

Title: Review of The Planning (Development Management) Regulations (Northern Ireland) 2015	Regulatory Impact Assessment (RIA)
	Date: October 2023
	Type of measure: Subordinate Legislation
Lead department or agency: Department for Infrastructure	Stage: Initial Development
	Source of intervention: Domestic NI
Other departments or agencies: N/A	Contact details: Nola Jamieson
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Summary Intervention and Options

What is the problem under consideration? Why is government intervention necessary? (7 lines maximum)

The 2022 Review Report on the implementation of the Planning Act (NI) 2011 included several actions in relation to the above Regulations namely (a) a review of categories and thresholds for development; (b) removal of mandatory pre-determination hearings; and (c) incorporating online/digital aspects into the pre-application community consultation process. These actions are being taken forward as part of the Planning Improvement Programme (PIP). A public consultation is being undertaken to seek the views of the public and inform the nature and extent of legislative change required.

What are the policy objectives and the intended effects? (7 lines maximum)

The aim of this policy revision is to review and amend, if appropriate, The Planning (Development Management) Regulations (Northern Ireland) 2015 in respect of:

Hierarchy for Development – classes & thresholds - The aim is to ensure that the current classes and thresholds remain relevant, fit for purpose and take account of future development requirements.

Removal of mandatory Pre-Determination Hearings (PDHs) - The aim is to give councils greater control as to when and how a PDH is carried out, which will ultimately create a more efficient and effective planning system.

Review of Pre-Application Community Consultation (PACC) - The aim is to improve the process of consulting with the community during the pre-application stage, by encouraging engagement methods which will increase awareness of development proposals and enable greater opportunities for the public and stakeholders to participate in the pre-planning process.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum)

Option 1. Do nothing and leave The Planning (Development Management) Regulations (NI) 2015 unchanged. With this option, the Department would not deliver on the commitments it outlined in the 2022 Review Report January 2022 and the Planning Improvement Programme, which address the concerns and issues highlighted through the Review of the Implementation of the Planning Act (NI) 2011. These commitments aim to improve the effectiveness and efficiency of the planning system in Northern Ireland.

Option 2. Review the three elements (see above) of The Planning (Development Management) Regulations (NI) 2015. This is the preferred option and will ensure the Development Management Regulations remain fit for purpose, relevant and consider current changing trends.

Will the policy be reviewed? Yes

If applicable, set review date: 2025 - as part of the next statutory review of the implementation of the Planning Act 2011.

Cost of Preferred (or more likely) Option

Total outlay cost for business £m	Total net cost to business per year £m	Annual cost for implementation by Regulator £m
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Does Implementation go beyond minimum EU requirements?		YES <input type="checkbox"/>		NO <input checked="" type="checkbox"/>
Is this measure likely to impact on trade and investment?		YES <input type="checkbox"/>		NO <input checked="" type="checkbox"/>
Are any of these organisations in scope?	Micro	Small	Medium	Large
	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Approved by: Date: XX [To be approved at final stage]

Description: Do nothing and leave The Planning (Development Management) Regulations (NI) 2015 unchanged.

ECONOMIC ASSESSMENT (Option 1)

Costs (£m)	Total Transitional (Policy) (constant price) Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			
<p>Description and scale of key monetised costs by ‘main affected groups’ Maximum 5 lines There are no new monetised costs with this option as the status quo would remain.</p>			
<p>Other key non-monetised costs by ‘main affected groups’ Maximum 5 lines To maintain the current position would not advance a recommendation in the 2022 Review Report and likely draw criticism from many stakeholders in the planning system, including local councils, developers and the wider public.</p>			
Benefits (£m)	Total Transitional (Policy) (constant price) Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			
<p>Description and scale of key monetised benefits by ‘main affected groups’ Maximum 5 lines It is difficult to measure / quantify any monetary benefits or effects of maintaining the current provision under the Regulations. Under this option, the existing regime will continue but without the benefit of potential amendments which otherwise may have been introduced.</p>			
<p>Other key non-monetised benefits by ‘main affected groups’ Maximum 5 lines Maintaining the existing requirements will, overall, be disadvantageous to the planning system as a whole. The 2022 Review Report recognised that a review of the Regulations was required. The review now forms parts of the PIP which aims to improve the effectiveness and efficiency of the planning system in Northern Ireland.</p>			
<p>Key Assumptions, Sensitivities, Risks Maximum 5 lines It is not unreasonable to assume that updating relevant legislative provisions in the Regulations would be positive overall. The Regulations have been in operation since 2015 and with the transfer of powers to Councils (2 tier planning system), stakeholder feedback received through the Review of the Implementation of The Planning Act (NI) 2011, and advances in technology it is assumed that now is an appropriate time to update the Regulations.</p>			

