EXPLANATORY MEMORANDUM TO

THE PLANNING (CONSERVATION AREAS) (CONSULTATION) REGULATIONS (NORTHERN IRELAND) 2015

S.R. 2015 No. 177

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under sections 104(5)(b) and 247(1) of the Planning Act (Northern Ireland) 2011("the Act") and is subject to negative resolution procedure before the Assembly.

2. Purpose

2.1 The Planning (Conservation Areas) (Consultation) Regulations (Northern Ireland) 2015 ("the 2015 Regulations") are being made to replace, with amendments, the Planning (Conservation Areas) (Consultation) Regulations (Northern Ireland) 2006 ("the 2006 Regulations"). They prescribe the bodies councils or, as the case may be, the Department of the Environment ("the Department") must consult before making, varying or cancelling a conservation area designation.

3. Background

3.1 Section 104 of the Act gives councils and the Department the power to designate a "conservation area". A conservation area is an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance.

3.2 Section 104(5) states that, subject to subsection 104(6), before making, varying or cancelling a designation under this section, the council or, as the case may be, the Department must consult with the Historic Buildings Council and "such other persons or bodies as may be prescribed".

3.3 In order that councils or, as the case may be, the Department may make a conservation area designation which is not time-limited, the power in sub-section 104(5) to prescribe in regulations such other persons or bodies to be consulted must be exercised. The bodies so prescribed are:

- in the case of a proposal made by a council to make, vary or cancel a designation – the Department, the Department for Regional Development and Northern Ireland Water;

- in the case of a proposal made by the Department to make a designation, following consultation with the relevant council under section 104(3) of the Act — the Department for Regional Development and Northern Ireland Water;

- in the case of a proposal made by the Department to vary or cancel a designation – the relevant council, the Department for Regional Development and Northern Ireland Water.

4. Consultation

4.1 The Department consulted on its "Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 2" between 31 October 2014 and 31 December 2014. In the 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 were not made subject to public consultation. The Planning (Conservation Areas) (Consultation) Regulations (Northern Ireland) 2015 was one of those Statutory Rules.

5. Equality Impact Assessment

5.1 In accordance with its duty under Section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals and has concluded that they do not have implications for equality of opportunity. The measures will not affect any group disproportionately.

6. Regulatory Impact

6.1 A regulatory impact assessment was carried out on the 2015 Regulations. The 2015 Regulations do not make any significant changes to the consultation requirements under the 2006 Regulations. As such, the Department considers that the 2015 Regulations will not impose any significant additional impact on councils, the Department, the Department for Regional Development, Northern Ireland Water or others.

7. Financial Implications

7.1 The financial implications of the move to the new two-tier planning system have been addressed in the financial package being transferred to the new councils.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department considers that the legislation complies with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 There are no EU implications.

10. Parity or Replicatory Measure

10.1 There are no equivalent regulations in other parts of the United Kingdom. I.e. there are no statutory requirements imposed on local planning authorities, or central government, in England, Wales or Scotland to consult on proposals to make, vary or cancel a conservation area designation.

11. Additional Information

11.1 Not applicable.

REGULATORY IMPACT ASSESSMENT (FINAL)
Planning (Conservation Areas) (Consultation) Regulations (Northern Ireland) 2015

1. Title of Proposal

The Planning (Conservation Areas) (Consultation) Regulations (Northern Ireland) 2015 ["the 2015 Regulations"].

2. Purpose and intended effect of measure

i) The objective:

The objective of the Statutory Rule is to require councils, or as the case may be the Department of the Environment ["the Department"], to consult widely where they propose to make a conservation area designation or to vary or cancel that designation.

ii) The background:

Section 104 of the Planning Act (Northern Ireland) 2011 ("the Act") gives councils and the Department* the power to designate a "conservation area". A conservation area is an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance.

Section 104(5) states that, subject to subsection 104(6), before making, varying or cancelling a designation under this section, the council or, as the case may be, the Department must consult with the Historic Buildings Council and "such other persons or bodies as may be prescribed".

