

# **Reform of the Northern Ireland Planning System:**

**Final Equality Impact Assessment (EQIA) at a  
strategic level in response to  
Programme for Government proposals**

## **Section 75 and Schedule 9 The Northern Ireland Act 1998**

**Final Equality Impact Assessment at a Strategic Level**

**March 2010**

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**DOE Planning Service**

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**Final Equality Impact Assessment (EQIA) at a strategic level  
in response to Programme for Government proposals**

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**Reform of the Planning System in Northern Ireland:  
Final Equality Impact Assessment (EQIA) at a strategic level**

**EXECUTIVE SUMMARY**

**Policy proposals**

On October 25<sup>th</sup> 2007, the Northern Ireland Executive published its first Programme for Government (PfG): a detailed set of strategic proposals covering the period 2008 – 2011, which included plans for a major reform of the planning system. The Department of the Environment was tasked with developing proposals, including not only a reform of fundamental elements of the planning system itself but also a transfer of responsibilities from central to local government following the Review of Public Administration (RPA) and the formation of 11 new district councils in 2011. A draft equality impact assessment (EQIA) at a strategic level was published at the same time as the reform consultation paper. The aim of the reform programme is not only to improve the efficiency and effectiveness of the planning system but also to create a planning system that provides transparency in decision-making and gives confidence to its users.

**Section 75 Impacts**

The draft EQIA at a strategic level acknowledged that there were two elements to potential impacts – procedural impacts resulting from changes to planning processes and substantive impacts resulting from planning decisions taken. The draft EQIA at a strategic level was concerned, at that stage, with potential procedural impacts, but recognised that potential substantive impacts will need to be addressed at implementation stage by the relevant planning authority. The Department will ensure that any potential substantive impacts identified are brought to the attention of the relevant planning authority with advice and guidance on possible mitigating measures.

**Consultation**

Consultation on the Reform of the Planning System in Northern Ireland commenced on 6 July 2009 with the publication of the proposals paper: 'Reform of the Planning System in Northern Ireland: Your chance to influence change'. The draft EQIA at a strategic level was published at the same time. There was a very encouraging response to the consultation paper, with 264 responses received, with, in general, strong support for the majority of the reform proposals.

During the 12 week consultation period a series of consultation roadshow events were undertaken. The roadshow events formed the central part in a process of encouraging engagement and response to the Reform Proposals before the closing date of 2 October 2009. They were organised and facilitated by a team of event managers and independent planners who, together with key Planning Service personnel, attended a mixture of day and evening events in each of the new 11 council areas to hear the views and opinions of those who came along.

Aside from being publicly advertised, over 1,500 invitations (written and e-invites) were issued to a wide range of sectors, including the business community, environmentalists, councils, community and voluntary groups and other organisations, and 1,000 fliers were issued to libraries, leisure centres, council offices and civic centres. In total almost 500 people took up the invitation and came along to one or more of the events.

This paper is the final EQIA at a strategic level, taking account of the responses to the planning reform consultation and the roadshow events. This paper is being published at the same time as the Government Response to the outcome of the planning reform consultation.

## **Commitments**

1. Existing data on those who do, or do not, engage with the planning system is less than substantial. The Department therefore commits to take action to develop a Monitoring Strategy that will incorporate information on relevant Section 75 categories, in accordance with best practice and the Equality Commission's Guidance on Section 75 Monitoring.
2. Despite this historical absence of data, the Department recognises that, in Northern Ireland as elsewhere, all members of the community may not always have had equality of access to the planning system. Indeed, this was part of the original rationale for the Department's funding of organisations such as Disability Action and Community Places. In bringing forward the key elements of the reform programme, the Department will remain alert to these issues and will aim to ensure that the reformed planning system is as user-friendly and inclusive as possible.
3. The Department commits to engage widely during the continuing development and implementation of the reform programme, including with representatives of those groups who may be at risk of adverse impact. Race, age and disability have already been identified as Section 75 categories that may warrant further attention to ensure that the reformed planning system is inclusive and genuinely accommodates those with particular needs.
4. The Department will ensure that all forms of consultation will be made accessible to all sections of the community, including written documents as well as the timing, management and location of consultation events.
5. Where a new issue/policy emerges through the programme of reform, over and above those key elements already identified, that issue/policy will also be subject to appropriate screening and, if necessary, an equality impact assessment (EQIA).
6. As the reform programme is rolled-out, and the new planning system is created, there will be an expectation on both central and local government to ensure that Section 75 obligations continue to be mainstreamed through regional and local planning systems.