BUSINESS ASSESSMENT (Option 1)

Direct Impact on business (Equivalent Annual) £m			
Costs:	Benefits:	Net:	
			<p>At this stage, there are unlikely to be monetary impacts (direct or indirect) in maintaining the status quo.</p> <p>The public consultation may yield some detail on potential monetary and non-monetary impacts from the review and potential changes proposed.</p>

Cross Border Issues (Option 1)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines
<p>This option means that the current legislative requirements in Northern Ireland will not keep pace with nor take account of changes / approaches in other UK jurisdictions aimed at accommodating new development trends and technologies, improving consultation methods, and streamlining consenting procedures.</p>

Description: Review three specified elements of The Planning (Development Management) Regulations (NI) 2015 to ensure they remain fit for purpose, relevant and consider current changing trends.

ECONOMIC ASSESSMENT (Option 2)

Costs (£m)	Total Transitional (Policy) (constant price) Years		Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised costs by ‘main affected groups’ Maximum 5 lines
 Option 2 commits to reviewing the current legislative provisions to ensure that the Development Management Regulations are relevant and fit for purpose.

- This includes a review of classes/thresholds - any potential changes could have possible costs and/or savings – these are unknown as yet. It could mean more planning applications, submitted by the business & industrial community, are subject to PACC (if the thresholds change), which would incur additional monetary costs during the pre-planning phase.
- The potential changes to the PACC process for certain planning applications require applicants to publish draft proposals online for a specified period and possibly hold an online consultation event – these are likely to incur additional monetary costs.

Other key non-monetised costs by ‘main affected groups’ Maximum 5 lines
 Option 2 commits to reviewing the current legislative provisions, with a view to improving procedures and processes in the planning system as a whole.

- The review of the classes/thresholds could mean more planning applications by the business & industrial community are subject to PACC (if the thresholds change) during the pre-planning phase. This would increase the time required to prepare planning applications for submission, taking into account a 12-week community consultation period, during the pre-planning phase.

Benefits (£m)	Total Transitional (Policy) (constant price) Years		Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by ‘main affected groups’ Maximum 5 lines
 It is difficult to measure/quantify the monetary benefits by ‘main affected groups’. Option 2 commits to reviewing the current legislative provisions to ensure that Northern Ireland planning system is relevant and fit for purpose. This includes a review of classes/thresholds and any potential changes could have possible costs and/or savings – these are unknown as yet. While some potential changes could result in certain types of planning applications being subject to PACC, other potential changes could mean less planning applications submitted by developers are subject to PACC, and therefore there are monetary savings during the pre-planning phase.

Other key non-monetised benefits by 'main affected groups' Maximum 5 lines

Option 2 commits to reviewing the current legislative provisions, with a view to improving procedures and processes in the planning system as a whole.

- The review of the classes/thresholds could mean less planning applications by the business & industrial community are subject to PACC (if the thresholds change) during the pre-planning phase, which may reduce the preparation time for preparing planning applications.
- The potential changes to the PACC process for certain planning applications are likely to provide more convenient opportunities (non-monetary) for the wider business and industrial community to engage with the public and local communities during the pre-planning process.
- The proposed changes to the PDH process for certain planning applications are likely to reduce time delays for certain planning applications in the planning process, improving procedures and streamlining the consenting process.
- The review ensures that the Regulations are up to date, relevant and fit for purpose to accommodate changes in development trends and new technologies.

Key Assumptions, Sensitivities, Risks Maximum 5 lines

It is a reasonable assumption that updating relevant legislative provisions in the Regulations will result in overall improvements to procedures and processes within the planning system. The Regulations have been in operation since 2015 and with the transfer of powers of Councils (2 tier planning system), stakeholder feedback received through the Review of the Implementation of The Planning Act (NI) 2011, and advances in technology it is assumed that now is an appropriate time to update the Regulations.

