

National Assembly for Wales
Research paper

Comparison of the planning systems in the four UK countries

January 2016

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Comparison of the planning systems in the four UK countries

January 2016

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This paper describes and compares aspects of the current land use planning systems operating in the four UK countries. In particular, given the changes introduced by the UK Coalition Government (2010-2015) and the devolved administrations, it compares the extent to which the four planning systems now differ from each other. It also describes further proposals for change that are in the pipeline. This is an update of a previous version of this paper published in June 2013.

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01. Comparison of the planning systems in the four UK countries

01.1 Introduction

This paper describes and compares aspects of the current land use planning systems operating in the four UK countries. In particular, given the changes introduced by the UK Coalition Government (2010-2015) and by the devolved administrations, it compares the extent to which the four planning systems now differ from each other. It also describes further changes for each country that are in the pipeline.

All four countries have a planning system that is 'plan-led'. 'Plan-led' means that national and local planning policy is set out in formal development plans which describe what developments should and should not get planning permission, how land should be protected and seeks to ensure a balance between development and environmental protection in the public interest. Decisions on individual planning applications are made on the basis of the policies in these plans, unless there are other considerations that need to be taken into account. Each country also has definitions of types of development that are permitted without the need for a planning application and defines "use classes" where change of use within a class is normally permitted. An appeal system to review decisions on applications also operates in each country. Each country also has a system in place to enforce breaches of planning consent.

Although the basic structures of the four systems are similar there are differences in the detail and in how each system works. Recent changes introduced by the UK Coalition Government (2010-2015) have seen a greater divergence between the system in England and the other three countries in the last couple of years. England, Scotland, Northern Ireland and Wales now each have their own primary planning legislation. The system in Northern Ireland has been changed significantly recently with passing of planning functions to local Councils. The *Planning (Wales) Act 2015* received Royal Assent in July 2015, although not all of its provisions are yet in force.

02. The Legislative framework

02.1 England

In England, the main Planning Acts currently in force are:

- The ***Town and Country Planning Act 1990*** which consolidated previous town and country planning legislation and sets out how development is regulated.
- The ***Planning and Compulsory Purchase Act 2004*** which made changes to development control, compulsory purchase and application of the Planning Acts to Crown land.
- The ***Planning Act 2008*** which sets out the framework for the planning process for nationally significant infrastructure projects and provided for the community infrastructure levy.
- The ***Localism Act 2011*** which provides the legal framework for the neighbourhood planning powers and the duty to cooperate with neighbouring authorities.

02.2 Northern Ireland

Institutional arrangements are different in Northern Ireland compared to other parts of the UK. Ministers within departments are granted full executive authority in their respective areas of responsibility; however, they must achieve broad agreement from the Northern Ireland Executive to ensure cohesion.

On the 1st April 2015 a new two-tier planning system came into force under the ***Planning Act (Northern Ireland) 2011*** (2011 Planning Act), introducing a sharing of planning responsibilities between Councils and the Department of Environment (the Department)¹. This replaced the old system under the ***Planning (Northern Ireland) Order 1991*** where the Department of Environment held responsibilities for planning in Northern Ireland. Under the 2011 Planning Act, each new Council is the Local Planning Authority for its district Council area. The Councils now have responsibility for local development planning; development management and planning enforcement.

However the Department still holds responsibility for regionally significant and 'called-in' applications; regional planning policy; planning legislation; oversight and guidance for Councils and performance management.

The 2011 Act is supported by a significant programme of subordinate legislation. Further details of this can be accessed [here](#).

02.3 Scotland

There are two pieces of legislation that govern the operation of the Scottish planning system:

- The ***Town and Country Planning (Scotland) Act 1997*** is the basis for the planning system and sets out the roles of the Scottish Ministers and local authorities with regard to development plans, development management and enforcement. This Act was substantially amended by the ***Planning etc. (Scotland) Act 2006***.

¹ However, departmental change is expected in 2016 where regional planning could be moved to a new Department of Infrastructure. Until such time, responsibilities will remain with the Department of Environment.

- The ***Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997*** is mainly concerned with the designation and protection of listed buildings and conservation areas. This Act was amended by the ***Historic Environment (Amendment) Scotland Act 2011*** and the ***Historic Environment (Scotland) Act 2014***.

02.4 Wales

Most parts of the town and country planning system in Wales are devolved. However the primary legislative framework is broadly the same as in England, although there are some differences in both primary and related subordinate legislation as it applies to Wales. The ***Planning (Wales) Act 2015*** that received Royal Assent in July 2015, once fully in force, will introduce further differences. The system currently operates at two levels:

- Nationally: through the Welsh Government and the Planning Inspectorate; and
- Locally: through Local Planning Authorities.

A third 'regional' tier could be introduced by the 2015 Act. Parts of Wales may be identified as Strategic Planning Areas and for these areas Strategic Planning Panels will be established (see section 4 below).

- The principal legislative framework for the planning system in Wales is now provided by the:
 - ***Town and Country Planning Act 1990***;
 - ***Planning and Compulsory Purchase Act 2004***; and
 - ***Planning Act 2008***;
 - ***Planning (Wales) Act 2015***

The majority of executive functions and secondary legislative powers contained in the first two acts were transferred to the National Assembly for Wales by the ***National Assembly for Wales (Transfer of Functions) Order 1999***. These powers have subsequently been transferred to Welsh Ministers as a result of the ***Government of Wales Act 2006***.

- Since 2011 the Assembly has had competence to pass Acts in the general area of Town and Country Planning. The ***Planning (Wales) Act 2015*** is the first such Act.

03.National planning policy and guidance

03.1 England

The **National Planning Policy Framework** (NPPF) published in March 2012 sets out the UK Government's planning policies for England and how it expects these to be applied. The NPPF must be taken into account in the preparation of local plans and is a material consideration in planning decisions. Three further documents should be read in conjunction with the NPPF:

Planning policy for traveller sites, updated August 2015;

Technical Guidance to the National Planning Policy Framework, March 2012, provides additional guidance to local authorities on development in areas at risk of flooding and in relation to mineral extraction; and

National Planning Policy for Waste, October 2014.

In March 2014 the Government launched its online **Planning Practice Guidance** (PPG) which is designed to accompany the NPPF. It is the Secretary of State's view on how the NPPF's policies should be used in practice and to provide further information. The PPG is actively managed by the Department for Communities and Local Government and is frequently updated.

There are no specific policies for nationally significant infrastructure projects in the NPPF or PPG. The Secretary of State determines these in accordance with the *Planning Act 2008* and relevant **national policy statements** for major infrastructure, which cover the fields of energy, transport, water, waste water and waste.

03.2 Northern Ireland

Under the **Programme for Government** (PfG), the Northern Ireland Executive maps out goals for Northern Ireland in terms of planning and development with reference to sustainable development. This is carried forward by the departments that have responsibility for developing policy and legislation.

Generally the development of planning policy and guidance in Northern Ireland is the responsibility of the Department and operates on a single regional (ie: Northern Ireland) basis. However, Regional Strategic Planning and development policy is the responsibility of the Department of Regional Development (DRD) in the form of the **Regional Development Strategy 2035** (RDS).

The RDS, produced by the DRD, offers a strategic and long-term perspective on the future development of Northern Ireland up to 2035. Its purpose is to deliver the spatial aspects of the PfG and is therefore a framework for regional planning across Northern Ireland. The 2011 Planning Act requires the Department to ensure that any policy it produces is "in general conformity" with the RDS

The new planning system involves the move away from the existing suite of Planning Policy Statements (PPS) to a single **Strategic Planning Policy Statement (SPPS)**. The SPPS consolidates the suite of PPS into one document and provides the overarching planning principles from which Councils should develop their own planning policies within their new Local Development Plans (LDPs). It will also be material to individual planning decisions and appeals.

However, a transitional period is currently in operation until Councils develop their own planning policies under their LDPs (see section 5.2). This means that during this time the new Councils will

apply the policy of some of the old PPS together with the new SPPS when determining planning decisions. However, where there is difference between the two, the SPPS takes precedence. Once Councils have developed and published their own policies, the old PPS will cease to have effect. For more detail on the transition period, refer to the **SPPS**.

