

Belfast City Council Written Evidence on Planning Bill

1. INTRODUCTION

Belfast City Council recognises the need for a reformed Planning System within Northern Ireland and welcomes the opportunity to submit its views on the Planning Bill, seeing it as progressive and instrumental in supporting reform.

The Council considers that an effective local planning function offers the potential to bring to fruition the new community planning role to be given to councils, enabling a much more strategic and integrated approach to be taken to the social, economic and physical regeneration of local areas and in improving the quality of life of citizens. The Council therefore welcomes the recognition of Community Planning as being fundamental in the hierarchy of the development plan formation. It also welcomes the increased importance attached to community participation in the determination of major planning applications.

The Committee will be aware that the Council had made a detailed response, in 2009, to the original Departmental consultation “Reform of the Planning System in Northern Ireland: Your chance to influence change” which set out proposals for planning reform. In cross-referencing the Council’s original response with the provisions as set out within the Planning Bill, it would appear that a number of concerns expressed by the Council have not been fully addressed.

The comments, as set out within this response, therefore reinforce previous views expressed by the Council. They are intended to be constructive and seek to ensure that the reform proposals contained within the Planning Bill are maximised in the interests of enhancing the customer experience, improving social outcomes for the citizen and achieving an efficient and effective service.

The following response sets out both a high-level commentary on the proposed reform of the Planning Service and the general tenor and focus of the Planning Bill, highlighting any potential omissions. Detailed commentary is provided also on the individual clauses as set out within the Bill.

It should be noted that in responding to the Planning Bill, the Council is conscious that much of the detail around the out workings of this legislation (such as the definition of regional development and the criteria for both departmental intervention and call in procedures) may be set out within the subsequent subordinate legislation (regulations) arising from the Bill.

Belfast City Council feels that, in accordance with good practice, the Department should ensure that local councils are consulted in the drafting of the relevant detailed subordinate regulations in respect of information requirements, timeframes and processes involved. This is particularly the case in respect of:

- **Part 2, Clause 15 (Intervention by Department)** - the definition of what the department considers as an “unsatisfactory” development needs to be clearly defined.
- **Part 3, Clause 26 (Department’s jurisdiction in relation to developments of regional significance)** – the Departments definition of what constitutes regional significance must be clearly defined
- **Clause 29 (Call in of applications, etc to Department)** – Department needs to outline clearly the criteria which could make an individual application subject to “call in”

The Council would commend that the underpinning principle for moving forward should be consultation on any regulations which materially affect the future discharge by councils of any function.

2. GENERAL COMMENTS

Consultation timing

As noted by the Executive at its second stage debate on the Planning Bill on 14th December 2010, the Council would be concerned that the short timescale set for the provision of written evidence to the 248 clauses set out within the Bill (one of the largest to come before the Assembly), may make it difficult for many respondents to undertake any detailed due diligence review of the proposals put forward and the impact upon the future administration of the functions.

Alignment and Integration of Legislation

The Council is aware of the separate, but associated consultation underway on Local Government Reform which sets out proposals which will inevitably impact upon the future administration of planning functions by Councils (e.g. proposals in relation to governance, ethical standards, decision-making processes, performance frameworks etc). It would appear that the reform of the Planning Service, as set out within the Planning Bill, has been considered almost in isolation from these other matters. Due consideration will need to be given to the important interconnection and sequencing of these two strands of legislation.

Planning Service Restructure

Accordingly, the Council would like to take this opportunity to highlight its concerns in relation to the recent announcement made by the Environment Minister on 30th November regarding the restructuring of the Planning Service and the creation and composition of the proposed new Belfast Area Office. The Council would seek further clarification from the Department in relation to how the new Area Offices will operate and, in particular, the prioritisation of workload, allocation of resources and the resolution of potential disputes within the proposed new Belfast Area Office which covers 5 council areas.

Oversight and Intervention

Whilst the Council recognises and accepts the necessity for regional oversight, it would be concerned that the proposed scope and level of intervention and scrutiny by the Department (e.g. reserve powers, monitoring, call-in, scrutiny, intervention, performance assessment, reporting and direction), of the future administration of planning functions by councils may create unnecessary tensions and potential delays in the process. It is suggested that the level of oversight/intervention is overly bureaucratic, process driven and may, in fact, militate against local democracy and accountability.

The Council would also seek further clarification and detailed guidance on the proposed call-in arrangements afforded to the Department for planning applications being progressed by councils. The Council would suggest that the scope and application of such call-in arrangements by the Department should be limited.

Under Section 15 (1) of the Bill provisions are set out whereby the Department can intervene in circumstances whereby development plans being prepared by Councils are deemed to be 'unsatisfactory'. The Council believes that this clause is open to wide interpretation and would, therefore, seek clarification and definition of the term 'unsatisfactory'. The Council would recommend that in accordance with good practice, the Department should ensure that local councils are consulted in the drafting of the relevant detailed subordinate legislation which emerges from this Clause.

Duplication of responsibilities

There are a number of areas of responsibility outlined in the Planning Bill which duplicate functions between the Councils and the Department (e.g. drawing up planning agreements; the designation of conservation areas; the making of tree preservation orders and the issuing of enforcement notices). The Council considers this as an unnecessary repetition of responsibility and resources which has the potential to cause unnecessary confusion within the planning process.

Consultee obligations

The Council would seek further clarification on the intended obligations to be placed upon designated consultees to respond in a timely and appropriate manner and the role of the Department and council in ensuring compliance with such obligations. This is particularly important in respect to the ability of councils to meet the proposed new ambitious timescales for processing planning applications and developing local area plans.

The Council would also seek clarification within the Bill as to the process for managing advice received from consultees and the obligation placed upon councils to take on board such advice and manage conflicting views.

Regional Significant Developments

Under Section 26 of the Bill provisions are set out giving the Department jurisdiction in relation to developments of 'regional significance'. Given the potential for key developments within Belfast being designated as being of regional significance, the Council would seek further clarification as to the process envisaged by the Department for the determination of planning applications. Again, the Council would seek further engagement by the Department and Committee in the development of the associated subordinate legislation on this matter. In many respects, the Minister for the Environment will have the final say in the determination of regionally significant applications. When it is considered that the respective Minister in the Republic of Ireland is not even allowed to decide upon any planning application, let alone a regionally significant one, it might be worth entrusting the determination of regionally significant applications in Northern Ireland to the Planning Appeals Commission. In so doing, the impartiality and independence of the decision-making process will be maintained. Also, the Ministerial power to appoint persons other than the PAC to conduct hearings should be applied only in the most exceptional of circumstances, such as in those instances when the workload of the PAC delays the programming of the hearing in a timely fashion.

Resource Implications

The Council would be concerned that inadequate consideration has been given to the resource and financial implications for councils of implementing the new regime and would seek further engagement with the Department in this regard. For example, one of the objectives of the reform of planning is to make it faster and more accessible to the public. The provision of a comprehensive web service is considered essential in this regard. Hence, the detail of just how the new ePIC internet service will be transferred to Councils will be a key operational consideration that has obvious resource implications.

If councils are to ensure the effective administration of planning functions and the maintenance of service continuity, it will be important that sufficient resources are available to support the level of transformation and additional responsibilities, processes and requirements embodied within the reform proposals. This also needs to be considered within the context of the recent proposals for significant downsizing of Planning Service staff. The Council would commend that the transfer of planning functions to local government should be cost-neutral at the point of transfer.

It is important to note that the Planning Service with its full complement of staff and resources has been unable to ensure full development plan coverage and therefore, due consideration will need to be given to the resource implications for councils in meeting this aspiration as set out within the Planning Bill.

Local Development Plans

Given the significant resource implications required in the preparation of the proposed local development plans, the Council would seek assurances within the Planning Bill that the local development plans will be the primary material consideration for planning applications.

Capacity Building

The Council recognises that there is a critical need to ensure that there is sufficient capacity within both central and local government to ensure that the reformed planning service is delivered in an effective and efficient way both pre and post transfer of specific functions to councils.

The reform proposals as set out within the Planning Bill including, for example, the new local development plan system, preparation of community statements, a new role of pre determination hearings, annual monitoring reporting, audit and reporting of performance, are likely to have significant resource and capacity implications for councils when functions transfer. The new councils will have limited experience in statutory planning delivery requiring the development of significant capacity and expertise.

The Council believes that given the delay in the Local Government reform process and the recent proposals announced by the Environment Minister in his announcement to the Assembly on 30th November regarding potential planning pilots, there is a real opportunity to strengthen the relationship between the Planning Service and councils, enhancing the joint capacity of both and ensuring vital learning is gained in advance of the full transfer of the function as part of the RPA. This approach could facilitate the exploration of potential synergies with the existing Council functions and the additional responsibilities proposed for transfer as part of the wider RPA process.

3. OMISSIONS

In considering the Planning Bill, the Council would suggest that the Power to require the proper maintenance of land to enable the protection of the general amenity of areas is potential omissions within the legislation.

The Council would request consideration be given to the potential inclusion of powers to require proper maintenance of land within the Planning Bill of a similar provisions as set out within Section 215 of the Town and Country Planning Act, England and Wales, which would allow councils to manage the amenity of an area. The details of Section 215 are outlined below:

(1) If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section.

(2)The notice shall require such steps for remedying the condition of the land as may be specified in the notice to be taken within such period as may be so specified.

(3)Subject to the following provisions of this Chapter, the notice shall take effect at the end of such period as may be specified in the notice.

(4)That period shall not be less than 28 days after the service of the notice.

The timescale for the consideration of the Planning Bill has prevented the Council from fully considering the potential omissions including the issues of the award of costs and the acquisition of land for planning purposes.

4. CONCLUSION

There are many positive attributes included in the proposals for this Planning Bill. However the Council would have concerns in relation to the overall resource required to make the Planning System, which does seem more comprehensive, functional.

We recognise that many additional requirements will emerge as a result of the subsequent regulations and believe that the transfer and set up of this system will be fraught with difficulties. We would therefore anticipate that there will be many appeals and legal challenges to the new system before a status quo is formed. We believe that the Planning Appeals Commission would therefore require additional resourcing in order to process these challenges, the determination of which will help form the basis of the new system.

5. DETAILED TECHNICAL RESPONSE ON BILL

Part 1: Functions of Department with respect to development of land

Clause 1: General functions of Department of the Environment with respect to development of land

	Belfast City Council Comments
<p>This clause maintains the Department's duty to formulate and co-ordinate planning policy which must be in general conformity with the Regional Development Strategy. A statutory duty is imposed on the Department in exercising these functions to do so with the objective of contributing to the achievement of sustainable development. This clause also provides for the Department to continue to undertake such surveys or studies as it considers necessary.</p>	<p>The Council would request further clarity in regards to the role of local councils in the production of the revised planning policy.</p> <p>The Council would suggest a programme management scheme similar to that proposed for local development plans for the review of planning policy to show timescale and regular monitoring and review arrangements.</p> <p>The Council would support more focused Planning Policy Statements produced in a shorter timescale. The Council considers the current system as lengthy and does not necessarily reflect the unique land use requirements of the different district Council areas for Northern Ireland.</p> <p>The proposals for the planning bill do not address the Regional planning policy split across the two departments (i.e. DRD and DOE). The Council are concerned that this could lead to the system becoming more fragmented and increase uncertainty regarding the responsibility for leadership in relation to regional planning.</p> <p>The Council would request that an expressed obligation is set out within the Bill putting an obligation on the Department to consult with relevant district councils when formulating policy.</p>
Clause 2: Preparation of statement of community involvement by Department	
<p>This clause maintains the requirement for the Department to produce a statement of its policy for involving the community in its development control functions.</p>	<p>The Council would support the introduction of a statement of community involvement but would request clarity in respect of the proposed role of the Department and the scrutiny in the process requiring Councils to seek prior approval from the Department on the statement.</p>

Part 2: Local Development Plans

<p>Clause 3: Survey of district</p>	
<p>This clause requires a district council to keep under review matters which are likely to affect the development of its district or the planning of that development. A district council may also keep matters in any neighbouring district under review, to the extent that those matters might affect the area of the district council, and in doing so they must consult the district council for the neighbouring district concerned.</p>	<p>The Council would support the need for district councils to keep under review matters which are likely to affect the development of its district including matters in any neighbouring district under review. However, the resource implications need to be fully assessed.</p> <p>The Council will be dependent on a number of government agencies for information and input into the process however, the bill does not detail the mechanism to oblige the relevant government agencies to work with local councils.</p>
<p>Clause 4: Statement of Community Involvement</p>	
<p>This clause defines a district council's statement of community involvement as a statement of its policy for involving interested parties in matters relating to the development in its district. It requires the district council and the Department to attempt to agree the terms of the statement and provides a power of direction for the Department where agreement is not possible. This statement will apply to the preparation and revision of a local development plan and to the exercise of the district council's functions in relation to development control.</p>	<p>The Council would support the introduction of a statement of community involvement but would have concerns in respect of the proposed level of Departmental scrutiny in the process requiring Councils to seek prior approval from the Department on the statement. The Council would seek further discussion on the basis for the assessment on which approval may be agreed and the introduction of a mechanism or process for appeal or challenge if central government endorsement is not given.</p> <p>Local Councils already have a duty to engage under Equality Legislation and will have both wellbeing and community planning responsibilities. The Council would suggest that there may be operational merit in combining community consultation on the local development plans with the Council's community planning function which would allow for resources to be shared and reduces the possibility of consultation fatigue in relation to the strategic element of the proposed plans.</p>
<p>Clause 5: Sustainable development</p>	
<p>This clause imposes a statutory duty on any person or body who exercises any function in relation to local development plans to do so with the objective of contributing to the achievement of sustainable development. In doing so they are required to have regard to policies</p>	<p>The Council welcomes the inclusion of a statutory duty to contribute to sustainable development when exercising any function in relation to a Local Development Plan. However, the Council would suggest that the reference to the sustainable development duty at Section 2, article 5</p>

and guidance issued by the Office of the First Minister and Deputy First Minister, the Department of the Environment and the Department for Regional Development.

(1) within the Planning Bill may be technically incorrect.

The actual requirement is as follows:-

“A public authority must, in exercising its functions, act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that it considers that any such action is not reasonably practicable in all the circumstances of the case.”

Therefore, the statutory requirement is not absolute as indicated in part 2, article 5 of the Planning Bill

By way of amplification, and for possible inclusion within the Bill, the development control / planning extract from the new OFMDFM Sustainable Development Strategy sets out the following strategic objectives:-

- Striking an appropriate balance between the responsible use and protection of natural resources in support of a better quality of life and a better quality environment.
- Promote sustainable land management.
- Ensure that our built heritage is used in a sustainable way.
- Improve that quality of life of our people by planning and managing development in ways which are sustainable and which contribute towards a better environment

It is noted that these additional commitments do not appear to have been referenced explicitly either within the draft bill or linked to its various local development control plan provisions.