## **Conclusion**

This final EQIA at a strategic level has provided the Department with an opportunity to demonstrate that Section 75 statutory obligations are at the heart of the reform programme. While the Department's initial screening exercise indicated that significant effects on each of the Section 75 categories were not anticipated, the draft EQIA at a strategic level was undertaken in order to offer a timely reflection on progress made to date, to consider the potential procedural impacts in greater detail and to begin the process of identifying those occasions during future implementation where it will be important to next apply the checks and balances that Section 75 affords. Through the operation of due diligence in this manner, the Department can make sure that fair treatment and the promotion of equality of opportunity remain a priority for the entire planning system up to and beyond 2011.

The Department is grateful for the contributions of all those who responded to the consultation paper and the draft EQIA at a strategic level, and who participated in the roadshow events that were held during the consultation period. The Department has listened to the comments made during the

consultation process and, following careful consideration, has made a number of changes to the proposals.

### **Monitoring**

The Department intends to take action to develop a monitoring strategy to monitor the impact of the reform programme on users of the planning system. The Department will publish the results of this monitoring in due course and include same in the annual progress report to the Equality Commission for Northern Ireland. An outline of the proposed Monitoring Strategy is contained in section 8.

Implementation of many aspects of the reformed planning system post 2011 will be the responsibility of local government, which is also, and will continue to be, responsible for operating in accordance with Section 75 obligations.

## **SECTION 1: INTRODUCTION**

A draft EQIA at a strategic level was made available for formal consultation as part of the Department's response to proposals as outlined in the Executive's Programme for Government (PfG) 2008-11 (<http://www.pfgbudgetni.gov.uk/finalpfg.pdf>).

In its Programme for Government, the Executive made a commitment to, **'Deliver a fundamental overhaul of the planning system by 2011 to ensure that it supports economic and social development and environmental sustainability'**. (p.14) The Department has been tasked with turning this aspiration into a reality through a staged programme that will streamline the planning system while also transferring a number of planning functions from central to local government.

Following on from an initial screening exercise and subsequent engagements (both internal and external), a draft EQIA at a strategic level was prepared as part of the Department's Section 75 statutory duties in response to the PfG proposals, and was published alongside the planning reform consultation paper.

As part of the consultation, views were invited on:

- consultees' views on the draft assessment of the equality impacts of the planning reform proposals;
- any further information which could be useful in assessing those equality impacts; and
- any comments or suggestions on how groups could be best engaged during the consultation process.

A copy of the consultation paper and the draft EQIA at a strategic level is available on our website at <http://www.planningni.gov.uk>

The Government Response to the Public Consultation is available on our website, along with a copy of this final EQIA at a strategic level at <http://www.planningni.gov.uk>

If you have any queries about this document, and its availability in alternative formats, please contact us to discuss your requirements:

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## **SECTION 75 NI ACT 1998**

Section 75 of the Northern Ireland Act 1998 requires each designated public authority, when carrying out its functions in relation to Northern Ireland, to have due regard to the need to promote equality of opportunity between:-

- persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- men and women generally;
- persons with a disability and persons without; and
- persons with dependants and persons without.

Without prejudice to these obligations, the public authority is also required, in carrying out its functions, to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

The Department of the Environment (DOE, including the NI Planning Service), submitted its Equality Scheme to the Equality Commission for Northern Ireland (ECNI) in February 2001. The Scheme outlined how the DOE proposed to fulfil its statutory duties under Section 75.

As set out in its Equality Scheme, the Department carries out equality screening on all new or revised policies to assess impact on the promotion of equality of opportunity and/or good relations using the following criteria:

- Is there any indication or evidence of higher or lower participation or uptake by different groups?
- Is there any indication or evidence that different groups have different needs, experiences, issues and priorities in relation to the particular policy issue?
- Is there an opportunity to better promote equality of opportunity or good relations by altering the policy or by working with others in government or in the larger community?
- Have previous consultations with relevant groups, organisations or individuals indicated that policies of that type create problems that are specific to them?

## **THE NORTHERN IRELAND PLANNING SERVICE**

### **Background**

The Town and Country Planning Service (which had been established in 1973 following the Macrory Report on the review of local government in Northern Ireland) became an Executive Agency (known as the 'Planning Service') of the Department of the Environment on 1 April 1996.

The Department's statutory planning functions are now mainly provided for by the Planning (Northern Ireland) Order 1991, associated subordinate legislation and relevant regulations implementing European Community Directives in the planning sector.

The aim of the Planning Service is:

'to deliver a modern, effective planning system which meets the needs of the whole community and the economy while protecting the environment'.

Its key objectives are:

- To make good, timely planning decisions within a fit for purpose area plans, policy and legislative framework which supports the key priorities in the Executive's Programme for Government.
- To deliver good quality service to its customers and stakeholders.
- To review, streamline, improve and monitor the Planning Service's key systems and processes.
- To have the necessary financial, human and other resources to deliver the Agency's aims and objectives.