03.3 Scotland

The Scottish Government sets out the purpose of the Scottish planning system and its specific land use policies in the **Scottish Planning Policy**. Spatial aspects of Scottish Government policies are set out in the **National Planning Framework for Scotland 3**. Updated versions of both these documents were published in June 2014. More detailed subject specific advice and guidance is set out in a series of **Planning Advice Notes, Planning Circulars, Guides and Letters from the Chief Planner**.

03.4 Wales

Planning Policy Wales (PPW) was originally published by the Welsh Government in 2002 and sets the context for planning in Wales, under which Local Planning Authorities prepare their statutory Development Plans. It is the principal and authoritative source of national planning policy.

Updates to national planning policy are issued for consultation and then incorporated into the latest version of PPW. **Planning Policy Wales (Edition 7)** is the latest version of PPW, issued as an online document only, in July 2014.

Minerals Planning Policy Wales provides the equivalent planning policy framework for mineral extraction and related development.

Technical Advice Notes (TANs) contain detailed guidance in specific areas. There is an equivalent series for minerals, known as **Minerals Technical Advice Notes** (MTANs). There are currently 22 topic based TANs and two MTANs.

The **Planning (Wales) Act 2015** will introduce a new National Development Framework (NDF) that will set out national spatial planning policies. The NDF replaces the **Wales Spatial Plan** and will form part of the formal 'development plan' for Wales and development plans prepared by other bodies (Strategic and Local) must take the NDF into account. The NDF will also be used to designate Developments of National Significance (see Section 7 below).

04.Regional planning/strategies

04.1 England

The former UK Coalition Government revoked the former regional spatial strategies, except for a few individual policies from certain regional spatial strategies which remain. Further details about what remains for each strategy is published in a “Post Adoption Statement” for each region.

In Greater London the Mayor’s London Plan remains and continues to provide the strategic context for issues that affect London as a whole.

The UK Government introduced a “duty to cooperate” with neighbouring authorities to replace formal regional planning. This means that public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities set out in the NPPF. This duty must be reflected in any Local Plan.

Section 28 of the Planning and Compulsory Purchase Act 2004 allows local authorities to prepare one or more joint local development documents.

04.2 Northern Ireland

See Section 3.2 above.

04.3 Scotland

Strategic Development Plans (SDPs) set out a vision for the long term development of Scotland’s four main city regions (these are regions centred on Aberdeen, Dundee, Edinburgh and Glasgow), focusing on issues such as land for housing, major business and retail developments, infrastructure provision and green belts/networks.

SDPs are drafted by Strategic Development Planning Authorities (SDPAs), the membership of which is defined in statutory designation orders. Each SDPA is under a statutory duty to publish and then update its SDP at least once every five years. SDPAs are required to publish and update a development plan scheme which outlines their programme for preparing and reviewing the SDP and for engaging the public. The scheme must also contain a participation statement setting out the ways in which local people and other stakeholders will be involved in the preparation of the plan. Each SDP must be accompanied by an action programme, which must be updated at least once every two years.

The process for developing and examining a SDP is very similar to that explained in Section 5.3 on Local Development Plans below. The key difference is that Scottish Ministers have the final say on modification, adoption or rejection of an SDP.

04.4 Wales

There is no statutory regional planning in Wales at present. However the ***Planning (Wales) Act 2015*** includes powers for the Welsh Government to identify Strategic Planning Areas (SPAs) that are larger than individual Local Planning Authorities and for Strategic Planning Panels to be established for these areas. These panels will comprise elected members from the constituent Local Planning Authorities. A panel, if established for an area, will then produce a Strategic Development Plan (SDP) that will form part of the formal “development plan” for that area. A SDP will cover ‘cross-border’ issues such as housing and transport. A SDP will also need to take account of the NDF (see section 3 above). Local Planning Authorities in a SPA must then have regard to the SDP when developing their Local Development Plans. The Welsh Government has indicated that there may be a need for no more than three SPAs, and these would only cover parts of Wales. The current Welsh Government has also ***announced proposals*** to reduce the current number of local authorities in Wales from 22 to only 8 or 9. If this proceeds, the need for SPAs will be less.

05. Local Development Plans

05.1 England

The NPPF (see Section 3) directs that each Local Planning Authority should produce a Local Plan for its area.² There is no legal requirement however, that a Local Plan must be produced.

According to the NPPF Local Plans should be aspirational but realistic. They should set out the strategic priorities for the area and be drawn up over an “appropriate” time scale, normally a 15 year horizon. The Local Plan should be based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area.

The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the duty to co-operate and other legal requirements. The Secretary of State has powers, under Section 21 of the ***Planning and Compulsory Purchase Act 2004***, to modify a Local Plan at any time before it is officially adopted, if he/she believes that it is “unsatisfactory”. The Secretary of State can also direct that any plan is submitted for approval.

Local Plans can be reviewed in whole or in part to respond flexibly to changing circumstances, but if this happens, must be open again to public consultation and examination if a material change is to be made.

The NPPF directs that decision-takers can also give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

In a ***written statement*** to Parliament on 21 July 2015 the UK Government said that “in cases where no local plan has been produced by early 2017—five years after the publication of the NPPF—we will intervene to arrange for the plan to be written, in consultation with local people, to accelerate production of a local plan.”³ Provision to allow for this change and other additional intervention in the local plan making process by the Secretary of State is now contained in the ***Housing and Planning Bill 2015-16***.

For further information see the section on Plan Making in England in the ***National Planning Policy Framework***.

² In England Local Planning Authorities are District Councils, London Borough Councils, County Councils, Broads Authorities, National Park Authorities and the Greater London Authority

³ 21 July 2015 **HCWS166**

05.2 Northern Ireland

The ***Planning (Northern Ireland) Act 2011*** establishes a new system of local development planning in Northern Ireland. Under the new system local Councils are responsible for the development of Local Development Plans (LDPs) rather than the Department. The new system defines development plans as LDPs and these must be based on consultation with the local community.

The Planning (Local Development Plan) Regulations (Northern Ireland) 2015 set out in more detail that LDPs should provide a 15 year framework on how the Council area should look in the future by deciding what type and scale of development should be encouraged and where it should be located. During its preparation the Council must take into account the newly developed SPPS and also deliver the spatial elements of a Council's community plan.

The LDP will be made up of two documents: the plan strategy and the local policies plan. Under this new plan-led system, the LDP will be the primary consideration in the determination of applications.

Under the LDP process, the Department will have an oversight and scrutiny role to ensure the plan is in line with central government plans, policies and guidance. The local community will also have an important role to play in the plan preparation process. A Council's Statement of Community Involvement (SCI) will set out the key stages for public engagement and inform the community of how and when they can become involved.

Until the new local Councils develop their own LDPs, the existing development plans made by the Department under the old system will remain in place.

For more information refer to **Development Plan Practice Notes** produced by the Department

05.3 Scotland

Local Development Plans (LDPs) cover the whole of Scotland and identify sites for new developments and set out policies that guide decision making on planning applications. Each Planning Authority⁴ is required to publish and then update Local Development Plan(s) covering their area at least once every five years.

In addition planning authorities must publish, and update, a development plan scheme which outlines its programme for preparing and reviewing LDPs and for engaging the public. The scheme must also contain a participation statement setting out the ways in which local people and other stakeholders will be involved in the preparation of the plan.

Prior to producing a LDP, a Planning Authority must first produce a main issues report, which sets out the authority's general proposals for development of its area and particular proposals as to where development should and should not occur. A main issues report must also contain one or more reasonable alternative sets of proposals. Finally, it must draw attention to the ways in which the favoured and alternative proposals differ from the spatial strategy of the existing adopted LDP (if any). The main issues report is then subject to a period of public consultation.

Having had regard to the representations received to the main issues report, a Planning Authority must publish a proposed plan, which is subject to a minimum of six weeks public consultation. Following the close of public consultation, the Planning Authority may modify the plan in response to representations received. The plan will then be submitted to Scottish Ministers, along with the

⁴ In Scotland the Planning Authorities are local Councils and the National Park Authorities

proposed action programme. If there are any unresolved representations then Scottish Ministers will appoint a Reporter to examine the proposed plan. The reporter will conduct an examination and produce a report with recommendations for the Planning Authority. A Reporter's recommendations are generally binding on the Planning Authority. The authority must then modify and re-publish the plan, publicise its intention to adopt the plan and submit it to Scottish Ministers. The Planning Authority can adopt the plan after 28 days, unless directed not to by Scottish Ministers.

