0
2016/17	2	13	15	11	11
2017/18	2	5	7	4	4
2018/19	0	4	4	2	2
2019/20	0	5	5	2	2
2020/21	1	2	3	5	4
Total	11	37	48	24	23

⁵ <https://www.infrastructure-ni.gov.uk/publications/planning-legislative-directions>

⁶ <https://www.infrastructure-ni.gov.uk/articles/planning-activity-statistics>

Enhanced Community Involvement

Pre-application community consultation

8. Section 27 of the Act places an obligation on the developer to consult the community in advance of submitting an application if the development falls within the major development category. This includes those major developments which the Department will determine because they are of regional significance.
- 8.1. Where developers engage in meaningful pre-application consultation, local communities can be better informed about development proposals and have an opportunity to contribute their views before a formal planning application is submitted. In so doing, it is hoped this will subsequently improve the quality of planning applications received; mitigate negative impacts where possible; address community issues or misunderstandings; and provide for smoother and more effective decision making. The developer must submit a pre-application community consultation report with the application. The purpose of the report is to confirm that pre-application community consultation has taken place in line with the statutory minimum requirements. The report should contain details of the steps that have been taken to comply with the requirements for consultation. Developers are required to demonstrate how they have considered any representations made during the consultation and any steps they have taken to address any issues raised in the representations.
- 8.2. Pre-application community consultation (where required) is now an established part of the planning process. The Department's guidance on pre-application community consultation is available on the [Planning Portal](#).

Pre-determination hearings

- 8.3. The introduction of pre-determination hearings (PDH) has also allowed the community the opportunity of appearing before and being heard by the council's planning committee before the committee makes its determination on the application. Section 30 of the Act and Regulation 7 of the Planning (Development Management) Regulations (Northern Ireland) 2015 requires councils to hold a PDH where the Department has decided not to call-in an application that was notified to it by the council. The council also has the discretion to carry out a PDH for any application that it determines.
- 8.4. The council must give the developer and those who submitted representations on the application an opportunity of appearing before and being heard by the planning committee. The format and attendance at the hearing is left to the council's discretion. The council also has discretion to consider if they require further representation from statutory consultees. Councils have published their own guidance on their policies for PDH which are now an established part of the planning system.

Planning Enforcement

9. Under Part 5 of the Planning Act councils have primary responsibility for planning enforcement in their administrative areas. It is the responsibility of a council to investigate all alleged breaches of planning control.
- 9.1. As well as transferring enforcement powers and amending time limits within which action may be taken in respect of planning control, the Act contains provisions for the imposition of potential fines which were increased from £20,000 to £100,000 on summary conviction for a range of offences:
 - the unauthorised works to a listed building;
 - the unauthorised demolition of a building in a conservation area;
 - the contravention of a hazardous substances consent; and
 - the breach of a stop notice.
- 9.2. Whilst the fines have been increased it is a matter for the courts to decide the amount of the fine levied on the offender in any particular case.
- 9.3. The performance targets for enforcement cases are set out in The Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015.
- 9.4. The Department's enforcement powers are only intended to be exercised in exceptional circumstances. An overview of enforcement responsibilities is set out in the advice document ["Overview of Planning Enforcement Responsibilities"](#)

Planning Appeals

10. Planning appeals are determined by the Planning Appeals Commission (PAC). The PAC is an independent and appellant body, it is not part of any Government Department. It receives financial and administrative support from its sponsor body, the Northern Ireland Courts & Tribunals Service. Information on appeals and Inquiries/Hearings for RSD and called-in applications may be viewed by visiting [Digest | Planning Appeals Commission](#).
- 10.1. In relation to appeals, the Planning Act reduced the time limit for submitting appeals from six months to four months, extends the non-determination period for major development applications; aims to restrict the introduction of new material at appeal; and provides for the award of costs. The following tables set out figures for the number of appeals received and decided from 2016/17 (by appeal type).

Appeals received, by appeal type⁷

Appeal Type	2016/17	2017/18	2018/19	2019/20	2020/21
Refusal or conditional grant of planning permission	221	207	204	215	139
Non determination of planning application	4	4	9	9	7
Enforcement Related	53	53	67	69	56
Other *advertisements, roads, listed buildings consent	22	45	43	34	7
Total	300	309	323	327	209

Appeals decided, by appeal type⁸

Appeal Type	2016/17	2017/18	2018/19	2019/20	2020/21
Refusal or conditional grant of planning permission	221	198	179	175	126
Non determination of planning application	11	7	1	11	5
Enforcement Related	36	44	56	51	35
Other *advertisements, roads, listed buildings consent	28	27	42	40	17
Total	296	276	278	277	183

Award of Costs

10.2. The power to award costs was a significant reform aimed at improving the behaviour of all parties in the appeal process. The PAC now has the power to make an order requiring the costs of one party to be paid where another party's unreasonable behaviour has put it to unnecessary expense. The following table set out a brief overview of the number of costs awards from 2016/17. Further details as to the PAC's guidance on the award of costs is available on their website [Award of Costs](#).

Costs Awards⁹

Type of Decision	2016/17	2017/18	2018/19	2019/20	2020/21
No Award	40	29	20	34	11
Partial Award	4	2	7	6	1
Full Award	1	10	8	8	1
Total	45	41	35	48	13

⁷ https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21_2.pdf

⁸ https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21_2.pdf

⁹ https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21_2.pdf

Assessment of the extent to which the objectives of planning reform and the Planning Act have been achieved.

11. The Planning Act 2011 (Review) Regulations 2020 require the Department to: consider the objectives intended to be achieved by the Planning Act; and assess the extent to which those objectives have been achieved. Within this context the review is not a detailed examination of the operation, effectiveness or performance of the overall new two-tier planning system.
 - 11.1. The main objectives to the introduction of the Act were: the continued formulation and co-ordination of planning policy by the Department; the preparation of local development plans, and determination of most planning applications by councils, together with responsibility for taking enforcement action where deemed appropriate.
 - 11.2. As has been evidenced, the vast majority of provisions within the Planning Act have been commenced, resulting in its successful implementation. The transfer of responsibility for the majority of planning functions to locally accountable councils has been achieved, together with the establishment of the two-tier planning system. The Act has also been supported by around 40 pieces of subordinate legislation and 6 Directions which provide the detailed legislative framework for the overall operation of the planning system.
 - 11.3. Significant progress has also been made in implementing certain reforms. In September 2015 the Department published the [Strategic Planning Policy Statement](#) setting out the Department's regional planning policies for securing the orderly and consistent development of land in Northern Ireland in a shorter more focused document. Extensive guidance including by way of Practice Notes on the new system has also been provided¹⁰.
 - 11.4. Councils are preparing local development plans for their areas and have published statements setting out how they will involve the community in delivering their planning functions. Councils now determine the vast majority of planning applications with only a very small number determined by the Department including regionally significant development or those called-in by the Department. Changes to the decision making process including pre-application community consultation and pre-determination hearings further enhance community engagement and have allowed greater public involvement and transparency in the determination of planning applications. Councils are also investigating alleged breaches of planning control and taking action as appropriate. Throughout, the Department has maintained its position to only intervene in the system in exceptional circumstances.
 - 11.5. Reforms have also been made to the planning appeals system and a Planning Monitoring Framework has been developed. This Framework and other evidence will be used to ascertain if the objectives of reform and

¹⁰ <https://www.infrastructure-ni.gov.uk/articles/planning-practice-notes>

transfer are being achieved and how the planning system is evolving over time.

Conclusion

- 11.6. Within the context set out above and overall, the Department is satisfied that the stated objectives of the implementation of the Planning Act have been achieved.

PART II

Assessment of whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act.

The Planning Act

12. The Planning Act 2011 (Review) Regulations 2020 further require the Department, in considering the objectives intended to be achieved under the Act, to assess whether it is appropriate **to retain, amend or repeal** any of the provisions of the Act or subordinate legislation made under it to achieve those objectives.

Amendments made or currently being made to Subordinate Legislation.

- 12.1. As with any legislative framework changes can be made to subordinate legislation to refine its detailed operation, or in response to changed circumstances. The Department has made a number of amendments to subordinate planning legislation since the transfer of planning functions. These include the:

- Planning (Hazardous Substances) Regulations (Northern Ireland) 2015;
- Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015;
- Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (which brought forward changes to reflect relevant EU Directives);
- The Planning (Fees) (Amendment) Regulations (Northern Ireland) 2019;
- The Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations (Northern Ireland) 2020;
- The Planning (General Permitted Development) (Amendment) Order (Northern Ireland) 2020;

- 12.2. Other minor technical amendments were made through the:

- The Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) (Amendment) Order (Northern Ireland) 2016;
- The Planning (Listed Buildings) (Amendment) Regulations (Northern Ireland) 2016;
- The Planning (Local Development Plan) (Amendment) Regulations (Northern Ireland) 2016;
- The Planning (Development Management) (Temporary Modifications) (Coronavirus) (Amendment) Regulations (Northern Ireland) 2020
- The Planning (Development Management) (Temporary Modifications) (Coronavirus) (Amendment) Regulations (Northern Ireland) 2021
- Planning (Development Management) (Temporary Modifications) (Coronavirus) (Amendment No.2) Regulations (Northern Ireland) 2021;
- The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018; and

- The Planning (Environmental Assessments and Technical Miscellaneous Amendments) (EU Exit) Regulations (Northern Ireland) 2020.

Call for Evidence – Key Messages

12.3. The broad themes to emerge from the call for evidence are set out at paragraphs 3.7-3.9 of this report which form the basis of the Department's considerations of respondent's calls for legislative, or other change. Conversely, a resounding message to emerge was that almost two-thirds of the Act (162 sections) drew little or no comment and the Department considers these provisions should be retained as structured. In particular, no substantive comments were made in relation to the following:

- Part 7 – Purchase of Estates in Certain Land Affected by Planning Decisions;
- Part 8 – Further Provisions as to Historic Buildings;
- Part 9 – The Planning Appeals Commission; (Department of Justice)
- Part 11 – Application of Act to Crown Land; and
- Part 15 – Supplementary.

12.4. As had been anticipated, the vast majority of comments and suggested improvements focused on the following parts of the Act and associated subordinate legislation:

- Part 2 – Local Development Plans;
 - The Planning (Local Development Plan) Regulations (NI) 2015
- Part 3 – Planning Control;
 - The Planning (Development Management) Regulations (NI) 2015
 - The Planning (General Permitted Development) Order (NI) 2015
 - The Planning (General Development Procedure) Order (NI) 2015
 - The Planning (Fees) Regulations (NI) 2015
- Part 4 – Additional Planning Control; and
- Part 5 – Enforcement.

12.5. To a lesser degree, further additional comments and suggestions were made in relation to:

- Part 1 – Functions of the Department
- Part 6 – Compensation;
- Part 10 – Assessment of a Council's Performance or Decision Making;
- Part 12 – Correction of Errors;
- Part 13 – Financial Provisions; and
- Part 14 – Miscellaneous and General Provisions

12.6. The tables at **Annex A** to this report set out the Department's detailed consideration of proposals for changes to existing legislation and guidance which have been informed by the call for evidence. This includes a series of recommendations/actions which the Department believes could assist towards better achieving the objectives of the Planning Act.

Key recommendations

- 12.7. Under Part I of this report the Department concluded that the stated objectives of the implementation of the Planning Act have been achieved.
- 12.8. The Department recognises that the planning system, in some parts, hasn't achieved the level of performance envisaged. For instance, indicative timeframes for bringing forward LDPs have not been achieved and while targets have largely been met for processing local planning applications, targets for processing major planning applications have not. There are various factors which have contributed to this and the Department is seeking to address these through a range of measures, which are largely outside the scope of this review. Nevertheless, the Department has considered whether amendments to legislation have the potential to make the system more efficient and in turn, bring forward performance improvements.