Subsection 104(6) provides that a designation under section 104 which has been made without consulting such other persons or bodies as may be prescribed shall only have effect for a period of 6 months beginning on the date on which the designation was made. The aim of such temporary designation is to provide immediate planning control over the demolition of buildings in conservation areas while the consultation process goes forward. As such, in order that councils or, as the case may be, the Department may make a conservation area designation which is not time-limited, the power in sub-section 104(5) to specify in regulations such other persons or bodies to be consulted must be exercised.

Considerations regarding the bodies who must be consulted on proposals to make a conservation area designation, or to vary or cancel that designation, are set out below[1]. Note that the Department has decided not to include in regulations a requirement that councils or, as the case may be, the Department must consult the "public" since in its view such a requirement would be too wide and attempts to define "the public" for this particular requirement may lead to interpretive difficulties. The Department anticipates that in addition to consulting those specified in the 2015 Regulations, councils will continue to undertake public consultation as a matter of operational practice. Existing guidance on public consultation will still be available to councils after planning functions are transferred on 1st April 2015.

The present legislative framework, specifying the bodies the Department must

[1] Section headed "The background"

consult where it proposes to make a conservation area designation, or to vary or cancel that designation, is contained in the Planning (Conservation Areas) (Consultation) Regulations (Northern Ireland) 2006[2] ["the 2006 Regulations"].

**DN: The Department has a reserve power to make a conservation area designation, but only after consultation with the relevant council. Such intervention would overturn a council's judgment on a matter which is, in the first place, its responsibility and may only be justified in exceptional circumstances.*

iii) Risk Assessment and Rationale for Government Intervention:

As set out above[3], in order that councils or, as the case may be, the Department may make a conservation area designation which is not time-limited, the power in sub-section 104(5) to specify such other persons or bodies to be consulted must be exercised. As such, failure to make regulations specifying those persons or bodies would not be consistent with the Act[4].

3. Options Appraisal

Option 1 – Do Nothing

Under this option the Department would commence section 104 of the Act but would not make regulations specifying the bodies councils, or as the case may be the Department, must consult where they propose to make a conservation area designation or to vary or cancel that designation.

As noted above[5], the approach under this option would not be consistent with the Act[6] as councils, and the Department, would not have the power to make a conservation area designation which is not time-limited. As such the Department cannot adopt a "do nothing" approach i.e. this option.

Option 2 – prescribe the bodies who must consult before a conservation area is designated, or a designation is varied or cancelled

Under this option the Department would commence section 104 of the Act and would make regulations specifying the bodies the council, or as the case may be the Department, must consult where they propose to make a conservation area designation or to vary or cancel that designation.

Adopting this approach would mean that councils, and the Department, will have the power to make a conservation area designation which is not time-limited. As such, this approach would give effect to the Act and is recommended for that reason.

Consideration regarding the bodies who must be consulted on proposals to make a conservation area designation, or to vary or cancel that designation, are set out below.

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[2] SR 2006 No 290

[3] Section headed "The background"

[4] Section 104(5)(b) & (6)

[5] See section headed "Risk Assessment and Rationale for Government Intervention"

[6] Section 104(5)(b) & (6)

1) In the case of a proposal made by a council to designate a conservation, or to vary or cancel that designation, it must consult:

- the Department, in effect the Northern Ireland Environment Agency, as it:
  - ➢ has expertise in relation to the historic environment and as such should be consulted. The aim of this requirement is to ensure that:
    - ✓ an area justifies such status because of its special architectural or historic interest;
    - ✓ where an area is designated as a conservation area, and justifies that status, the designation is not removed without justification;
  - ➢ is responsible for administering grant schemes[7] in relation to conservation areas and as such should be consulted;
- the Department for Regional Development. In effect Transport NI (formerly known as Roads Service), an agency within that Department, will be consulted as it is responsible (under roads legislation) for road and pavement surfacing, and street furniture etc which sometimes makes a very positive contribution to the character and appearance of a conservation area. There may be additional costs, to Transport NI, in relation to those works and street furniture, and as such they should be consulted;
- Northern Ireland Water (formerly known as Water Service and formerly within the Department for Regional Development) will be consulted as it is responsible (under Water and Sewerage legislation) for providing water and sewerage services. There may be additional costs to Northern Ireland Water in relation to works in a conservation area and as such they should be consulted;

2) In the case of a proposal made by the Department to:

(a) designate a conservation area (following consultation with the relevant council under section 104(3)):

- the Department for Regional Development and Northern Ireland Water (regulation 3(1)).