BUSINESS ASSESSMENT (Option 2)

Direct Impact on business (Equivalent Annual) £m			
Costs:	Benefits:	Net:	
			<p>At this stage, it is difficult to quantify the direct and indirect monetary impacts.</p> <p>Potential changes to the PDH process may incur monetary and non-monetary time-savings for the business & industrial community (as applicants) with less delay and greater efficiencies in securing planning consent for specific planning applications.</p> <p>Potential changes to the PACC process to require the business & industrial community to provide a website and potentially an online consultation event, which will likely incur additional monetary costs. However, it will provide more convenient opportunities (non-monetary) for the wider business and industrial community to engage with communities during the pre-planning process.</p> <p>The public consultation may yield some detail on the monetary and non-monetary impacts of these potential changes.</p>

Cross Border Issues (Option 2)**How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland)** Maximum 3 lines

The option commits to reviewing the current legislative provisions to ensure that Northern Ireland planning system considers and addresses new/improved consultation methods, streamlining procedures to improve consenting times, and ensuring that new development trends/technologies are captured similar to other UK jurisdictions.

Evidence Base

1.0 Background

In 2021, the Department for Infrastructure (DfI) commenced a review of the implementation of the Planning Act (NI) 2011 Act as required under Section 228 of the Act. Following a Call for Evidence in February 2021 to gather information and evidence on the outworking of the Act and subordinate legislation, DfI published a Review Report of its findings, in January 2022.

The Review Report included several recommendations and actions in relation to The Planning (Development Management) Regulations (NI) 2015 (the Development Management Regulations), namely the review and/or amendment of the following aspects:

- (a) Categories and thresholds for development;
- (b) Removal of mandatory pre-determination hearings; and
- (c) Incorporating online / digital aspects into the pre-application community consultation process (PACC) process.

These actions are being progressed as part of the Planning Improvement Programme (PIP) which aims to aim to improve the effectiveness and efficiency of the planning system in Northern Ireland.

2.0 Concerns raised & rationale for intervention

Through the Call for Evidence process, various issues and concerns were raised about the three aspects of the Development Management Regulations noted above. A high-level summary for each is noted below:

2.1 Review of the classes and thresholds in the Schedule (Major Development Thresholds)

The Development management Regulations have been in operation since 2015, and issues raised include:

- It is considered timely to evaluate whether the current classes and thresholds are reasonable and proportionate to enable local communities to engage on complex development proposals which may impact them, whilst ensuring there is a balanced approach to timely decision-making.
- The current hierarchy of development should be reviewed.
- The nine classes of development and the corresponding thresholds / criterion for major and regionally significant development should be reviewed to ensure they take account of current and future development trends.
- New technologies and developments have been emerging which do not fall clearly into the current classes of development
- The review should also consider a third category, sub-dividing the 'local' category.
- Recent legal proceedings have highlighted operational discrepancies which need to be addressed, to ensure that local communities are given an opportunity to engage in the pre-application planning process

2.2 Removal of mandatory Pre-Determination Hearings

A council must carry out a mandatory pre-determination hearing in limited circumstances for specific planning applications, where DfI has indicated that it does not intend to 'call-in' the applications for determination. Issues raised regarding this process include:

- These hearings should be discretionary only, for councils to decide where, in their view, they would add value to the decision-making process.
- The hearings can add unnecessary administration, add delay, increase cost and hinder performance.
- The notification process can delay the processing of planning applications and securing planning consent.
- If a previous PDH has been held, and there are no new material planning considerations.

2.3 Incorporating Online / Digital aspects into the PACC process.

Planning applications for major development are subject to PACC prior to submission to the council or Department. The mandatory requirements for PACC comprise at least one public (in-person) event, which has been publicised in a newspaper beforehand, and a report summarising discussions with the local community.

During the Covid-19 pandemic, the temporary introduction of online / digital options for engaging with local communities yielded numerous benefits, including (inter alia):

- Widened the sphere of community engagement and raised awareness of the proposals to a wider geographical audience.
- Altered the profile of those getting involved in the planning process, encouraging a younger demographic;
- Enhancing access to proposals for major development;
- Improved accessibility for those wishing to engage with developers and provided greater opportunities on how to engage.