Each LDP must be accompanied by an action programme that must be updated at least once every two years.

05.4 Wales

The ***Planning and Compulsory Purchase Act 2004*** introduced a statutory requirement for each of the 25 Local Planning Authorities⁵ to produce a Local Development Plan (LDP). The LDP sets out proposals and policies for the future use of all local land, and along with the NDF and the SDP, is the formal "development plan" in Wales. The LDP covers a period of ten to fifteen years and should reflect national planning policy in Wales and should also have regard to the NDF when it has been produced and also the SDP, if there is one (see sections 3 and 4 above). Once a SDP is in place, in these areas the Local Planning Authority will only be required to produce a 'light' version of an LDP for its area in future.

The Local Planning Authority prepares a deposit plan, which is a full draft of the LDP. This plan represents the preferred strategy for the area. The Planning Inspectorate (on behalf of the Welsh Government) then examines the deposit plan and other related documents. The aim of the public examination is to ensure that the plan is 'sound', and that the views of all those who have commented have been considered.

The inspector publishes a report outlining any changes that should be made to the plan, with an explanation of why these changes are needed. The views of the inspector are binding on the Local Planning Authority.

The Welsh Ministers have wide-ranging powers in relation to LDPs including; to call-in a plan for the Welsh Government's determination; to direct an authority not to adopt the plan where the recommendations of the inspector are considered to be in conflict with national policy and to direct that a plan shall be altered or replaced. It can also direct two or more authorities to work together to produce a joint LDP.

⁵ In Wales the Local Planning Authorities are the 22 Unitary Authorities and the three National Park Authorities.

06. Neighbourhood/community plans

06.1 England

Under powers provided by the **Localism Act 2011** neighbourhood forums and parish Councils can establish general planning policies for the development and use of land in a neighbourhood. These are called Neighbourhood Development Plans. Local Planning Authorities continue to produce Local Plans that set the strategic context within which Neighbourhood Development Plans sit. Policies produced in a Neighbourhood Development Plan cannot block development that is already part of the local plan. What they can do, is shape and influence where that development will go and what it will look like.

Neighbourhood Development Plans do not take effect unless there is a majority of support in a referendum of the neighbourhood. They also have to meet a number of conditions to ensure plans are legally compliant and take account of wider policy considerations (e.g. national policy). The conditions are:

- they must have regard to national planning policy;
- they must be in general conformity with strategic policies in the development plan for the local area (i.e. such as in a core strategy); and
- they must be compatible with EU obligations and human rights requirements.

If proposals pass the referendum, the Local Planning Authority is under a legal duty to bring the neighbourhood plan into force. Once it is in force, it becomes part of the legal framework and planning decisions for the area must be taken in accordance with it, as well as the Local Plan for the wider area (see Section 5.1).

06.2 Northern Ireland

The **Local Government (Northern Ireland) Act 2014** places a statutory duty on Councils to produce and implement community planning through the production of a Community Plan for their area. The Community Plan is based on engagement with the community and provides the framework within which Councils, departments, statutory partners and other relevant organisations must work together to develop and implement a shared vision. This is a long term vision for promoting the economic, social and environmental well-being of their area through the delivery of better services.

The 2014 Act provides for the production of a list of statutory partners that must participate in and support community planning. Draft legislation has been produced by the Department, *the Draft Local Government (Community Planning Partners) Order (Northern Ireland) 2015*, and is proposed to be in place by the end of 2015/2016⁶. Also unique to Northern Ireland is the creation of a statutory link between the Community Plan and the development of LDPs under Section 77 of the **Local Government Act 2014**.

For more information refer to **Guidance to Councils: Community Planning Foundation Programme** produced by the Department.

⁶ The Draft Regulations can be found Annex A of the **consultation document**

06.3 Scotland

Neighbourhood and community plans are not a formal feature of the Scottish planning system. However a **Community Planning** system is in place, with the aim of bringing together public bodies and local communities to improve service delivery.

06.4 Wales

There is no equivalent right in Wales to the power introduced by the **Localism Act 2011** for communities in England to produce Neighbourhood Development Plans. However the Welsh Government is piloting the production of Place Plans. Place Plans will involve Community and Town Councils working with their Local Planning Authority to identify and take forward Supplementary Planning Guidance for their communities, translating and developing policies and allocations in LDPs for local implementation. These plans however won't be a part of the formal 'development plan'.

As in other parts of the UK there is a **Community Planning system** in place requiring local authorities to produce a community strategy to improve local service delivery. The **Well-being of Future Generations Act 2015** will soon replace this system with the production of Well-being Plans by Public Service Boards.

07. Nationally Significant Infrastructure Projects

07.1 England

The **Planning Act 2008** introduced a new development consent process for Nationally Significant Infrastructure Projects (NSIPs). NSIPs are usually large scale developments (relating to energy, transport, water, waste water or waste) which require a type of consent known as “development consent”. An extension of the regime in 2013 now allows certain business and commercial projects to also opt into this process.

Following changes made by the **Localism Act 2011** responsibility for decisions on these projects now rests with the relevant Secretary of State in that field. The **National Infrastructure Directorate** of the Planning Inspectorate will make recommendations to help inform the Secretary of State’s decision. The decisions on these projects should be made in line with the relevant **National Policy Statements** (NPS) approved by the UK Parliament.

Any developer wishing to construct a NSIP must first apply to the **National Infrastructure Directorate** for consent to do so. The process is timetabled to take approximately 12-15 months from the time that the application is officially accepted. The 2008 Act sets out thresholds above which certain types of infrastructure development are considered to be nationally significant and require development consent. Minor associated development is also usually dealt with through the same decision-making process.

The UK Government **announced an additional change** to the energy consenting regime in May 2015, to transfer decisions on all applications for onshore wind generation back to the town and country planning regime, to be taken by Local Planning Authorities in England. Provision for this is now part of the **Energy Bill 2015-16**.

07.2 Northern Ireland

Under the **Planning (Northern Ireland) Act 2011**, development falls under a new three-tier hierarchy of development. This includes: local, major and regionally significant development. Further details on categories are set out in the **Planning (Development Management) Regulations (Northern Ireland) 2015**.

All local and major developments are to be dealt with by Councils and major developments will be subject to pre-application consultation with the community.

An applicant must give all stakeholders and local communities a chance to discuss and voice their views before a formal application for major development is submitted. The level and extent of pre-application consultation is to be proportionate to the scale and the complexity of the proposed development.

Further details can be found in **Information Leaflet 16: Guidance on Pre-Application Community Consultation**.

Under the 2011 Planning Act, regionally significant development is any major project deemed to be of regional significance by the Department. Proposals will also be subject to pre-application community consultation and will be determined by the Department. According to Schedule 1 of the 2015 Regulations, any major application of regional significance will include those listed under

Column 3 – for example any electricity generating station at or exceeding 30 megawatts or any extraction of unconventional hydrocarbons.

The Department may ask the **Planning Appeals Commission** to hold a public local inquiry into any application of regional significance. When determining the planning application, the Department must take any report produced from the inquiry into account. However, the Department takes the final decision.

For applications being dealt with by the Councils, the 2011 Planning Act requires Councils to produce a Scheme of Delegation. This provides for the delegation of local applications to officers, with large developments, contentious applications and those that receive a number of objections to go before the planning committee for decision.

For more information see **Practice Note 15 on Schemes of Delegation**.

07.3 Scotland

All proposed developments in Scotland fall within one of the three categories of a statutory hierarchy of developments, which can be described as follows:

National developments: Developments designated as of national significance in the National Planning Framework for Scotland

Major developments: Nine classes of large scale development are defined as major developments in the ***Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009***.

Local Developments: Any development which is not a national or major development is automatically categorised as a local development.