Local Development Plans

- 12.9. While the Department estimated all councils would have LDPs in place by 2019 this was an indicative timeframe which sought to provide an estimate for the preparation of an untested system. Legislation does provide for amended timetables to be submitted and agreed by the Department reflecting and acknowledging that timeframes may be subject to change.
- 12.10. While there have been some calls for a fundamental review of the LDP system, the Department is of the view that any fundamental review of the current approach is best undertaken following adoption of a number of LDPs to evaluate and better understand 'perceived' obstacles in plan-making. The Department is of the view that the current approach remains appropriate, but considers some practical measures may assist the process. The Department intends to add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs. The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant / appropriate to reduce unnecessary consultation. In addition, the Department will work with councils and other stakeholders to determine whether there are ways in which to enhance online / digital means of communication in plan-making to improve accessibility for citizens.

Development Management

- 12.11. In relation to development management, while the Department considers the existing framework of roles and responsibilities remains appropriate, there are a number of areas which merit further review and potential legislative change. This includes a review of existing thresholds and categories of development to determine if they remain fit for purpose. The Department will bring forward proposals to provide for both in-person and on-line/electronic pre-application community consultation (PACC) public engagement. This will include consideration of any recommendations to

emerge from the work of the Planning Engagement Partnership. The Department will also review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward. The Department also intends to bring forward proposals to improve the information requirements / quality of planning applications entering the system through statutory “validation check-lists”. Notwithstanding current work-streams aimed at improving statutory consultee response times, the Department will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes. The Department will also bring forward proposals to make pre-determination hearings discretionary for councils. In terms of appeals, the Department will bring forward proposals to supplement existing s.59 provisions which would disallow the variation of a development proposal at appeal. In addition, the Department will undertake a general review of current Departmental Directions and will undertake a general review of planning fees including proposals for an automatic annual inflationary uplift, and multiple fees for retrospective applications. Further recommendations are made in relation to additional planning controls and enforcement (fixed penalty notices).

12.12. The following table summarises these key recommendations. (The issue references correlate with those in the Annex).

Table of Recommendations/Actions

Part 2 - Local Development Plans	
Issue Ref	Action
PT2-2	<p><u>Local Development Plan Guidance</u></p> <p>The Department will add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs.</p>
PT2-4	<p><u>Consultation Bodies in Plan-Making</u></p> <p>The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant / appropriate to local planning authorities.</p>
PT2-6 PT3-17 PT5-2	<p><u>Digitization in the Planning System</u></p> <p>The Department will work with councils and other stakeholders to determine whether there are ways in which to enhance online / digital means of communication in plan-making, development management, and in the planning system generally to improve accessibility for citizens.</p>

Part 3 - Planning Control	
Issue Ref	Action
PT3-1	<p><u>Categories of Development</u></p> <p>The Department will review existing thresholds and categories of development to determine the need for revisions.</p>
PT3-3	<p><u>Pre-Application Community Consultation (PACC) and Notice</u></p> <p>The Department will bring forward proposals to provide for both in-person and on-line/electronic PACC public engagement. This will include consideration of any recommendations to emerge from the work of the Planning Engagement Partnership. Clarity on the PAN process could be provided in expanded guidance if appropriate.</p>
PT3-4	<p><u>Call-In Applications</u></p> <p>The Department will review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward.</p>
PT3-5	<p><u>Incomplete Applications and Validation Check-Lists</u></p> <p>The Department will bring forward proposals to introduce statutory 'validation check-lists' and will seek to advance policy development at the earliest opportunity.</p>
PT3-7	<p><u>Time period for consultation responses</u></p> <p>The Department will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes.</p>
PT3-10	<p><u>Pre-Determination Hearings (PDH)</u></p> <p>The Department will bring forward proposals to make PDH discretionary for councils in the exercise of their functions.</p>
PT3-14	<p><u>Matters Raised at Appeal</u></p> <p>The Department will bring forward proposals to supplement existing s.59 provisions which would disallow the variation of a development proposal at appeal.</p>
PT3-19	<p><u>DFI Directions</u></p> <p>The Department will undertake a general review of current departmental directions.</p>

PT3-20	<u>Commencement of Development</u> The Department will review this provision to establish if any technical amendments are appropriate.
Part 4 – Additional Planning Control	
Issue Ref	Action
PT4-3	<u>Tree Preservation Orders (TPO)</u> The Department will review current requirements around TPOs with a view to bringing forward proposals to permit councils to vary or revoke TPOs. The Department will also consider whether there is a need for guidance to clarify certain TPO terms or definitions.
PT4-4	<u>Review of Old Mineral Permissions (ROMPs)</u> The Minister is to consider options on the way forward with regards to ROMPs early in 2022.
Part 5 – Planning Enforcement	
Issue Ref	Action
PT5-3	<u>Fixed Penalty Notices (FPN)</u> The Department will explore the possibility of applying FPNs to advertisement control.
Part 13 – Financial Provisions	
Issue Ref	Action
PT13-1	<u>Planning Fees</u> The Department will undertake a general review of planning fees including an automatic annual inflationary uplift, and multiple fees for retrospective applications as part of a wider review of planning fees.

Any proposed change to legislation will require further policy development, public consultation on potential amendments to primary and/or subordinate legislation, Assembly scrutiny and preparation of associated guidance, as necessary. Amendments are likely to be proposed to:-

- The Planning Act (Northern Ireland) 2011
- The Planning (Local Development Plan) Regulations (Northern Ireland) 2015.
- The Planning (Development Management) Regulations (Northern Ireland) 2015
- The Planning (General Development Procedure) Order (Northern Ireland) 2015

- Planning (Fees) Regulations (Northern Ireland) 2015
- ## **Conclusions and Next Steps**

- 12.13. As a reminder, the purpose and scope of the review is to consider: the objectives intended to be achieved by the Planning Act; assess the extent to which those objectives have been achieved; and assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.
- 12.14. The Department would conclude that the vast majority of the Act is to be retained as currently structured and that there is no case, in this first review report, to recommend the repeal of any of its provisions in order to achieve the objectives of the Act.
- 12.15. The report has, however, identified certain provisions / areas of the Act and subordinate legislation which, if amended or supplemented, could assist in improving the planning system and, therefore, better achieve the objectives of the Act.
- 12.16. The Department will, therefore, seek to develop these policy proposals with a view to bringing forward proposals for public consultation at the earliest opportunity. Actions which require amendment to current primary legislation will be taken forward through the NI Assembly Bill Process.¹¹ Actions which require secondary / subordinate legislation will also be undertaken in accordance with best practise, in conjunction with the Committee for Infrastructure and Assembly where appropriate. Other actions may be addressed through new or revised guidance. Actions falling to the next mandate will be subject to the views of an incoming Minister.

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https://education.niassembly.gov.uk/post_16/the_work_of_the_assembly/making_legislation/bill_act

Consideration of Proposals for Change

Table 1

Part 1 Functions of the Department	Assessment
<p>(PT1-1) Matters for the Department to take account of in the exercise of its functions.</p> <p>You said: - A small number of respondents, principally NGOs and some individuals, proposed that Departmental functions under Part 1 should be updated to include specific reference to other strategies e.g. climate change, net zero emissions, ecological protection and ecological restoration.</p>	<p>Our response: The objective of the planning system, consistent with Part 1 of the Act, is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being. This means the planning system should positively and proactively facilitate development that contributes to a more socially economically and environmentally sustainable Northern Ireland. In furthering sustainable development and improving well-being, the planning system supports the Executive's Programme for Government commitments and priorities as well as the aims and objectives of the Regional Development Strategy 2035 (RDS) which is its overarching spatial strategy for Northern Ireland.</p> <p>Section 1(3)(b) of the Planning Act gives latitude to the Department, in the formulation and co-ordination of policy to secure the orderly and consistent development of land, to take account of, "any other matter which appears to it to be relevant". Such other strategies will normally be relevant in the exercise of these functions. In light of this and given the current and ever increasing number of strategies aimed at assisting in improving the environment, economy and climate etc, it would not be pragmatic, nor necessary to explicitly cite all such strategies in the Act, or planning legislation in general. To do so would involve continually amending the Planning Act as other strategies come forward.</p>

	Proposed Action: The Department will, in the exercise of its functions, continue to keep under review other strategies/policy/guidance to determine their relevance in the formulation and co-ordination of planning policy and is not persuaded of the need to amend legislation.
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Table 2

Part 2 Local Development Plans (LDP)	Assessment
<p>(PT2-1) The two document approach to LDP preparation</p> <p>You said – A cross-section of respondents including local government, business, some individuals and political parties put forward various suggestions to reform the current approach to include: a single LDP document; greater number of smaller plan documents; parallel preparation of development plan documents, a review within the context of retained Planning Policy Statements set out in the Strategic Planning Policy Statement.</p>	<p>Our response - Calls for a change to the overarching framework for preparing LDPs are considered premature within the context of current LDPs under preparation by councils.</p> <p>A move away from the current two document approach would likely cause significant disruption and greater delay to current efforts in developing draft plans, and would represent a fundamental change requiring extensive policy development and public consultation. The Department is of the view that any fundamental review of the current approach is better undertaken following adoption of a number of LDPs to evaluate and better understand ‘perceived’ obstacles in plan-making. The Department is of the view that the current approach remains appropriate.</p> <p>Proposed Action: The Department will, in conjunction with councils and key stakeholders, monitor and review current processes following adoption of a number of LDPs.</p>
<p>(PT2-2) Local Development Plan Guidance</p> <p>You said – A small cross-section of respondents including some local government, business and NGOs suggested that</p>	<p>Our response – Existing guidance on local development plan making processes is set out in the SPPS and other Departmental Development Plan Practice Notes (DPPN), and includes</p>

<p>the Department further clarifies in guidance its overall role in the plan-making process, including: the agreement of timetables, submission of documents for independent examination (IE), adoption and revision of an LDP etc. A small cross-section of councils, representative bodies and some business interests questioned the need for an LDP to be submitted to the Department for IE and suggested that councils should be permitted to submit plans directly to the examination body, saving time, cost and unnecessary burden.</p>	<p>clarification on the role of the Department at various stages. These are available on the DfI website: https://www.infrastructure-ni.gov.uk/publications/development-plan-practice-notes</p> <p>Extant practice notes will be reviewed as part of an overall review following adoption of a number of LDPs, to determine if guidance would benefit from further clarification. The Department is of the view that any review of the current approach to LDP preparation, including its own role in the overall process is better undertaken following adoption of a number of LDPs to evaluate and better understand 'perceived' obstacles in plan-making. The Department is of the view that the current legislative approach remains appropriate.</p> <p>Proposed Action: The Department will add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs.</p>
<p>(PT2-3) Matters to <u>take account of</u> in furthering sustainable development, and preparation of LDPs</p> <p>You said – A cross-section of respondents including renewables and business groups put forward the suggestion that the matters to take account of should be broadened to include the Programme for Government, and other NI Executive and Departmental strategies e.g. Environment, Energy / Renewables, Investment, Climate, Minerals, commitments to Net Zero emissions etc; and more robust connectivity with Local Community Plans; some also consider that the statutory requirement to 'take account of'</p>	<p>Our response - The objective of the planning system, consistent with Part 2 of the Act, is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being. This means the planning system should positively and proactively facilitate development that contributes to a more socially economically and environmentally sustainable Northern Ireland. In furthering sustainable development and improving well-being, the planning system supports the Executive's Programme for Government commitments and priorities as well as the aims and objectives of the Regional Development Strategy 2035 (RDS) which is its overarching spatial strategy for Northern Ireland.</p>

