EXPLANATORY MEMORANDUM TO

THE PLANNING (STATEMENT OF COMMUNITY INVOLVEMENT) REGULATIONS (NORTHERN IRELAND) 2015

2015 No. 63

1. Introduction

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

1.2 The Statutory Rule is made under sections 4(6) and 247(1) and (6) of the Planning Act (Northern Ireland) 2011 and is subject to the negative resolution procedure.

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

2. Purpose

2.1 This Statutory Rule prescribes the form and content of a council's statement of community involvement and the discretionary public consultation and agreement with the Department. The Regulations also set out the publicity and availability requirements for the statement.

3. Background

3.1 The 2011 Act provides the legislative basis for the reform of the Northern Ireland planning system and the transfer of responsibility for the majority of planning decisions to councils in April 2015. Under the Act councils must prepare a statement setting out the council's policy for involving those with an interest in development in the district in local development plan and planning control matters.

3.2 These Regulations prescribe the form and content of a council's statement of community involvement. The Regulations also contain provision for the discretionary public consultation on the statement and the procedures for its agreement with the Department prior to making it available for public inspection, in accordance with the Regulations.

4. Consultation

4.1 The Regulations were subjected to a 12 week period of public consultation in the Department's Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1 Consultation between 28 May 2014.

5. Equality Impact

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.

6. Regulatory Impact

6.1 A Regulatory Impact Assessment carried out in respect of the Regulations indicated that the proposals would not impose any significant costs to business or the voluntary sector. (See Annex).

7. Financial Implications

7.1 As a document simply expressing a council's policy on community involvement in planning matters, preparation costs are likely to be minimal. This forms part of their functions under the new two-tier planning system, and meets the requirements of the 2011 Act to transfer planning powers to councils in April 2015. The Department will provide councils with adequate funding to cover the costs of preparing and publishing the statement of community involvement.

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 Not applicable.

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 (FINAL)

1. Title of Proposal

The Planning (Statement of Community Involvement) Regulations (Northern Ireland) 2015.

2. Purpose and intended effect of the measure

i) The objective:

The Regulations are required to implement section 4 of the Planning Act (Northern Ireland) 2011 [2011 Act] for the preparation of a statement of community involvement (SCI) by each of the new 11 councils. The Regulations will ensure that SCIs are prepared in an effective and consistent manner across Northern Ireland, while minimising the complexity of the preparation process and the regulatory burden on councils. The Regulations have been drafted to meet the expectations of the Department and other stakeholders as expressed during the passage of the Planning Act (Northern Ireland) 2011, particularly as regards improved community engagement with the planning system, and greater transparency in the decision making process. The Regulations will require councils to prepare their own SCIs.

ii) The background:

The commencement of the 2011 Act will represent the most significant change to the Northern Ireland planning system in over 40 years, and requires comprehensive Regulations. These Regulations set out the detail on the preparation requirements for SCIs including their form and content, publicity and arrangements for agreeing the SCI with the Department as well as consultation arrangements (if considered appropriate by councils).

iii) Risk Assessment:

The Regulations are required by the 2011 Act and the expectation of the Assembly and stakeholders in the planning system was that various matters which arose in the course of the passage of the 2011 Act would be dealt with in secondary legislation. As the SCI is new and it will be prepared by councils, these Regulations are required to achieve consistency in the delivery of the new SCI system across the 11 new councils. They are also required to ensure that individuals and organisations, including businesses and voluntary organisations will be made aware through the SCI how they can be involved in the councils' planning functions.

The Regulations are a vehicle for ensuring that the Department's priorities for planning are delivered. These priorities include better engagement with the public and other stakeholders which is important for the efficient delivery of the planning system.

If these Regulations were not brought into force the benefits listed above would not be achieved.

3. Options Appraisal

Option 1: Do nothing

Doing nothing is not feasible. The preparation and content of the SCIs cannot work without regulation as it would be reliant upon guidance and this would risk inconsistency of approach across the various Councils. There are certain statutory requirements that must be met by the councils and failure to meet these requirements will likely lead to SCIs being found to be unsound.