National developments are designated in the ***National Planning Framework for Scotland 3***, which was considered by the Scottish Parliament to establish the necessity of these developments. Any objection to an application for a national development can only be made on an issue of detail, as its inclusion in the ***National Planning Framework for Scotland 3*** is deemed to have established the need for that development.

07.4 Wales

In Wales the development consent process for NSIPs established by the ***Localism Act 2011*** only applies to types of development where responsibility had previously been reserved by the UK Government. These are energy projects of over 50 Megawatts onshore/over 100 Megawatts offshore, major electricity lines, cross-country pipelines, underground gas storage and some types of harbour development.

In Wales consent for ‘associated development’ (for example an electricity sub-station associated with a new power station) is dealt with by the Local Planning Authority rather than the Planning Inspectorate, because of the devolution settlement.

The **Draft Wales Bill** published in October 2015, seeks to devolve to Welsh Ministers the responsibility for energy generating development consents for projects up to 350MW onshore and offshore in Welsh territorial waters. The combined effect of the provisions in the Bill is to dis-apply the Secretary of State’s power under the 2008 Act to grant development consent in relation to electricity generating stations up to 350MW (see Section 7.1 above). The Bill in effect transfers such projects into the town and country planning system in Wales if they are onshore.

The 350 Megawatts limit was recommended by the **Silk Commission** on the basis that it would bring most renewable energy schemes within a Welsh system, but larger schemes of 'strategic importance' would still be decided by the UK Government.

The **UK Government announcement** about transferring onshore wind out of the development consent regime (see Section 7.1 above) will mean that in Wales decisions on all such applications will in future fall within the town and country planning regime set by the Welsh Ministers in Wales.

The ***Planning (Wales) Act 2015*** will introduce a new category of Developments of National Significance (DNS) in Wales. These are planning applications for some types of development over certain thresholds that will in future be submitted to the Welsh Ministers, rather than to Local Planning Authorities. The Welsh Government has **consulted** on the likely definition of DNS. The final definition is likely to include energy projects of between 25 and 50 Megawatts, plus railway and airport-related development. It is not yet known whether or not the DNS definition will be extended to include onshore energy projects of up to 350 Megawatts and all onshore wind applications, once these are devolved. The application process for DNS is expected to be introduced from early in 2016.

08. Neighbourhood development orders/Community right to build orders

08.1 England

In addition to providing for Neighbourhood Development Plans, the ***Localism Act 2011*** also allows communities to produce Neighbourhood Development Orders and Community Right to Build Orders. The Local Planning Authority must provide support.

A Neighbourhood Development Order effectively gives communities planning permission for development that complies with the order. It removes the need for a formal planning application to be submitted to the Local Planning Authority. Neighbourhood Development Orders can be used to permit a specific development, or a type of development. They can grant planning permission for things such as, new houses, a new shop or pub, or permit extensions of a certain size or scale across the whole neighbourhood area.

A Community Right to Build Order is a type of Neighbourhood Development Order. It is an order that gives permission for small-scale, site-specific developments by a community group, without the need for planning permission.

Further information about these orders is available from the UK Government's webpage: ***Giving communities more power in planning local development.***

08.2 Northern Ireland

There is no equivalent to Neighbourhood Development Orders/Community Right to Build Orders in Northern Ireland.

08.3 Scotland

There is no Scottish equivalent of Neighbourhood Development Orders or Community Right to Build Orders.

08.4 Wales

There are no equivalent orders in Wales.

09. Permitted development rights

09.1 England

Permitted development rights (PD rights) are rights to make certain changes to a building or land without the need to apply for planning permission. These derive from a general planning permission granted by the UK Parliament in the ***Town and Country Planning (General Permitted Development) Order 2015*** (*the 2015 Order*), rather than from permission granted by the Local Planning Authority. Schedule 2 of the 2015 Order lists separate classes of permitted development.

In some areas, called “designated areas”, PD rights are more restricted. These are generally in conservation areas, a National Park, an Area of Outstanding Natural Beauty (AONB) or the Norfolk or Suffolk Broads. In designated areas planning permission will be needed before changes can be made to a building. Restrictions also apply if the property is a listed building.

In some circumstances Local Planning Authorities can suspend PD rights in their area. They have powers under Article 4 of the 2015 Order to remove PD rights. While Article 4 directions are made by Local Planning Authorities, the Secretary of State must be notified, and has wide powers to modify or cancel most Article 4 directions at any point.

09.2 Northern Ireland

Under the 2011 Planning Act, a similar system operates with the ***Planning (General permitted Development) Order (Northern Ireland) 2015***. Subject to exemptions and limitations, this grants planning permission for certain types of permitted development listed in Schedule 1 e.g. alteration/extension/ maintenance to a dwelling house, installation of domestic micro-generation equipment such as solar panels and the building, erection and alteration of certain agricultural buildings.

The Department or Council has the power to restrict or remove PD rights, in the interests of local amenity, using directions under Article 4 of the Order. They can also be removed through conditions attached to a planning permission.

The 2015 Order gives Councils the power to remove or limit PD rights in protected or sensitive environments such as conservation areas or AONBs, for mineral exploration and for development where an Environmental Impact Assessment is required.

09.3 Scotland

A similar regime operates in Scotland. Certain categories of development, as set out in the ***Town and Country Planning (General Permitted Development) (Scotland) Order 1992***, are automatically deemed to have planning permission. The categories of development that enjoy PD rights were recently amended under the provisions of ***The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2014***. This created new permitted development rights for small extensions or alterations to shops, schools, colleges, universities and hospital and office buildings. Additionally permitted development rights were created for off-street recharging of electric vehicles and disabled access ramps. A further amendment to permitted development rights was introduced by the 2014 Amendment Order which specifically applies to private ways, commonly known as tracks or hill tracks. As in England, PD rights can be removed or amended through Article 4 directions, which are generally made by Planning Authorities. Article 4 directions do not need Scottish Ministerial approval.

09.4 Wales

The types of development defined as permitted in Wales are set out in the ***Town and Country Planning (General Permitted Development) Order 1995*** (the 1995 Order). The 1995 Order originally applied to both England and Wales but has now been revoked by the consolidated 2015 Order in England (see Section 9.1). Many parts of Schedule 2 in the 1995 and 2015 Orders are the same for both England and Wales, but there are an increasing number of differences. Some changes were made to the permitted development rules for household improvements and extensions in 2013 and in 2014 for offices, shops and financial services.

The Welsh Government will consult on any proposed changes to the 1995 Order and does not always introduce the same changes as those introduced by the UK Government for England. For example in England a retail unit (class A1) or a financial/professional services unit (class A2) can be converted into residential use without planning permission, subject to certain conditions. This change has not been made in Wales to date.

Also as in England PD rights are more restricted in “designated areas” and Article 4 Directions can be used to remove PD rights and the Welsh Ministers have similar powers to the Secretary of State in England (see Section 9.1).

In 2012 the Welsh Government introduced powers for Local Planning Authorities to make Local Development Orders (LDOs) for specified types of development. It is encouraging Local Planning Authorities to use these powers in the Enterprise Zones that have been designated in Wales.

10. Use classes

10.1 England

The ***Town and Country Planning (Use Classes) Order 1987*** (1987 Order) puts uses of land and buildings into various categories known as “Use Classes”. The categories give an indication of the types of use which may fall within each use class. There are four main Groups:

- Classes in Group A cover shops and other retail premises such as restaurants and bank branches;
- Classes in Group B cover offices, workshops, factories and warehouses;
- Classes in Group C cover residential uses; and
- Classes in Group D cover non-residential institutions and assembly and leisure uses.

A further category, called ‘sui generis’ (‘unique’) exists to cover other uses, including betting office and payday loan shops.

Planning permission is not normally required for changes of use within the same classes and for certain changes of use between some of the classes.

10.2 Northern Ireland

A similar system of use classes is provided by the ***Planning (Use Classes) Order (Northern Ireland) 2015***. In general planning is not required for a change of use within the same use class, but a change between use classes does require planning permission. That being said, under the ***Planning (General permitted Development) Order (Northern Ireland) 2015***, there are instances listed in Part 4 of the Schedule where it is possible to change between use classes without making a planning application.

10.3 Scotland

The ***Town and Country Planning (Use Classes) (Scotland) Order 1997*** sets out 11 broad “uses classes”. Planning permission is not normally required for a development that involves a change that is covered by a single use class.