(b) vary or cancel that conservation area designation:

- the relevant council, the Department for Regional Development and Northern Ireland Water (regulation 3(2)).

4. Costs and Benefits

It is not proposed to introduce any significant changes to the current legislative requirements, under the 2006 Regulations, and as such there is only a redistribution of costs.

Option 1: Do Nothing

7 Section 106 (Grants in relation to conservation areas) of the Act

As noted above[8] the Department cannot adopt this approach as it is not consistent with the Act.

Option 2 – prescribe the bodies who must consult before a conservation area is designated, or a designation is varied or cancelled

Costs to those consulting on proposals:

The Department anticipates that there will be few proposals to:

- designate new conservation areas;
- vary or cancel conservation area designations.

As such the costs to those carrying out consultation under the 2015 Regulations, i.e. the council's or (as the case me be) the Departments costs, will not be significant.

Benefits to those consulting on proposals:

Councils will have primary responsibility for conservation area designations. As such, except in exceptional circumstances, councils will be responsible for consulting on proposals to make a conservation area designation or to vary or cancel that designation.

Requirement to consult the Department –

the Northern Ireland Environment Agency has a detailed knowledge of Northern Ireland's historic environment. As such, this requirement will ensure that councils can properly assess the significance of the heritage asset and thus make informed decisions in relation to designations.

Requirement to consult the Department for Regional Development [Transport NI] and Northern Ireland Water-

This will ensure that Transport NI and Northern Ireland Water are aware of, and are given the opportunity to comment upon, proposal regarding conservation area designations. As such, this requirement will ensure that councils can properly assess the impact of their proposals regarding designations. In addition, this requirement will ensure that Transport NI and Northern Ireland Water are aware of conservation area designations and are therefore aware of the need to ensure that any works they carry out do not adversely impact on the area.

Costs to those responding to consultations requests:

As noted above[9] the Department anticipates that there will be few proposals to designate conservation areas or to vary or cancel designations. As such, the costs to those responding to consultations on proposals i.e. the Department, the Department for Regional Development [Transport NI], Northern Ireland Water and councils[10], will not be significant.

8 See section headed Risk Assessment and Rationale for Government Intervention

9 See section headed ‟Costs to those consulting on proposals”

10 In relation to proposals to vary or cancel any conservation area designated by the Department

Benefits to those responding to consultations requests:

Requirement to consult the Department –

- The Department is responsible for administering grant schemes in relation to conservation areas[11]. This requirement will help to ensure that a conservation area merits designation and as such, that it would be appropriate to provide grants in that area.
- The Department has a reserve power to designate a conservation area following consultation with the relevant council. This requirement will ensure that the Department is aware of proposals by councils to reduce the size of a conservation area or to cancel the designation. As such, this requirement will enable the Department to consider whether the proposals raise issues which warrant the Department intervening i.e. by exercising its reserve power to designate a conservation area.

Requirement to consult the Department for Regional Development [Transport NI] and Northern Ireland Water-

- this requirement will ensure that ensure that Transport NI and Northern Ireland Water :
  - are aware of, and are given the opportunity to comment upon, proposals to make a conservation area designation or vary or cancel that designation; and
  - are aware of the need to ensure that any works they carry out do not adversely impact on the area.

Costs to owners of unlisted buildings in conservation areas and others

The 2015 Regulations will not result in any cost to the owners of unlisted buildings in conservation areas or to others with an interest in those areas.