We believe the imperative could be stronger and be included in the Strategy Plan and should also be able to demonstrate how it achieves the objectives set out in policy and regulations.

In particular the Council believes that all brownfield redevelopment is sustainable. The Council would recommend that *Article 5 (2)a* also

	<p>includes policies, guidance and best practice advisory notes issued by Local Authorities. E.g. “Air Quality and Land Use Planning”, “Waste Storage Guide”. Also that there is a local authority provision for adopting specific guidance; E.g. Belfast specific guidance note for developers and air quality consultants.</p> <p>Furthermore, on a more general point, the Council has particular concerns about the use of ‘Negative Conditions’ to secure planning permission for sites which may be contaminated. In line with current Government Policy, and English, Scottish and Welsh Planning Policies we would strongly recommend that this approach is avoided by Planning Authorities.</p>
<p>Clause 6: Local development plan</p>	
<p>This clause sets out the definition of a local development plan and clarifies the position in relation to potential conflicts between local development plan policies; the conflict must always be resolved in favour of the policy contained in the last development plan document to be adopted. It also confirms in law the status of a development plan in the determination of planning decisions. Where regard is to be had to the local development plan, the determination must be in accordance with the plan unless material considerations indicate otherwise.</p>	<p>The Council would support a plan led system which gives certainty to developers but has concerns that difficulties may arise in introducing a plan led system across the region in circumstances where the new councils will have different administrative areas that could include existing plans that are at different stages of the local plan development process.</p> <p>Given the significant resource implications required in the preparation of the proposed local development plans, the Council would seek assurances within the Planning Bill that the local development plans will be the primary material consideration for planning applications.</p> <p>The Council would support procedures to be put in place in circumstances where Councils do not fully support the existing local plan for their area. There should be a mechanism for such circumstances such as reverting back to the policy of the Regional Development Strategy or Planning Policy guidance pending adoption of a new or amended plan.</p> <p>The Council would request that guidelines are drawn up to clarify support to be offered from the new regional planning body in relation to the potential legal challenges that could arise from the introduction of a completely new development plan system. There are likely to be</p>

	<p>significant challenges for a plan led system when it also is introduced with inconsistencies in up to date plan coverage.</p> <p>The weight attached to the development plan in addition to the proposals for the accelerated plan production process will have significant resource issues beyond the current levels of provision. This needs to be recognised in the document and reflected in the requirement for contextual support and guidance from the Department in relation to the maintenance of any existing development plans and the introduction of new style plans.</p> <p>The transfer of responsibility to Councils will also require a commitment to the transfer of the evidential baseline information and support in relation to the defence of adopted plans developed by the predecessor authority.</p> <p>The Council would contend that Local Development planning process should be made to deal with issues relating to prematurity in which the application of existing policy has the potential to undermine any emerging development planning.</p> <p>In relation to sub- para 4 the Council welcomes the ability to deviate from the development plan when material considerations indicate that this is appropriate to do so. This will allow for the application of policy which is sensitive to local needs or emerging circumstances.</p>
<p>Clause 7: Preparation of Timetable</p>	
<p>This clause places a requirement on the district council to prepare and keep under review a timetable for the preparation and adoption of its local development plan. The district council must agree the timetable with the Department. However, if the timetable cannot be agreed, then the Department may direct that the timetable is in the terms specified in the direction.</p>	<p>The Council accepts the requirement to prepare and keep under review a timetable for preparation and adoption of local development plans. Whilst it believes the views of the Department in this process would be material to this obligation it believes that the requirement to comply with directions issued by the department is unnecessary.</p> <p>The Council would support the principle of a timetable in relation to the development plan process however the main issues relate to the processes that lie outside the control of the councils. The Council will be dependent on a number of government agencies for evidence and input into the process but the document does not detail the mechanism</p>

	<p>to tie in the relevant government agencies to the programme delivery. The Council would advocate early discussion with the Department and the relevant government agencies to agree on an appropriate mechanism.</p> <p>The proposed local development plan process introduces a number of elements and functions that would lie outside the control of the Councils, thereby making a rigid programme management scheme difficult to deliver.</p> <p>Before the principle of a rigid statutory programme management process could be supported, the Council would request further dialogue on the mechanism for approving the different stages of the plan development and on those parts for which central government would be responsible - the Department of the Environment or the Executive.</p> <p>The Council would have reservations in relation to the high levels of scrutiny proposed through a number of measures including requiring agreement on the programme management scheme prior to agreement on resource and capacity building implications. The proposals for the new local development plan system along with a number of other reforms will have significant resource and capacity implications for the new Councils and these have not been fully assessed.</p> <p>The various formal development plan processes will involve working with external agencies, including the Planning Appeals Commission, which are outside of direct local council control. The Council would suggest that consideration must be given to ensuring their statutory engagement in order to facilitate the effective management and delivery of the process.</p>
<p>Clauses 8 and 9: Plan Strategy and Local Policies Plan</p>	
<p>Clauses 8 and 9 impose a statutory duty on the district council to prepare a plan strategy and a local policies plan. These documents</p>	<p>Whilst the Council recognise the need for a faster, more flexible plan making process clarification is required on a number of issues:</p>

taken together constitute a local development plan. The local development plan must set out the district council's objectives and policies in relation to the development and use of land in its district. The district council must take account of the matters listed in these clauses, including the Regional Development Strategy and must carry out a sustainability appraisal for the proposals in each document. The Department may prescribe the form and content of both the plan strategy and the local policies plan.

- The proposed status of the options paper and associated consultations as outlined above.
- Clarification or examples are needed on the strategic content of the document and the proposed evidential base to support the development.
- Clearer guidance is required on the engagement and role of the Department / Central Government generally, in respect of the public inquiry stage.
- The Council would seek to further explore the mechanisms for dealing with the Commissioners report following the public inquiry. The proposed option for the Department to issue the binding report that could direct the Council to adopt a plan, modified from that developed through participation in a full public inquiry process, is not considered appropriate.

Resource and capacity issues for carrying out a sustainability appraisal also need to be fully assessed.

The Council considers that there should be some flexibility by local councils in relation to developing local plans and strategies to reflect local circumstances.

Within Clause 8, the Council would highlight the fact that within UK law, waste sites have to be identified as part of the plan strategy and that the waste plans sit alongside this master-plan /"plan strategy" and would therefore call for the same in our jurisdiction.

We would stress the importance of Waste Management and would seek clarity as to where the Councils Waste Plans sit within the proposed developments from the department. In the absence of specific reference to Waste Plans within the Bill, we would request that further guidance is produced and that any future Waste Plans can be aligned with changes in waste planning and can also incorporate the principles of Sustainable Development. This lack of clarity within the Planning law could potentially incur infraction proceedings if it leads to ambiguity about land use.

Clause 10: Independent examination

<p>This clause requires the district council to submit its plan strategy and local policies plan to the Department for independent examination and makes provision for the Department to cause an independent examination to be carried out by the PAC or a person appointed by the Department. The purpose of the examination will be to determine whether the plan strategy or local policies plan is sound and whether it satisfies the requirements relating to its preparation. Any person who makes representations seeking a change to the plan strategy or local policies plan has a right, if they so request, to appear in person at the examination.</p> <p>After completion of the independent examination, the person appointed to carry out the examination must make recommendations on the plan strategy or local policies plan and give reasons for those recommendations.</p>	<p>The Council would have concerns in relation to the proposed soundness test of the inquiry evidence. Whilst the evidence may be provided by a number of government agencies that lie outside of local government control the Council will be required to assess and defend the robustness of this evidence.</p> <p>The Council has concerns in relation to the level of scrutiny proposed by the Department in the development plan process with the potential for this to contribute to delays.</p> <p>The Council considers that it is more appropriate for the local authority responsible for the plan development and the programme management to appoint and work with the examiner/ commissioner.</p> <p>In relation to sub section 10 (5) (b), the Council feels that the provisions as set out lacks clarity and should be removed as it affords the person undertaking the independent examination a range of discretion in the context of independent examination which is excessive.</p> <p>In order to safeguard the objectivity and impartiality of the planning process, the Department should only appoint a person other than the PAC to conduct a hearing in exceptional circumstances when there are unacceptable delays caused by the increasing workload of the PAC. The wording of the statute would need to be amended to incorporate this exceptional clause.</p>
<p>Clause 11: Withdrawal of development plan documents</p>	
<p>This clause enables a district council to withdraw its plan strategy or local policies plan at anytime before it submits it to the Department for independent examination. However, if either of these documents has been submitted for independent examination, it can only be withdrawn by direction of the Department.</p>	<p>The Council considers that it is more appropriate for the local authority responsible for the plan development and the programme management to be responsible for the withdrawal of development plan documents at all stages.</p>
<p>Clause 12: Adoption</p>	
<p>This clause requires the Department to consider the recommendations</p>	<p>The Council would request further exploration on the process for</p>

<p>of the independent examination and provides a power of direction for the Department to undertake one of three options at this stage. It can direct the district council to adopt the development plan document as originally prepared; adopt the document with such modifications as may be specified in the direction or direct the district council to withdraw the development plan document. The district council must comply with the direction within such time as may be prescribed and adopt the plan strategy or local policies plan by resolution of the council as directed.</p>	<p>considering the inquiry advisory report. The Council considers the proposed process whereby the Department would have the option for issuing a binding report as inappropriate and suggests that the final step in advance of adoption should either be independent or carried out by Councils in consultation with the regional planning body.</p> <p>The Council would be concerned that there appears to be an absence of a consultation or dialogue between the department and the Council prior to the adoption of the development plan.</p>
<p>Clause 13: Review of local development plan</p>	
<p>This clause requires the district council to carry out a review of its development plan at such times as the Department may prescribe and to report to the Department on the findings of the review.</p>	<p>The Council recognises the need to regularly review and monitor local development plans and considers that local councils should have responsibility for triggering the review process.</p>
<p>Clause 14: Revision of plan strategy or local policies plan</p>	
<p>This clause empowers a district council to revise a plan strategy or local policies plan at any time (after adoption). If a review under clause 13 indicates that they should do so, or they are directed to do so by the Department, then they must carry out a revision. Revisions to a plan strategy or local policies plan must comply with the same requirements as those which apply to the preparation of a plan strategy or local policies plan.</p>	<p>The Council recognises the need to regularly review and monitor local development plans to ensure up to date coverage. However the Department must recognise and commit to the significant resources input this will require both by Councils and those wider agencies involved in the process</p>
<p>Clause 15: Intervention by Department</p>	
<p>This clause allows the Department, if it thinks that a plan strategy or local policies plan is unsatisfactory, to direct a district council to modify the plan strategy or local policies plan at any time before it is adopted. The district council must comply with the direction.</p>	<p>The Council has general concerns on the level of potential scrutiny or intervention proposed by the Department.</p> <p>The emphasis and focus should be on a supportive role and approach to engagement with councils responsible for plan development and a more positive stance should be outlined on how the Department can assist local councils rather than emphasis on powers to intervene.</p>
<p>Clause 16: Department's default powers</p>	

<p>This clause contains default powers for the Department to prepare or revise a district council's plan strategy or local policies plan if it thinks the district council is failing to properly carry out these functions itself. The district council must reimburse the Department for any expenditure it incurs in exercising these powers.</p>	<p>The Council has general concerns on the level of intervention proposed by the Department. Emphasis should be on a support and assistance on the development plan process.</p>
<p>Clause 17: Joint plans</p>	
<p>This clause enables two or more district councils to jointly prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan. It also sets out the arrangements which are to apply in such a case. If any district council withdraws from an agreement to prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan, it will be possible for the remaining district council(s) to continue with the preparation of the plan strategy or local policies plan if it satisfies the conditions required for it to be treated as a "corresponding document".</p>	<p>The Council considers that the decision on the joint plan strategy process should be made by the relevant local authorities.</p>
<p>Clause 18: Power of Department to direct councils to prepare joint plans</p>	
<p>This clause enables the Department to direct two or more district councils to prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan. In the instance of the Department issuing such a direction no district council may withdraw from the joint working and the preparation of (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan must continue to its natural conclusion.</p>	<p>The Council considers that the decision on the joint plan strategy process should be made by the relevant local authorities.</p> <p>The power to give direction without some means of independent testing whether such a direction is reasonable would seem in appropriate.</p>
<p>Clause 19: Exclusion of certain representations</p>	
<p>This clause allows the district council, PAC or person appointed by the Department to disregard representations in relation to a plan strategy or local policies plan if the representations are made in respect of anything that is done or proposed under certain orders or schemes made under the New Towns Act (Northern Ireland) 1965; the Housing (Northern Ireland) Order 1981; Part 7 of the Planning (Northern Ireland) Order 1991; the Roads (Northern Ireland) Order 1993; or a</p>	<p>Given the strategic importance of Waste Management we cannot deliver the requirements of the EC Landfill Directive and Waste Framework Directive without adequate waste infrastructure (including provision for storage, collection, reprocessing and treatment of waste). We would therefore ask that, subject to the Waste plan for a specific area, specific waste facilities, such as household recycling centres and civic amenity sites, are excluded under subsequent regulation.</p>

<p>simplified planning zone scheme or an enterprise zone scheme under this Bill. These Orders and this Bill set out specific procedures for considering the representations and objections concerned.</p>	<p>The Council would also request that the Bill allows for the exclusion of amenities such as automatic public conveniences. Currently these are permitted if a street works licence is obtained from the DRD. If these are not excluded will this continue to be the case?</p>
<p>Clause 20: Guidance</p>	
<p>This clause requires that any body involved in carrying out any function under this part must have regard to any relevant guidance issue by the Department, Department for Regional Development or Office of First Minister and Deputy First Minister.</p>	<p>The proposals for reform appear to leave Regional planning split across the two departments (i.e. DRD and DOE) with the majority of local planning returning to local councils. The Council would suggest that efforts should be taken to rationalise and streamline the whole planning system within Northern Ireland with the emphasis on the regional function supporting the delivery of the proposed local planning system by Councils</p>
<p>Clause 21: Annual monitoring report</p>	
<p>This clause requires district councils to report annually to the Department on whether the policies in the plan strategy or local policies plan are being achieved. The clause also provides powers for the Department to make regulations prescribing what information an annual report must contain, the period it must cover, when it must be made and the form it must take.</p>	<p>The Council would support monitoring and review of the development plan process however adequate resources that reflect the proposed additional responsibilities, processes and requirements are needed.</p>
<p>Clause 22: Regulations</p>	
<p>This clause gives the Department the power to make regulations in connection with the exercise by any person of local development plan functions.</p>	<p>The Council seeks clarification in the role of local authorities when drawing up regulations for the development plan function. As the role of local development plan is proposed to be transferred to local councils they should be closely involved in the regulation process.</p>