10.4 Wales

The 1987 Order (see Section 10.1 above) also applies in Wales. However the Welsh Ministers can make their own modifications to the order and so there are differences.

Some changes have been introduced to the 1987 Order in England that have not to date been introduced in Wales. In particular in Wales, Class A3 in the Use Classes Order is “Food and Drink”. This includes restaurants and cafés, drinking establishments and hot food takeaways. In England, Class A3 ‘Food and drink’ has been split into A3 (Restaurants and cafés), A4 (Drinking establishments), and A5 (Hot food takeaways). This change came into force on 21 April 2005. A building in Wales that currently has a Class A3 use would therefore not require planning permission from the Local Planning Authority to change from a café/restaurant to a hot food take-away, whereas in England such a change would require permission.

The Welsh Government **announced in 2013** that it will carry out a review of the Use Classes Order. It will consider the permitted changes between use classes and how the retail classes are sub-divided, issues surrounding residential uses such as conversion of other uses to housing and the use of agricultural buildings.

11.Planning conditions

11.1 England

Local Planning Authorities have the power to impose planning conditions on planning permission. While the *Town and Country Planning Act 1990* enables the Local Planning Authority to impose “such conditions as they think fit”, this must be done in line with the NPPF, which directs that planning conditions should only be imposed where they meet the “six tests” as follows:

01. necessary;
02. relevant to planning and;
03. to the development to be permitted;
04. enforceable;
05. precise; and
06. reasonable in all other respects.

An applicant may appeal against any conditions imposed. Under the 1990 Act, a breach of planning control can include failing to comply with any condition for which planning permission has been granted. Enforcement action may be taken by the Local Planning Authority against a breach of conditions (see Section 15.1).

11.2 Northern Ireland

The power for the Department or Council to impose conditions on a planning permission is provided under Part 3 of the 2011 Planning Act. Conditions may be applied to enhance the quality of the development and enable development to proceed where it otherwise would have been refused. For example, they may be used to introduce time limits, restrict use or permitted rights and impose after care conditions.

For conditions to be imposed, they must satisfy a six point test to ensure they are necessary, fair and practicable. The **Development Management Practice Note 20** provides more detail. These tests are the same as in England (see Section 11.1 above).

Grants of planning permission must impose a time limit of five years from the date of permission within which the development must be started. However, there are exemptions to the five year limit. Conditions may be challenged on appeal in writing to the Planning Appeals Commission.

A Council may issue a “breach of condition notice” where conditions attached to a grant of planning permission have not been complied with.

11.3 Scotland

Planning Authorities in Scotland can impose conditions when granting planning permission to enable development to proceed where it may otherwise have been necessary to refuse permission. **Circular 4/1998** states that conditions should only be imposed where they are:

- necessary
- relevant to planning

- relevant to the development to be permitted
- enforceable
- precise

An **addendum to this circular** suggests a number of model planning conditions and lists satisfactory and unsatisfactory reasons for imposing conditions on an award of planning permission.

Applicants can seek an appeal, or review, of a decision to impose conditions on the grant of planning permission.

Planning Authorities can enforce conditions, either by issuing an enforcement notice, or a breach of condition notice. There is a right of appeal to the Scottish Ministers against these notices.

11.4 Wales

Local Planning Authorities can impose conditions when granting planning permission. The same tests that apply in England also apply in Wales (see Section 11.1 above).

A **Circular** issued by the Welsh Government in October 2014 gives further details of how to interpret the six tests. It also includes a list of 'model' conditions for Local Planning Authorities to use.

Decision notices should state clearly and precisely the full reasons to be given for conditions, and to specify all relevant development plan policies and proposals. Detailed planning permissions should include a condition specifying that development should commence within a period of five years from the date of the permission.

Local Planning Authorities may enforce conditions, either by issuing an enforcement notice, or a breach of condition notice. There is a right of appeal to the Welsh Government against these notices (see also Section 15.4).

12. Advertisement consent

12.1 England

Local Planning Authorities are responsible for the day-to-day operation of the advertisement control system and for deciding whether a particular advertisement should be permitted or not. The rules are set out in the *Town and Country Planning (Control of Advertisements) (England) Regulations 2007*. Separate planning permission is not required in addition to advertisement consent.

There are three categories of advertisement consent:

- Those permitted without requiring either deemed or express consent from the Local Planning Authority;
- Those which have deemed consent;
- Those which require the express consent of the Local Planning Authority.

It is a criminal offence to display an advertisement without consent, including the consent of the landowner of the site.

Further information about how Local Planning Authorities should consider applications for advertisement consent is set out on the advertisements pages of the UK Government's *Planning Practice Guidance*.

12.2 Northern Ireland

The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015, issued under the 2011 Act, include provisions to allow Councils to restrict and regulate the display of advertisements in the interest of amenity and public safety.

A consent to display must be applied for to the Council, however there are a number of exemptions to this control listed in Schedule 2 of the Regulations (e.g. advertisements on enclosed land). Certain cases may be classed as "deemed consent" under Schedule 3 (e.g. advertisements by departments or Councils).

- Further information is provided in the Department's *Development Management Practice Note 7*.

12.3 Scotland

The *Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984*, as amended, regulate the display of most outdoor advertisements in Scotland. These Regulations split adverts into three classes:

- *Excepted*: adverts which are not subject to control, e.g. adverts within buildings, displayed on vehicles or balloons.
- *Deemed consent*: adverts that are automatically deemed to have consent. This class includes statutory notices, direction and warning signs, certain temporary signs, adverts on business premises. There are a number of other conditions regarding placement on a building, duration and height of display also set out in the Regulations if an advert is to qualify for deemed consent.
- *Express consent*: Adverts that do not fall within the above classes, which require the explicit grant of consent from the Planning Authority before they can be displayed.

- There are restrictions on the display of adverts in conservation areas and “areas of special control”, which are areas designated by a Planning Authority which have enhanced controls over the display of adverts. However, these restrictions do not apply to certain specified classes of advert.
- Applicants have a right of appeal to Scottish Ministers against a decision to refuse permission for an advert, or where conditions have been imposed on any grant of permission. Planning Authorities have powers to enforce advertisement controls, principally the power to issue an enforcement notice where an advert has been displayed without consent or in breach of conditions attached to any consent.

12.4 Wales

The ***Town and Country Planning (Control of Advertisements) Regulations 1992*** (as amended) regulate outdoor advertisements in Wales. These regulations enable Local Planning Authorities to control outdoor advertisements in the name of amenity and public safety. Some types of advertisement are exempted (generally those smaller than 0.3 square metres) and some advertisements qualify for deemed consent. Others require express consent from the Local Planning Authority. There is a right of appeal to the Welsh Government for a refusal of advertising consent.

Technical Advice Note 7 (Outdoor Advertisement Control) published in 1996 provides more detailed guidance.

13.Environmental Impact Assessments

Environmental assessment is a procedure that ensures that the environmental implications of decisions are taken into account before those decisions are made. Assessments for individual development proposals are known as Environmental Impact Assessments (EIAs). EIAs assess the possible impact – positive and negative – that a proposed project may have on the environment and human health and this information is submitted to the Local Planning Authority or the relevant decision maker in the form of an Environmental Statement (ES) in order for it to be considered alongside a planning application.

The requirement to carry out an EIA of certain planning proposals comes from European legislation (***Directive 2011/92/EU of the European Parliament and of the Council***). Regulations exist for each of the four UK countries to transpose the Directive's requirements. Further changes will need to be made to reflect a ***revised European Directive*** on EIA that was adopted in 2014.

Whether or not an EIA is required for a particular development depends on the nature of the development. An EIA is compulsory for some major types of development listed in the regulations (Schedule 1 developments), such as a waste disposal installation.

Other developments only require an EIA when certain thresholds and criteria are met and whenever they are likely to have significant effects on the environment (Schedule 2 developments). Examples are a wind turbine installation of more than 2 turbines.

For some developments a "scoping opinion" will first need to be sought from the relevant Local Planning Authority as to whether or not an EIA will be required.