<p>such strategic guidance documents in legislation is too flexible, while a few considered it to be too rigid.</p>	<p>In light of this and given the current and ever increasing number of strategies aimed at assisting in improving the environment, economy, climate etc it would not be pragmatic to explicitly list in planning legislation those which must be taken into account by councils in the preparation of local development plans. The SPSP sets out additional policy/guidance on the matters to be taken into account of in the plan-making process. Also, the Local Government Act (NI) 2014 inserted into s.8 & 9 of the Planning Act, the requirement to also take account of a “council’s current community plan”. In furthering sustainable development, s.5(2)(b) of the Planning Act gives latitude to authorities exercising any function under Part 2, to take account of “any other matter which appears to that person to be relevant”, in addition to other policy and guidance issued by other Departments.</p> <p>Proposed Action: The Department is not persuaded of the need to amend legislation on matters to <u>take account of</u> in the preparation of LDPs.</p>
<p>(PT2-4) Consultation Bodies in plan-making</p> <p>You said – A majority of councils and other public bodies consider that the scope of consultation bodies is too wide ranging and laborious for a Council to consult at every stage. Those respondents were of the view that it may be better left to the discretion of a Council to filter / tailor the plan-making consultation lists, and to only maintain contact with those it considers, or those which have specifically asked to be consulted, to have a continuing interest in the Council’s plan preparations.</p>	<p>Our response - The consultation bodies for the purposes of preparing a LDP are set out at regulation 2 of the Planning (Local Development Plan) Regulations (NI) 2015. This is an established list of relevant consultees, taken forward from previous plan-making under the unitary planning system. The list of consultees includes all NI government departments, neighbouring councils, the Civil Aviation Authority, NIHE, water & sewerage undertakers, any person to whom the electronic communication code applies, and any person to whom a licence has been granted under either the Electricity (NI) Order 1992, or Gas (NI) Order 1996. The Department understands that this issue pertains principally with respect to those consultees listed at regulation 2(1)(f-h), which can</p>

	<p>be quite numerous and include some which do not wholly operate within NI.</p> <p>Proposed Action: The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant / appropriate to local planning authorities. Changes to the consultee list arising from this review will require amendment of the Development Plan Regulations.</p>
<p>(PT2-5) Approach to LDP Timetabling</p> <p>You said – A cross-section of a number of councils and businesses are of the view that the LDP process spans too long a period of time and the timetables require continual updating, and suggest separate timetables for each stage. A cross-section of other respondents including NGOs, Renewables and business sectors suggested potential fines for failure to adhere to LDP timetables, including possible introduction of a maximum time period for adoption of a plan.</p>	<p>Our response - While the requirement to prepare and keep under review a timetable for the preparation of an LDP is a statutory duty, the dates a council indicates are indicative and estimated on the basis of the information available at that time. The duty to keep the timetable under review is to afford councils the opportunity to amend / adjust the timetable in the face of unforeseen delays. It would not be practicable to hold councils to strict adherence to an LDP timetable particularly when unforeseen events beyond their control may cause programme slippage. The Department anticipates that as councils work through their LDP processes, that future plan preparations including plan adjustments, should become more focused and efficient.</p> <p>Proposed Action: The Department is not persuaded of the need to amend current LDP timetabling requirements at this time. The Department will however consider this issue as part of a wider review of LDP processes.</p>
<p>(PT2-6) Digitization in the Planning System -</p>	<p>Our response - Calls to better utilise digital / online means of consultation and communication in plan-making, and development management featured strongly in the responses to the call for</p>

<p>You said – Overall, a broad cross-section of respondents proposed the planning system should enhance the use of online / digital availability of documents for inspection and comment in plan-making. Generally, most councils suggested that the need for advertisements in the local press and Belfast Gazette which is viewed as costly and ineffective, should be removed.</p>	<p>evidence. Regulation 4 of the LDP regulations, and Regulation 29 of the GDPO provides for the use of electronic means of communication which could be amended to expand the use of digitization in plan-making and development management. Removing the requirement for advertisement in the printed press and Belfast Gazette would need careful consideration particularly around its potential effects on some s.75 groups.</p> <p>Proposed Action: The Department will undertake a review of the publicity and advertisement requirements associated with plan-making to determine whether there are ways to enhance online / digital means of communication in plan-making specifically to approve accessibility for citizens. This will include consideration of any recommendations which may emerge from the work of the Planning Engagement Partnership.</p>
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Table 3

Part 3 Planning Control	Assessment
<p>(PT3-1) Categories of Development</p> <p>You said - Overall, a broad cross-section of respondents including most councils, business and renewables sectors called for a review of the current hierarchy of development, and thresholds for major and RSD development, to also include consideration of the introduction a third 'Intermediate / Minor' category of development mirroring that in GB (Major, Minor and Other).</p>	<p>Our response - Section 25 of the Planning Act classifies development into two categories: 'major' and 'local', with section 26 providing for major development of regional significance (RSD) which is to be dealt with by the Department. The associated thresholds for major and RSD development, are set out in the Planning (Development Management) Regulations (NI) 2015. Any development below the major category threshold is classed as 'local', which represent the vast majority of planning applications received and determined by councils.</p>

	<p>Performance of a council's planning functions is principally measured against processing of major and local applications. The suggestion to introduce a third 'intermediate/minor' category is intended to sub-divide the current 'local' category which can currently range from, for example, a domestic porch to a large residential scheme comprising 49 units. Consequently, the processing requirements to determine these types of application can also vary within this category of development.</p> <p>The thresholds for regionally significant applications are tailored to meet regional needs and circumstances and particular planning pressures in Northern Ireland in comparison to other jurisdictions. The thresholds in each jurisdiction are also specifically designed to suit the respective political, administrative and legislative context of each of the administrations. Even in the event of changes to the thresholds, the Department is required to make a determination as to whether a proposed development is considered to be one of regional significance. Where the thresholds are met or exceeded it does not automatically equate that the application is to be dealt with by the Department.</p> <p>Equally, calls to review the major and RSD thresholds could examine the need to introduce new/revised categories of development including for example, energy storage and generation facilities. Such revisions could result in more or fewer applications categorised as major or RSD, also affecting the need for pre-application community consultation.</p>
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	Proposed Action: The Department will review existing thresholds and categories of development to determine the need for revisions.
<p>(PT3-2) Pre-Application Discussions (PADs)-</p> <p>You said - A broad cross-section of respondents including some councils, NGOs, business and representative bodies suggested that PADs should be moved to a legislative footing particularly for major and RSDs proposals, with statutory consultees enabled to charge their own PAD fees with the income ring-fenced to improve capacity. Some developers suggested they would be willing to pay statutory consultees for PAD advice if it would improve the quality of their applications and significantly improve processing time. Some suggested Councils can take different approaches to pre-application discussions and this may benefit from a more standardised, formalised approach in subordinate legislation.</p>	<p>Our response - The PAD process is not a statutory requirement and is therefore optional. PADs are a separate activity from statutory pre-application consultation with communities, although they can inform the planning process and scope of the statutory consultation activity. Such consultation may also support the applicant's preparation of the statutory design and access statement. DM Practice Note 10 sets out the current guidance on PACC and PADs, and indicates that the PADs process will take a different form in each instance, and should be proportionate to the nature, scale and benefits of the application. The suggestion to move PADs to a legislative fee-based footing for major and RSD applications (in addition to PACC), could serve to add another layer of bureaucracy, and potentially put further pressure on the limited resources of statutory consultees. It is considered more effective to retain the current discretion planning authorities have to undertake proportionate PADs as appropriate. The Planning Forum is currently reviewing the regional approach to PADs to improve their effectiveness and efficiency.</p> <p>Proposed Action: The Department is not persuaded of the case for, or benefits of moving PADs to a legislative footing. However, the Planning Forum will continue to review the regional approach to PADs to improve effectiveness and efficiency.</p>

<p>(PT3-3) Pre-Application Community Consultation (PACC) and Notice –</p> <p>You said - A broad cross-section of respondents including some councils, NGOs, business and representative bodies suggested that provision should be made to allow for a 'blended' in person and online approach to PACC within the context of digital availability and COVID 19 restrictions. Meaningful engagement and a central register for PACC third parties to receive regular updates was also suggested as was a requirement for applicants to demonstrate how they have altered their proposals in light of issues raised during pre-application process. Some suggested reducing the 12 week period to 6 or 8 weeks. Others sought clarity on PAN process and timeframe for submission of a subsequent application.</p>	<p>Our response - Guidance on current PACC and PAN processes is set out in Development Management Practice Note 10.</p> <p>In response to the COVID 19 emergency, The Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations (Northern Ireland) 2020 temporarily removed the requirement for a public event (and its associated advertising) as part of the pre-application community consultation process associated with planning applications for major development. This applied where a proposal of application notice (PAN), which triggers the pre-application community consultation process, is given to a council / the Department before, or during, the defined emergency period (1 May 2020 to 30 September 2020). The regulations were subsequently amended (on several occasions) to suspend the PACC requirement, firstly to 31 March 2021, then 30 September 2021, and again to 31 March 2022.</p> <p>The Department will keep the latter date under review, taking account of any changes to the public health advice, to consider if an extension or reduction to the emergency period would be appropriate. It will also continue to encourage potential applicants to undertake alternative arrangements to engage with the community as set out in guidance which will be updated. It should also be noted that this does not prohibit developers, if they considered it appropriate and beneficial, to voluntarily hold a public event as part of the pre-application community consultation, provided they comply with the health regulations.</p> <p>The PACC process helps to underpin the front loading of an application by seeking to identify and address local community concerns prior to submission of an application. Any proposed reduction to the current 12 week period could negatively impact on</p>
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	<p>pre-application community participation and may be viewed as an attempt to limit / curtail meaningful community engagement.</p> <p>The associated PACC report (s.28), prepared by the applicant, can outline any amendment(s) to a proposal arising from community consultation. While the legislation does not specify a period within which a planning application must be submitted (following service of a PAN), further evidence would be required to quantify this matter before recommending amendment to both primary and subordinate legislation.</p> <p>Calls to better utilise digital / online means of consultation and communication in plan-making, and development management featured strongly in the responses to the call for evidence. Regulation 29 of the GDPO provides for the use of electronic means of communication which could be amended to expand the use of digitization in the PACC process.</p> <p>A new Regional Planning IT System is currently being developed which will provide a modern system to the Department and 10 councils when it goes operational, which may help to address these issues. It will also deliver new services to the public who will be able to submit planning applications on-line as well as via the normal routes. The new system is due to be operational in summer 2022.</p> <p>Proposed Action: The Department will bring forward proposals to provide for both in-person and on-line/electronic PACC public engagement. This will include consideration of any recommendation to emerge from the work of the Planning Engagement Partnership. Clarity on the PAN process could be provided in expanded guidance if appropriate.</p>
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<p>(PT3-4) Call-In Applications</p> <p>You said – A small cross-section of respondents suggested the Department clarify and simplify the call-in process and publish criteria and clarity on how this power will be exercised by the Department. Some are of the view that where a proposal which a council considers acceptable but is called-in, this only serves to elongate the time taken to determine the application.</p>	<p>Our response - Guidance on the call-in process is set out in Development Management Practice Note 13.</p> <p>Section 29 (1) of the 2011 Act allows the Department to direct that an individual application or applications be referred to the Department instead of being dealt with by a council. This provision allows the Department to call in any planning application for determination. The Department's direction may be given under Section 29(2)(a) to an individual council or to councils in general and, under Section 29(2) (b), may relate to either a particular application or a specific use class. There are currently several Departmental Directions in this regard, including: The Planning (Notification Of Councils' Own Applications) Direction 2015; and The Planning (Notification Of Applications) Direction 2017. These are important checks and balances in the planning system.</p> <p>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.</p> <p>Furthermore, there may be circumstances where a proposed development raises issues of such importance that they could be considered to have a significant regional impact, regardless of falling below the threshold for regionally significant development, or it may be considered the Department is a more appropriate authority to determine the application. As there have been calls for clarity around the call-in process and there have been some delays in the process, the Department considers there is merit in reviewing the process.</p> <p>Proposed Action: The Department will review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward.</p>
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<p>(PT3-5) Incomplete Applications and Validation Check-Lists</p> <p>You said – A broad cross-section of respondents including most councils, some in the business sector and several political parties proposed that the efficiency and effectiveness of the planning system can be improved if the quality of applications coming into the system is improved. Most councils suggested the Department make statutory provision to permit councils to issue application ‘check-lists’ setting out all the necessary information needed to accompany various types of planning application when they are submitted.</p>	<p>Our response - Guidance on the different types of planning applications, including other additional supporting information which may be required is set out in Development Management Practice Note 04.</p> <p>The format of an application for planning permission is provided for by section 40 of the 2011 Act. The form and content of a planning application is specified in Article 3 of the GDPO.</p> <p>Validation requirements set out what information or evidence must be submitted with a planning application before it can be considered by the planning authority, and therefore deemed to be ‘valid’. Whenever a planning application becomes ‘valid’ the timeframe for processing a planning application commences. It is against this timeframe that a council’s performance is measured, and also for the purposes for appeals against ‘non-determination’ of an application. However, many applications when submitted do not contain all the information needed to determine them. This can result in further requests to the applicant and delays in processing.</p> <p>The move to a ‘validation check-list’ would permit a council to prepare and publish, against various types of planning applications and development, the additional information which must accompany applications (over and above the minimum requirements) which it considers as necessary to properly determine the application. Such provision is available in England and Wales and some councils in NI have already put similar arrangements in place on an administrative basis.</p>