Part 3: Planning Control

Clause 23: Meaning of “development”	
<p>This clause carries forward the broad definition of the meaning of development and clarifies what is deemed to be included under the term, “building operations”. It also lists the operations or uses of land which, for the purposes of the Bill, do not involve development of land. An amendment is included to exclude (for certain buildings specified by direction) structural alteration consisting of partial demolition from the definition of development.</p>	<p>The Council supports this clause</p>
Clause 24: Development requiring planning permission	
<p>This clause maintains the requirement for planning permission to be sought for developing land. Permission is not required to return to a former land use after planning permission which is time bound expires. Development orders can grant planning permission without applications being required. Enforcement notices carry implicit permission for the use of the land for any purpose it could have been legally used for if the development which is being enforced against had not been carried out.</p>	<p>The Council supports this clause</p>
Clause 25: Hierarchy of Developments	
<p>A new hierarchy of developments is defined and the Department can make regulations as to the classes of development which fall into either the major developments or local developments categories. The Department can require a specific application which would normally be a local development to be dealt with as if it is a major development.</p>	<p>The Council considers that the thresholds to determine the scale of potential major applications will vary across the different local authority areas and thresholds should be set to reflect this.</p> <p>The threshold proposed for major developments do not reflect the potential for similar developments to have differing impacts that depend on the locality within the region rather than the scale of the individual proposal. The Council suggest that it may be more appropriate to consider whether or not such proposals would be in accordance with the local development plan.</p> <p>The introduction of any threshold system should be related to the potential impact and the justification for central government intervention linked to the consideration of broader issues or impacts beyond that of the local authority area.</p>

Clause 26: Development's jurisdiction in relation to developments of regional significance	
<p>This clause allows the Department to make regulations as to which applications falling within the major developments category should be submitted directly to it. Developers must approach the Department if the proposed development falls above prescribed thresholds and the Department will decide if the application is regionally significant or involves a substantial departure from the development plan, and is to be dealt with by it instead of the district council. An exception is made for urgent development by the Crown where application can be made directly to the Department. Applications under this clause follow the process similar to that previously used for Article 31 applications under the 1991 Planning Order, with the option for a public inquiry to be held by the PAC or a person appointed by the Department. If an application raises national security or security of premises issues, an inquiry route must be followed. The decision of the Department is final for these applications.</p>	<p>The proposed upper threshold for major development could be exceeded by a significant number of proposed developments in Belfast and potentially undermine the ability of the new Council to manage the process of development within the city.</p> <p>The Council would suggest that the hierarchy should be simplified and the call-in or article 31 process(es) clarified to reflect the very limited circumstances where it is proposed to reserve decision making to the Minister.</p> <p>The Council have concerns in relation to arrangements for calling in projects centrally which has the potential to undermine the local authority and local democracy. The work of the retained regional planning functions should be focussed on the provision of a strategic framework for the development of the region and the consideration of the very limited number of regionally significant projects or infrastructure.</p> <p>Decisions relating to regionally significant applications must also have regard for the local development plan and indeed the Council's view on the proposals as inevitable all planning decisions are local in their nature.</p> <p>In order to ensure the impartiality and independence of any hearing it is recommended that the PAC be appointed to this role. A ministerial appointment should be made only in the most exceptional of circumstances.</p>
Clause 27: Pre-application community consultation	
<p>Obligations are placed on the developer to consult the community in advance of submitting an application if the development falls within the major category. This includes those major developments which the Department will determine because they are of regional significance. The minimum period of consultation is 12 weeks, and regulations will</p>	<p>The Council would agree that pre application consultation with communities should be a statutory requirement in respect of regionally significant applications to ensure the process is open and transparent and allow communities the opportunity to influence the proposal at an early stage.</p>

<p>prescribe the minimum requirements for the developer. Additional requirements may be placed on the consultation arrangements for a particular development if the district council or Department considers it appropriate.</p>	<p>The applicant should be responsible for the community consultation. Further clarification of guidance in relation to the relationship with the formal statutory process, including details on the statutory consultees, is required.</p> <p>Clarification should be provided in relation to the requirements and what is considered to constitute both the process and the definition of communities for the purposes of an application's potentially broad areas of impact. Liaison with Councils in relation to the proposed arrangement may facilitate the development of effective consultation processes.</p>
<p>Clause 28: Pre-application community consultation report</p>	
<p>After the community consultation in clause 27, a report must be produced and this is to be submitted with the application. Regulations can be made as to what this should contain.</p>	<p>The Council would support the production of a report. Information on the outcome of community involvement and the steps taken to address community concerns should be provided.</p>
<p>Clause 29: Call in of applications, etc., to Department</p>	
<p>This allows the Department to direct that certain applications (including those where the Secretary of State or the Department of Justice have certified that an application raises national security or security of premises issues) be referred to it instead of being dealt with by the district council. It covers applications which would not be over the thresholds specified in clause 26. The process for determination is then the same as for the regionally significant developments of that clause, with the option for a public inquiry. An inquiry route must be followed if an application raises national security or security of premises issues. The decision of the Department is final for these applications.</p>	<p>The Council would request procedures to ensure that local council's views on the application are considered and that councils are involved in the formulation of conditions in the event of an approval.</p> <p>The provisions set out under this clause should detail the circumstances in which the department is entitled to invoke this power – as it stands this provision may be viewed as being excessive.</p>
<p>Clause 30: Pre-determination hearings</p>	
<p>The Department can require the district council through subordinate</p>	<p>The Council agrees with the legislation to allow pre-determination</p>

<p>legislation to provide the opportunity for the applicant to have a hearing before the district council, as part of the application process, for certain types of applications. The procedures for the hearings will be decided by the district council concerned, and it will decide on the parties which will have a right to attend the hearing.</p>	<p>hearings at the discretion of the local authority.</p>
<p>Clause 31: Local developments: schemes of delegation</p>	
<p>This clause requires each district council to prepare a scheme of officer delegation, stating the application types which they will allow the decision to be taken by one planning officer rather than the council. The scheme must be kept under regular review. The decision will have the same effect as one taken by the council. In individual cases the district council will be able to decide that an application which would normally fall within this scheme should be determined by the council.</p>	<p>The Council would support a scheme of officer delegation with the option for an application to be removed from this scheme at the request of the Council committee.</p> <p>Section 31 (a) The Council would suggest that consideration be given to replacing the word 'must' with 'may'....and delete the sub-sections <u>(a) (i) and (ii)</u></p> <p>Accordingly, consideration should be given to the removal of sub-section 3 under this clause.</p>
<p>Clause 32: Development orders</p>	
<p>The Department must make a development order stating the types of development which are granted planning permission and those for which permission must be applied for to the district council or Department. The grant of permission can include permission with conditions if necessary. In the case of permitted development, the district council and Department will have the power to direct in relation to a particular case or area of land that the permission granted by the order does not apply, and an application must be made.</p>	<p>The Council would support the drawing up of development orders jointly with local authorities.</p>
<p>Clause 33: Simplified planning zones</p>	

<p>This clause lays the basis for simplified planning zones by defining them and by prescribing their content and effect. The effect of a simplified planning zone is to grant planning permission for development specified in the scheme or for development of any specified class.</p>	<p>The Council would request further clarification and discussion in relation to the introduction of simplified planning zones.</p> <p>In principle the planning reform proposal should result in a more effective and speedier planning process which would eliminate the need for simplified planning zones.</p>
<p>Clause 34: Making and alteration of simplified planning zone schemes</p>	
<p>This clause enables a district council to make or alter a simplified planning zone scheme at any time in any part of its area. The exception is where a scheme has been approved by the Department rather than adopted by the district council. In such cases, the consent of the Department is required before a scheme may be altered by the relevant district council.</p> <p>In making or altering a simplified planning zone scheme district councils must take account of the regional development strategy, any guidance issued by the Department and any other matters either prescribed in regulations or contained in a direction given by the Department.</p>	<p>The Council would request further clarification and discussion in relation to the introduction of simplified planning zones.</p> <p>The Council would raise concerns of the proposal for blanket development zones. Much of the development within Belfast will be brownfield development therefore there will need to be express provision to provide the necessary soil investigation reports prior to approval. Or alternatively the zonal permission will be granted subject to such analysis being made available to the council and, where containments do exist, mitigating measures can be enforced. Particular problems may arise where unsuitable development takes place on land where particular measures are required prior to the land being developed. Consequently, the granting of Simplified Planning Zones needs careful site-wide consideration prior to their establishment. The conditional granting of planning permission in such zones would only be an effective control mechanism if conditions are appropriately adhered to and enforced. We therefore call for subsequent regulation that requires the developer to ensure that all the relevant statutory agencies are consulted in advance of the determination.</p>
<p>Clause 35: Simplified planning zone schemes: conditions and limitations on planning permission</p>	
<p>This clause describes the types of conditions and limitations which may be placed on planning permission specified in a simplified planning zone scheme. It also covers the effects of a simplified planning zone on development other than that for which permission has been granted under the scheme.</p> <p>Clause 36: Duration of simplified planning zone scheme</p>	<p>The Council would request further clarification and discussion in relation to the introduction of simplified planning zones.</p>

<p>This clause provides that a simplified planning zone scheme shall last for a period of ten years from the date when it was adopted by the district council or approved by the Department. Upon expiry of the scheme, the planning permission granted by the scheme shall no longer have effect except where development authorised by it has already been commenced.</p>	<p>The Council would request further clarification and discussion in relation to the introduction of simplified planning zones.</p>
<p>Clause 37: Alteration of simplified planning zone scheme</p>	
<p>This clause sets out the effect of alterations to an existing simplified planning zone scheme. Such alterations range from the inclusion of additional land in the scheme to the exclusion of land previously included in the scheme and the withdrawal of planning permission.</p>	<p>The Council would request further clarification and discussion in relation to the introduction of simplified planning zones.</p>
<p>Clause 38: Exclusion of certain descriptions of land or development</p>	
<p>This clause provides that a number of specified types of land or development may not be included in a simplified planning zone. These include land designated as a National Park, land designated as an area of outstanding natural beauty, land declared to be an area of special scientific interest and land declared to be a national nature reserve.</p> <p>The Department also has the power to make an order preventing a simplified planning zone from granting planning permission in relation to certain specified areas of land or development of a specified description.</p>	<p>The Council would request further clarification and discussion in relation to the introduction of simplified planning zones.</p> <p>The Council would recommend under <i>Section 38 (1)b</i> that included within the lands subject to exclusion from simplified planning zones is:</p> <ul style="list-style-type: none"> ○ Air Quality Management Areas declared under Article 12 of the Environment (Northern Ireland) Order 2002 (NI 7) ○ Land identified as Contaminated Land under Articles 50 and 51 of the Waste and Contaminated Land (Northern Ireland) Order 1997 <p>The proposed inclusion would help safeguard human health.</p>
<p>Clause 39: Grant of planning permission in enterprise zones</p>	

<p>This clause declares the effect of an enterprise zone designation in planning terms. It also describes the effect where modifications to an existing scheme are made. Planning permission granted under an enterprise zone scheme may be withdrawn in relation to certain developments where a direction to that effect is made by the Department.</p>	<p>The Council would request further clarification and discussion in relation to the introduction of enterprise zones.</p>
<p>Clause 40: Form and content of applications</p>	
<p>The format of applications for planning permission is governed by this clause. A development order may specify information and documents which must accompany an application and the form and content of it. The provisions of the order can cover applications for any consent, agreement or approval required by this Bill. This clause requires certain applications for planning permission and consent to be accompanied by a statement about the design principles and concepts that have been applied to the development and a statement about how issues relating to access to the development have been dealt with. Powers are also provided to enable the applications to which this is intended to apply to be prescribed in subordinate legislation.</p>	<p>The Council would support this clause and the inclusion of a statement about how the issues relating to amenity, nuisance and human health have been dealt with as these are of equal if not greater significance than the issues highlighted in the proposed Article 40 (3) and a greater emphasis should be placed on whether a site is fit for its intended end use.</p>
<p>Clause 41: Notice, etc., of applications for planning permission</p>	
<p>The publicity requirements for applications previously contained in the 1991 Planning Order have been amended. Instead of replicating the previous provisions, this clause reflects the situation in England, Wales and Scotland, where the power to specify the publicity requirements is contained in subordinate legislation. This will allow the requirements to be regularly reviewed to keep up to date with changing media.</p>	<p>The Council would support this clause</p>
<p>Clause 42: Notification of applications to certain persons</p>	
<p>This clause carries forward the requirement for one of four certificates to be submitted with each application to satisfy the district council or Department that the owner has consented to or is aware of the</p>	<p>The Council would support this clause</p>

application for development of their land. It covers land held in tenancy, and makes it an offence to issue a false certificate. The form of these certificates can be prescribed by development order.	
Clause 43: Notice requiring planning application to be made	
The district council may serve a notice on an owner or occupier requiring them to apply for planning permission for development which has been carried out without this having been granted in advance. It is an offence not to comply with this in the time specified within the notice. Provisions are included for a change of ownership and withdrawal of notices.	The Council would support this clause
Clause 44: Appeal against notice under section 43	
The notices served under clause 43 can be appealed, and the three grounds for this are set out in this clause. Appeals are made to the PAC and the appellant has the opportunity to appear before and be heard by the Commission, as does the district council.	The Council would support this clause
Clause 45: Determination of planning applications	
The procedure for determining a planning application requires the district council or the Department to have regard to the local development plan and any other material considerations. Representations made must be taken into account when determining the application.	The Council would support this clause
Clauses 46 to 49: Power to decline to determine subsequent or overlapping applications	
These clauses clarify and expand the cases where a district council or the Department may decline to determine subsequent, repeat or overlapping applications. Existing powers within the 1991 order are expanded to allow district councils to decline to determine a repeat application where the PAC has refused a similar deemed planning application within the last 2 years. District councils may also decline to	The Council would support this clause

determine overlapping applications made on the same day as a similar application and where similar applications are under consideration by the PAC.	
Clause 50: Duty to decline to determine application where section 27 not complied with	
If the pre-application community consultation requirements in clause 27 have not been complied with, the district council or Department must decline to determine the application. The district council or Department can request additional information in order to decide whether to decline the application.	The Council would support this clause however the community consultation requirements should be clear to remove any uncertainty that would be subject to challenge and could introduce delays into the process. Clear guidance on what is defined as community and clear guidance on the consultation process is required.
Clause 51: Assessment of environmental effects	
Regulations may be made by the Department requiring the environment effects of development to be a consideration when determining a planning application. Can I suggest amending the last sentence to read 'This allows the EU requirements to be recognised in Northern Ireland planning legislation'	<p>The Council would welcome the introduction of regulations requiring that all the Environmental effects of a development become a material consideration when determining a planning application. At present, planning guidance note PPG24 cites noise as a material consideration. We welcome that this will now be formally recognised in statute. The City council has long argued that Planning Policy Guidance should have recognised Air Quality, Contaminated land, Odour and lighting as material considerations. We would ask that the proposed regulations include all of the aforementioned environmental effects. We agree that the Regulations should reflect the requirements of all relevant current and future EU regulations and standards.</p> <p>Further we would call for that these requirements do not duplicate or compromise other construction standards that are being enforced by the council. To this we would therefore that construction standards be dealt with under the building regulations. This is line with government thinking in England and Wales.</p>
Clause 52: Conditional grant of planning permission	
Planning permission can be granted by the district council or	The Council would support this clause and adequate resources should