A determination of whether or not EIA is required must be made for all projects of a type listed in Schedule 2. This is called the "screening opinion". In making this determination the authority must take into account the relevant selection criteria in Schedule 3 to the Regulations. The authority must make all screening opinions and directions available for public inspection.

The Local Planning Authority has 16 weeks from the date of receipt of the ES to determine the planning application, instead of the normal 8 weeks from the receipt of a planning application. It must seek the views of the consultation bodies listed in the Regulations. The authority must take account of the ES, together with any other information, comments and representations made on it, in deciding whether or not to give permission for the development. Where an ES reveals that a development would have an adverse impact on the environment, it does not automatically follow that planning permission will be refused. If permission is granted, conditions may be attached that include mitigation measures that can be based on the ES.

13.1 England

The Directive is enacted in England through the ***Town and Country Planning (Environmental Impact Assessment) Regulations 2011***. The threshold for some housing and industrial projects requiring EIA was increased in England in April 2015.

13.2 Northern Ireland

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 transpose the requirements of the EIA Directive to reflect the new planning system under the 2011

Planning Act. They provide a statutory framework for both the Department and Councils when fulfilling their planning responsibilities.

As In England, the regulations list Schedule 1 and Schedule 2 projects.

13.3 Scotland

The **Environmental Impact Assessment (Scotland) Regulations 2011** transpose the EIA Directive, as amended, into the Scottish planning system. As in England, the Regulations list Schedule 1 and Schedule 2 projects.

Detailed guidance on EIA in the Scottish planning system can be found in **Planning Circular 3/2011: The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011**.

13.4 Wales

The Directive in Wales is enacted in through the ***Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999/293***. As In England, the Regulations list Schedule 1 and Schedule 2 projects. These regulations have been superseded in England and now only apply (as amended by later legislation) to Wales.

As noted in Section 13.1 above, the threshold for some projects requiring EIA was increased in England in April 2015, but has not to date been increased in Wales.

14. Appeals/Planning Inspectorate

14.1 England

The **Planning Inspectorate** is a joint Executive Agency of the Department for Communities and Local Government (DCLG) and the Welsh Government.

Where an application has been rejected by a Local Planning Authority, the applicant has the right of appeal to the Secretary of State. In practice, the normal procedure is for the appeal to be decided by a planning inspector in the name of the Secretary of State, either after considering written representations, holding an informal hearing or holding a full inquiry. The choice of procedure will depend upon the complexity of the case and will be determined by the planning inspector.

The Secretary of State also has powers to “recover” an appeal, to take the decision himself.

There is no third party right of appeal, nor any further right of appeal beyond a decision by the Secretary of State (even if taken in his name by a planning inspector). In particular cases it may be possible to bring a judicial review of a local authority’s decision or a statutory review of the Secretary of State’s or planning inspector’s decision. The **Planning Court**, established in the High Court under a separate list under the supervision of a specialist judge, deals with all judicial reviews and statutory challenges involving planning matters in accordance with **Civil Procedure Rule 54.21** and **Practice Direction 54E**. Planning Court challenges cannot be about the merits of the planning application or appeal decision itself, it is about the lawfulness of the way in which the decision was taken.

The Planning Inspectorate also examines Local Plans (see Section 5.1).

14.2 Northern Ireland

Appeals on decisions may be made by or on behalf of the applicant to the Planning Appeals Commission (PAC). There is no ‘third party’ right of appeal against a planning decision. However, when an application is appealed, objectors or anyone with an interest in the proposal may make a response to the PAC.

The Planning Appeals Commission (PAC) is an independent appeals body which operates under the 2011 Planning Act. Its operation falls into the following two categories:

Decisions on Appeals – the commission makes decisions on all appeals against Departmental and Council decisions on a wide range of planning and environmental matters. However, this does not apply to any application called-in by the Department.

Hearing and Reporting on Public Inquiries/Hearings – the commission makes recommendations on a wide range of cases referred to it by the Department. The final decision on these matters is taken by the relevant Department.

Decisions are transferred out from political decision, unlike elsewhere in the UK where the appeal bodies make decisions in the name of the relevant Ministers. In Northern Ireland the PAC must reach its decision on the basis of the reports made by the Commissioners. Commission decisions are final, however they are open to challenge by application to the High Court for judicial review.

14.3 Scotland

There are two planning appeal/review systems in operation in Scotland, these are:

Local Review Body: Every Planning Authority is required to produce a “scheme of delegation” which sets out a list of local developments that can be determined by an appointed person, normally a planning officer, rather than Councillors at a committee. If a planning decision was taken by a planning officer under a scheme of delegation then any appeal will be made to the Council’s Local Review Body and not Scottish Ministers. A local review body is made up of at least three elected members who were not involved in the original decision.

Scottish Ministers: If a planning decision was taken by Councillors then any appeal against that decision will be made to Scottish Ministers. Planning appeals made to Scottish Ministers are considered by a Reporter appointed by the **Directorate for Planning and Environmental Appeals** (DPEA). In most instances the appeal decision is made by the Reporter on behalf of the Scottish Ministers. However, in a small number of cases the Reporter does not issue the decision, but submits a report with a recommendation to the Scottish Ministers, who make the final decision. Most appeals are decided by means of written submissions.

Scottish Ministers also appoint DPEA Reporters to hold Development Plan examinations into objections to development plans (see Sections 4.3 and 5.3).

14.4 Wales

As outlined in Section 14.1 above the Planning Inspectorate is an Executive Agency of both the UK Government and the Welsh Government. The inspectorate as it operates in Wales is effectively a branch of the Executive Agency as a whole. There is an agreement between the Welsh and UK Governments on the inspectorate’s work programme.

In Wales the Planning Inspectorate duties include responsibility for the processing of planning and enforcement appeals, holding public examinations into LDPs and reporting on planning applications called in for decision by the Welsh Ministers. It also now considers certain NSIPs in Wales (see Sections 7.1/7.4 above). The Inspectorate will in future be considering DNS planning applications on behalf of the Welsh Ministers (see Section 7 above).

The procedures for deciding an appeal in Wales are similar to those in England (see Section 14.1). As in England and Scotland most decisions on planning appeals are made by the inspectorate on behalf of the Welsh Ministers. However a few appeals are ‘recovered’ and the decision is made by the Minister, who considers a recommendation from the Planning Inspectorate.

15. Enforcement

15.1 England

Carrying out development without planning consent or breaching a condition of a planning consent is generally not a criminal offence (unless in relation to making changes to listed buildings and advertisements that operate under separate regimes).

Failure to comply with an enforcement notice however, is a criminal offence. An enforcement notice is a notice requiring compliance with planning consent. If the notice is upheld, the penalty for failure to comply is a fine of up to £20,000 on summary conviction or an unlimited fine on indictment. Other types of enforcement action include a Breach of Conditions Notice, a Stop Notice, a Temporary Stop Notice or an Injunction to restrain a serious breach of planning control. Further information about all of these powers is provided on the ***Ensuring effective enforcement*** pages of the Planning Practice Guidance.

Enforcement action is discretionary and Local Planning Authorities are directed to act proportionally in responding to suspected breaches of planning control.⁷ Some authorities will look at the amount of harm caused by the suspected breach and examine whether it justifies taking action. Sometimes no action will be taken if the authority believes that planning permission is likely to have been given. If someone believes that there has been a significant breach of planning control in their area, where there has been serious harm to public amenity and believes that the Local Planning Authority has not acted as it should, then a complaint may be possible to the Local Government Ombudsman (LGO). More information about this process is available from the **Local Government Ombudsman website**.

There are two time limits for enforcement action laid down in the *Town and Country Planning Act 1990*. Four years is the time allowed to an authority to take enforcement action where the breach comprises either operational development (the carrying out of unauthorised building, engineering, mining or other operations) or change of use to use as a single dwelling. Ten years is the time allowed for all other breaches of planning control. In both cases, enforcement action can be completed after that date provided that it was started before it.

15.2 Northern Ireland

Under the 2011 Planning Act, one of the functions transferring to local Councils is planning enforcement; however, the Department has powers to take enforcement measures where it believes a Council failed to take action.