## **SECTION 2: THE POLICY CONTEXT**

### **The Programme for Government (PfG) 2008 – 2011**

On 25 October 2007, the First and Deputy First Ministers launched the Executive's first Programme for Government<sup>1</sup>. This document was published along with the Budget and Investment Strategy (ISNI2) covering the same 3-year period. These documents highlighted a range of priorities but, in particular, economic growth and the development of a peaceful, prosperous, fair and healthy society. In acknowledging these two priorities it was recognised that, 'economic growth and social progress cannot be taken forward in isolation from action to address poverty and disadvantage to build a fairer and more equitable society'.

The Programme for Government and Investment Strategy were formally endorsed by the Assembly on 28 January 2008. This was followed on 29 January 2008 with the Assembly formally agreeing to the Executive's Budget for 2008-11. Within the Public Service Agreements established as part of the PfG, the Department is committed to reform of the planning system, the focus of this final EQIA at a strategic level.

A major reform programme for the planning system in Northern Ireland, encompassing the structural changes announced under the Review of Public Administration (RPA), was launched in November 2007 and is being taken forward by the Environment Minister and planning officials. A draft EQIA at a strategic level was published at the same time as, and in conjunction with, the planning reform consultation paper containing the Department's proposals for reform.

In summary, the programme of reform incorporates a range of medium to long-term measures designed to address all the key elements of the planning system, including planning policy, development plans and development management (formerly known as development control). A number of process improvements, designed to have an immediate impact on the efficiency and effectiveness of the planning system, continue to be put in place.

In this way the reform programme represents a dynamic process of change over coming years in order to shape a planning system that can, 'play its part in delivering on the Programme for Government priorities and, in particular, by contributing to growing a dynamic, innovative and sustainable economy'.

### **Draft EQIA at a Strategic Level: Programme for Government, Executive Budget, Investment Strategy (ISNI2)**

In January 2008, the Executive published an equality impact assessment (EQIA) on the three co-joined policies, Programme for Government 2008 - 2011, Executive Budget 2008 – 2011 and the Investment Strategy 2008 – 2018 (ISNI2)<sup>2</sup>.

In broad terms this EQIA presented a very positive message as to how the PfG and the budget would impact positively across the Section 75 categories. In the words of the EQIA,

'The approach to the development of the Programme for Government, Budget and Investment Strategy is to promote equality and good relations and address the causes and consequences of poverty and exclusion. In this context, the Programme for Government highlighted that, alongside action to address poverty and exclusion, the Executive will seek to address differential outcomes in key areas such as health and

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<sup>1</sup> Available at <http://www.pfgbudgetni.gov.uk/finalpfg.pdf>.

<sup>2</sup> Available at <http://www.pfgbudgetni.gov.uk/drafrequi.pdf>

education that may be experienced by a number of Section 75 groups and which significantly impact on the lifetime opportunities of those groups. Focusing action to address differentials will have a more positive impact on some Section 75 groups than others. However, there is no evidence to suggest that this is likely to equate to a negative impact on others’.

Included within this assessment were a number of statements with a direct bearing on the reform of the planning system, framed under the priority, **‘Protecting and enhancing our environment and natural resources’**. The draft EQIA carried out on the PfG found no evidence to suggest that this priority would have significant adverse impacts; rather it was anticipated that delivery of the priority would have a positive effect on a number of Section 75 categories and also isolated communities.

A further PfG priority, **‘Delivering modern, high quality and efficient public services’**, also includes the planning reform programme. The draft EQIA concluded that there was no evidence to suggest that the delivery of this priority would have an adverse impact on any Section 75 group; rather it would have the potential to deliver positive impacts on those groups that may experience particular difficulties in accessing public services. In addition, the development of more effective and efficient public services, which promote inclusion and accessibility, has the potential to contribute towards the promotion of good relations across all groups.

## **REFORM OF THE PLANNING SYSTEM**

In November 2007 the Minister of the Environment at that time (Arlene Foster) announced her intention to bring forward a programme of planning reform, with the key aim of developing proposals that would enable the planning system to play its part in delivering the Executive’s priorities and, in particular, by contributing to growing a dynamic, innovative and sustainable economy, while promoting inclusion and equality of opportunity.

The consultation paper, launched at the same time as the draft EQIA at a strategic level, set out the measures the Department proposed to take to reform the planning system in Northern Ireland and to make the changes required to implement the decisions taken under the Review of Public Administration. These proposals will see the majority of planning functions returning to local government and, in combination, represent the most fundamental change to the planning system in Northern Ireland for over 30 years.

The planning reform consultation paper also presented certain related issues on which the Department sought views, including third party appeals, criminalisation of development without planning permission and increased developer contributions towards infrastructure provision.