Department with conditions. These can relate to regulation of the land use, or restoration of the land at the end of a specified period of time.	be available to monitor and ensure the conditions are met.
Clause 53: Power to impose aftercare conditions on grant of mineral planning permission	
The power to impose aftercare conditions is made available to district councils and the Department to ensure mineral sites are restored to the required standard once development has finished	The Council would support this clause
Clause 54: Permission to develop land without compliance with conditions previously attached	
A person who has been granted planning permission with conditions can apply under this clause to have them removed, provided the time has not expired on the planning permission. The form and content of applications will be set out in the development order. The district council or Department can amend or replace the conditions or remove them completely if it considers appropriate.	Clear guidance should be given for the reason for the removal of planning condition such as a change in planning policy or other material consideration.
Clause 55: Planning permission for development already carried out	
This clause allows the district council or Department to grant planning permission retrospectively on application. This can cover development which has no planning permission or which did not comply with conditions attached to a permission, including a time condition.	<p>The Council would request consideration be given to the introduction of a premium fee for retrospective planning applications to act as a deterrent that focuses on the obligation to seek approval for proposals of clarification prior to the commencement of development. The fee should be proportionate to the level of the development and the level of uncertainty surrounding the form of development and associated provision for permitted development.</p> <p>The Council would also request that consideration be given within the Bill to the necessity to indemnify councils in the matters relating to retrospective approval or alternatively give robust investigatory powers and appropriate resources to determine such applications</p>
Clause 56: Directions etc. as to method of dealing with applications	
The Department may make a development order to specify how applications are to be dealt with. It can direct that the district council is restricted in its power to grant permission for some developments, and	<p>Further clarification is required on this clause.</p> <p>Again it is noted that the power of the department to veto locally taken</p>

require it to consider conditions suggested by the Department before granting permission on an application. A development order may require district councils and the Department to consult specified authorities or persons before determining applications. A development order can also specify who applications need to be sent to under the Bill, and who should in turn be sent copies	decisions seems excessive.
Clause 57: Effect of planning permission	
This provision states that once planning permission is granted it has effect for the benefit of the land and of anyone who has an interest in the land at the time. If the permission includes the erection of a building, it can specify the use to which this building should be put. If the permission does not specify a use, then it is assumed to be the use associated with the purpose for which the building was designed.	The Council would support the clause
Clause 58: Appeals	
If an application made to a district council is refused or granted subject to conditions the applicant may appeal to the PAC. The previous time limit for lodging an appeal is reduced from 6 months to 4 or such other period as may be prescribed by development order. If the applicant or district council wish, they may appear before and be heard by the Commission.	The Council would support the clause
Clause 59: Appeal against failure to take planning decision	
An applicant may ask the PAC to determine their planning application if a district council has not done so within a specified or agreed time (a "non determination appeal").	The Council would support the clause
Clause 60: Duration of planning permission	
Every planning permission granted or deemed to be granted, will continue to be subject to the condition that the development must begin within 5 years of the date on which permission is granted (or such other period as considered appropriate by the Department or district council which granted the permission).	The Council would support the clause in the present climate but the length of duration should be kept under review. The Council would suggest that measures are introduced to address or counteract any potential increase in technical starts.

Clause 61: Duration of outline planning permission	
Outline planning permission establishes for the applicant whether a proposal is acceptable in principle before embarking on the preparation of detailed plans (“reserved matters”). Unless provided otherwise reserved matters must be submitted for approval within 3 years of the grant of outline planning permission and development must be begun within 5 years of the grant of outline permission or 2 years from the final approval of reserved matters.	The Council would support the clause
Clause 62: Provisions supplementary to sections 60 and 61	
This clause includes ancillary provisions required for the working of clauses 60 and 61 above. These include defining planning authority as a district council, the Department, the PAC (when planning permission is granted on foot of an enforcement appeal) and the Department of Enterprise Trade and Investment when planning permission is deemed to be granted under Schedule 8 of the Electricity (NI) Order 1992 (NI 1). Those operations which establish the time of commencement of development are also defined.	The Council would support the clause
Clause 63: Termination of planning permission by reference to time limit	
This clause allows a district council to issue a “completion notice” to require a development which has a time bound planning permission, and which has been begun, to be completed. The district council must give at least one year for the completion. Notices can be withdrawn by the district council if appropriate.	The Council would support the clause
Clause 64: Effect of completion notice	
Completion notices issued by the district council under clause 63 must be confirmed by the Department before they take effect. The person on whom it is served can request a hearing before the PAC, as can the district council. Once it takes effect the planning permission	The Council considers the agreement by the Department on completion notices as unnecessary.

expires at the end of the period allowed for the development's completion.	
Clause 65: Power of Department to serve completion notices	
This allows the Department to issue completion notices which have the same effect as those issued by the district council. It must consult the district council before doing so.	The Council considers the duplication of the authority for issuing completion notices by the Department as unnecessary. The Council suggests the function lies solely with the district council to avoid confusion.
Clause 66: Power to make non-material changes to planning permission	
District councils may make a change to a planning permission already issued on application. The change must not have any material effect on the permission, and it includes the power to amend or remove conditions or impose new ones.	The Council would support the clause
Clause 67: Revocation or modification of planning permission by council	
This clause allows a district council to revoke or modify any planning permission, provided the operations have not been completed or change of use has not yet occurred.	The Council would welcome the powers granted to it by virtue of this provision permitting a level of flexibility to revoke or modify permissions to ensure a consistency with the local development plan and to give a discretion predicated upon other material considerations.
Clause 68: Aftercare conditions imposed on revocation or modification of mineral planning permission	
This clause permits a district council to impose aftercare conditions where a mineral planning permission has been modified or revoked via an order served under clause 67.	The Council would support this clause
Clause 69: Procedure for section 67 orders: opposed cases	
This clause requires that an opposed modification or revocation order served under clause 67 by a district council must be confirmed by the Department before it can take effect. The person on whom it is served can request a hearing before the PAC, as can the district council. The Department may confirm an order with or without modification.	The Council considers the approval by Department on section 67 orders as unnecessary scrutiny
Clause 70: Procedure for section 67 orders: unopposed cases	
This clause allows for an expedited procedure for clause 67 cases in	The Council would support the clause

that the confirmation of the Department is not required.	
Clause 71: Revocation or modification of planning permission by the Department	
This gives the power for the Department to revoke or modify planning permission itself, after consulting the district council. The district council has the opportunity to request a hearing prior to its issue. The notice has the same effect as if it were issued by the district council, and applies to mineral permissions.	The Council would not support the clause and would seek its removal or at minimum seek further clarification on the circumstances in which the department may revoke or modify a planning permission given by the Council.
Clause 72: Orders requiring discontinuance of use of alteration or removal of buildings or works	
The district council can issue an order requiring a particular land use to stop or require buildings to be removed or altered. The NIHE has a duty to house anyone whose place of residence is displaced if there is no reasonable alternative.	The Council would support the clause
Clause 73: Confirmation by Department of section 72 orders	
The Department must confirm orders issued by the district council in clause 72 before they take effect. They may modify it before they confirm it. Notification requirements for the district council are contained in this clause, which take place at the same time as the notice is submitted to the Department for approval. The person on whom the notice is served has the opportunity to appear before and be heard by the PAC.	The Council considers the approval by Department on section 72 orders as unnecessary scrutiny and would seek its removal.
Clause 74: Power of Department to make section 72 order	
This allows the Department to issue an order under clause 72 instead of the district council, and it has the same effect. It must first consult the district council.	The Council considers the duplication of the authority for issuing section 72 orders by the Department as unnecessary. The Council suggests the function lies solely with the district council to avoid confusion.
Clause 75: Planning agreements	
This clause enables any person who has an estate in land to enter into a planning agreement with either the district council or the Department	The Council considers that the Article 40 approach has been underused in Northern Ireland and it also presented an element of

<p>(whichever is the relevant authority). A planning agreement may facilitate or restrict the development or use of the land in any specified way, require operations or activities to be carried out, or require the land to be used in any specified way. An agreement may also require a sum or sums to be paid to the relevant authority or to a Northern Ireland department on a specified date or dates or periodically. The relevant authority has the power to enforce a planning agreement by entering the land and carrying out the operations itself. Any expenses incurred through doing so are recoverable from the person or persons against whom the agreement is enforceable.</p>	<p>uncertainty to developers. The Council would support a revision to the method of obtaining developer contributions which would be linked to policies and infrastructure needs identified as part of the local development plan process.</p> <p>The emphasis should focus on local impacts and the provision of appropriate local infrastructure linked to the scale / impact of the proposal with the contributions managed by the district councils. Any contribution to broader infrastructure should be related to the provisions with the new Development Plan and provided in consultation with the appropriate statutory agency.</p> <p>Furthermore under subsection (4) of this article we would ask that the council has wider enforcement powers to ensure that all beneficiaries of such agreement may be made to comply with the Planning Agreement.</p>
<p>Clause 76: Modification and discharge of planning agreements</p>	
<p>This clause provides that a planning agreement may not be modified or discharged except by agreement between the relevant authority and the person or persons against whom the agreement is enforceable. It sets out the conditions under which a planning agreement may be modified or discharged and enables regulations to be made with respect to applications under subsection (4) and determinations under subsection (7).</p>	<p>The Council would support this clause</p>
<p>Clause 77: Appeals</p>	
<p>This clause enables a person who applies for the modification or discharge of a planning agreement to appeal to the planning appeals commission where the relevant authority fails to give notice of its determination to the applicant within such period as may be prescribed, or determines that a planning agreement shall continue to have effect without modifications.</p>	<p>The Council would support this clause</p>

Clause 78: Land belonging to councils and development by councils

This clause introduces new powers setting out the procedure for dealing with district councils' own applications for planning permission. The new powers are introduced to ensure district councils do not face a conflict of interest in dealing with their own proposals for development. The principle remains that district councils will have to make planning applications in the same way as other applicants for planning permission. Provisions are introduced for district councils to grant planning permission for their own development or for development carried out jointly with another person and for development to be carried out on land owned by district councils. Specifically, the new powers enable the Department to make regulations modifying the application of Parts 3 (Planning Control), 4 (Additional Planning Control - apart from Chapters 1 and 2 of that Part) and 5 (Enforcement) of the Planning Bill in relation to land of interested district councils; and the development of any land by interested district councils jointly with any other persons. The regulations will deal with governance arrangements and will ensure that conflicts of interest are avoided

The Council would support this clause, however, would seek consultation on the drafting of the relevant detailed subordinate legislation which emerges from this Clause.

Part 4: Additional Planning Control

Clause 79: Lists of buildings of special architectural or historic interest	
This clause will ensure that the Department will continue to compile lists for buildings of special historic or architectural merit. The Department will continue to consult with the Historic Buildings Council and the appropriate district council before it compiles or amends any list.	The Council would request further clarification on the councils role
Clause 80: Temporary listing: building preservation notices	
Under this clause the district council can issue a building preservation notice served on the owner or occupier, to protect a building in its area which is not a listed building and which is in danger of demolition or alteration which would affect its character. The notice remains in force for 6 months or until the Department either lists the building under clause 79 or notifies the district council that it does not intend to do so.	The Council welcomes additional measures to protect the built environment but additional resource capacity and technical expertise will be needed to carry out the function.
Clause 81: Temporary listing in urgent cases	
This clause enables the district council, where it appears urgent that a building preservation notice should come into force, to fix the notice conspicuously to an object on the building instead of serving the notice on the owner or occupier.	The Council welcomes additional measures to protect the built environment but further consideration must be given to the additional resource capacity needed to carry out the function.
Clause 82: Lapse of building preservation notices	
This clause applies where a building preservation notice ceases to be in force after the 6 month expiry period has lapsed or by departmental notification. A person who commits an offence under clause 84 "Control of works for demolition, alteration or extension of listed buildings" or clause 146 "Offence where enforcement notice not complied with" while the notice is current can still be prosecuted and punished even after the notice has ceased to be in force under clause 82. However, any applications for listed building consent – or any consent granted - while the notice was in force shall lapse. Likewise,	The Council would support this clause

any listed building enforcement notice served while the notice was in force shall cease to have effect.	
Clause 83: Issue of certificate that building is not intended to be listed	
This clause describes the circumstances in which the Department can issue a certificate that it does not intend to list a building. This also precludes the Department from listing that building for a period of 5 years or for the district council to issue a building preservation notice during that period.	The Council would request further clarification of the council's involvement in the listing process.
Clause 84: Control of works for demolition, alteration or extension of listed buildings	
This clause provides that carrying out unauthorised works on a listed building will be an offence, and sets out the penalties and the circumstances when works on a listed building may be defended from prosecution. It further establishes when works for demolition, alteration or extension are authorised and excludes ecclesiastical buildings from the workings of this provision.	The Council welcomes this measure to protect the built environment.
Clause 85: Applications for listed building consent	
This clause specifies that applications for listed building consent must be made in a manner and format which will be specified in regulations. The regulations shall specify that applications for consent must include statements about design principles, access to the building, publicity for the application and requirements as to consultation. Regulations must also specify requirements for the district councils to take account of responses from consultees.	The Council would request further consideration given to the additional resource capacity needed to carry out the function.
Clause 86: Notification of applications for listed building consent to certain persons	
This clause sets out the requirements to be satisfied before a district council will entertain an application for listed building consent.	
Clause 87: Call in of certain applications for listed building consent to Department	
Under this clause the Department may direct that certain applications (including those where the Secretary of State or Department of Justice	The Council has concerns on the wide scope by the Department to call in applications. This should only be used in limited circumstances to