Similar to other UK jurisdictions, the power to take enforcement action is left up to the discretion of the Council or the Department. It is not necessarily an offence to undertake development without planning consent; in some cases, if it is agreed that the development is in keeping with the LDP and material considerations, retrospective planning consent may be simply required.

However, should the breach be considered extensive, the decision may be made to issue an enforcement notice to bring the unauthorised development under control. Failure to comply with an enforcement notice is an offence liable to a fine of up to £100,000 on summary conviction, or an unlimited fine on indictment.

⁷ Department for Communities and Local Government, ***National Planning Policy Framework***, March 2012, p47

Under the 2011 Act, enforcement action must be taken within five years of completion for breaches of operational development (building, engineering, mining or other operations in, on, over or under land) and five years from the start of the breach for any change of use to a dwelling house.

An appeal against an enforcement notice may be made, by the person served with the notice, to the Planning Appeals Commission (PAC). The PAC must publically provide details of the appeal, so that anyone with an objection or interest can become involved in the process.

For more information on the range of enforcement powers given to local Councils and the Department, refer to Part 5 of the 2011 Planning Act.

15.3 Scotland

The planning enforcement system in Scotland is broadly similar to that in England and Wales. Enforcement action is carried out at the discretion of the Planning Authority, which will generally only act if it is in the public interest. Planning authorities have a number of enforcement options they can pursue, which are briefly summarised below:

Planning Contravention Notice: A Planning Authority can issue a Planning Contravention Notice (to anyone with an interest in land) to obtain information on whether activities on that land constitute a breach of planning control.

Enforcement Notice: A Planning Authority can issue an Enforcement Notice when it considers that a breach of planning control has occurred. As in England, a failure to comply can lead to a fine not exceeding £20,000, or on conviction on indictment to an unlimited fine. There is a right of appeal to Scottish Ministers against the issue of an enforcement notice.

Breach of Condition Notice: This can be used as an alternative to an Enforcement Notice, and is used to enforce the conditions of a planning permission.

Stop Notice: Where a Planning Authority considers that a breach of planning control must be dealt with as a matter of urgency it may issue a stop notice.

Temporary Stop Notice: A temporary stop notice is similar to a stop notice but takes immediate effect.

Fixed Penalty Notices: A Planning Authority also has the power to issue a Fixed Penalty Notice for a failure to comply with an Enforcement Notice or a Breach of Condition Notice.

Interdict: Although not a specific planning power, a Planning Authority can apply to the sheriff court or Court of Session for an interdict where they consider a breach of planning control has occurred, or is about to occur.

Every Planning Authority is required to produce an enforcement charter, updated every two years, which sets out how the enforcement system works, the role of the Planning Authority in enforcement and its service standards.

More information on these enforcement options is set out in [Circular 10/2009: Planning Enforcement](#).

15.4 Wales

Enforcement of planning operates in a similar way in Wales as it does in England (see Section 15.1 above). A breach of planning control is not in itself a criminal offence and Local Planning Authorities have discretion over taking enforcement action. According to **Planning Policy Wales**, “the decisive issue for the authority is whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.”

The options for taking enforcement action include Enforcement Notice; as in England, failure to comply is a criminal offence and can lead to a fine of up to £20,000; a Breach of Condition Notice; a Stop Notice and in serious cases an Injunction. These options are set out in more detail in a **Planning Quick Guide** on enforcement. The Welsh Government has also recently introduced Temporary Stop Notices in Wales.

In cases where there has been a breach of planning control and a person considers that the Local Planning Authority has not acted as it should, then a complaint may be possible to the **Public Services Ombudsman for Wales**.

The time limits for taking enforcement action are also the same as in England.

16. Community Infrastructure Levy/Developer contributions

16.1 England

Community Infrastructure Levy (CIL)

The CIL is a levy that local authorities in England and Wales can choose to charge on new developments in their area. It is charge on new buildings and extensions to help pay for supporting infrastructure. In areas where a CIL is in force, land owners and developers must pay the levy to the local authority. The money raised from the levy can be used to support development by funding infrastructure.

The CIL charges are set by the local authority, based on the size and type of the new development. It is payable on most developments over 100 square metres or where a new dwelling is created. The local authority can set different rates for different geographical zones in their area and for different intended uses of development. This is a local decision based on economic viability and the infrastructure needed. There is no requirement for a local authority to charge the CIL if it does not want to. Structures which are not buildings, such as pylons and wind turbines, are not liable to pay the levy. Relief from the CIL is also available for development which relates to social housing and development by charities for charitable purposes. There are also exemptions from CIL for certain residential extensions and self build homes.

Section 106 agreements

Section 106 agreements, sometimes known as “planning obligations” or “planning gain” stem from agreements made under section 106 of the *Town and Country Planning Act 1990*, as amended. They are agreements negotiated between the developer and the Local Planning Authority to meet concerns that an authority may have about meeting the cost of providing new infrastructure. Section 106 agreements are legally binding, and the obligations may be either in cash or kind, to undertake works, provide affordable housing or provide additional funding for services.

Planning obligations to support new development must help meet the objectives of the Local Plans and Neighbourhood Development Plans for a particular area. Three legal tests must be met before a planning obligation can be used. They are set out in part 11 of the *Community Infrastructure Levy Regulations 2010*, as follows:

A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

Many Local Planning Authorities issue their own Planning Obligations Supplementary Planning Document. These documents explain further an authority’s approach to planning obligations and when they may be sought.

The Government's Planning Practice Guidance on the **Community Infrastructure Levy** clarifies the relationship between the CIL and section 106 agreements. The basic premise is that there should be no double charging to developers of the CIL and section 106 agreements for the same purpose.

From 6 April 2015, the use of 'pooled' planning obligations toward infrastructure projects has been restricted. Previously, Local Planning Authorities had been able to combine planning obligation contributions towards a single item or infrastructure 'pot'. However, under the 2010 CIL Regulations, authorities can no longer pool more than five planning obligations together if they were entered into since 6 April 2010, and if it is for a type of infrastructure that is capable of being funded by the CIL.⁸ These restrictions apply even where an authority does not yet have a CIL charging schedule in place.

16.2 Northern Ireland

Developer contributions can be secured as a condition to planning permission or by a planning agreement under Section 76 of the 2011 Planning Act. This enables the Department or Council (whichever is the relevant Planning Authority) to enter into Planning Agreements for the purpose of facilitating, regulating or restricting the development or use of the land. This may include the setup of contributions to be paid by the developer to the relevant authority, or any Northern Ireland department, to offset the impact of the proposed development, in conjunction with granting planning permission.

According to the **Spatial Planning Policy Statement (SPPS)** developer contributions can be used:

- where a proposed development requires the provision or improvement of infrastructural works over and above those programmed in a LDP;
- where earlier than planned implementation of a programmed scheme is required;
- where a proposed development is dependent upon the carrying out of works outside the site; and
- where archaeological investigation or mitigation is required.

Planning agreements under the new system could support the delivery of developer contributions for social/affordable housing. A **joint consultation** was issued in 2014 by the Department for Social Development (DSD) and the Department of the Environment on the possible introduction of a Developer Contributions Scheme for social and affordable housing in Northern Ireland. In response to suggestions from respondents about the need for further economic research on the issue, DSD has commissioned this research and is still awaiting the outcomes.

Another mechanism is **Article 122 of the Roads (Northern Ireland) Order 1993** in terms of infrastructure works.

Developers may decide to offer community benefits to communities likely to be affected by their development. This may involve payments to the community, in-kind benefits and shared ownership arrangements. However, community benefits are voluntary and are not legislated for in the same way as planning agreements/developer contributions. For this reason, community benefits are not material considerations in the determination of planning applications.

⁸ Planning Practice Guidance, **Community Infrastructure Levy**, para 099

16.3 Scotland

Developer contributions in Scotland are normally secured under the provisions of Section 75 of the ***Town and Country Planning (Scotland) Act 1997***, commonly known as “Section 75 agreements”. In essence, a Section 75 agreement is a contract between the Planning Authority and the landowner (and possibly future landowners, depending on the terms of the agreement) which requires the landowner to restrict or regulate the use of their proposed development or mitigate against any potential negative impacts of that development through means set out in the agreement. This can include making a payment to the Planning Authority towards the development of associated infrastructure, e.g. expanding a school or improving a road. The issues covered by a Section 75 agreement are normally matters that cannot be enforced through a condition attached to planning permission.