	<p>In addition, a 2019 review into the efficiency and effectiveness of the planning system in NI with a particular focus on the role of statutory consultees concluded that “...<i>the efficiency and effectiveness of the planning system can be improved if the quality of applications coming into the system is improved.</i>” Evidence on the use of validation check lists on an administrative basis suggest there may be benefits on placing these on a statutory footing.</p> <p>Proposed Action: The Department will bring forward proposals to introduce ‘validation check-lists’ and will seek to advance policy development at the earliest opportunity.</p>
<p>(PT3-6) Advertisement / Notification of Applications</p> <p>You said - A small cross-section of respondents including several councils suggested that the requirement to publicise applications in the printed press should be removed in its entirety and substituted with a combination of electronic consultation, neighbour notification and site notices. Some respondents were of the view that a specified date for receipt of representations made in response to notifications should be imposed.</p>	<p>Our response - Guidance on publicity and neighbour notification requirements in planning is set out in Development Management Practice Note 14.</p> <p>Current advertisement, notification and inspection requirements for planning applications (and appeals) are set out at Article 8 of the GDPO 2015, (in exercise of powers conferred by s.41 & 42) which includes notice being placed in the printed press (locally), neighbour notification(s) and advertisement of a council's website, date for receipt of representations, but not site notices. These requirements would need to be repeated where a proposed scheme has materially changed before a planning application can be determined.</p> <p>Planning applications are publicised in the local press in order to bring the details of development proposals to the attention of the public. The statutory requirements placed upon councils or the Department to advertise planning applications and certain types of consents within local newspapers, and to carry out neighbour notification of ‘identified occupiers’ provides interested parties with an opportunity to consider and comment on development</p>

	<p>proposals. Publication of planning applications in the local press allows authorities to engage with a much broader range of interested parties or groups than simply through neighbour notification alone.</p> <p>There is also a requirement for developers to undertake pre-application community consultation before submitting an application for a major development, and as part of this process a developer must publish in a local newspaper a notice containing details of the proposed development and the arrangements for a community consultation event.</p> <p>Site notices are used in some other jurisdictions, in conjunction with (and not in substitution for) other on-line notification measures, and depending on the type of development may also require newspaper advertisement.</p> <p>While the Department can appreciate the views of respondents, particularly councils with regards to the costs associated with advertisement in the printed press, it is not persuaded that it can adequately be substituted with the proposals suggested. Any proposal to remove the requirement to advertise in the local printed press would also need added scrutiny given the potential impacts on certain s.75 groups etc. In addition, while the date for submission of a representation is not to be earlier than 14 days after the date on which a notice is sent, the consideration of any representation will depend on its substance and materiality to planning considerations. However, there is scope to examine the potential to use online/digital methods to improve the process.</p> <p>Proposed Action: The Department will undertake a review of the publicity and advertisement requirements associated with planning applications to determine whether there are ways to</p>
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	<p>enhance online / digital means of communication. This will include consideration of recommendations to emerge from the work of the Planning Engagement Partnership.</p>
<p>(PT3-7) Time period for consultation responses</p> <p>You said - A broad cross-section of respondents including renewables, business, representative groups and some public interest bodies suggested that the statutory timeframes for consultations responses should be reviewed, with consideration given to introducing penalties for late responses. Some respondents also suggested that 'deemed consent' should apply where no consultation response is received within 21 days, and greater clarity given as to how councils can proceed if statutory consultees do not respond within the required timeframes.</p>	<p>Our response - Current requirements to consult and duty to respond are set out at s.229, and prescribed at Articles 13-16 of the GDPO 2015. These specify, amongst other things, that a consultee is to provide a substantive response within 21 days of it receiving notice, and that the application is not to be determined before 21 days (or 28 days for EIA development). A different (longer) period may be agreed in writing with the consultee.</p> <p>The 2019 review on the Role of Statutory Consultees in the Planning Process in NI, stated that: "Statutory consultees play an essential role in the planning process as planning authorities may not have the necessary expertise in-house to assess the technical and specialist issues of an application's merits. The consultation process is an important element of an open, transparent and democratic planning system where, ultimately, elected politicians oversee final decisions on planning applications."</p> <p>Where a consultee fails to respond within the timescale the planning authority is not obliged to await a response. However, it will wish to consider the potential impact of proceeding without the views of a consultee. Within this context the Department is not persuaded that 'deemed consent' would be appropriate in the absence of a substantive consultation reply, which may ultimately be critical to the proper determination of an application.</p> <p>It is recognised that there are many factors causing delays in the processing of planning applications, not just statutory consultees. These include the increased complexity of the system and regulatory requirements, risk of legal challenges, wider resourcing</p>

	<p>issues, case management issues, the culture of working with applicants to 'fix' poor quality applications etc.</p> <p>The issue of resources has also been raised by Minister Mallon with the Finance Minister. This was identified as one of the 'key conclusions' from the review on the role of consultees (see above) which states "...from a statutory consultee perspective, I have concluded that access to adequate resources is crucial to a more efficient and responsive system. I have, therefore, recommended that relevant departments review the resourcing requirements associated with their statutory consultee role against workloads and determine the need for any additional resource to ensure efficient and timely responses to planning consultations."</p> <p>It has also long been recognised that poor quality planning applications impact not only the performance of statutory consultees but also the performance of the entire planning system. To this end, the potential introduction of statutory 'validation check-lists' setting out the detailed information requirements to accompany planning application for most types of development, will assist towards an enhanced front-loaded planning system.</p> <p>The cross-government Planning Forum is also working on improving processes and timeframes for processing major and economically significant applications. The Forum is focusing on a number of areas including: statutory consultees reviewing existing practices, procedures and the resourcing requirements associated with their statutory consultee role against workloads, to ensure efficient and timely responses to planning consultations.</p> <p>The Forum recently developed and issued an advice note (see link below) on the key operating principles for planning consultations.</p>
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	<p>The purpose of this is to encourage best practice around the consultation process to make it more efficient and effective for all.</p> <p>https://www.infrastructure-ni.gov.uk/publications/consultations-planning-application-process-operating-principles-planning-authorities-and-consultees</p> <p>The Department monitors and publishes quarterly and annual statistical reports on the performance of statutory consultees across the planning system (See link below to the latest annual report).</p> <p>https://www.infrastructure-ni.gov.uk/publications/ni-statutory-planning-consultations-annual-performance-report-202021</p> <p>Notwithstanding the context set out above, the Department considers there may be some merit in reviewing the legislative requirements around statutory consultations, including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes.</p> <p>Proposed Action: While the Department is not persuaded of the case for the introduction of ‘deemed consent’ where a statutory consultee fails to respond in time, it will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes.</p>
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<p>(PT3-8) Determination of applications</p> <p>You said – Some councils consider that additional information and/or amended plans (particularly at Committee stage) should only be accepted at their discretion, and that they should have the power to pause processing of applications / agree an extension of time to process. Some councils and the business sector are of the view that councils should also be able to decline representations which are made late in the planning process. <i>(See also PT3-9 below).</i></p>	<p>Our response - Guidance on the different types of planning applications, including the additional supporting information which may be required to determine an application, is set out in Development Management Practice Note 04.</p> <p>The suggested proposals, including the ‘pausing’ of processing (of an application when awaiting additional information), could be addressed in part with the front-loading of planning applications through the introduction of ‘validation check-lists’ (see PT3-5 above). Such a provision would negate time lost awaiting additional information from applicants, or the need to pause processing. In addition, while the time period for decisions (See PT3-9 below) is set out at regulations 20(2)(a) and (b) of the GDPO 2015 for major and local development respectively, regulation 20(2)(c) allows for an extension to the specified periods where this is agreed in writing between the council and the applicant.</p> <p>The ability of an applicant to seek to amend/alter a development proposal before an application is submitted (pre-application community consultation), or during processing to overcome potential objections and reason(s) for refusal is an established part of planning practice and procedure. A planning authority can however, refuse any application where it determines that a proposal, even if amended, would be contrary to planning policy / development plan or other material planning considerations. An applicant does retain a right to appeal such decisions. (The issue of new material and variation of applications at appeal is considered at PT3-14 below).</p>

	<p>The issue of ‘late representations’ (which in the view of some respondents, are framed to frustrate the determination of a planning application) could be difficult to legislate against, and importantly, may interfere with a person’s (third party) right to be heard. This is not a straightforward matter as the issue of whether a representation to an application raises issues which are material to its determination must be considered and not just the time in which it is submitted to the planning authority. Similar considerations apply to amended plans / additional information from applicants. We are not aware of a relevant legislative approach in other jurisdictions, however it may be the policy / practice of planning authorities elsewhere not to accept amended schemes immediately prior to a decision.</p> <p>Proposed Action: The Department is not persuaded of the need to disallow the introduction of new information or pause, or amend a development proposal during the processing of an application. These matters could be significantly addressed with the front-loading of information accompanying planning applications via the introduction of validation check-lists and the issue could be revisited after that (See PT3-5 above).</p>
<p>(PT3-9) Statutory timeframes for determining applications</p> <p>You said – A cross-section of respondents including businesses and industry called for the Department to set more ambitious targets that are comparable to GB for RSD and major applications. Other respondents suggested the inclusion of statutory time periods for other determinations</p>	<p>Our response - Currently Article 20 of the GDPO sets out the statutory time periods for decisions, for the purposes of making an appeal under Section 60 of the 2011 Planning Act (non-determination appeal). The periods are: 16 weeks for a major development; and 8 weeks for any other case (local development). However, there is no right of appeal under Section 58 or Section 60 for decisions on applications made to the Department under Section 26, or called-in by the Department under Section 29.</p>