<p>have certified that an application raises national security or security of premises issues) be referred to it instead of being determined by the district council. The direction may relate to individual applications or to a class of buildings as may be specified in the direction. The clause also allows the Department to call a public local inquiry to be held by the PAC or a person appointed by the Department. An inquiry route must be followed if an application raises national security or security of premises issues.</p>	<p>ensure local authorities retain the function to influence the development of their area.</p>
<p>Clause 88: Duty to notify Department of applications for listed building consent</p>	
<p>This clause places a duty on the district council, where it intends to grant an application for listed building consent, to first notify the Department providing details of the works for which consent is required. This allows the Department to decide if it wishes to call the application in.</p>	<p>The Council has concerns on the wide scope by the Department to call in applications. The scrutiny by the Department on the local councils decision process on listed buildings is unnecessary and should be dealt with through the consultation process.</p>
<p>Clause 89: Directions concerning notification of applications, etc</p>	
<p>This clause enables the Department to direct, in applications for listed buildings consent which it may specify, that clause 88 does not apply. Thus, while such a direction is in force, district councils may determine applications of the type specified in the direction in any way they think fit. The Department may also direct district councils to notify the Department and other specified persons of any listed building consent applications and district council decisions on those applications.</p>	<p>The Council has concerns on the wide scope by the Department to call in applications. The scrutiny by the Department on the local council's decision process on listed buildings is unnecessary and should be dealt with through the consultation process.</p>
<p>Clause 90: Decision on application for listed building consent</p>	
<p>This power ensures that an application for listed building consent may be refused, granted without conditions or granted subject to conditions. It also establishes the factors a district council or the Department must consider when deciding to grant listed building consent or any conditions that it wishes to attach to the consent.</p>	<p>The Council considers that the development control decisions on listed buildings should be the responsibility of local councils in consultation with statutory consultees.</p>
<p>Clauses 91 and 92: Power to decline to determine subsequent or overlapping application for listed building consent</p>	
<p>These clauses clarify and expand the cases where applications for</p>	<p>The Council supports this clause</p>

<p>subsequent (repeat) or overlapping listed building applications may be declined.</p>	
<p>Clause 93: Duration of listed building consent</p>	
<p>This requires that listed building consents must be granted subject to a condition that the works must begin within 5 years of the grant of consent or any other such time as the district council or Department may direct.</p>	<p>The Council would request further consideration on the duration of listed building consent.</p>
<p>Clause 94: Consent to execute works without compliance with conditions previously attached</p>	
<p>This clause relates to applications for listed building consent for the execution of works to a building without complying with conditions subject to which a previous consent was granted. An applicant can apply to a district council - or the Department if it granted the original consent to have the conditions (other than those relating to time limits) to which a previous listed building consent was subject changed or set aside if it is considered that they are no longer appropriate.</p>	<p>The Council would support this clause if the conditions applied are no longer appropriate.</p>
<p>Clause 95: Appeal against decision</p>	
<p>Under this clause an applicant can appeal to the PAC where their application to a district council for listed building consent or approval is refused or where they object to any conditions that have been imposed. As with appeals under clause 58 for planning applications, the appeal must be lodged with the Commission within 4 months or such other period as may be prescribed by development order. If the applicant or district council wish, they may appear before and be heard by the Commission.</p>	<p>The Council would support this clause</p>
<p>Clause 96: Appeal against failure to take decision</p>	
<p>An applicant may appeal to the PAC if a district council has failed to determine an application for listed building consent within a specified period or extended period as agreed in writing between the applicant and the district council.</p>	<p>The Council would support this clause</p>

Clause 97: Revocation or modification of listed building consent by council	
A district council may revoke or modify listed building consent in a manner similar to clause 67 that is used for the revocation and modification of planning permission. Such action can only be taken before authorised works are completed.	The Council would support this clause
Clause 98: Procedure for section 97 orders: opposed cases	
Under this clause section 97 orders made by a district council but which have been opposed by the parties specified in the clause, shall not take effect unless confirmed by the Department (following a hearing by the PAC if requested by an opposing party).	The Council considers this to be unnecessary scrutiny by the Department.
Clause 99: Procedure for section 97 orders: unopposed cases	
This clause applies where a district council has made an order under section 97 revoking or modifying a listed building consent and the owner or occupier of the land and all persons who the district council think will be affected by the order have notified the district council in writing that they have no objections. The Department's confirmation is not required in such cases.	The Council would support this clause
Clause 100: Revocation or modification of listed building consent by the Department	
This clause enables the Department to make an order revoking or modifying the consent to such an extent as it considers expedient but the Department must consult with the relevant district council before doing so.	The Council considers this to be unnecessary scrutiny by the Department and should be the responsibility of the Council to avoid duplication and confusion.
Clause 101: Applications to determine whether listed building consent required	
Under this clause if a person proposing to execute any works to a listed building wishes to have it determined as to whether the works would involve the alteration or extension of the building in a manner which would affect its character as a building of special architectural or historic interest, they may apply to the district council to determine the question.	The Council would support this clause

Clause 102: Acts causing or likely to result in damage to listed buildings	
This clause establishes that anyone carrying out unauthorised works on a listed building will be guilty of an offence. It also establishes that a person who fails to prevent damage or further damage resulting from this offence is guilty of a further offence.	The Council would support this clause
Clause 103: Conservation areas	
This clause enables and sets out the procedures whereby a district council can designate areas within its remit which it decides are of special architectural or historic interest with the objective to preserve or enhance its character or appearance. The clause also enables the Department to designate a conservation area but it must consult with the relevant district council before doing so. The district council or the Department must pay special regard to enhancing the character or appearance of these areas where the opportunity to do so arises. This amendment is the Department's response to the House of Lords "South Lakeland" ruling and allows its policy for the enhancement of conservation areas to be maintained.	<p>The Council would welcome responsibility to designate conservation areas but request further consideration be given to the additional resource capacity needed to carry out the function.</p> <p>The Council considers the duplication of the authority by the Department as unnecessary and designation should be carried out by Councils in consultation with the key statutory bodies.</p>
Clause 104: Control of demolition in conservation areas	
This clause prevents the demolition of unlisted buildings in conservation areas without consent. Such buildings should not be demolished without the consent of the appropriate district council or Department. The Department may specify by direction buildings to which this clause does not apply. An addition to this clause provides (following the House of Lords "Shimizu ruling") that structural alteration of buildings to which this clause applies, where the alteration consists of partial demolition, will also require consent. This effectively creates a new offence of partial demolition of an unlisted building in a conservation area without consent.	The Council would support this clause
Clause 105: Grants in relation to conservation areas	

<p>This clause permits the Department to continue to make grants or loans to offset expenditure incurred in the promotion, preservation or enhancement of the character or appearance of any conservation area.</p>	<p>The Council would support this clause but would request clarification on the role of local councils in this process.</p>
<p>Clause 106: Application of Chapter 1, etc., to land and works of councils</p>	
<p>This clause introduces new powers setting out the procedures for dealing with district councils' own applications for listed building consent. The provision of the Bill which apply are listed with an enabling power taken to allow the Department by regulations, to modify and to make exceptions from certain provisions of the Bill in their applicability to district councils.</p>	<p>The Council would request further consideration on this clause</p>
<p>Clause 107: Requirement of hazardous substances consent</p>	
<p>This clause continues the basis of control over hazardous substances and the requirement for hazardous substances consent.</p>	
<p>Clause 108: Applications for hazardous substances consent</p>	
<p>This clause is a regulation making power making provision for the form and content of consent applications and makes it an offence to supply false information. Regulations made under this clause may also require a district council to consult the Health and Safety Executive (HSENI) before determining an application for hazardous substances consent.</p>	
<p>Clause 109: Determination of applications for hazardous substances consent</p>	
<p>This clause gives the district council the power to grant or refuse hazardous substances consents, outlines certain factors that the district council shall have regard to and gives the district council the power to attach conditions to any consent. A new amendment requires a district council to have regard to the advice given by the HSENI</p>	

<p>during the consultation required by clause 108. A district council may only grant consent if the conditions are consistent with HSENI advice.</p>	
<p>Clause 110: Grant of hazardous substances consent without compliance with conditions previously attached</p>	
<p>This clause confers power for a district council or the Department to review the conditions subject to which the consent had previously been granted. Thus a person making a fresh application for hazardous substances consent can apply to have the conditions attached to the original consent reviewed.</p>	
<p>Clause 111: Revocation or modification of hazardous substances consent</p>	
<p>Under this clause where it appears to a district council that there has been a material change of use of land, or planning permission has been granted for development and the carrying out of which would involve a material change of use of such land, and the development to which the permission relates has been commenced, it may revoke the consent. The district council may revoke the consent if it relates to only one substance or, if it relates to more than one substance it may revoke it or revoke so far as it relates to a specified substance. Any person on whom a notice is served, by the district council, must be afforded an opportunity of appearing before, and being heard by, the PAC.</p>	
<p>Clause 112: Confirmation by Department of section 111 orders</p>	
<p>This clause confirms that an order under section 111 will not take effect unless it is confirmed by the Department. The Department may confirm the order either without modification or subject to such modification as it thinks fit. When the district council submits a section 111 order for confirmation it must also notify the landowner, any person who appears to it to be in charge of the land or any other person who, in its opinion will be affected by the order. This notice must also specify that any person on whom the notice is served can</p>	

appear before and be heard by the PAC. The Department must give such an opportunity to both that person and the district council.	
Clause 113: Call in of certain applications for hazardous substances consent to Department	
Under this clause the Department may direct that certain applications (including those where the Secretary of State or Department of Justice have certified that an application raises national security or security of premises issues) be referred to it instead of being determined by the district council. The direction may relate to individual applications or to a class of buildings as may be specified in the direction. The clause also allows the Department to call a public local inquiry to be held by the PAC or a person appointed by the Department. An inquiry route must be followed if an application raises national security or security of premises issues.	The circumstances in which the department may call in applications should be more particularly described.
Clause 114: Appeals	
This clause gives a right of appeal when an application for hazardous substances consent is refused or granted subject to conditions. The appeal is made to the PAC.	
Clause 115: Effect of hazardous substances consent and change of control of land	
This clause ensures that hazardous substances consent ceases to have effect if there is a change in the control of part of the land and requires that anyone taking control of the land must make a fresh application, unless an application for the continuation of the consent has previously been made to the district council. The district council is responsible for the grant of an application for the continuance of the consent and the Department will have no role in this regard. In dealing with an application the district council must have regard to any advice given by the HSENI in relation to the application.	
Clause 116: Offences	
Under this clause if there is a contravention of hazardous substances control the appropriate person will be guilty of an offence. This is the	Consideration should be given to a potential penalty of imprisonment.

<p>case when a quantity of hazardous substance (equal to exceeding a controlled quantity) is present on or has been present on, over or under land and there is no hazardous substances consent for the presence of that substance. Alternatively, an offence is committed if the quantity exceeds the maximum permitted by the consent or there has been a failure to comply with any conditions attached to the consent. The person guilty of the offence is the person knowingly causing the substance to be present, any person who allows it to present or the person in control of the land. It shall be a defence for the accused if it can be proved that they did know that the substance was present (or was present in quantities that contravened the consent), or if they can prove that all reasonable precautions were taken or that commissioning of the offence could only be avoided by taking action amounting to a breach of a statutory duty.</p>	
<p>Clause 117: Emergencies</p>	
<p>This clause ensures that this power will be retained by the Department only. The Department may make a direction that the presence of a hazardous substance specified in the direction is necessary for the effective provision of that service or commodity if it appears that the community is likely to be deprived of an essential service or commodity.</p>	
<p>Clause 118: Health and safety requirements</p>	
<p>This provision prevents conflict between any action that may be taken under the hazardous substances provisions and any relevant statutory provision. Where such conflict arises, any consent which allows these actions shall be void. There is a requirement to consult the HSENI when a consent or hazardous substances contravention notice is believed to be void in this manner and the consent must be revoked if HSENI advises that the consent or notice has been rendered void.</p>	
<p>Clause 119: Applications by councils for hazardous substances consent</p>	
<p>This clause introduces new powers setting out the procedures for dealing with district councils' own applications for hazardous</p>	

<p>substances consent. The provisions of the Bill which apply are listed with an enabling power taken to allow the Department by regulations, to modify and to make exceptions from certain provisions of the Bill in their applicability to district councils.</p>	
<p>Clause 120: Planning permission to include appropriate provision for trees</p>	
<p>This clause places a duty on a district council and the Department to make provision for the preservation or planting of trees when granting planning permission.</p>	<p>The Council would welcome the clause but request further consideration be given to the additional resource capacity needed to carry out the function.</p>
<p>Clause 121: Tree preservation orders: councils</p>	
<p>This clause allows district councils to make tree preservation orders (TPO). TPOs prohibit the cutting down or damaging of protected trees and can also secure the replanting of felled trees. TPOs can apply to an individual tree, a group of trees or woodland. The Department may make regulations as to the form of TPOs and the procedure to be followed in the making of such orders. No TPO shall apply to the cutting down, uprooting, topping or lopping of trees which are dying or dead or have become dangerous.</p>	<p>The Council would welcome the clause but request further consideration be given to the additional resource capacity needed to carry out the function.</p>
<p>Clause 122: Provisional tree preservation orders</p>	
<p>This clause allows a tree preservation order to be made with immediate effect by a district council, in circumstances which they deem to be urgent, and does not require previous confirmation.</p>	<p>The Council would welcome the clause but request further consideration be given to the additional resource capacity needed to carry out the function.</p>
<p>Clause 123: Power for Department to make tree preservation orders</p>	
<p>Under this clause the Department, after it has consulted the relevant district council, can decide to make a tree preservation order or amend or revoke an order.</p>	<p>The Council considers this as unnecessary duplication of responsibility.</p>
<p>Clause 124: Replacement of trees</p>	
<p>This clause gives the district council the power to require the owner of land where a TPO is in force to replace any trees that have been removed.</p>	<p>The Council would welcome this clause</p>

Clause 125: Penalties for contravention of tree preservation orders	
This clause provides for penalties to be imposed in respect of the contravention of a TPO. It also makes it an offence to cut down or destroy a tree in contravention of a tree preservation order, or to top or lop a tree in such a way as is likely to destroy it.	The Council would welcome this clause
Clause 126: Preservation of trees in conservation areas	
This clause applies the protection given by a TPO to trees within conservation areas. Thus it is an offence to carry out works to a tree within a conservation area unless notice was served of the intention to carry out works to the tree, consent was given or the works were carried out 6 weeks after the notice was issued and before the end of 2 years.	The Council would welcome this clause
Clause 127: Power to disapply section 126	
The Department can make regulations under this provision to disapply the requirement to preserve trees in conservation areas: section 126). This can relate to specified conservation areas, trees of specified species or size, trees belonging to specified persons or bodies or specified acts that may be carried out on the trees	The Council would not support this clause
Clause 128: Review of mineral planning permissions	
This clause and the provisions introduced by the schedules enable district councils to start a process resulting in an initial review of all mineral permissions granted in Northern Ireland thereby ensuring that their conditions meet modern expectations and current environmental standards. The provisions also prevent dormant sites from reopening without a review of the conditions attached to their permissions. A further duty is placed on district councils to instigate additional periodic reviews of all mineral sites. Although the majority of these functions will fall to the district councils, the Department will be able to require that certain applications for review are referred to it.	The Council would request further consideration be given to the additional resource capacity needed to carry out the function.
Clause 129: Control of advertisements	