There is no equivalent of the England and Wales Community Infrastructure Levy in Scotland.

16.4 Wales

Section 16.1 explains that the CIL applies in both England and Wales. Although most aspects of the planning system are devolved, the CIL is seen as a tax and is currently a reserved matter. The Welsh Government has however **called for the CIL to be devolved** as it closely related to the planning system. It has issued its own ***CIL guidance to the production of a charging schedule*** saying that it expects that the evidence base supporting a charging schedule will include an up to date development plan. Local authorities in Wales are required to use 'appropriate available evidence' to inform their charging schedules.

Local Planning Authorities can also enter into Section 106 agreements with developers as in England.

Local Planning Authorities in Wales have been slower than some in England to adopt the CIL – however a small number of Welsh authorities have now produced charging schedules and others are working alone or in collaboration to produce one. This is partly because of the further restriction on the use of Section 106 agreements now that the transitional period has finished (see Section 16.1).

17.Planning advice services

17.1 England

The **Planning Advisory Service** is funded directly by the Department for Communities and Local Government. It provides a range of support and online resources to local authorities to help them deliver an effective planning service.

The Government's **Planning Portal** provides information, interactive guides and other resources about how to use the planning system in practice.

Planning Aid England, run by the Royal Town Planning Institute, supports communities and individuals with planning issues in England.

17.2 Northern Ireland

Northern Ireland does not have an advice service similar to England. The Department advises that the majority of queries relating to the planning process, planning applications and fees should be directed to the **local area planning offices**. Each new Council area will have its own local planning office.

The Department, through its **Planning Portal** provides online information and advice on legislation, regional policy, planning applications and the planning system.

Community Places is an independent charity with full-time staff offering advice on planning issues, training and project support for groups meeting Community Places eligibility criteria. It also independently facilitates public and community consultation on planning and public service issues.

17.3 Scotland

Planning Aid for Scotland, an independent charity, provides professional planning advice, support and training to individuals and community groups across Scotland.

17.4 Wales

The Welsh Government set up a national **Planning Advisory and Improvement Service** (PAIS) in May 2015 that it will host. The service will operate on an interim basis in the first year. The group appointed by the Welsh Government to operate the service will also provide advice on how the PAIS should operate effectively in the longer term.

Planning Aid Wales is an independent charity providing advice on all aspects of land use planning in Wales.

18.Future changes

18.1 England

The ***Housing and Planning Bill 2015-16*** was introduced to Parliament on 13 October 2015. Many of its provisions are focused on speeding up the planning system with the aim of delivering more housing. Some of the main planning provisions include:

- putting a general duty on all planning authorities to promote the supply of Starter Homes, and providing a specific duty, which will be set out in later regulations, to require a certain number or proportion of Starter Homes on site;
- requiring local authorities to grant “sufficient suitable development permission” of serviced plots of land to meet the demand based on the self-build and custom housebuilding register.
- intervention by the Secretary of State over the production of local plans where local authorities are judged to be too slow;
- creating a zonal system for brownfield land creating automatic planning permission in principle for housing;
- allowing Nationally Significant Infrastructure Projects with “an element” of housing to be considered as part of the *Planning Act 2008* development consent regime;
- making changes to the compulsory purchase process both in England and Wales.

For more detailed information and reaction to these changes see the House of Commons Library briefing paper, ***Housing and Planning Bill***.

As well as some measures now contained in the Bill, the Government’s July 2015 Productivity Plan, ***Fixing the Foundations: Creating a more prosperous nation***, and the November 2015 ***Autumn Statement*** also announced some further changes including:

- “significantly” tightening the “planning guarantee” (the time that planning applications spend in total with decision makers), for minor planning applications;
- strengthening guidance to improve the use of the duty to cooperate on strategic matters between local authorities; and
- introducing a delivery test on local authorities, to ensure delivery against the homes set out in local plans within a reasonable timeframe.

The UK Government’s August 2015 rural productivity plan, ***Towards a one nation economy: A 10-point plan for boosting productivity in rural areas***, also announced some changes, designed to make the planning process easier in rural areas including the introduction of new and revised permitted development rights.

The UK Government has also confirmed that it will put on a permanent basis the current temporary permitted development right allowing offices to change to residential use, in some circumstances, without the need for planning permission. There are also proposals to increase permitted development rights in relation to shale gas exploration.

18.2 Northern Ireland

The 2011 Planning Act, which took effect in April 2015, brought a complete reform of the planning system in Northern Ireland by returning certain planning functions to local Councils. While regional planning (and other functions detailed in section 2.2) remains with the Department of Environment, proposals to restructure other departments in 2016 may result in the amalgamation of these functions and those currently performed by the DRD (as detailed in section 3.2) under a new Department of Infrastructure. The Act effectively sees a shift from a land-use based planning system to one operating on the concept of spatial planning.

Currently development plans produced by the Department under the old planning system are being used by the newly formed councils. This is an interim measure until the new Councils develop their own LDPs.

The current Environment Minister has announced the need for the creation of an independent environment protection agency in line with departmental restructuring in May 2016. Such a change would bring Northern Ireland into line with the rest of the UK. Currently the Northern Ireland Environment Agency (NIEA) is a governmental agency of the Department of Environment; it is a statutory consultee in determining planning applications, offers advice on applications requiring an EIA and issues the necessary environmental permits required for a project.

18.3 Scotland

The Scottish planning system was substantially amended by the *Planning etc. (Scotland) Act 2006*, with enactment of the main provisions of that Act taking place up until 2010. The Scottish Government's **Programme for Scotland 2015-16** states that the Scottish Government will review the planning system with a focus on delivering "a quicker, more accessible and efficient planning process, in particular increasing delivery of high quality housing developments".

In September 2015, Alex Neil MSP, Cabinet Secretary for Social Justice, Communities and Pensioners' Rights announced the appointment of an independent panel to undertake a review of the Scottish planning system.

The independent panel issued a call for written evidence on 19 October 2015, which posed a series of questions on the issues of development planning, housing delivery, planning for infrastructure, development management, leadership/resourcing/skills and community engagement. The call for evidence closed on 1 December 2015.

The independent panel is due to produce its report in May 2016. Scottish Ministers will then respond to its recommendations with a programme of work to take forward changes to the planning system.

Further information on the review is available on the **[Scottish Government's website](#)**.

18.4 Wales

Following Royal Assent of the **Planning (Wales) Act 2015**, the Welsh Government has a programme of secondary legislation to bring forward to implement the changes to the planning system introduced by the Act.

The Welsh Government has also asked the Law Commission to consider the need for a **Planning Consolidation Act for Wales**, to create simplified primary planning legislation for development management in Wales. The commission is due to report with a draft bill in the summer of 2017.

The new National Development Framework to be developed under the 2015 Act is expected to be adopted in 2019.

19. Further information

19.1 England

House of Commons Library Briefing Papers are available online [here](#).

The **Planning Portal** also provides information about the planning system in England (select **England** in the top right corner of the home page).

HM Government, **Plain English guide to the planning system**, 5 January 2015

19.2 Northern Ireland

Useful Documents and links:

Planning Act 2011

Subordinate legislation to Planning Act 2011.

DRD NI (2012) **Regional Development Strategy 2035.**

DOE NI (2015) **Strategic Planning Policy Statement.**

Old Planning Policy Statements.

Further advice on the planning system in NI is available from the **Planning Portal NI**. Of particular use are the **Practice Notes**. These provide advice for homeowners, business, developers and practitioners in relation to:

Development Plan Practice Notes

Development Management Practice Notes

Northern Ireland Assembly Research & Information Service briefings are available [here](#).

19.3 Scotland

Scottish Parliament Information Centre briefings are available [here](#).

19.4 Wales

National Assembly for Wales Research Service briefings are available [here](#).

We have published a series of **Planning Quick Guides** on different aspects of the planning system in Wales.

This **Research Service blog post** includes links to key planning-related publications and other resources.

The **Planning Portal** also provides information about the planning system in Wales (select the **Welsh Site** from the top right corner of the home page).