<p>including; s.54 applications, Discharge of Conditions; CLUDs; Non-Material Changes.</p> <p>At a technical level, some respondents considered there was currently ambiguity around the timeframes within which extensions to the decision making process on a planning application should be sought and agreed with a Council, and therefore, when a non-determination appeal could be sought.</p>	<p>There are currently 3 statutory planning indicators, one of which relates to major applications processed by councils – <i>‘to process major planning applications from the date valid to decision issued or withdrawal date within an average of 30 weeks’</i>. The Department monitors these indicators on a quarterly and annual basis. In addition to the 3 statutory planning indicators, the Department published the first planning monitoring framework in September 2019, which includes a number of non-statutory indicators. The second Planning Monitoring Framework was published in December 2020. It is envisaged that this framework will continue to evolve over time and will assist in ensuring we continuously improve the planning system going forward.</p> <p>The Department accepts that improvements to processing times must be made. However, it is also important that due process is followed when determining a planning application to avoid poor decisions being taken in order to meet mandatory targets. It is considered that focusing on the work of the Planning Forum, particularly in relation to the performance of statutory consultees is the most appropriate way of improving performance.</p> <p>With regard to non-determination appeals, the Department holds the view that the entitlement to appeal against non-determination arises "at once" upon the expiry of the determination period. In other words, if the applicant and planning authority do not agree to extend the determination period before it expires and then attempt to do so some time later the right of appeal against non-determination will expire at the end of the initial determination period. There must be no break in extending the determination period from the initial one if the right of appeal against non-determination is to be retained.</p>
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	<p>Proposed Action: The Department is not persuaded of the need to amend existing provisions but will monitor and keep this issue under review.</p>
<p>(PT3-10) Pre-Determination Hearings (PDH)</p> <p>You said – Most councils and some business and professional bodies suggested that PDHs should be a solely discretionary function for councils to decide where, in their view, they would add value to the decision making process. There were also calls for the Department to issue guidance and direct councils regarding PDHs for greater consistency across councils.</p>	<p>Our response - Guidance on PDH processes is already set out in Development Management Practice Note 17.</p> <p>Section 30 sets out the process for PDHs. Generally PDHs are at the discretion of Councils and Sections 30(2) and (3) allow a council to choose the appropriate method for the hearing and who, in addition to the applicant or specified persons can also participate.</p> <p>There is, however, a mandatory requirement for a PDH in certain limited circumstances where a major application has been subject to a call-in notification and returned to the council for processing. Often in these major application cases a PDH will already have taken place before it has been notified to the Department and, therefore, a second PDH may not be necessary or appropriate. Consequently, a mandatory PDH in these circumstances could potentially add some delay and uncertainty to the planning process, hindering a Council's performance against statutory targets, with increasing costs for both applicants and councils. On this basis the Department believes there is merit in amending this provision so that all pre-determination hearings are wholly at the discretion of councils.</p> <p>Proposed Action: The Department will bring forward proposals to make all PDH discretionary for councils in the exercise of their functions. This will require amendments to subordinate legislation.</p>

<p>(PT3-11) Duration of Planning Permission</p> <p>You said – A small number in the renewables sector and other businesses interests suggested that extant planning permissions should be extended in emergency situations, for example, extending permissions for 10+ years for more complex approvals and regionally significant development.</p>	<p>Our response - Section 61 of the Act stipulates that every planning permission granted or deemed to be granted, will be subject to the condition that the development must begin within 5 years of the date on which permission is granted (<u>or such other period as considered appropriate</u> by the Department or council which granted the permission). In relation to outline permissions, section 62 states that unless provided otherwise reserved matters must be submitted for approval within 3 years of the grant of outline planning permission and development must be begun within 5 years of the grant of outline permission or 2 years from the final approval of reserved matters.</p> <p>Councils or the Department already have latitude under s.61 when granting permission, to allow for a period of more than 5 years within which development is to be commenced.</p> <p>The issue of extending permissions during emergency situations was raised several times to the Department, by various sectors during the current pandemic, and on foot of similar extensions provided in other jurisdictions. However, permissions in England and Scotland are granted to commence within 3 years, while those in NI and Wales are granted with a 5 year commencement condition, making the issue less acute in NI and Wales. Events such as the current COVID 19 emergency are very uncommon and the case for legislative change is not strong enough to proceed with such a proposal, especially given the various alternative options, including: commencement of development (See PT3-20); or making an application for renewal of permission, as was advised in Chief Planner's Updates issued during the pandemic.</p>
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	<p>Proposed Action: The Department is not persuaded of the need to amend existing provisions but will monitor and keep this issue under review.</p>
<p>(PT3-12) Notices of Opinion</p> <p>You said – Some within the business and industry sectors are of the view that there should be a presumption against the use of Notices of Opinion for regionally significant development applications (or applications to amend such schemes), and that the process could be streamlined with such applications sent directly to the Planning Appeals Commission (PAC) or other independent body for independent consideration / determination.</p> <p>Furthermore the Planning Appeals Commission would wish to see greater use of online arrangements for hearings or public local inquiries</p>	<p>Our response - Applications under Section 26 and Section 29 are dealt with and processed by the Department which is the relevant planning authority. Where a public local inquiry is not held, the Department must serve a notice of opinion (NOP) on the applicant and the Council indicating the decision it proposes to make. Upon receipt of the notice, the applicant or the Council can request a hearing before the PAC or other Examiner. The PAC is not bound by the NOP in preparing its report and the Department must take the PAC report into account in finally determining the application. Not every application requires a Public Local Inquiry (PLI) and equally not every NOP results in a hearing at the PAC. It should also be noted that going to PLI adds at least a year onto a timescale for processing more complex applications and, therefore, a planning application should only be taken to PLI when deemed necessary to consider particular matters. This should remain a matter for professional planning judgement. Where an applicant wishes to contest a NOP, they have a right to a hearing before the PAC. In terms of the PAC role, the recommendation to send all RSD and called-in applications directly to the PAC or other independent body would be a fundamental reordering of the Department's and PAC's roles. At present, under the Act the PAC is a statutory and independent appellate body set up and resourced to hear and determine appeals and conduct PLI/hearings, not to process and determine planning applications in the first instance. There is no clear evidence that moving this function from DfI Planning to the PAC or other independent body would result in significant process efficiencies. Indeed, such a move may cause further delay and</p>

	<p>confusion as arrangements would still need to be made to allow the Minister to determine such applications. It would also raise the question of how to facilitate the ability of councils or applicant to avail of a PL/hearing if they did not agree with the PAC decision. Finally, much work would be required to set up and resource the PAC as a first instance planning authority.</p> <p>The Department recognises the success throughout the pandemic in using online hearings and the associated efficiencies for the overall planning process.</p> <p>Proposed Action: The Department is not persuaded of the need to amend existing provisions with regard to notices of opinion or making the Commission or other independent body responsible for RSD applications but will monitor and keep the issue under review. The Department will explore further options to facilitate online / virtual hearings or public local inquiries (See 3-17).</p>
<p>(PT3-13) Retrospective Permissions</p> <p>You said – A small number of individual respondents, political parties and community groups voiced their opposition to provisions which permit applications which seek permission for development already carried out (retrospective permission). This opposition included calls to introduce fines and increased planning fees for such applications.</p>	<p>Our response - Section 55 of the 2011 Act allows for retrospective planning applications to be made i.e. where development has already been carried out without permission, and for applications for planning permission to authorise development which has been carried out without complying with a planning condition(s) to which it was subject. Such applications must seek full planning permission only.</p> <p>Currently, the fee for an application which relates to development carried out without planning permission, is calculated in accordance with the provisions of Part 2 of the Fees regulations as if the application were one for permission to carry out that development. Section 223(2) does allow for the charge of a fee for</p>

	<p>retrospective permission to be a multiple of the usual fee, however, this is not currently provided for in Part 2 of the Fees Regulations.</p> <p>Applications made to regularise permission for development already carried out is an established part of planning practice. Introducing fines or, increasing the planning fees for applications seeking retrospective permission, would need careful consideration and could be viewed as punitive as it often, but not always, relates to householder type development such as extensions.</p> <p>Councils do have discretionary powers to proceed with enforcement action against unauthorised development, which if not remedied, can result in the imposition of fines, or the alteration or removal of buildings as a remedy.</p> <p>Proposed Action: The Department will consider introducing multiple fees for retrospective applications as part of a wider review of planning fees (see PT13-1). The Department is not persuaded of the need to amend current provisions with regard to retrospective planning permission.</p>
<p>(PT3-14) Matters which may be raised at appeal</p> <p>You said - A majority of councils, and a small number of other respondents have sought clarity around section 59 of the Act to ensure that the legislative tests are fit for purpose. Respondents have further suggested that the wording of the legislation should be revisited and, if necessary, amended or guidance published to clarify the approach, for instance, section 59 should be amended to ensure that appeals can</p>	<p>Our response - Currently a party to the proceedings of a planning appeal will not be able to raise any matter that was not in front of a council or the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the PAC, that the matter could not have been raised before that time or that it's not being raised was due to exceptional circumstances.</p> <p>While the NI approach is modelled on that in other jurisdiction, it does not go as far as in Scotland for example, where an appellant</p>

<p>only be determined on the basis of the application as originally refused by the council.</p>	<p>cannot change the terms of the proposed development – it must be the same as the proposal that was considered previously by the council, using the same plans¹². Such a measure, if introduced here, may encourage applicants to alter their development proposals where a council is minded to refuse permission on the basis of the application as made, knowing that it cannot be varied thereafter via an appeal mechanism.</p> <p>Proposed Action: The Department will bring forward proposals to supplement existing s.59 provisions which would disallow the variation of a development proposal at appeal. This will require public consultation, and amendments to primary and/or subordinate legislation.</p>
<p>(PT3-15) Third Party Right of Appeal</p> <p>You said – Most individual respondents, together with a broad cross-section of community and political representatives, NGO and some councils suggested the Department introduce a new appeals mechanism or provide for third party planning appeals / challenges.</p>	<p>Our response: The legislative and structural changes to the planning system which came into effect with the new two-tier system in 2015 are designed to deliver an inclusive, front-loaded system with stronger third party engagement and local democratic accountability. Concerns with the introduction of third party rights of appeal at the end of the development management process could undermine an applicant's commitment to community engagement at the start of a front-loaded system, and risks reducing certainty and the effectiveness and efficiency of the planning system at a time when it needs to be responsive to sustainable recovery from the pandemic.</p> <p>Proposed Action: The Department is not persuaded of the need to amend current provisions with regard to planning</p>

¹² <https://www.legislation.gov.uk/ukpga/1997/8/section/32A>

	<p>appeals but will continue to keep this matter under review. This will include consideration of recommendations to emerge from the work of the Planning Engagement Partnership.</p>
<p>(PT3-16) Non / Minor-material changes</p> <p>You said – A broad cross-section of respondents including some councils, professional bodies, business and renewables sectors suggested the Department consider introducing a proportionate approach to minor material changes, in addition to non-material changes, and that the Department should retain authority for such changes with regards to permissions it has granted.</p>	<p>Our response - Guidance on the non-material change mechanism and procedures as well as good practice is set out in Development Management Practice Note 25.</p> <p>The 2011 Act has introduced a mechanism by which a council will have a formal method of dealing with small changes ('non-material') to approved schemes (s.67 and Regulation 7 GDPO). The introduction of the non-material change procedure under the 2011 Act replaced the otherwise informal process previously used to respond to requests for minor amendments. In deciding whether a change is material, a council will have regard to the effect of the change, together with previous changes on the original permission. This provision allows a council to impose new conditions, or remove or alter existing conditions. Whether or not the proposed amendment(s) are considered to be 'non-material' (rather than 'material') will depend on the specific details of the existing planning permission. A change which may be considered 'non-material' in one case could be 'material' in another.</p> <p>There is no statutory definition of 'non-material', it is down to the Local Planning Authority to be satisfied that any amendment(s) sought are 'non-material' in order to be eligible for this type of application.</p>