<p>This clause enables the Department to make regulations for controlling the display of advertisements in the interests of amenity or public safety. These allow the regulation of the dimensions, appearance and position of advertisements and also require that the consent of the relevant district council is obtained before the advertisement can be displayed. The regulations may prohibit the display in any area of special control (which may be defined by means of orders made or approved by the Department) of all advertisements except advertisements of such classes as may be prescribed. Finally, planning permission is deemed to be granted where the display of advertisements, in accordance with regulations made under this clause, involves the development of land.</p>	<p>The Council considers this as unnecessary scrutiny by the Department on local development control decisions. A Planning Policy Statement is in place relating to the control of advertising.</p> <p>The Council welcomes the enforcement of advertisement control; however we would also see merit in the beneficiary of any unauthorised advertisement being liable to prosecution. Thus we would call for the powers of enforcement to include enforcement against all relevant persons. In addition we ask the department to enable Councils to issue fixed penalty notices in respect of this offence. This would support the intent of the Clean Neighbourhoods Bill in that the beneficiaries would also be liable to prosecution.</p>
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Part 5: Enforcement

<p>Clause 130: Expressions used in connection with enforcement</p>	
<p>This clause defines a breach of planning control and sets out that enforcement action constitutes the issuing of an enforcement notice or breach of condition notice.</p>	<p>The Council considers enforcement as an important function of the development management process and would request additional time to consider the issues.</p> <p>The Council would be generally supportive of the clause but require more detail of the proposed process, additional resources needed and the need for clarity of responsibility.</p>
<p>Clause 131: Time limits</p>	
<p>This clause sets out the time period within which action may be taken in respect of breaches of planning control, by establishing two different limitation periods for enforcement action i.e. the 4 year rule and the 10 year rule. Where the breach consists of carrying out without planning permission of building, engineering, mining or other operations no enforcement action may be taken after 4 years beginning with the date on which the operations were substantially completed.</p> <p>If the breach consists in the change of use of any building to use as a single dwelling-house no enforcement action may be taken after 4 years beginning with the date of the breach. In the case of any other breach of planning control no enforcement action may be taken after the end of 10 years beginning with the date of the breach.</p>	<p>The Council would be generally supportive of the clause but require more detail of the process.</p> <p>Whilst the Council welcomes the clarity for a single dwelling house to the four year rule, this would still appear to be a short period of time and is a cause for concern, especially with regard to the potential for risk to human health. Again issues about enforcement and the provision of adequate resources are critical to ensure proactive and effective policing of planning controls and a suitable and sufficient inspection regime.</p>
<p>Clause 132: Power to require information about activities on land and Clause 133: Penalties for non-compliance with planning contravention notice</p>	
<p>A district council may serve a temporary stop notice to halt a breach of planning control for a period of up to 28 days as soon as the breach is identified, without first having had to issue an enforcement notice. The district council has up to 28 days to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue. The provisions also impose certain limitations on activities on the land in</p>	<p>The Council would request additional time to consider the issues</p>

<p>question. Temporary stop notices issued under clause 134 are not applicable to residences, or to other activities which the Department can specify in regulations. They cannot be issued for development or activities whose time limits for enforcement have passed. Only one notice can be issued unless further enforcement action is taken. Clause 136 specifies that contravention of a notice issued under clause 134 is a criminal offence, punishable on summary conviction by a fine of up to £30,000 or on indictment by an unlimited fine.</p>	
<p>Clause 137: Issue of enforcement notice by councils</p>	
<p>This clause provides the district council with the power to issue an enforcement notice to remedy a breach of planning control. An enforcement notice must be served within defined time periods on the owner or occupier of the land to which the notice relates and on any other person with an estate in the land.</p>	<p>The Council would support this clause, however would suggest that provision should be made for an alternative arrangement for service in the event that the whereabouts of any of the relevant parties cannot be ascertained.</p>
<p>Clause 138: Issue of enforcement notice by Department</p>	
<p>This clause provides the Department with the power to issue an enforcement notice, however the Department must consult the district council for that area before doing so.</p>	<p>The Council considers this as an unnecessary duplication of responsibility which has the potential to cause confusion.</p>
<p>Clause 139: Contents and effect of enforcement notice</p>	
<p>The enforcement notice has to be sufficiently clear to enable any recipient to understand exactly what breach of planning control is alleged and what action is required to remedy this. A timeframe must be stated in the notice during which time all actions to remedy the breach must be completed. The district council or Department have the flexibility to require only partial remedy of a breach of planning control where, at the time of enforcement, a total remedy is not considered necessary.</p>	<p>The Council would request further time to consider the contents and effect of enforcement notices.</p>
<p>Clauses 140 and 141: Variation and withdrawal of enforcement notices by councils or Department</p>	
<p>These clauses allow for the withdrawal or variation of an enforcement</p>	<p>The Council would support this clause but considers the function</p>

notice by the district council or Department without prejudice to their power to issue a further notice.	should be the responsibility of a single authority.
Clause 142: Appeal against enforcement notice	
This clause includes provisions which specify the grounds on which an appeal against an enforcement notice can be made and the procedures for making a valid appeal. Before determining an appeal under these provisions the PAC must provide all appellants, the relevant district council or the Department the opportunity to appear before and be heard by the Commission.	The Council would support this clause
Clause 143: Appeal against enforcement notice – general supplementary provisions	
This clause provides that the PAC must quash an enforcement notice, vary it or uphold it on appeal. The Commission may correct any mistakes in the notice or vary its terms as long as the correction or variation can be made without injustice to either the appellant, the district council or the Department.	The Council considers the involvement of the Department and the local council in the process as unnecessary and confusing.
Clause 144: Appeal against enforcement notice – supplementary provisions relating to planning permission	
When determining an appeal under clause 142 the PAC can grant planning permission for the matters the notice refer to, change the conditions of an existing permission or issue a certificate of lawfulness of existing use or development. The PAC must notify the appellant of the amount of the planning application fee and specify the period within which it must be paid. If the fee is not paid within that period then the appeal on the planning merits will lapse and the Commission will be barred from considering or determining the deemed planning application.	The Council would support this clause
Clause 145: Execution and cost of works required by enforcement notice	
This clause includes provisions which allow the district council or the Department to enter land and carry out steps to ensure compliance with an enforcement notice and to recover from the land owner any	The Council considers the involvement of the Department and the local council in the process as confusing and responsibility should lie with a single authority.

reasonable expenses in doing so. It is an offence, punishable on summary conviction to a fine not exceeding level 3 on the standard scale, to wilfully obstruct anyone authorised to carry out those steps.	
Clause 146: Offence where enforcement notice not complied with	
This clause deals with offences for not complying with an enforcement notice. The maximum level of fine, on summary conviction, is £30,000. A person can be convicted and fined on indictment for this type of offence. The courts when determining the level of fine shall have regard to any financial benefit, which has accrued or appears likely to have accrued, in consequence of the offence. The clause also provides that a person found guilty of an offence, and who continues not to comply with a notice, may be guilty of a further offence, and subsequently, of still further offences until there is compliance with a notice.	The Council would request further time to consider the offence process in relation to the enforcement notice.
Clause 147: Effect of planning permission etc., on enforcement or breach of condition notice	
If planning permission is subsequently granted to development mentioned in an enforcement notice or a breach of condition notice, the notice ceases to have effect in relation to the part or parts of the development which has permission. This does not remove any previous liability of a person for non-compliance with either notice.	The Council would support this clause
Clause 148: Enforcement notice to have effect against subsequent development	
Once an enforcement notice has been complied with the requirements within it continue to stand for future use of the land to which it relates. Discontinuance of use must be permanent, as must alteration or removal of buildings. To breach this requirement is punishable by a level 5 fine (currently £5,000).	The Council would support this clause but would request further consideration on the level of fine.
Clause 149: Service of stop notices by councils and Clause 150 Service of stop notices by Department	
These clauses allow the district council or the Department to issue a stop	The Council would support the stop notice guidance but consider the

<p>notice requiring that an activity for which an enforcement notice has been issued should cease. The Department must consult the appropriate district council before serving a stop notice. A stop notice has immediate effect unless the district council or Department state otherwise. The contravention of a stop notice is an offence; the maximum level of fine for contravention of a stop notice is £30,000 on summary conviction; a person may be convicted and fined on indictment for this type of offence; and courts are required to take account of any benefits accrued or which appear likely to accrue as a result of the offence.</p>	<p>duplication of responsibility between the Council and the Department as confusing.</p>
<p>Clause 151: Enforcement of conditions</p>	
<p>This clause provides for the district council to issue a breach of condition notice for breaches of conditions attached to a planning permission. It may be served if there is clear evidence that a planning condition has not been complied with. Non-compliance with a breach of condition notice shall be an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).</p>	<p>The proposed level of call in of planning applications by the Department and their imposition of conditions on applications may result in local councils carrying out enforcement action where they may not agree with the proposal or condition.</p>
<p>Clause 152: Fixed penalty notice where enforcement notice not complied with and Clause 153: Fixed penalty notice where breach of condition notice not complied with</p>	
<p>Clauses 152 and 153 enable an authorised officer of a district council, to issue a fixed penalty notice for the offences of failure to comply with an Enforcement Notice or Breach of Condition Notice, offering the offender an opportunity to discharge any liability for the offence without having to go to court. The amount of the penalty can be such amount as may be prescribed. The fixed penalty payable is reduced by 25% if paid within 14 days.</p>	<p>The Council would support this clause</p>
<p>Clause 154: Use of fixed penalty receipts</p>	
<p>This clause enables district councils to use the receipts from fixed penalty notices issued under clauses 152 and 153 for the purposes of enforcement functions or other functions specified in regulations.</p>	<p>The Council would support this clause In relation to other penalties for other offences under the Bill it would ask that consideration is given to these monies similarly being made</p>

	available to it for the discharge of functions
Clause 155: Injunctions	
This clause gives the district council a power to apply to the Courts for an injunction to prevent any actual or threatened breach of planning control. This power also applies in relation to unauthorised demolition or works to a listed building, breaches of a tree preservation order and certain acts in respect of trees in a conservation area; and, any actual or apprehended breach of hazardous substances control.	The Council would support this clause
Clause 156: Issue of listed building enforcement notices by councils	
This clause enables a district council to issue a listed building enforcement notice where the requirement to obtain listed building consent for works to a listed building has not been complied with. This includes if conditions associated with that consent are not being adhered to. The notice must set out the steps to be taken to remedy the breach and the timeframe allowed.	The Council would support this clause, however would request consideration is given to the additional technical expertise and resources needed to carry out this function.
Clause 157: Issue of listed buildings enforcement notices by Department	
The Department may issue a listed building enforcement notice, after consulting the appropriate district council, and this has the same effect as a notice issued by a district council.	The Council considers this as an unnecessary duplication of resources
Clause 158: Appeal against listed building enforcement notice	
Notices issued under clauses 156 or 157 may be appealed and this clause sets out the timings and possible grounds for appeal. Appeals are determined by the PAC, and the Commission can grant listed building consent or discharge/substitute any condition attached to previous consent.	The Council would support this clause
Clause 159: Effect of listed building consent on listed building enforcement notice	
If listed building consent is subsequently granted to development mentioned in a listed building enforcement notice, the notice ceases to have effect in relation to the part or parts of the development which has consent. This does not remove any previous liability of a person for non-compliance.	The Council would support this clause
Clause 160: Urgent works to preserve building	

<p>The district council or the Department may carry out and recover the costs of urgent works to either a listed building or one which the Department has directed that this clause shall apply. The Department may direct this clause applies to buildings in a conservation area. A notice issued to the owner can be appealed to the PAC on the grounds specified in this clause.</p>	<p>The Council considers that the remit should lie with a single authority to avoid duplication of resources.</p>
<p>Clauses 160 and 161: Hazardous substances contravention notice (including variation)</p>	
<p>These clauses enable district councils to issue a hazardous substances contravention notice for a contravention of hazardous substances control. Service requirements and specifics to be contained within the notice are outlined in clause 160. A notice can be withdrawn, and the Department is required to make regulations to cover appeals provisions and may make further regulations as to the specific requirements of the notice. Clause 162 allows the district council to vary a notice which it has already issued, regardless of whether the notice has taken effect.</p>	<p>The Council would support this clause, however would request consideration is given to the additional technical expertise and resources needed to carry out this function</p>
<p>Clauses 163 and 164: Enforcement of duties as to replacement of trees and appeals against section 163 notices</p>	
<p>These provisions include enforcement measures in respect of the protection of trees that are subject to a TPO with a power for the district council to enforce the duty to replace trees subject to a TPO. They also set out (in clause 164) specific grounds and method of appeal against enforcement notices issued under clause 163 in relation to trees.</p>	<p>The Council would support this clause, however would request consideration is given to the additional technical expertise and resources needed to carry out this function</p>
<p>Clause 165 and 166: Execution and cost of works required by clause 163 notice and enforcement of controls as respects trees in conservation areas</p>	
<p>Clause 165 enables the district council to enter onto land to replant trees subject to a TPO, and to recover any costs incurred as a civil debt. Clause 166 places a duty on an owner to replace trees that are removed in a conservation area.</p>	<p>The Council would support this clause, however would request consideration is given to the additional resources needed to carry out this function.</p>
<p>Clause 167: Enforcement of orders under section 72</p>	
<p>This clause includes provisions dealing with enforcement of orders (issued under clause 72) requiring the discontinuance of use or alteration or removal of buildings or works. The district council or the Department is</p>	<p>The Council considers that the remit should lie with a single authority to avoid duplication of resources.</p>

