EXPLANATORY MEMORANDUM TO

THE PLANNING (CLAIMS FOR COMPENSATION) REGULATIONS (NORTHERN IRELAND) 2015

2015 No. 58

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of the Environment to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.

1.2 This Statutory Rule is made under sections 186(2) and 247(1) of the Planning Act (Northern Ireland) 2011 (the 2011 Act).

1.3 The Rule is due to come into operation on 1 April 2015.

2. Purpose

2.1 The main purpose of this Statutory Rule is to transfer the powers associated with claims for compensation for loss or damage caused by the serving of a listed building preservation notice under section 186 of the 2011 Act from central government to councils

3. Background

3.1 Regulation 3 requires that such claims for compensation shall be made to the relevant council in writing.

3.2 Regulation 4 requires that such a claim shall be made within 6 months from the date on which the building preservation notice ceases to have effect without the building having been listed in a list compiled by the Department under section 80 (lists of buildings of special architectural or historical interest).

3.3 The 2015 regulations replace the existing Planning (Claims for Compensation) Regulations 2006. .

4. Consultation

4.1 This is a purely technical amendment concerned with the transfer of existing powers to councils. No changes are made to existing policy. Thus the Department did not consult on the Statutory Rule.

5. Equality Impact

5.1 Equality Impact Screenings carried out in respect of these proposals found no evidence of any differential impact on any of the section 75 categories.

6. Regulatory Impact

6.1 A Regulatory Impact Assessment was carried out and is attached at Annex A.

7. Financial Implications

7.1 These regulations make no change to existing policy. There is no cost involved in making a compensation claim although there would obviously be a benefit to a successful applicant.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered the matter of Convention rights and Community Law and is satisfied that there are no matters of concern.

9. EU Implications

9.1 There are no EU transpositional implications.

10. Parity or Replicatory Measure

10.1 This is not a parity or replicatory measure.

11. Additional Information

11.1 Not applicable.

Annex A

REGULATORY IMPACT ASSESSMENT (FINAL)

The Planning (Claims for Compensation) Regulations (Northern Ireland) 2015

1. Title of Proposal

The Planning (Claims for Compensation) Regulations (Northern Ireland) 2015

2. Purpose and intended effect of measure

i) The objective:

The purpose of the proposed Planning (Claims for Compensation) Regulations (Northern Ireland) 2015 is to provide for the transfer of planning functions to District Councils (DCs). Under the review of public administration responsibility for the majority of planning functions currently carried out by the Department of the Environment (DoE) will transfer to DCs. The regulations establish two necessary requirements for a person to make a claim for compensation to a council acting as the local planning authority under section 186 (compensation for loss or damage caused by service of building preservation notice) of the Planning Act (Northern Ireland) 2011 ("the 2011 Act").

ii) The background:

The regulations make provision for a person to make a claim for compensation to a council in its role as local planning authority. Specifically such a claim must be made in writing to the relevant council and must be made within six months of the action or decision which has given rise to the compensation claim. This replicates the existing procedural requirements without amendment. These powers will be available when the district councils take over the majority of planning functions in 2015. The regulations will ensure that these elements will be available in a consistent manner across Northern Ireland. This is a technical amendment which will allow councils to discharge these functions in line with existing policies but within the new two-tier planning system.

iii) Risk Assessment and Rationale for Government Intervention:

Current legislation allows for claims for compensation to be made to the DoE as the unitary planning authority. However, as part of the two tier planning system, the proposed legislation has been developed to allow DCs to operate as local planning authorities. No change has been made to existing claims for compensation policies and no additional risks are envisaged with transitional arrangements allowing DC to perform these planning functions. The Planning (Claims for Compensation) Regulations (NI) 2006 were assessed with no risks pertaining to their introduction.

3. Options Appraisal

Option 1 – Do Nothing

This is not a viable option as the current provisions set out in the Planning (Claims for Compensation) Regulations (NI) 2006 made under the Planning (NI) Order 1991 have to be replaced by subordinate legislation under the 2011 Act.

Option 2 – Introduce regulations transferring the power to process claims for compensation to councils

Introduce the Planning (Claims for Compensation) Regulations (NI) 2015 to provide for the transfer of planning powers to DCs.

4. Costs and Benefits

Sectors and groups affected

All sectors are affected equally as these regulations will apply to all users of the planning system equally. District councils as local planning authorities will be affected by the need to carry out the process correctly and to defend their actions should they be called into question.

Benefits

Option 1 – Do Nothing

This is not a viable option as the current provisions set out in the Planning (Claims for Compensation) Regulations (NI) 2006 have to be replaced under the 2011 Act. There are no benefits with this option because if new regulations are not introduced there is no clear provision governing an application for compensation to a DC.

Option 2 - Introduce regulations transferring the power to process claims for compensation to councils

The regulations make provision for the requirements for submitting a claim for compensation to a DC in its role as local planning authority. No change has been made to existing claims for compensation policies therefore; the main benefit of introducing these regulations is the continuation of an existing, effective practice for claiming compensation.

Costs

Option 1 – Do Nothing

While there are no specific costs associated with this option it is not considered viable as the current provisions set out in the Planning (Claims for Compensation) Regulations (NI) 2006 have to be replaced under the 2011 Act.

Option 2 - Introduce regulations transferring the power to process claims for compensation to councils

There is no cost associated with a claim for compensation. An applicant may incur costs in relation to any professional advice they may seek but this would be a matter for an individual applicant and is not a requirement of the regulations.

5. Enforcement and Sanctions

The proposed Planning (Claims for Compensation) Regulations (Northern Ireland) 2015 are procedural and do not include any provisions for enforcement or sanctions.

6. Consideration of Impacts

Equality Impact Assessment

An Equality Impact Assessment screening carried out in respect of this proposal found no evidence of any negative impact on any of the Section 75 categories.

Health Impact

No impact on health has been identified.

Human Rights Assessment

The Department considers that the proposed provisions are fully compliant with the Human Rights Act 1998.

Rural Impact Assessment

The Department does not consider that there will be any significant differential impact of the proposals between urban and rural areas because of the specific scope and technical nature of the proposals.

7. Monitoring and Review

As no change has been made to the existing procedural requirements for submitting a claim for compensation no additional risks are envisaged and it is not intended to put in place formal monitoring or review mechanisms. However, where the DoE feels that the procedural requirements for making a claim for compensation are not operating effectively, or where such evidence is provided to it, it will undertake an appropriate review.

8. Consultation

The primary legislative powers under which these regulations are made derive from a range of proposals which were the subject of public consultation in 2009 and Assembly scrutiny of the 2011 Act. The Department consulted on its “Planning Reform and Transfer to Local Government proposals for Subordinate Legislation Phase 1” between 28 May 2014 and 20 August 2014. In this consultation document the Department indicated that it will also take forward a range of technical Statutory Rules which are needed to take account of the new two-tier planning model. These SRs will all be subject to the full scrutiny of the Assembly as part of the legislative process but as they do not involve new policies or significant changes to existing policies they are not being made subject to public consultation. The Planning (Claims for Compensation) Regulations (Northern Ireland) 2015 was one of these Statutory Rules.

9. Summary and Recommendations

Option 2 the recommended option as the coming into operation of these Regulations will ensure that there are clear and workable statutory controls for the submission of claims for compensation to councils.

In view of the above, it is recommended that the Regulations are introduced into

Northern Ireland law.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by a senior officer of the Department of the Environment.



Date: 13th February 2015

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