	<p>Some respondents are of the view that there is value in introducing a legislative provision allowing an applicant to make a 'minor-material' modification to a current extant permission. The basis being that it would assist in cases where numerous acceptable changes are made to a core permission over time but resulting in multiple layers of individual permissions arising. In addition, minor amendments to planning permissions can require a new application, (possibly including full PACC and PAN), which in the view of some respondents, is rather onerous and has an impact on delivery.</p> <p>There is no statutory definition of 'minor-material', however other jurisdictions suggest that 'minor material' amendments are likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved (and recommends that pre-application discussions should be used to determine whether an amendment is a 'minor material amendment' before an application is submitted).</p> <p>Some amendments may, if appropriate, be taken forward under Section 54 of the Act, allowing conditions associated with the existing permission to be varied. A local planning authority can use its discretion to decide who should be consulted about such an application and the approach that should be taken to notification.</p> <p>In relation to the point that the Department should retain authority for changes to permissions it has granted, the approach here mirrors that in other jurisdictions, where the local planning authority has principal responsibility for the vast majority of planning functions, including subsequent applications and changes to those previously granted by the Department.</p>
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	Proposed Action: The Department is not persuaded of the need to amend current provisions with regard to non-material or, minor-material amendments, but will continue to keep these matters under review.
<p>(PT3-17) Digitization in the Planning System</p> <p>You said – Overall, a broad cross-section of respondents proposed the planning system should allow for the electronic submission of planning applications, fees and inspection of other documents.</p>	<p>Our response - Calls to better utilise digital / online means of consultation and communication in plan-making, and development management and enforcement featured strongly in the responses to the call for evidence. Regulation 4 of the LDP regulations, and Regulation 29 of the GDPO provides for the use of electronic means of communication which could be amended to expand the use of digitization in plan-making and development management. Removing the requirement for advertisement in the printed press and Belfast Gazette would need careful consideration particularly around its potential effects on some s.75 groups.</p> <p>A new Regional Planning IT System is currently being developed which will provide a modern system to the Department and the 10 councils when it goes operational. It will also deliver new services to the public who will be able to submit planning applications on-line as well as via the normal routes. The new system is due to be operational next summer.</p> <p>Proposed Action: The Department will work with stakeholders to determine whether there are ways in which to better utilise online / digital means of communication in plan-making, and the planning system overall (See also PT2-6 and PT3-6). This may require public consultation, and amendments to primary and/or subordinate legislation</p>
(PT3-18) Permitted Development	Our response - Certain elements of The Planning (General Permitted Development) Order (NI) 2015 have been reviewed and

<p>You said – A majority of councils and a cross-section of other NGOs, individuals and industry suggested that the department undertakes a review of current permitted development rights in a number of areas, particularly in relation to: minerals, utilities, agriculture, forestry, and householder development. Some councils also requested the introduction of permitted development rights specific to the use of land for COVID 19 related purposes such as test centres.</p>	<p>amended since its introduction. Changes include provisions in relation to minerals, telecommunications, electric vehicle charging points, and shops, financial and professional services. A more comprehensive review covering other matters raised by respondents such as agriculture, forestry, and householder development would be a significant and resource intensive undertaking, and not achievable in the short or medium term.</p> <p>Proposed Action: The Department will continue to keep permitted development rights under review and will bring forward amendments to extant PD provisions as and when appropriate in line with Ministerial priorities and Departmental resources.</p>
<p>(PT3-19) DFI Directions</p> <p>You said – A small cross-section of respondents including some councils and industry are of the view that existing Notification Directions should be amended or repealed, particularly The Planning (Notification Of Applications) Direction 2017. Some respondents also consider the Department consider the introduction of a new Direction to deal with applications for electricity transmission lines.</p>	<p>Our response – Councils are required to notify the Department, either through certain Notification Directions or requirements of the Planning Act, of certain specified matters with regard to major development, listed building consent, councils own planning applications, and control of demolition in Conservation Areas. A council cannot proceed to determine such applications or grant consent until such time as the Department has had opportunity to consider the application. The Department has 28 days to consider the matter, or may issue a holding direction pending a decision whether or not, to call-in the application.</p> <p>Given that departmental directions have been in place for several years now, the Department considers there is merit in undertaking a general review of their operation to determine if they remain appropriate going forward.</p>

	<p>Proposed Action: The Department will undertake a general review of current departmental directions. This may require public consultation, and amendments to primary and/or subordinate legislation.</p>
<p>(PT3-20) Commencement of Development</p> <p>You said – A small cross-section of respondents including some councils, business and private sector suggested that further guidance is needed on what constitutes a lawful start to development, and that s.63(2) should make specific reference to ‘laying out or constructing a road’ & ‘demolition’ to avoid applicants losing their permissions.</p>	<p>Our response - Section 61 of the Act imposes a statutory condition on the grant of planning permission that development must be begun within 5 years of the date on which permission is granted or such other period as the council or the Department considers appropriate.</p> <p>Additionally, where outline planning permission is granted, development must be begun within 5 years of the date on which the permission is granted or within 2 years of the final approval of the reserved matters.</p> <p>Commencing development means undertaking some limited works on site to commence a planning permission and thus keep it alive.</p> <p>A material operation can include any works of construction, demolition, digging foundations, laying out or constructing a road and a material change in the use of the land. The works must be done within the time period expressed on the permission.</p> <p>In order to lawfully commence development it is necessary to satisfy the legal requirements in section 63(2) of the Act. This says that <i>“development shall be taken to be begun on the earliest date on which any of the following operations comprised in the development begins to be carried out.”</i> Section 63(2) specifies the operations which can constitute the start of development. The meaning of ‘development’ is set out at section 23 of the Act, as too is the meaning of ‘building operations’, and includes demolition, and rebuilding.</p>

	<p>Proposed Action: The Department will review this provision to establish if any technical amendments are appropriate.</p>
<p>(PT3-21) Planning Agreements</p> <p>You said – A cross-section of respondents including some councils, business, NGOs and private sector interests suggested that further guidance / clarification could be provided on the circumstances in which section 76 planning agreements will be implemented including the use of conditions and covenants to secure developer contributions and other benefits. Some considered that legal fees associated with formulating planning agreements should be inclusive of the planning application fee, and that any variation to planning conditions should not result in the need for a Deed of Variation to a Section 76 agreement. Some also suggested that developers should be able to submit a 'Unilateral Undertaking' as a substitute to a Bi or Multi Party planning agreement under Section 76.</p>	<p>Our response – Section 76 of the Planning Act (NI) 2011 enables any person who has an estate in land to enter into a planning agreement with either a council or the Department (whichever is the relevant authority).</p> <p>A planning agreement may facilitate or restrict the development or use of the land in any specified way, require operations or activities to be carried out, or require the land to be used in any specified way. An agreement may also require a sum or sums to be paid to the relevant authority or to a Northern Ireland department on a specified date(s) or periodically.</p> <p>The relevant authority has the power to enforce a planning agreement by entering the land and carrying out the operations itself. Any expenses incurred in doing so are recoverable from the person or persons against whom the agreement is enforceable. A planning agreement may not be modified or discharged except by agreement between the relevant authority and the person or persons against whom the agreement is enforceable.</p> <p>A planning agreement can play a meaningful role in the development management process as a valuable mechanism for securing planning matters arising from a development proposal. An agreement may mean that development can be permitted whilst potentially negative impacts on land use, the environment and infrastructure could be reduced, eliminated or mitigated.</p> <p>Most of the comments and suggestions in relation to planning agreements revolve around their use and practice or seeking</p>

	<p>clarification on technical aspects of them. The matter of recoverable costs associated with planning agreements under the Act, is similar to that in other jurisdictions, e.g. for planning obligations in Scotland, under section 75 of the Town and Country Planning (Scotland) Act 1997. These are matters that can and should be addressed by planning authorities adopting best practice approaches and do not require legislative change.</p> <p>Proposed Action: The Department is not persuaded of the need to amend existing provisions but will continue to engage with Councils on practice through the normal mechanisms.</p>
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Table 4

Part 4 Additional Planning Control	
<p>(PT4-1) Temporary Listing / Building Preservation Notice (BPN)</p> <p>You said – Some councils and professional bodies are of the view that the Department for Communities (DfC) should retain powers to enforce / issue a BPN and be liable for compensation (not a council). These respondents have also requested that consideration be given to providing DfC with a power to issue a BPN, including liability for compensation.</p>	<p>Our response - Responsibility for certain functions under the Planning Act with respect to Listed Buildings and Conservation Areas transferred from the Department of Environment to the Department for Communities in 2016¹³. Councils however are responsible for the issuing of BPNs, (temporary listing where considered necessary), to be confirmed (or not) by DfC. Councils are currently liable for compensation (s.186) where a BPN ceases to have effect without the building having been listed by DfC.</p> <p>Proposed Action: As these functions are the responsibility of another department, DfI will continue to liaise with DfC on these matters.</p>

¹³ <https://www.legislation.gov.uk/nisr/2016/76/contents/made>

<p>(PT4-2) Conservation Areas (CA)</p> <p>You said – A number of councils, together with other professional bodies and a political party, propose that councils be given the authority to vary / repeal a CA designated by the Department, and that The Planning (Northern Ireland) Act 2011 Planning (Control Of Demolition In Conservation Areas) Direction 2015 should be rescinded.</p> <p>Respondents also contend that the requirement for councils to refer an application for Conservation Area Consent to the Department, where it intends to grant permission, is completely heavy handed, disproportionate and an unnecessary administrative burden.</p>	<p>Our Response - Responsibility for certain functions under the Planning Act with respect to Listed Buildings and Conservation Areas transferred from the Department of Environment to the Department for Communities in 2016. Councils and DfC can designate CAs, however such designation can only be varied or cancelled by the authority which made the designation. In effect, councils are currently unable to vary or cancel a CA designated by the Department prior to the transfer of planning functions in 2015.</p> <p>Proposed Action: Given these functions are the responsibility of another department, DfI will continue to liaise with DfC on these matters.</p> <p>The Department intends to review the Conservation Area consent notification requirements (See also comments at PT3-19)</p>
<p>(PT4-3) Tree Preservation Orders (TPO)</p> <p>You said – A number of councils and political representatives have requested that the Department provides the power for councils to vary or revoke TPOs, including those made by the Department and its predecessors, and to also clarify the meaning of 'amenity' and 'abatement of a nuisance' within guidance. Some further contend that such protections should be extended in other designated areas such as ATCs.</p>	<p>Our response - Planning powers with respect to Trees are set out at sections 121-128, Chapter 3, Part 4 of the Planning Act (NI) 2011 and are primarily the responsibility of local councils. The Department has a power to make, amend or revoke a tree preservation order (TPO) under section 124, in consultation with the local council. In effect, should a council wish to amend or revoke a TPO, it currently must make a request that DfI do so on its behalf. In addition, while trees in a CA are offered protection under section 127 of the Act, those in other designated areas such as ATCs are not. ATC's are, however, identified and designated through the LDP process which does not currently provide statutory protection of trees.</p>

	Proposed Action: The Department will review current requirements around TPOs with a view to bringing forward proposals to permit councils to vary or revoke TPOs in their areas. The Department will also consider whether there is a need for guidance to clarify certain TPO terms or definitions.
(PT4-4) Review of Old Mineral Permissions (ROMPs) You said – A broad cross-section of respondents including councils, NGOs, individuals, political parties and some business interests requested that the Department commence legislation around ROMPs and that the Department provide the necessary resources to allow implementation.	Our response - Officials are continuing to examine a number of options in relation to the commencement of legislation for the review of old mineral permissions (ROMPs). Councils do, however, have a broad range of other enforcement powers available under the Planning Act (NI) 2011 where they believe a developer is operating outside the terms of a permission. Councils remain best placed to investigate such planning matters and have a responsibility to do so. Proposed Action: The Minister is to consider options on the way forward with regards to ROMPs early in 2022.