<p>permitted to enter the land and carry out any works required by the order, and recover the costs as a civil debt. Provisions cover change of ownership of land and the failure to comply being attributed to a third party.</p>	
<p>Clauses 168 and 169: Certificate of lawfulness of existing use or development and Certificate of lawfulness of proposed use or development</p>	
<p>Clause 168 enables a person to apply to the district council for a certificate to establish whether any existing use or development, or non compliance with a condition on a planning approval is lawful. Provisions cover the circumstances for issue and actual requirements of the certificate. Clause 169 enables any person to apply to the district council to establish whether any proposed use or development, or any operations to be carried out in, on, over or under land is lawful. Again, provisions cover the circumstances for issue and actual requirements of this certificate.</p>	<p>The Council would support this clause</p>
<p>Clauses 170 to 173: Certificates under sections 168 and 169, supplementary provisions, offences, appeals against refusal or failure to give decision on applications, further provision as to appeals under clause 172</p>	
<p>Clause 170 covers supplementary provisions associated with procedures for obtaining/revoking the certificates under clauses 168 and 169 to be specified by development order. Clause 171 deals with offences and sets out that any person who makes a false or misleading statement in respect of procuring a certificate will, on summary conviction, be liable to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both. Clause 172 provides a right of appeal to the PAC against a district council's refusal or failure to give a decision on applications for a certificate. The PAC can grant the appellant the certificate or dismiss the appeal if it considers the district council's decision appropriate. In relation to appeals clause 173 provides the opportunity for all appellants and the district council to appear before and be heard by the commission.</p>	<p>The Council would require further consideration of this clause</p>

Clause 174: Enforcement of advertisement control	
This clause allows a district council to deal with enforcement of advertisement control. On conviction for display of an advertisement contravening regulations, made under clause 129 for the control of advertisements, a person is liable to a maximum fine up to level 4 on the standard scale (currently £2,500). The defendant may be a landowner / occupier or those whose advertisement is being displayed.	The Council would support this clause.
Clauses 175, 176 and 177: Rights to enter without warrant, under warrant and supplementary provisions	
Clause 175 allows any person authorised by the district council to enter land without a warrant to carry out enforcement functions under this Bill. The provisions also enable the Department to enter land prior to issuing an enforcement notice, listed building enforcement notice, stop notice, following consultation with the district council. Clause 176 provides that if entry to land has been refused or the case is urgent, the district council or Department can obtain a warrant to enter the land. Clause 177 covers administrative arrangements for the entering of land either with or without a warrant, and includes offence provisions e.g. an offence of obstructing the entry of authorised persons.	The Council would support this clause but request clarification of the role the Department to avoid confusion and duplication of resources.
Part 6: Compensation	
Clause 178: Compensation where planning permission is revoked or modified	
Clause 178(1) transfers the functions under sections 26 and 27 of the Land Development Values (Compensation) Act 1965 (“the 1965 Act”) from the Department to district councils on the day of transfer. This excludes certain functions to be retained by the Department, namely setting the time within which the compensation claim is to be lodged (section 20(2) as applied by section 26(6)) and compensation recovery (section 24 as applied by section 27(5)). Clause 178(3) ensures that references to the Department in any relevant statutory instrument or provision passed before the transfer date will be construed as references to a district council.	<p>The Council would request further time to consider this clause. There appears to be over regulation by the Department in the process.</p> <p>Notwithstanding the above, the Council would recommend compensation should not be payable in the circumstances when the revocation or modification of permission is to secure compliance with some subsequent rule of law (subsequent to the grant of planning permission). Nor should compensation be payable in circumstances in which the applicant has misled the Council in respect of making the application for permission.</p>

<p>Sections 26 and 27 of the 1965 Act provide for the payment of compensation by a council when planning permission is revoked or modified. Section 26(5) applies section 29 of the 1965 Act which makes provision for how compensation is measured in instances where it relates to new development or “Schedule 1 development”. Schedule 1 development, so called because it is specified in schedule 1 of the 1965 Act, includes a number of relatively minor types of development (more generally known as existing use) which might be expected to receive planning permission as a matter of course. New development is development not specified in this schedule. Section 26(6) applies section 22 specifying how compensation is to be paid. Section 27 allows a district council to apportion compensation between different parts of the land to which the claim relates and also to register details of the apportionment.</p>	
<p>Clause 179: Modification of the Act of 1965 in relation to minerals</p>	
<p>This clause makes provision corresponding to Article 97 of the Planning (Northern Ireland) Order 1972. It modifies section 26(1) of the 1965 Act so that a claim for expenditure or loss when planning permission for the winning and working of minerals is revoked or modified shall not be entertained in respect of buildings plant or machinery unless the claimant can prove that they are unable to use them except at the loss claimed. The reason is that such machinery can often be moved and the provision ensures that only the net loss is paid on revocation.</p>	<p>The Council would request further time to consider this clause</p> <p>See comments at Clause 178 above</p>
<p>Clause 180: Compensation where listed building consent revoked or modified</p>	
<p>This clause provides that compensation is payable when listed building consent is revoked by a district council under section 97 or by the Department under section 100. The clause specifies that a claim may be made for abortive expenditure or loss or damage, but not for expenditure on work carried out before the grant of listed building consent nor for other loss or damage arising out of anything done or omitted to be done before the grant of consent. Clause 180(4) applies the provisions from the 1965 Act relating to revocation and modification to this provision.</p>	<p>The Council would request further time to consider this clause</p> <p>See comments at Clause 178 above</p>

Clause 181: Compensation in respect of orders under section 72 or 74	
This clause provides for compensation when a discontinuance order is made by a district council under section 72 or by the Department under section 74. Clause 181(5) ensures that no compensation is payable if a purchase notice has been served in respect of an estate in the land or if the estate has been purchased by the district council under Part 7.	The Council would request further time to consider this clause
Clause 182: Compensation in respect of tree preservation orders	
Under this clause a tree preservation order may make provision for the payment of compensation if consent is refused to fell, lop or top a tree which is the subject of a tree preservation order with a consequent loss to the owner of the value of the timber. The compensation is not related to the development value of the land. Thus a claim for compensation could not include an item for loss of development value if refusal to allow felling of the tree means that the land cannot be developed. A claim may also be made for any loss or damage caused by a consent granted subject to conditions.	The Council would request further time to consider this clause
Clause 183: Compensation where hazardous substances consent modified or revoked	
This clause provides that compensation is payable when there is a change to the person in control of part of the land to which a hazardous substances consent relates and the district council revokes or modifies the consent upon an application for its continuation under section 115(2).	The Council would request further time to consider this clause
Clause 184: Compensation for loss due to stop notice	
Compensation is payable when a stop notice is served by a district council (under clause 149) or the Department (under clause 150). A person who has an estate in or occupies the land is entitled to compensation if the enforcement notice is quashed on grounds other than those mentioned in clause 142(3)(a) (planning permission granted for those items contained in the stop notice on appeal); if the enforcement notice is varied, other than that mentioned in clause 142(3)(a), so that the activity prohibited by the stop notice ceases to be relevant; if the notice is withdrawn for reasons other than the grant of planning permission where it is assumed that there was a withdrawal because the notice was invalid or was not warranted; or if it was withdrawn (and by implication should never have been served).	The Council would request further time to consider this clause

Clause 185: Compensation for loss or damage caused by service of building preservation notice	
This clause provides that compensation is payable when a building preservation notice ceases to have effect without the building being included on the list of buildings of special architectural or historic interest compiled by the Department under clause 79.	The Council would request further time to consider this clause
Clause 186: Compensation for loss due to temporary stop notice	
This clause applies if a temporary stop notice is issued to halt an alleged breach of planning control and the activity specified is subsequently authorised either by a planning permission or development order, if a certificate in respect of the activity is issued under clause 168 (Certificate of lawfulness of existing use or development - CLUD) or granted by virtue of an appeal against a decision not to issue a CLUD under clause 172 or if the district council withdraws the temporary stop notice. The clause provides for compensation for any loss that may have occurred under these circumstances.	The Council would request further time to consider this clause
Clause 187: Compensation where planning permission assumed for other development	
A claim for compensation following modification or revocation of planning permission can be made to a district council under article 26 of the 1965 Act. It may, however, appear to the district council that planning permission could have been granted for development other than that which gave rise to the claim. In such cases the district council may direct that it shall be assumed that permission for that other development would be granted either unconditionally or conditionally when assessing the amount of compensation payable.	The Council would request further time to consider this clause
Clause 188: Interpretation of Part 6	
This clause provides that Part 6, "compensatable estate" has the same meaning as in the 1965 Act.	The Council would support this clause

Part 7: Purchase of estates in certain land affected by planning decisions

Clause 189: Service of purchase notice	
This clause enables a land owner, who claims their land is left without any reasonable beneficial use by virtue of a planning decision, to issue a purchase notice to seek to have the district council acquire it from them. A purchase notice must be served within the time and manner specified by a development order.	On initial review of this clause the Council would suggest that this provision may be unnecessary. This places an unreasonable burden on district councils even though it does appear that the provision would be rarely, if ever, used. The Council would request further time to consider this clause
Clause 190: Purchase notices: Crown land	
This clause sets out the conditions whereby a purchase notice may be served in respect of Crown land only.	The Council would request further time to consider this clause
Clause 191: Action by council following service of purchase notice	
Under this clause after a purchase notice is served on the district council it may respond in a number of ways. The district council may serve a notice that it is willing to comply with the purchase notice or it may serve a counter-notice by way of objection. A counter-notice must state the reasons why the district council does not wish to comply with the purchase notice.	The Council would request further time to consider this clause
Clause 192: Further ground of objection to purchase notice	
This clause allows the district council to object to development of land which although incapable of beneficial development in its existing state, ought to remain undeveloped in accordance with a condition attached to a previous planning permission.	The Council would request further time to consider this clause
Clause 193: Reference of counter-notices to Lands Tribunal	
This clause empowers the Lands Tribunal to decide if either the purchase notice or the district council's counter-notice should be upheld. Clause 194: Effect of valid purchase notice	The Council would request further time to consider this clause
Clause 195: Special provision as to compensation under this Part	
Under this clause if compensation is payable in respect of expenditure incurred in carrying out any work on land under section 26 of the 1965	The Council would request further time to consider this clause

Act, then, if a purchase notice is served on that land, it is payable in respect of the acquisition of that estate in pursuance of the purchase notice and shall be reduced to an appropriate value.	
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Part 8: Further provisions as to historic buildings

Clause 196: Historic Buildings Council	
This clause authorises the continuance of the Historic Buildings Council which is unique to Northern Ireland within the UK. It also outlines the functions of the Council as keeping under review the general state of preservation of listed buildings, advising the Department on the preservation of such buildings as the Department may refer to it and such other functions as conferred on it by statutory provision.	The Council would request clear guidance on the role of the different bodies relating to listed buildings. Consideration should also be given to the additional technical expertise and resources needed to carry out this function by local councils.
Clause 197: Grants and loans for preservation or acquisition of listed buildings	
Under this clause the Department has the option to make a contribution for expenditure (through grants or loans) incurred in the repair or maintenance of a listed building, or in the upkeep of land comprising any such building or repair or in the maintenance of objects kept in the building. The Department, in conjunction with Department of Finance and Personnel, can make grants or loans to the National Trust towards the cost of acquiring; a listed building; any land associated with any such building; or any objects which are usually kept in the building.	The Council would request clarification on the roles of the different bodies relating to listed buildings. Responsibilities seem to be split between the Department, the Northern Ireland Environmental Agency and local councils which may cause confusion.
Clause 198: Acquisition of listed buildings by agreement	
Under this clause the Department may acquire a listed building or land comprising such a building by agreement, purchase, lease or otherwise or by gift. The Department may also acquire objects which have been kept in a listed building or an estate vested in the Department or in a listed building under its control or management. The Department may at its discretion make arrangements for the management, custody and use of property acquired or accepted by it.	The Council would request clarification on the role of the Department and local councils on listed buildings.

Clause 199: Acceptance by Department of endowments in respect of listed buildings	
This clause sets out arrangements for the acceptance by the Department of endowments in respect of listed buildings.	The Council would request clarification on the role of local councils in relation to endowments in respect of listed buildings
Clause 200: Compulsory acquisition of listed buildings	
Under this clause the Department may intervene and compulsorily acquire the listed building and any land associated with the building if the Department determines it necessary to preserve the building or for its proper control or management. Compulsory acquisition procedures are set out within the clause.	The Council would request clarification on the role of local councils in relation to listed buildings acquisition.

Part 9: The Planning Appeals Commission (PAC)

Clause 201: The Planning Appeals Commission (PAC)	
This clause describes the continued governance arrangements of the PAC including its senior structure, impartiality and administration. These provisions were transferred to OFMdfM by the Departments (Transfer of Functions) Order (NI) 2001, SR 2001, No. 229.	
Clause 202: Procedure of appeals commission	
This clause describes the internal procedures of the PAC, including appointment of members of the appeals commission to hear appeals, inquiries / independent examinations or hearings and after consultation with the commission and the Department (OFMdfM), the appointment of assessors to sit with the members appointed to advise the member on any matters arising.	The Council would request further time to consider this clause.

Part 10: Assessment of Council's performance or decision making

Clause 203: Assessment of council's performance	
This clause introduces new powers for the Department to conduct an assessment of a district council's performance or to appoint a person to do so. The assessment may cover the district council's performance of	The Council considers that the Department should have an assessment function to help support the introduction and enhancement of the new functions for local councils.

