EXPLANATORY MEMORANDUM TO

THE PLANNING (FEES)(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2015

2015 No. 398

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 223(1) and (9) and 247(1) of the Planning Act (Northern Ireland) 2011.

1.3 The Rule is due to come into operation on 31 December 2015.

2. Purpose

2.1 The main purpose of this Statutory Rule is to correct a drafting error in the Planning (Fees) Regulations (Northern Ireland) 2015 and clarify how fees for certain applications for planning permission for mixed development should be calculated.

3. Background

3.1 The proposed Regulations are intended to correct a drafting error in the Planning (Fees) Regulations (Northern Ireland) 2015 S.R.2015 No.73 ("the 2015 Regulations") which had been carried forward from the Planning (Fees) (Amendment) Regulations (Northern Ireland) 2014 S.R. 2014 No.127 ("the 2014 Regulations") and to clarify how the fees for certain mixed development applications are calculated.

3.2 As part of the review of planning fees in 2013 the Department conducted a public consultation on a range of proposals designed to address issues of inconsistency and equity. Following consideration of the responses to the public consultation the Department introduced amendments to the planning fees system through the 2014 Regulations.

3.3 Previously, where an application related to two or more fee categories (excluding dwelling houses), the fee was assessed separately for each category but only the highest fee was charged. In order to more accurately reflect the actual work undertaken in assessing these applications, an amendment was brought forward that assessed each individual element and added together all relevant fee categories of development (subject to any individual fee maximum).

3.4 However, in order to avoid the possibility of 'double-charging', an exception to this approach was proposed for mixed development applications where the

fee for one or more of the categories was calculated according to the 'full site area' (the area of the entire site as outlined in red). This related to the categories of:

- plant and machinery, telecoms and wind turbines/farms;
- winning and working of peat; and
- minerals, drilling for oil or natural gas and waste/refuse.

3.5 The consultation document proposed that the charging methodology for applications containing one or more of these full site area based fee categories was to remain as before, i.e. only the highest of the fees calculated to be charged.

3.6 The intention of this exception was to ensure that there was no element of double-charging if a full site area calculation was combined with another category of development which involved an area calculation which was less than the full site coverage (e.g. floorspace area of buildings sited within the site's red line boundary). In such a situation the buildings area could be counted under both calculations and added together, resulting in double-charging for that element of development.

3.7 The provisions for the calculation of mixed development applications involving full site area (i.e. plant and machinery/telecoms/wind turbines and farms etc.) were intended to include any development from each of the three categories identified. The policy intent was that this approach was to be adopted where "*one or more"* of the site area based fee categories was included. However, the wording of the amending regulations mistakenly referred to "*more than one*" (i.e. 2 or more) and thereby require that, where only one of the full site area based categories is part of a mixed development application, the fee for each category should be assessed separately and all the elements added together. This is contrary to the policy intent whereby only the highest fee should be charged.

3.8 In addition, the 2014 Regulations were written in such a way that paragraph 8 of Schedule 1, Part 1 did not reflect the policy intent of charging the highest calculated fee for applications where more than one full site area category was combined with one or more non full site area category.

3.9 Paragraph 8 correctly addressed the intent for full site area categories but was silent on the combination of full site and non full site categories. The Regulations could be read so as to then fall back to paragraph 7 in such circumstances so that the calculations for non full site area categories would be added on rather than the highest for **all** elements being the appropriate fee. This is resolved by the new paragraph 7(3).

4. Consultation

4.1 This is a technical amendment to correct a drafting error in the existing fees regulations and to clarify how fees for certain applications for planning permission for mixed development should be calculated in line with established policy. No changes are made to existing policy. Thus the

Department did not publicly consult on the Statutory Rule.

5. Equality Impact

5.1 An equality impact screening carried out in respect of the Statutory Rule 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 The Planning (Fees) Regulations (Northern Ireland) 2015 contained a drafting error which resulted in incorrect planning fees being charged to a small number of applicants. This Rule is designed to correct that error and ensure that, in line with established policy, applicants are charged the correct fee for such mixed development applications and are not subject to potential double charging.

8. Section 24 of the Northern Ireland Act 1998

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

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.

REGULATORY IMPACT ASSESSMENT
The Planning (Fees) (Amendment) Regulations (Northern Ireland) 2015

1. Title of Proposal

The Planning (Fees) (Amendment) Regulations (Northern Ireland) 2015

2. Purpose and intended effect of measure

i) The objective:

The Regulations are intended to correct a drafting error in the Planning (Fees) Regulations (Northern Ireland) 2015 S.R.2015 No.73 ("the 2015 Regulations") which had been carried forward from the Planning (Fees) (Amendment) Regulations (Northern Ireland) 2014 S.R. 2014 No.127 ("the 2014 Regulations") and to clarify how fees for mixed development applications should be calculated in line with the Departments policy intent.

ii) The background:

Following consideration of the responses to the public consultation on the review of planning fees in 2013, the Department introduced amendments to the planning fees system through the 2014 Regulations.