Table 5

Part 5 Enforcement	Assessment
(PT5-1) Relevant authority for Enforcement You said – A cross-section of councils, business and academia are of the view that planning enforcement should rest with the authority which granted the relevant approval, while several individuals contend that enforcement should not be a discretionary function, nor where it is only expedient to do so. Some also believe that cost recovery	Our response – Guidance on planning enforcement is set out in Enforcement Practice Notes 1-4. The vast majority of planning functions, including that for planning enforcement rests with local councils. The Department has parallel powers with regards to certain functions, including issuing of enforcement notices (section 139). The Department's parallel enforcement powers can be used where it is considered expedient

<p>could further incentivise appropriate action by planning authorities.</p> <p>Councils have suggested that the Department should take responsibility for enforcement action where necessary (extending to applications for Reserved Matters approval, and discharge of conditions) where it was the determining authority, and these should not rest with councils.</p>	<p>in circumstances where, for example, a council has failed to issue enforcement or stop notices (and not before consulting the appropriate council).</p> <p>The potential need for the enforcement of matters connected to decisions previously issued by the Department, is a discretionary function of councils, taking account of the merits of the case, and other relevant planning matters, and is only likely to extend to a small number of cases.</p> <p>The approach to planning enforcement here is modelled on that in other jurisdictions, where planning enforcement is exercised as a discretionary function. Planning authorities will, in deciding to take appropriate action, be guided by the key enforcement objectives, as set out in the SPPS¹⁴, and will do so having regard to the provisions of the Local Development Plan and any other material considerations.</p> <p>In its considerations, a council may include matters such as: whether the breach of planning control would be clearly contrary to planning policy or unacceptably affect public amenity (including road safety and nature conservation issues) or the existing use of land and buildings meriting protection in the public interest; the extent of the breach; the willingness of the offender(s) to remedy the breach of control voluntarily or through negotiations; and the statutory time limits for taking enforcement.</p> <p>Enforcement action against a breach of planning control may be taken when a council regards it as expedient to do so. Whilst not formally defined, expediency is taken as a test of whether an unauthorised development or activity is causing unacceptable harm</p>
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¹⁴ These key objectives are as stated in paragraph 5.57 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) September 2015

	<p>to the environment and / or public amenity, having regard to the provisions of the local development plan and to any other material considerations. It would be appropriate for councils, in determining what (if any) enforcement action is to be taken, to give priority to those breaches where in a council's opinion the greatest harm is being caused. It is considered good planning practice that any action taken against a breach of planning control shall be proportionate to the breach.¹¹</p> <p>Proposed Action: The Department is not persuaded of the need to change the approaches to planning enforcement but will keep these matters under review.</p>
<p>(PT5-2) Digitization in the Planning System</p> <p>You said – Some councils and academia suggested that legislation should permit the electronic service of enforcement and other similar notices.</p>	<p>Our response - Calls to better utilise digital / online means of consultation and communication in the planning system overall featured strongly in the responses to the call for evidence.</p> <p>Section 239 of the Act provides for the service of notices and documents by means of electronic communications however this currently excludes enforcement notices, stop notices, planning contravention notices etc (see section 239(3)).</p> <p>This matter could be considered within the context of a broader examination of enhanced digitization in the planning system. Such a proposal if taken forward would require policy development, public consultation and amendment to primary and/or subordinate legislation and guidance.</p> <p>A new Regional Planning IT System is currently being developed which will provide a modern system to the Department and the 10 councils when it goes operational. It will deliver new services to the</p>

	<p>public who will be able to submit planning applications on-line as well as via the normal routes. The new system is due to be operational summer 2022.</p> <p>Proposed Action: The Department will work with stakeholders to determine the potential use of online / digital communication in planning enforcement. This can be undertaken within the context of a broader examination of enhanced digitization in the planning system.</p>
<p>(PT5-3) Fixed Penalty Notices (FPN)</p> <p>You said – A majority of councils and some individuals suggested that FPNs are punitive only, and would be better applied to unauthorised signage/advertisements.</p>	<p>Our response - Sections 153 and 154 enable a council to issue a fixed penalty notice for the offences of failure to comply with an Enforcement Notice or Breach of Condition Notice, offering the offender an opportunity to discharge any liability for the offence without having to go to court.</p> <p>FPNs are intended to provide planning authorities with an alternative process, in addition to the current option to seek a prosecution, to address situations where a person has failed to comply with the requirements of an enforcement notice (EN) or a breach of condition notice (BCN).The majority of ENs and BCNs issued by planning authorities are complied with; however there are occasions where they are not.</p> <p>By paying the penalty imposed by the FPN, the person will discharge any liability for prosecution for the offence. They will not however discharge the obligation to comply with the terms of the EN or BCN and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person.</p>

	<p>This approach to FPN mirrors that in other jurisdictions and provides councils with an alternative means of remedy.</p> <p>Advertisements</p> <p>Section 175 of the 2011 Act allows a council to deal with enforcement of advertisement control. On conviction for display of an advertisement contravening regulations made under section 130 (i.e. control of advertisements), a person is liable to a fine not exceed level 4 of the standard scale (£2500). In the case of a continuing offence, the fine will not exceed one tenth of level 4 (£25) for each day during which the offence continues after conviction. Within this context, respondents are of the view that the application of FPN to advertisement controls would be a proportionate response to potentially better address the issue.</p> <p>Proposed Action: The Department will explore the possibility of applying FPNs to advertisement control. Any changes, if taken forward will require amendment to primary and/or subordinate legislation.</p>
<p>PT5-4 Unadopted Roads / Private Streets Determinations (PSD)</p> <p>You said – Some councils suggested the introduction of a mechanism so councils can take enforcement action to deal with un-adopted roads. Alternatively, the planning process should not be used to deal with matters that are for other regulatory regimes.</p>	<p>Our response: - The Department would not be in favour of removing the PSD from the planning process. The Private Streets (NI) Order 1980 is inter-linked to the Planning Act, and separating the two would create a two stage approval process. While doing so may shorten the process time for relevant planning applications, it would likely lengthen the overall time required by developers to subsequently obtain the requisite PSD approval and begin development. There is also a risk that some developers may not submit a Private Streets Determination post-planning, meaning an agreement and road bond cannot be put in place. On balance it is considered that maintaining the existing link between the planning and PSD process is best for the efficiency of the end to end</p>

	<p>development process, and in terms of ensuring that road layouts are completed in a timely manner.</p> <p>Proposed Action: The Department is not persuaded of the need to amend existing provisions however, it will continue to explore ways of improving the PSD aspect of the process.</p>
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Table 6

Part 6 Compensation	Assessment
<p>(PT6-1) Liability as to Compensation</p> <p>You said – A small number of councils consider that they should not be held liable for compensation for any actions or decisions taken by the Department e.g. if the Department decides to revoke or modify a planning permission then councils should not be liable for any costs.</p>	<p>Our response: The approaches to planning enforcement, including modification, revocation, and compensation here follow those in other jurisdictions, for example: In England, the local planning authority has the power to revoke planning permissions under section 97 of the 1990 Planning Act, but this has to be confirmed by the Secretary of State. In England and Wales the Secretary of State also has the power to revoke planning permission under section 100 of the 1990 Planning Act, and where this is done the liability to pay compensation still falls on the local planning authority, as though it had made the revocation order. Also, the revocation or modification of an unimplemented planning permission is not a routine or common exercise, and a planning authority can take into account the matter of compensation payable should it seek to proceed with such an order.¹⁵</p> <p>Proposed Action: The Department is not persuaded of the need to change the approaches to compensation.</p>

¹⁵ Health and Safety Executive (Appellant) v Wolverhampton City Council (Respondent) [2012] UKSC 34, 18 July 2012

Table 7

Part 7 Purchase of Estates in Certain Land Affected by Planning Decisions	Assessment
You said – No comments.	

Table 8

Part 8 Further Provisions as to Historic Buildings	Assessment
You said – No comments.	

Table 9

Part 9 The Planning Appeals Commission	Assessment
You said – No comments.	

Table 10

Part 10 Assessment of a Council's Performance	Assessment
<p>(PT10-1) Exercise of powers</p> <p>You said – A small cross-section of respondents including NGOs, business, housing, and other professional bodies requested the Department exercise greater and more regular use of its powers to undertake regular reviews of a council's performance, which in their view would allow shortcomings to be identified and recommendations for improvements to be made. Others, including some councils suggested that the way in which councils planning performance is measured should be reviewed with an emphasis on quality decisions rather than the speed at which an application can be moved through the process.</p>	<p>Our response: Part 10, sections 207- 209 of the Act enables the Department to conduct an assessment of a council's performance or decision making, including an assessment of how a council deals with applications for planning permission and the basis on which determinations have been made. Since the transfer of the Planning function to councils in 2015 the Department has not carried out any assessments under Sections 207-209, however it does monitor the performance of councils through a number of mechanisms including 3 statutory planning performance indicators, which are reported upon quarterly and annually and also a number of non-statutory planning indicators, contained within the Planning Monitoring Framework, which is published annually. All information relating to these indicators is published on the DfI website (see attached links).</p> <p>https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-april-2019-march-2020</p> <p>https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-october-december-2020</p> <p>The Department continuously works in collaboration with Councils and other planning stakeholders across a range of planning issues to discuss and bring forward improvements to the efficiency and effectiveness of the planning system. The issue raised by respondents is about the exercise of these powers and not the structure of powers themselves. The use of powers available to the Department will however, be kept under review as a means to deliver improvements, if appropriate.</p>

	Proposed Action: The Department is not persuaded of the need to change the approaches to the assessment of a council's performance, but will keep this matter under review in the exercise of its functions.
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Table 11

Part 11 Application of Act to Crown Land	Assessment
You said – No comments.	

Table 12

Part 12 Correction of Errors	Assessment
(PT12-1) Correction of Errors You said – Most councils together with a small cross-section of other respondents suggested that Part 12 should be commenced, to include additional provisions to correct errors in conditions.	Our response: See paragraphs 4.5 – 4.6 of this report. Proposed Action: The Department proposes to make a minor amendment at an appropriate legislatively opportunity to remove this anomaly and subsequently commence Part 12

Table 13

Part 13 Financial Provisions	Assessment
(PT13-1) Planning Fees	Our response:

<p>You said – Councils were unanimous in their call for a review of existing fees structure, to include an automatic uplift of fees annually and that they should have the power to apply fees for the discharge of conditions, non-material changes, PADs and other similar consents/applications.</p>	<p>The Department considers there is merit in reviewing planning fee categories and the fees themselves to establish if they remain fit for purpose and cover the costs of processing applications in line with the requirements of Managing Public Money (NI). Such a review would consider the introduction of new fees with regard to applications to discharge conditions, PADs, non-material changes, retrospective permission etc and would require amendment to the Fees Regulations.</p> <p>Proposed Action: The Department will undertake a general review of planning fees including an automatic annual inflationary uplift, and multiple fees for retrospective applications as part of a wider review of planning fees.</p>
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Table 14

Part 14 Miscellaneous and General Provisions	
<p>(PT14-1) Duty to respond to consultation</p> <p>You said – A small number of respondents consider that the consultation process continues to remain open ended and is impacting on the ability of councils to meet their statutory targets.</p>	<p>Our response: Refer to commentary at Table 3 (PT3-7) – ‘Time period for consultations’.</p> <p>Proposed Action: In conjunction with the recommendation at issue PT3-7 above, the Department will keep under review any consequential changes to this duty.</p>
<p>(PT14-2) Planning Register</p>	<p>Our response: Section 45 of the Planning Act (NI) 2011 (“the 2011 Act”) sets a requirement on the Department and councils to</p>

<p>You said – A small number of respondents including some councils suggested the introduction of provisions similar to Article 40(13) (a) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 with regards to Finally Disposed of Applications which allows planning authorities to “Finally Dispose” of applications where it has not been determined and the statutory time limit for lodging an appeal has expired.</p>	<p>determine an application for planning permission. Article 20 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 (“the GDPO”) sets out the periods for determination of council planning applications [16 weeks for ‘major’ applications and 8 weeks for ‘local’ applications]. If a determination has not been made within that period then under sections 58 and 60 (2011 Act) the applicant may appeal to the Planning Appeals Commission.</p> <p>Whilst a council or Department can issue a decision notice to refuse a development proposal on the basis of insufficient information to determine the development proposal, it does not have any legislative framework in place to dispose of ‘old’ applications where both the statutory timeframe and appeal timeframe have passed without a determination being made.</p> <p>As of September 2021, less than half of all councils are dealing with a small number of live, legacy planning applications which over time, will continue to diminish. On the basis of the evidence, the Department is not persuaded of the need for any change to existing legislative provisions.</p> <p>Proposed Action: The Department is not persuaded of the need to amend these provisions.</p>
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Table 15