3.0 Policy Aims

Hierarchy for Development – classes & thresholds

- The aim is to ensure that the current classes and thresholds remain relevant, fit for purpose and take account of future development requirements.

Removal of mandatory Pre-Determination Hearings (PDHs)

- The aim is to give councils greater control as to when and how a PDH is carried out, which will ultimately create a more efficient and effective planning system.

Incorporating Online / Digital aspects into the Pre-Application Community Consultation (PACC) process

- The aim is to improve the process of consulting with the community during the pre-application stage, by encouraging engagement methods which will increase awareness of development proposals and enable greater opportunities for the public and stakeholders to participate in the pre-planning process.

4.0 Options – Including Advantages/Disadvantages/Risks

A 'Do Nothing' option is considered for each of the three aspects of the Development Management Regulations under review.

With this option, the Department would not deliver on the commitments it outlined in the 2022 Review Report January 2022 and the Planning Improvement Programme, which address the concerns and issues highlighted through the Review of the Implementation of the Planning Act (NI) 2011. These commitments aim to create an efficient, effective and equitable planning system, trusted to deliver high quality, sustainable inclusive and healthy places.

Maintaining the existing requirements means that opportunities to create efficiencies and streamline procedures may be lost, public and stakeholders trust and confidence in the system may be undermined, and the lack of change is likely to be disadvantageous to the planning system as a whole.

4.1 Review of the classes and thresholds in the Schedule (Major Development Thresholds)

The public consultation seeks to explore what revisions may be required, if any, to the classes of development and the corresponding thresholds in the Schedule for major and regionally significant development, to ensure they remain fit for purpose and relevant for current and future development trends. It focuses on gathering key issues and concerns in the operation of the hierarchy, to garner views, feedback and user experiences from the public to identify and inform any potential changes that may be required. As such, no specific options have been posed in the consultation.

The review of the classes/thresholds could mean more or less planning applications by the business & industrial community are subject to PACC (if the thresholds change) during the pre-planning phase. This could impact on the both the monetary costs of and timelines for preparing planning applications and securing planning consent.

Any potential options for change emerging from the public consultation will be considered within this Regulatory Impact Assessment (RIA), to inform policy development and the decision-making process.

4.2 Removal of mandatory Pre-Determination Hearings

In addition to the 'Do Nothing' option, the Department is seeking views on the option to make PDHs discretionary for Councils in the exercise of their functions. The aim is to enable councils to have greater flexibility and control over when and how a PDH takes place which will ultimately lead to a more efficient, effective, transparent and inclusive planning service.

The advantages of this option can be summarised as:

- reduced delays, no duplication of process, and less administrative resources for the council in organising and undertaking mandatory PDHs
- reduced delays in issuing a formal planning decision for certain planning applications, which benefits the council in terms of performance.
- minimising delays in the planning process for certain applications benefits the applicant by securing consent as promptly as possible, reducing costs and the risks for viability and socio-economic deliverability of a proposed development project.
- the opportunity to undertake a discretionary PDH is retained within primary legislation, and can be utilised by the council if, and when, deemed appropriate.

The disadvantages of this option are:

- consultees and the public who submit representations to certain planning application to which PDH are required may feel they did not get a fair opportunity to outline their case to elected members prior to a decision being finalised.

4.3 Incorporating Online / Digital aspects into the PACC process.

In addition to the 'Do Nothing' option, the Department is seeking views on two potential options for incorporating online / digital aspects into the PACC process. These options, and their advantages /disadvantages are considered further below.

Option 1 places an *additional* requirement for prospective applicants for major development to display information on a website (which they will maintain) for a specified period of time during the pre-application phase prior to submission of the associated planning application. The current publication requirements for PACC would be obliged to include the website address to alert members of the public. The website would include draft planning proposals, including environmental reports, for the public to view, consider and submit comments / feedback online.