Previously, where an application related to two or more fee categories (excluding dwelling houses), the fee was calculated separately for each category but only the highest calculated fee was charged. In order to more accurately reflect the actual work undertaken in assessing these applications, an amendment was brought forward that added together all relevant fee categories of development (subject to any individual fee maximum).

However, in order to avoid the possibility of 'double-charging', an exception to this was proposed for mixed development applications where the fee for one or more of the categories was calculated according to the 'site area' (the area of the entire site as outlined in red on the application). This related to the categories of:

- plant and machinery, telecoms and wind turbines/farms;
- winning and working of peat; and
- minerals, drilling for oil or natural gas and waste/refuse.

The consultation document proposed that the charging methodology for mixed development applications containing development in one or more of these site based area categories was to remain as before, i.e. calculate the fee for each category, but only charge the highest one.

This exception was intended to apply to applications involving "*one or more*" of these of these site area categories. However, the amending 2014 regulations mistakenly referred to "*more than one*" (i.e. 2 or more). Thus the regulations did not apply the exception to applications involving only one site area based category and one or more non-site area based category (for example a minerals development where the

fee calculation would be based on the “red line” boundary of the whole site, and associated office buildings whose footprint would only form part of the area within the site boundary). In such a case the regulations would incorrectly require the fee to be calculated by adding both of these categories together, effectively counting the areas of the minerals development and the office buildings twice and double charging the applicant. .

In addition the drafting error was compounded by a lack of clarity in the regulations, with the result that double charging was possible for applications comprising more than one of the full site area based categories and one or more non-site area based area categories. In this case the regulations would correctly require that the highest area based fee would be charged, but this would then be incorrectly added to the sum of all the non-site area based categories. The total fee would once again double charge the applicant.

The drafting error in the 2014 Regulations was carried forward into the 2015 Regulations which were introduced to accommodate the move to the new two-tier planning system with the new district councils operating as the local planning authority for their respective areas. Because of the drafting error reference to *“more than one”,* the literal application of the statutory requirement set out in the 2015 Regulations could in effect lead to higher than appropriate fees being requested from applicants. The Department is aware of a small number of such cases and has advised district councils, in their role as local planning authorities to calculate any such cases on the basis of the single higher calculation (in line with the original policy intent) rather than the addition of each calculated element of the application.

The amendments in this new SR remove the drafting error from the Regulations. They also clarify how the fees for mixed developments should be calculated.

iii) Risk Assessment and Rationale for Government Intervention:

The Planning Act (Northern Ireland) 2011 enables Council or as the case may be, Department to charge a fee for planning applications. HM Treasury/DFP guidance requires that the full costs incurred in processing planning applications should be recovered.

3. Options Appraisal

Option 1 – Do Nothing

This is not a realistic option as this could mean higher than appropriate fees being requested from applicants.

Option 2 – Amend the 2015 Regulations

The Planning (Fees) Regulations (Northern Ireland) 2015 would be amended to rectify drafting errors and clarify the method for calculating the fee for mixed development applications.

4. Costs and Benefits

Option 1: Do Nothing

Fees would continue to be calculated incorrectly with potential over-charging to applicants. The council or as the case may be Department would be liable for any cost refunds.

Option 2: Amend the 2015 Regulations

The Planning (Fees) Regulations (Northern Ireland) 2015 would be amended to rectify the drafting error and prevent any further incorrect fees being charged.

5. Sectors and Groups Affected

The main sectors and groups affected are the Department, councils and users of the planning system submitting applications for mixed development.

6. Enforcement and Sanctions

The Department, councils and the Planning Appeals Commission will enforce the Regulations.

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
There will be no adverse impact on small firms as the Regulations do not impose any new requirements on users of the planning system.

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

Rural Impact Assessment
There will be no significant differential impact of the proposals between urban and rural areas because of the specific scope and technical nature of the changes.

8. Monitoring and Review

Ongoing contact with District Councils in relation to the calculation of appropriate planning fees.

9. Consultation

As these regulations do not involve a change in policy but merely involve technical amendments to the existing Regulations they have not been subject to public consultation.

10. Summary and Recommendations

Option 2 is the recommended option as it addresses the existing errors in the current Regulations.

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.



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Date: 2 December 2015

Angus Kerr

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