Benefits to owners of unlisted buildings in conservation areas and others

The requirement that proposals to make a conservation area designation, or to vary or cancel that designation, are tested by consultation with the Department, the Department for Regional Development and Northern Ireland Water will help to ensure that those bodies consider the special character of the conservation area when carrying out their functions. As such, this requirement should reassure the owners of unlisted buildings in conservation areas and others with an interest in the proper protection of the historic environment.

5. Sectors and Groups Affected

[11] Under section 106 of the Act

As noted above[12], the Department anticipates that there will be few proposals to designate conservation areas or to vary or cancel designations. As such, the Department anticipates that the costs to the bodies affected will not be significant.

The main sectors and groups affected are the:

- Department since it will have to respond to consultation requests made by councils. In addition, in the unlikely event that the Department proposed to make a conservation area designation (following consultation with the relevant council[13]) or to vary or cancel that designation, the Department would be required to consult in the manner specified in the 2015 Regulations [regulation 3];
- Department for Regional Development [i.e. Transport NI] and Northern Ireland Water since they will also be consulted in relation to proposals to make a conservation area designation or to vary or cancel that designation. However, it should be noted that the 2015 Regulations do not impose a duty on Transport NI or Northern Ireland Water to respond to those consultations and as such it is for them to decide whether to respond or not;
- councils since they will:
  - have to consult those specified under the 2015 Regulations i.e. the Department, Department for Regional Development and Northern Ireland Water, and consider responses made by those bodies [regulation 2]; and
  - be consulted on any proposal by the Department to vary or cancel a conservation area designation [regulation 3(2)]. However, as noted above[14], the Department would only exercise its powers to designate a conservation area in exceptional circumstances. As such, it is highly unlikely that a council would be consulted in relation to a proposal by the Department to vary or cancel a conservation area designation.

6. Enforcement and Sanctions

None.

7. Consideration of Impacts

Equality Impact Assessment

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

Health Impact

No impact on health has been identified.

Small Firms Impact Test

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[12] Section headed "Costs to those responding to consultations requests"

[13] Section 104(2) & (3)

[14] Section headed "The background"

In relation to small firms located in conservation areas, whether they own the unlisted building or not, the requirement that proposals to designate conservation areas, or to vary or cancel designations, are tested by consultation with the Department, the Department for Regional Development and Northern Ireland Water will help to ensure that the council's decisions are sound which is in the interest of these firms.

Human Rights Assessment

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

Rural Impact Assessment

Conservation areas designated under the Planning (Northern Ireland) Order 1991 are all within urban areas. However, conservation areas may be designated anywhere for example, for a rural area that has no great architectural interest but special historic interest, making it desirable to preserve or enhance its character or appearance.

No significant differential impact is anticipated between urban and rural areas.

8. Monitoring and Review

Section 228 of the 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.

9. Consultation

The 2015 Regulations do not make any significant changes to the arrangements for consulting on proposals to designate a conservation area, or to vary or cancel a designation, under the 2006 Regulations, except changes which are a direct consequence of the commencement of the Act. As such the Department did not consult publicly on the 2015 Regulations.

10. Summary and Recommendations

Option 2 is the recommended option as this will:

- enable councils and the Department to designate a conservation area which is not time limited i.e. give effect to the Act;
- ensure that councils test their proposals to designate a conservation area, or to vary or cancel that designation, by consulting staff in the Departments Northern Ireland Environment Agency who have a detailed knowledge of the historic environment;
- ensure that councils can properly assess the impact of their proposals to designate a conservation area, or to vary or cancel that designation, on those responsible for roads, and water and sewerage services in the area i.e. Transport NI and Northern Ireland Water.
- ensure that the Department, in the exceptional circumstances that it proposed to designate a conservation area, following consultation with the relevant council[15], is also required to consult the Transport NI and Northern Ireland Water. In addition, in the circumstances where the Department proposes to vary or cancel that designation it would be required to consult the relevant

[15] Section 104(2) & (3)

council, since it has primary responsibility for planning in its district (including conservation areas), and Transport NI and Northern Ireland Water.

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.

Angus Kerr

Date
23 March 2015

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