<p>its planning functions in general or of a particular function.</p>	<p>The Council would have reservations in relation to the high levels of scrutiny proposed through a number of measures by the bill. The Council considers that the emphasis by the Department should be in providing assistance to local councils in areas of poor performance rather than highlighting poor performance</p> <p>The Council requires clarification on information requirements by the Department for assessment which could have significant resource implications for Councils.</p> <p>The various formal development plan processes and local development management will involve working with external agencies, including the Planning Appeals Commission, which are outside of direct local council responsibility. The Council would suggest that consideration must be given to ensuring their statutory engagement in order to facilitate the effective management and delivery of the local planning process.</p>
<p>Clause 204: Assessment of council's decision making</p>	
<p>This clause gives the Department or an appointed person the power to conduct an assessment of how a district council deals with applications for planning permission. In order to capture long term trends, this power is limited to exclude decisions made within the year preceding the date that the district council are notified of the assessment. The assessment may cover the basis for determinations, the processes by which they have been made and whether they were in accordance with the local development plan or conformed to advice given by the Department.</p>	<p>The Council is concerned in relation to the level of scrutiny by the Department.</p> <p>The Councils processing of local planning applicants is dependent on statutory consultee duty to respond to consultation. The Council would request clarification on monitoring arrangements on consultee response performance and timeframes.</p> <p>A significant element of the evidence required for the proposed local plan process would not be under the control of the future councils responsible for their development. The Council would recommend early involvement to ensure the contribution to and engagement in the different stages of the development plan process is binding on all appropriate government agencies</p>
<p>Clause 205: Further provision as respects assessment of performance or decision making</p>	
<p>This clause details the arrangement for assessments of district councils' performance or decision making. The Department is required to notify the</p>	<p>The Council considers that the arrangements should be drawn up in close consultation with local councils.</p>

<p>district council of its intention to carry out an assessment, and to indicate its intended scope, and where it appoints a person to carry out the assessment it is to advise the district council who the appointed person is. The Department will have powers to determine that the scope of an assessment under clause 204 may relate to a type of application, a period of time or a geographical area. For the purposes of any assessment the Department or the appointed person may require access to any premises of the district council and any documents which appear to be necessary for the purposes of the assessment. The clause allows the Department or the appointed person to require a person to give them such information as necessary and to attend in person to give the information or documents and requires the district council to provide the Department or the appointed person with every facility and all information which may reasonably be required. The Department or the appointed person must give 3 clear days notice of any requirement under this section and produce a document of identification if required to do so.</p>	
<p>Clause 206: Report of assessment</p> <p>The Department or the appointed person is required to prepare a report (an assessment report), and issue it to the district council. The report may recommend improvements which the district council should make. The district council is required to prepare and submit a response report to the Department within 3 months of receipt of the assessment report. This report will set out the extent, the manner and the period within which it proposes to implement the recommendations or reasons for declining to implement recommendations. Both reports must be published. The Department may issue a direction specifying actions where the district council declines to implement recommendations or appears not to be carrying out what it proposes in its response report. The Department must publish any such direction or variation of a direction.</p>	<p>The Council is concerned that the Department arrangements for assessment could have significant resource implications for Councils.</p>

Part 11: Application of Act to Crown Land

Clause 207: Application to the Crown	
Clause 206 applies the provisions of the Bill to the Crown with the exception of enforcement functions covered by clauses 145, 155, 160 and 165 of the Bill, subject to express provisions detailed in the remainder of Part 11. This means that the Crown requires planning permission or consent as required by the Bill and relevant subordinate legislation.	
Clause 208: Interpretation of Part 11	
This clause deals with the interpretation of Part 11 and includes various definitions.	
Clause 209 on Urgent Crown development and clause 210 on Urgent works relating to listed buildings on Crown land	
Covers instances where development by Crown bodies will be considered to be of significant public importance and require the processing of applications more quickly than permitted by the processing procedures of district councils. The new powers aim to streamline the process and provide for the direct submission of planning applications to the Department. A similar procedure is introduced for urgent works to a listed building on Crown land.	
Clause 211: Enforcement in relation to the Crown	
This clause provides that the Crown should remain immune from prosecution for any offence under the Bill. A district council or the Department is able to initiate enforcement action by, for example, serving enforcement notices but is not able to enforce them by entering land or making applications to the court without the consent of the appropriate authority (appropriate authority is defined in clause 208 of the Bill). In granting such consent the appropriate authority may impose such conditions as it considers relevant. This might mean, for example, that any site visit by the Department has to be accompanied, to take place at a pre-arranged time and/or to exclude certain parts of the site.	

Clause 212: References to an estate in land	
This clause deals with references to an estate in land and states that references to an “estate” in land includes a Crown estate.	
Clause 213: Applications for planning permission, etc. by Crown	
This clause sets out that, through subordinate legislation, the Department may modify or exclude any statutory provision relating to the making and determination of applications for planning permission or consent etc by the Crown.	
Clause 214: Service of notices on the Crown	
This clause deals with the service of notices on the Crown and states that notices under the Planning Bill must be served on the appropriate authority. In addition Section 24 of the Interpretation Act (Northern Ireland) 1954 in relation to the service of notices has been disapplied.	

Part 12: Correction of Errors

Clause 215: Correction of errors in decision documents	
The power to allow the Department to correct minor typographical errors in its decision documents/notices was introduced by The Planning Reform (NI) Order 2006 (No. 1252 NI 7). This power has now been amended by the current Bill. Firstly, the power to correct errors is now transferred to district councils and secondly, the requirement to first obtain the written consent of the applicant (or the landowner if that is not the applicant) has now been removed. The clause also allows a district council to correct an error if requested in writing by any person and if it sends a written statement to the applicant explaining the error and stating that it intends to make a correction.	The Council would support this clause
Clause 216: Correction notice	
Under this clause the district council must after making any correction or deciding not to make any correction, issue a notice in writing specifying the correction of the error or giving notice of its decision not to correct such an error.	The Council would support this clause

Clause 217: Effect of correction	
This clause describes the impact where a correction is made or where a correction is not made.	The Council would support this clause
Clause 218: Supplementary	
This clause defines a decision document and a correctable error for the purposes of this Part.	The Council would support this clause

Part 13: Financial Provisions

Clause 219: Fees and charges	
This clause contains provisions for the payment of both charges and fees relating to planning and consent applications. The provisions enable the Department to make regulations for the payment of charges or fees for the recovery of the costs of performing district council or departmental functions. OFMDFM may also make regulations for the payment of a charge or fee in respect of deemed planning applications or planning appeals. This clause also introduces new provisions for charging multiple fees for retrospective planning applications.	Funding and resourcing is pivotal to the Council being successful in implementing and enforcing the provisions of the proposed Bill. More detail is required in respect of proposed regulations and funding arrangements. The Council would welcome any arrangement permitting it to utilise funds raised by way of either penalty or fees in the application of any duties which it may hold under the Bill.
Clause 220: Grants for research and bursaries	
This clause allows the Department to make grants to research or education institutions relating to planning and design of the physical or built environment. Students undertaking particular courses may be awarded bursaries.	The Council would request clarification on local councils role in the grant process, commissioning of research and having access to the information produced.
Clause 221: Grants to bodies providing assistance in relation to certain development proposals	
These provisions allow the Department to award a grant to an organisation which is assisting the community with particular applications for development, or which is providing technical expertise to allow an application to be easily understood. Grants may also be made to organisations which aim to further the preservation, conservation and	The Council would request clarification on local council's involvement in this grant process.

<p>regeneration of historic buildings. The organisations being funded must not be profit making bodies.</p>	
<p>Clause 222: Contributions by councils and statutory undertakers</p>	
<p>This clause creates a discretionary power to allow statutory undertakers or other district councils to contribute to the costs of a council carrying a review under clause 3 – matters affecting development. Also available is a discretionary power allowing statutory undertakers or other district councils to contribute to another council’s costs when discharging specified planning functions under the Bill. Finally, the Department will be able to require councils to contribute to another council’s compensation costs when that council is carrying out certain specified functions under the Bill.</p>	<p>The Council would support the power to allow contributions to local council in carrying out survey work relating to the local development function. The Council would also request consideration of a mechanism to oblige the relevant government agencies to work with local councils.</p> <p>Council would request clarification in relation to Council contributing to another Councils compensation in the case that support was not given for the proposal.</p>
<p>Clause 223: Contributions by departments towards compensation paid by councils</p>	
<p>This clause provides a discretionary power whereby a government department can contribute to the compensation costs of a district council if those costs were incurred by a council decision or order made in the interest of services provided by that government department. Part 14: Miscellaneous and General Provisions</p>	<p>The Council would support this clause.</p>
<p>Clause 224: Duty to respond to consultation</p>	
<p>This clause introduces a requirement that those persons or bodies which are required to be consulted by a district council or the Department before the grant of any permission, approval or consent must respond to consultation requests within a prescribed period. The clause also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.</p>	<p>The Council would strongly support this clause, however, would seek further clarification on the intended obligations to be placed upon designated consultees to respond in a timely and appropriate manner and the role of the Department and council to enforce compliance with such obligations. This is particularly important in respect to the ability of councils to meet the proposed new ambitious timescales for processing planning applications and developing local area plans.</p> <p>The Council would also seek clarification within the Bill as to the process for managing advice received from consultees and the obligation placed upon councils to take on board such advice and manage conflicting views.</p>

Clause 225: Minerals	
<p>This clause provides for the application of the Bill to development consisting of the winning and working of minerals, subject to modifications. The circumstances under which mining operations are considered to be a “use” of land are stipulated.</p>	<p>The Council would support this clause</p>
Clause 226: Local inquiries	
<p>This clause allows the Department to hold a public inquiry when carrying out any of the functions of this Bill. The provisions of the Interpretation Act (NI) 1954 apply to these inquiries. The Department may make rules for the procedures to be followed during the inquiry process.</p>	<p>The Council considers that the decision to hold public inquiries should be made in close consultation with local councils.</p>
Clause 227: Inquiries to be held in public subject to certain exceptions	
<p>Given the changes in the role of the Secretary of State and the new role of the Department of Justice, following devolution of policing and justice, these provisions clarify the responsibilities of the Secretary of State and the Department of Justice in relation to inquiries. The provisions deal with procedures for planning applications, etc, where, in the opinion of the Secretary of State/the Department of Justice, the consideration by the council or Department of objections or representations received in relation to the application raise issues of national security or the security of Crown or other premises and that the disclosure of related information would be contrary to the national interest. The Secretary of State will have responsibility for issuing a relevant direction under clause 227 in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information relating to:</p> <ul style="list-style-type: none"> (a) national security; or (b) the measures taken or to be taken to ensure the security of any premises or property belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department; or (c) measures taken or to be taken to ensure the security of any premises 	<p>The Council would support this clause</p>

<p>or property which is used for the purposes of the armed forces of the Crown or the Ministry of Defence Police.</p> <p>The provisions also set out that the Department of Justice will have responsibility for issuing the relevant direction under clause 227 in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information (contrary to the public interest) relating to the measures to be taken to ensure the security of any premises or property other than premises or property mentioned above.</p>	
<p>Clause 228: Directions: Secretary of State</p>	
<p>This clause sets out that the Secretary of State may direct that certain evidence may only be heard by, or be open to inspection by, certain persons. If the Secretary of State is considering giving such a direction, the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting such evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.</p>	<p>The Council would support this clause</p>
<p>Clause 229: Directions: Department of Justice</p>	
<p>This clause sets out that the Department of Justice may direct that certain evidence may only be heard by, or open to inspection by, certain persons. If the Department of Justice is considering giving such a direction, the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting such evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.</p>	<p>The Council would support this clause</p>
<p>Clause 230: National security</p>	
<p>This clause contains the procedures for planning applications, consents</p>	<p>The Council would support this clause</p>

<p>and approvals where, in the opinion of the Secretary of State or as the case may be the Department of Justice, the consideration by a district council or the Department of objections or representations received in relation to the application raise issues of national security or matters relating to the security of Crown or other properties and the public disclosure of such information would be contrary to the national interest. Procedures will enable decisions to be made where, for security reasons, details of the development cannot be revealed but where to withhold such details would impact on the ability of interested parties to fully participate in the planning process. The Department will be required to hold a public local inquiry in such circumstances. The roles of the Secretary of State and the Department of Justice in relation to certification under this clause are split. The Secretary of State will have responsibility for the making of rules in circumstances where he has certified under this clause, the Department of Justice will have responsibility for the making of corresponding rules where that Department issues the relevant certification under this clause.</p>	
<p>Clause 231: Rights of entry</p> <p>This clause gives district councils and the Department the powers of entry they require to discharge their functions under this Bill. Powers of entry are also given to the Department of Social Development, Department of Finance and Personnel and the PAC in respect of their functions under this Bill.</p>	<p>The Council would have no comment on this clause.</p>
<p>Clause 232: Supplementary provisions as to powers of entry</p> <p>This clause sets out the obligations on a person exercising powers of entry under clause 231 to provide notice to occupiers and, if required, identification on arrival. Provisions covering trade secrets and damages to property are addressed.</p>	<p>The Council would support this clause</p>
<p>Clause 233: Supplementary provisions as to powers of entry: Crown land</p> <p>Additional provisions for the exercise of the powers of entry under clause 231 when the land is owned by the Crown are contained in this clause. Advance permission must be obtained from the appropriate</p>	<p>The Council would support this clause</p>

authority.	
Clause 234: Service of notices and documents	
This clause allows for the service of notices to be completed via electronic communication where the recipient has agreed to this. Provisions are contained for permission to be withdrawn and a list of notices to which this cannot apply is listed in paragraph (3).	The Council would support this clause
Clause 235: Information as to estates in land	
This clause allows a district council or the Department to require occupiers of premises to provide information to them on the owner, to enable them to serve a notice or other document on them. Failure to give this information within the stipulated timeframe is an offence.	The Council would support this clause
Clause 236: Information as to estates in Crown land	
This clause disapplies clause 235 when the land is Crown land. Powers are given to the district council or Department to request the same information as that in clause 235, and the authority must comply with this request.	The Council would support this clause
Clause 237: Planning Register	
This clause requires all district councils to keep and make available a planning register containing copies of the items listed, which includes all applications for planning permission. A development order may require the Department to populate the register of the relevant district council when an application is submitted directly to it, or it issues a notice under departmental reserved powers.	The Council would support this clause
Clause 238: Power to appoint advisory bodies or committees	
This clause allows the Minister to appoint bodies to assist the Department in any of its functions under this Bill.	The Council would request input into the decision to appoint bodies to assist in the functions of this bill.
Clause 239: Time limit for certain summary offences under this Act	

This clause gives jurisdiction to the Magistrates' court to hear complaints on offences relating to breaches of tree preservation orders and breach of condition notices if the complaint is made within 3 years from the time when the offence was committed or ceased to continue.	The Council would request further time to consider this clause.
Clause 240: Registration of matters in Statutory Charges Register	
This clause sets out the matters which are a permanent encumbrance on land or property and must be registered in the Statutory Charges Register.	The Council would support this clause.
Clause 241: Directions	
This clause confirms that any directions which may or must be given by a district council or the Department may be withdrawn, varied or revoked by a subsequent direction.	The Council would support this clause
Clause 242: Regulations and orders	
This clause details the Assembly controls which will apply to regulations and orders under the Bill.	The Council would support this clause

Part 15: Supplementary

Clause 243: Interpretation	
This clause contains interpretation provisions and defines a number of terms used throughout the Bill.	The Council has no comment on this clause
Clause 244: Further provision	
This clause allows the Department to make subordinate legislation to give full effect to the Bill including transitional or transitory provisions and savings in connection with the coming into operation of any provisions. A draft of such an order must be laid before and be approved by resolution of the Assembly.	The Council considers that subordinate legislation should be formulated in close consultation with local councils.
Clause 245: Minor and consequential amendments	
This clause provides for the amendments set out in Schedule 6 to have effect.	

Clause 246: Repeals	
This clause provides for the repeals set out in Schedule 7 to have effect.	
Clause 247: Commencement	
This clause concerns the commencement of the Bill and enables the Department to make Commencement Orders.	The commencement of the bill should be carried out in close consultation with the local councils.
Clause 248: Short title	
This clause provides a short title for the Bill.	