Part 15 Supplementary	Assessment
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You said – No comments.	
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Table 16

Other Matters	Assessment
<p>(OM-01) Resources / Training</p> <p>You said – A broad cross-section of respondents including some councils, NGOs, business and renewables sectors have suggested that the Department ensures that adequate resources and training are made available for statutory consultees, PAC, councillors etc, to help in the exercise of their planning functions, to include resources for specialist and shared services with regard to minerals and waste, urban design, habitats assessments, EIA etc.</p>	<p>Our response: The issue of resources and training for consultees and others, is out-with the scope of this review. At the time of transfer of planning functions and the reform of local government necessary resources were made available together with appropriate training with regards to the exercise of planning functions by councils and associated committees. Councils are responsible for resourcing, training and operational performance. Furthermore, the PAC is resourced through the Department of Justice.</p>
<p>(OM-02) Biodiversity Net Gain principles, Net Zero, and Nature Recovery Networks</p> <p>You said – A small number of respondents including NGOs business and renewables sectors have suggested that the Department look to develop additional bespoke environmental legislation, such as is proposed within the Environment and Nature Restoration Private Members Bill including Biodiversity net gain.</p>	<p>Our response: While the Department is of the view that this matter is out-with the scope of this review, furthering sustainable development is at the heart of the planning system and regional planning policy. The Department is committed to ensuring that the planning system plays its part in responding to the climate crisis and that resources are actively focused on measures and actions to support a green recovery from the pandemic.</p> <p>The Planning Act (NI) 2011 and existing regional planning policy and guidance already provide councils with the flexibility to bring forward bespoke local policies for the development of their areas, where appropriate. The matter of additional bespoke environmental legislation is however out-with the scope of this review.</p>

<p>(OM-03) Review extant planning policy</p> <p>You said – A small cross-section of councils, renewables, and professional bodies have suggested that the Department should review the Regional Development Strategy (RDS), Strategic Planning Policy Statement (SPPS) and address the ongoing review of existing planning policy statements (PPSs), on the countryside, minerals etc, as these may have an impact on future local policy development / LDP preparation. Consider allowing the retention of PPSs until such time as a Local Policy Plan is adopted.</p>	<p>Our response: The Department is of the view that this matter is out-with the scope of this review.</p> <p>The RDS is prepared under the Strategic Planning (Northern Ireland) Order 1999. Under that Order the Department is responsible for formulating “in consultation with other Northern Ireland departments, a regional development strategy for Northern Ireland, that is to say, a strategy for the long term development of Northern Ireland”. The RDS provides an overarching strategic planning framework to facilitate and guide the public and private sectors. It does not redefine other Departments’ strategies but complements them with a spatial perspective.</p> <p>The SPPS has a statutory basis under Part 1 of the Planning Act (Northern Ireland) 2011 which requires the Department to formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development. The existing suite of Planning Policy Statements and the remaining provisions of ‘A Planning Strategy for Rural Northern Ireland’ will be cancelled when all eleven councils have adopted a new Plan Strategy for the whole of their council area.</p> <p>Both the RDS and SPPS are subject to periodic reviews to ensure they remain appropriate over time and can respond to new and emerging issues or challenges.</p> <p>Proposed Action: The Department will, in the exercise of its functions, continue to keep extant planning policy under review.</p>
<p>(OM-04) Measurement of Planning Performance (Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015)</p>	<p>Our response: This issue is out-with the scope of this review.</p> <p>The Department monitors the performance of Councils through a number of mechanisms including 3 statutory planning performance</p>

<p>You said – A small number of councils, together with some from the business and professional sectors consider that the way in which planning application performance is measured should be reviewed. Respondents suggested that the approach in GB of measuring the percentage of applications determined within the statutory target should be adopted, and that Statutory Performance Indicators should be reviewed to take account of quality decisions rather than the speed at which an application can be moved through the process.</p>	<p>indicators, which are reported upon quarterly and annually and also a number of non-statutory planning indicators, contained within the Planning Monitoring Framework, which is published annually. All information relating to these indicators is published on the DfI website (see attached links):</p> <p>https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-april-2019-march-2020</p> <p>https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-october-december-2020</p> <p>Any changes to the way in which council's performance is measured would require amendment to the Measurement of Planning Performance (Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015).</p> <p>Proposed Action: The Department will keep this matter under review.</p>
<p>(OM-05) Infrastructure Commission / Independent Planning Body or Regulator</p> <p>You said – A small number of respondents from business, renewables and political spectrums suggested the establishment of an independent body to decide on regionally significant planning applications. Some individual respondents further contend that such a body should not pre-exist a commission with regards to climate and biodiversity, and that the Department should also establish a 'Planning Regulator' to operate an independent oversight role of the planning system.</p>	<p>Our response: While such matters are out-with the scope of this review, the Minister has for some time now, been engaging with Executive Colleagues on the need for a better, longer term approach to infrastructure planning and delivery here and is pleased that the recommendation of her own Ministerial Advisory Panel on Infrastructure, that an Infrastructure Commission should be established here and a key action in the Executive's Covid-19 Recovery Plan will now be progressed in a positive way via a cross-departmental working group, led by TEO (see link below). Minister Mallon continues to offer her support and that of her officials to this group and hopes that rapid progress can be made with this work.</p>

	<p>https://www.infrastructure-ni.gov.uk/news/ministerial-advisory-panel-infrastructure-present-report-minister</p> <p>Part 9 of the 2011 Act provides for the continued governance arrangements of the Planning Appeals Commission including its senior structure, impartiality and administration. These provisions were transferred to the Department for Justice by the Departments (Transfer of Functions) Order (NI) 2016. With regards to the small number of planning applications deemed regionally significant and dealt with by the Department, the independent PAC may consider these, if requested, by way of either a public local inquiry, or notice of opinion called / served by the Department.</p>
<p>(OM-06) Belfast Metropolitan Area Plan (BMAP) Status</p> <p>You said – A small number of respondents including some councils and political representatives requested the department provide clarification on the status of the BMAP, (and Joint Ministerial Statement on prematurity) with clear guidance as to how competing area plans should be weighted by each local authority.</p>	<p>Our response: Such matters are out-with the scope of this review.</p> <p>Draft BMAP and all representations received to it, together with the Planning Appeals Commission inquiry reports, continue to be material considerations to be weighted by the decision maker in the determination of planning applications. Draft BMAP also provides a more up to date evidence base for the creation of local development plans by councils. The Minister is exploring with officials the most appropriate way forward with draft BMAP.</p> <p>The Joint Ministerial statement issued in 2005 by the then DOE and DRD Ministers on the importance of emerging development plans in deciding planning applications, has not been superseded or rescinded.</p>
<p>(OM-07) New Strategic Infrastructure Order – Some respondents within the renewables / electricity sectors requested the introduction of ‘Strategic Infrastructure Order’, to deliver energy projects which contribute to or</p>	<p>Our response: This matter is out-with the scope of this review. [Please see comments above in relation to an Infrastructure Commission].</p>

<p>connected with the delivery of renewable energy or net zero carbon targets, via an accelerated / simplified planning process.</p>	
<p>(OM-08) Planning Judicial Reviews</p> <p>You said – A small cross-section of public representatives and business suggested the establishment of a dedicated Court to deal with planning related Judicial Reviews.</p>	<p>Our response: This matter is out-with the scope of this review.</p> <p>Consideration of the need for, and establishment of a new dedicated court for planning related judicial reviews would be for the NI Executive to determine in conjunction with the Department of Justice and Department for Infrastructure (as it would involve more than one NI department).</p>
<p>(OM-9) Planning Processing Agreements (PPA)</p> <p>You said – A cross-section of respondents including business, renewables and private practice suggested the introduction of PPAs into legislation. Respondents are of the opinion that an agreed PPA between Councils / the Department and applicants would set out the roles and responsibilities of all parties, possibly including penalties for failure to adhere to the pre-agreed schedule for determination of an application.</p>	<p>Our response - A planning processing agreement is a project management tool. It sets out the key processes involved in determining a planning application, identifying what information is required from all stakeholders' involved and setting timescales for the delivery of various stages of the process. Processing agreements set out a route to a decision on an application, not necessarily to an approval. These are available to planning authorities in Scotland in relation to major applications or for local developments that are complex, involve legal agreements, or are likely to be contentious or require amendments to be made to the proposals during their processing. The main purpose of the agreement is to provide clarity to all parties involved in the determination of the application of their responsibilities and to establish realistic timescales for processing the application. The Scottish Government has actively promoted the use of processing agreements as a project management tool for planning applications for a number of years</p>

	<p>PPAs are linked with PADs and other forms of early engagement between applicants and the planning authority. As a management tool it would not require statutory provision, however introducing PPAs in NI would require significant engagement and consultation amongst all stakeholders, particularly agreement with statutory consultees. The introduction of processing agreements would involve additional administrative burdens to councils and the Department. Councils would therefore need to be consulted on this option. While they may be encouraged elsewhere they are not mandatory, and would likely only be particular to a relatively small number of applications in Northern Ireland. Furthermore, the Department does not consider the introduction of fines or penalties to be beneficial for what would be a non-statutory management process tool.</p> <p>Proposed Action: The Department will keep under review.</p>
<p>(OM-10) Consistency between terrestrial planning and Marine Planning regimes</p> <p>You said - The Planning Act should be amended to ensure consistency with marine legislation (Marine and Coastal Access Act 2009 and the Marine Act (Northern Ireland) 2013) with regard to decisions affected by marine plan/marine policy documents.</p>	<p>Our response – The UK Marine Policy Statement (MPS) acknowledges that in achieving integration in marine and land-use (terrestrial) planning systems, policy and development plan documents already include policies addressing coastal and estuarine planning. Marine policy guidance and plans seek to complement rather than replace these, recognising that both systems may adapt and evolve over time. It should be noted that in many cases the policies reflected in this MPS are already taken into account in the terrestrial planning system (including land-use planning decisions) and other consenting regimes which affect or might affect the marine area unless relevant considerations indicate otherwise¹⁶.</p>

¹⁶ <https://www.legislation.gov.uk/nia/2013/10/section/8>

	<p>The draft Marine Plan for NI has been developed to support and complement other existing legislation, policies, plans and strategies, also taking account of Local Development Plans (LDPs). Equally, the Planning Act 2011 requires councils in preparing LDPs to take account of such other matters as the Department may prescribe or direct, and to have regard to such other information and considerations as appear to the council to be relevant which can include a Marine Plan affecting the particular area. In this respect, there exists a degree of integration between both regimes.</p> <p>Proposed Action: The Department is not persuaded of the need to amend the Planning Act in this way. (See also to PT2-3)</p>
<p>(OM-11) Retrofit / Reuse of existing buildings</p> <p>You said - Rather than demolishing and rebuilding new, the Department should consider promoting the reuse of existing buildings to assist towards a reduction in carbon emissions and to reduce the construction industry's consumption of resources.</p>	<p>Our response – The reuse and retrofitting of existing buildings as opposed to new builds, falls outside the scope of the this review.</p> <p>Existing policy (SPPS) makes provision for the re-use and adaptation (or 'retrofitting') of existing buildings and specifies that the planning system should help to mitigate and adapt to climate change by, among other things, <i>"promoting sustainable patterns of development, including the sustainable re-use of historic buildings where appropriate"</i>.</p> <p>It also makes specific provision for the conversion and re-use of existing buildings in the countryside for residential and a variety of other non-residential uses; and, for certain farm diversification</p>

	<p>schemes where proposals involve the re-use or adaption of existing buildings.</p> <p>In addition, regional policy supports the re-use of existing buildings in a number of scenarios, including listed buildings, where redevelopment would “secure the ongoing viability and upkeep of the building”. Also, the Planning (Use Classes) Order (NI) 2015 can help by prescribing the circumstances where a change of use is not regarded as involving development, where the former use and new use are both within the same class specified in the Order.</p>
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