The advantages of Option 1 are:

- the minimum of one 'in-person public event' is retained, and the public have the option to either attend a public event to view proposals and provide comments in person to the prospective applicant, or view and comment online. This provides greater accessibility and convenience, and enhances opportunities to get involved in the planning process;
- the provision of a website for a specified period provides a proactive and more flexible opportunity to view and consider proposals, over an extended period, which may promote accessibility to information on development proposals;
- this blended consultation option optimises opportunities for community engagement for all major development projects during the pre-application phase, which aims to ultimately improve the quality of the PACC and overall planning submission; and
- provides greater clarity and certainty for prospective applicants and the public on the legislative requirements for PACC.

The disadvantages of Option 1 are:

- additional online PACC can be requested by the planning authority at present under current legislative provisions, if they deem it necessary;
- prospective applicants may consider that this approach does not represent a proportionate or reasonable strategy for many major developments, could be considered overly onerous in many cases, and characterises a 'one size fits all' way to dealing with engaging local communities;
- the requirement for hosting and maintaining a website for a specific period of time could increase the costs of a proposed development for applicants;
- some local communities may feel that this level of community engagement does not go far enough to compel prospective applicants to engage with the public, particularly on those larger, and more complex developments; and
- temporary legislation would be required to replace in-person public events with online events during a future 'emergency period'.

Option 2 retains the requirement for at least one public event as part of PACC, however introduces an element of flexibility, enabling it to be either an in-person event or an online event. It also places an *additional* requirement for prospective applicants for major development to display information on a website (which they will maintain) for a specified period of time during the pre-application phase prior to submission of the associated planning application. This would include draft planning proposals, including environmental reports, for the public to view, consider and submit comments / feedback online.

The advantages of Option 2 are:

- this option tailors the consultation event to a particular development proposal and a specific location / community, incorporating a reasonable and proportionate response to consultation and acknowledges that not every major development will benefit from consultation through an in-person public event;
- the planning authority must agree the approach to the consultation event at the outset, based on their planning judgement and knowledge of the site location and local community;
- the provision of a website for a specified period provides a proactive and more flexible opportunity to view and consider proposals, over an extended period, which may promote accessibility to information on development proposals;
- this blended consultation option optimises opportunities for community engagement for all major development projects during the pre-application phase, which aims to ultimately improve the quality of the PACC and overall planning submission;
- provides greater clarity and certainty for prospective applicants and the public on the legislative requirements for PACC; and

- temporary legislation would not be required to replace in-person public events with online events during a future 'emergency period', thereby future-proofing the policy requirements.

The disadvantages of Option 2 are:

- prospective applicants may consider that this approach does not represent a proportionate or reasonable strategy for many major developments, could be considered overly onerous in many cases, and characterises a 'one size fits all' way to dealing with engaging local communities;
- there are risks that this option is inconsistently and unfairly applied by different councils to specific projects, applicants and locations;
- some local communities, groups or organisations may feel that this level of community engagement may not go far enough to compel prospective applicants to engage with the public, particularly on those larger, and more complex developments;
- where a fully online consultation process is proposed, there is the potential to disadvantage some groups or members of the public, if they have little or no access to the internet;
- additional online PACC can be requested by the planning authority at present under current legislative provisions, if they deem it necessary; and
- the requirement for hosting and maintaining a website for a specific period of time could increase the costs of a proposed development for applicants.

5.0 Costs and Benefits

At this stage, it is difficult to quantify the direct and indirect monetary and non-monetary impacts.

Potential changes to the classes & threshold may result in certain types of planning applications now being subject to PACC. Businesses submitting these planning applications are likely to incur additional costs should the proposed changes to PACC be brought forward. On the contrary, other potential changes could mean less planning applications submitted by certain business' are subject to PACC, and therefore there are monetary savings during the pre-planning phase.

Potential changes to the PDH process may incur monetary and non-monetary time-savings for the business & industrial community (as applicants) with less delay and greater efficiencies in securing planning consent for specific planning applications.

Potential changes to the PACC process to require the business & industrial community to provide a website and potentially an online consultation event, which will likely incur additional monetary costs. However, it will provide more convenient opportunities (non-monetary) for the wider business and industrial community to engage with communities during the pre-planning process.

The public consultation may yield some detail on the monetary and non-monetary impacts of these potential changes and, in that event, the RIA will be updated as required.