Option 2: Introduce new Regulations

The revised framework for SCI system is set out in some detail in the 2011 Act, so choices as to different approaches to take in the Regulations have been necessarily limited. Some of the key areas where choices are to be made are:

- Who to consult in the preparation of the SCI.
- The form and content of the SCI.
- The publicity for and availability of the SCI.

4. Benefits

Option 1: Do nothing

Costs:
This option would not incur any additional costs, however this option is not considered viable as it does not meet the requirements of the 2011 Act to transfer planning powers to councils and enhance community involvement in the planning system. The absence of such Regulations would likely lead to inconsistency of approach across the 11 new councils as to the preparation of their respective SCIs. This could lead to further confusion amongst stakeholders, particularly across council boundaries.

Benefits:
No economic, social or environmental benefits are derived from doing nothing.

Option 2 – Introduce new Regulations

Costs:
There will be a cost to new councils in the preparation of their respective SCIs, particularly around the engagement with stakeholders and the consultation process. This is unquantifiable at this time and would likely vary across the new council areas. There may be opportunities to align with community planning obligations and processes which could reduce costs.

Benefits:

The introduction of new Regulations will however ensure that the following principles for a new effective and consistent SCI system are met:

- councils will set their policy for engaging with those whom they consider will have an interest in matters relating to development in their districts
- the council may consult the public in preparation of the SCI;
- adequate minimum publicity requirements are met;
- SCIs are agreed with the Department; and
- the form and content of the different SCIs across the 11 councils are prepared in a consistent manner.

5. Business Sectors Affected

The Regulations will not directly affect businesses who engage with the planning system in general, or in the preparation of SCIs in particular. SCIs will however enhance community involvement, including business involvement in the development of their areas.

6. Enforcement and Sanctions

The SCI must be agreed by the Department which has the power to direct the councils to modify the SCI if the Department considers that it does not fulfil the statutory requirements or demonstrate how the council intends to involve the public in its planning functions.

7. Consideration of Impacts

Equality Impact Assessment

The Department's screening for equality impacts considers that the proposals will not discriminate unlawfully, unfairly or unjustifiably against any sections of the community specified in Section 75 of the Northern Ireland Act 1998. The views of the public were invited on the screening analysis through the consultation paper.

Health Impact

No impact on health has been identified.

Small Business Impact Test

All businesses that engage with the planning system will be affected by the introduction of the SCI but the Department does not expect the proposals to impact adversely upon small businesses. Small businesses and their representatives were consulted as part of the wider public consultation.

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 of the changes.

Compliance costs

Option 1: N/A

Option 2: The financial costs which will fall to each Council in the preparation of their SCI is difficult to quantify as this requirement is new and neither the Department or a council has prepared a SCI before, however, as a document expressing a council's policy on community involvement in planning matters, it is not considered to be an unreasonable amount. Within this context, the benefits derived from the SCI through enhanced and effective community involvement / engagement in the development plan and development management processes are considered to significantly outweigh any financial burden associated with its preparation.

8. Monitoring and review

Under the provisions of section 228 of the 2011 Act the Department must carry out a review and report back to the Assembly on the implementation of the Act three years after planning functions transfer to councils and every five years thereafter. This provision places a statutory requirement on the Department to monitor and report on the implementation of the new SCI system including these Regulations.

9. Consultation

i. Within Government

The Regulations have been the subject of discussion and internal consultation within DOE and consultation with other departments.

ii. Public Consultation

The public consultation paper "Reform of the Planning System in Northern Ireland: Your chance to influence change" issued in July 2009 set out the context for the SCI. A full public consultation on the policy to deliver option 2 was included in the Department's Planning Reform and Transfer to Local Government Proposals for Subordinate Legislation: Phase 1 Consultation between 28 May 2014 and 20 August 2014.

10. Summary and Recommendations

The objective of these proposals is to deliver a new effective and consistent approach to councils as to the preparation of their SCIs as provided for in the 2011 Act.

Based on the policy consideration the recommendation is to make the subordinate legislation as outlined in Option 2 as it will ensure that all the statutory requirements of the new SCI system are met by the councils. It will also ensure that the public are made aware of how they can be involved in the planning system.

The SCI provide the opportunity to enhance the openness, transparency and the democratic nature of the planning system and will increase awareness of how the public and stakeholders can become involved in the planning system.

11. 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

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