In order to fully inform the proposals the Department has been involved in a number of different engagement activities, including a major conference in November 2007, attended by approximately 200 delegates and addressed by the Environment Minister. A questionnaire developed for the conference was posted on the Planning Service website for 10 weeks, with over 240 responses submitted and considered.

Officials also engaged in research and liaised with their counterparts in planning throughout the UK and Ireland. A series of meetings were held with internal and external stakeholders in Northern Ireland, including other government departments, the Planning Appeals Commission, representative bodies such as Community Places, Northern Ireland Environmental Link (NIEL), the Construction Employers Federation, the Institute of Directors, the Confederation of British Industry, the Northern Ireland Local Government Association and others. The Department was also assisted in

developing its reform proposals by Professor Greg Lloyd who was appointed as an independent expert on planning to advise the Minister on how best to take forward the reform agenda.

In addition, the reform consultation paper drew on the Emerging Proposals paper, which was posted on the Planning Service website in October 2008<sup>3</sup>. In the months following this, there were also a number of seminars and conferences to discuss the emerging proposals, involving groups such as NILGA, the Royal Institution of Chartered Surveyors (RICS), NIEL etc.

The planning system is about ensuring the effective and efficient use of land in the public interest, thereby contributing to achieving sustainable development in cities, towns and rural areas. Land use and development involves a complex interaction and analysis of economic, environmental and socio-economic issues and, with the return of devolved government in Northern Ireland, the Executive has made it clear that the top priority for the next three years is sustainable economic growth.

Driven by imperatives first laid out in the PfG, reform is therefore seen as critical to ensure that Northern Ireland has a modern, efficient and effective planning system that is fit for purpose and can support the Executive in delivering on its key priorities. The planning system needs to provide confidence to investors, developers and the public alike. It also needs to be highly responsive to the many and varied challenges we are facing today, including promotion of economic growth, promotion of equality of opportunity, enabling sustainable development, securing environmental protection, addressing climate change and demands for more social and affordable housing and, of course, ensuring effective use of resources and improved service provision.

The Department carried out an initial screening exercise which found that there was no evidence that the reform proposals would have any significant adverse effects on Section 75 groups. This screening document has been posted on the Department's website and no Section 75 issues have been raised. However, the draft EQIA at a strategic level looked at the Department's strategic response to the PfG commitments and considered further Section 75 work that could be carried out during the development and implementation of the reform programme, by both central and local government.

Hence the draft EQIA at a strategic level formed an integral part of the reform programme and ongoing engagement with the wider community regarding the outcomes of the reform programme.

### **Those Affected by the Reform Programme**

The reform programme is likely to impact on a great many people, including anyone who makes a planning application, lodges an appeal, is a consultee, wishes to object to a planning application, wishes to comment on development plans, carries out a breach of planning control and, more generally, on all users of the planning system. The proposals will also impact on the Planning Service, the new district councils (post 2011), the Planning Appeals Commission (PAC) and a range of other statutory bodies that are involved in the planning system.

### **Responsibility for Implementing the Reform Programme**

The Planning Service is, in general, responsible for delivering the reform programme with the intention that many responsibilities and functions will be devolved to the 11 new district councils from 2011, following implementation of the Review of Public Administration (RPA). The new district councils, when duly designated as public authorities under Section 75, will be obliged to

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<sup>3</sup> Between March and June 2009, the Emerging Proposals paper has been downloaded over 600 times. To date no Section 75 groups have raised issues with regards to the paper. Figures for the period October 2008 to February 2009 are not available.

have due regard to the promotion of equality of opportunity in the same way as central government. When responsibility passes to the new district councils it will be important to ensure that mechanisms are in place to consolidate the mainstreaming of due regard for the need to promote equality of opportunity and without prejudice to same, regard for the desirability of good relations in local planning systems, compliant with Section 75.

With regard to the appeals system, some of the policy will continue to be delivered by the Planning Appeals Commission (PAC) which, as a separate appeals body, is independent of the Planning Service. The PAC adheres to the Nolan Principles for maintaining standards in public life and adopts in its business plan the core values of impartiality, integrity, openness, fairness, professionalism, quality, valuing workforce and customer care.

### **Anticipated Outcomes**

The anticipated outcomes from the proposed reform programme are:

- a more responsive planning system delivered at a local level with enhanced local political accountability;
- a streamlined development plan system, with a more meaningful level of community involvement;
- a more effective development management system with a greater focus given to economically and socially important developments;
- a system more capable of discharging the statutory obligations to have due regard for the need to promote equality of opportunity;
- improved efficiency of processing and greater certainty about timescales;
- a change in the culture of the planning system: seeking to ‘front load’ the development plan consultation process, make plans more strategic in nature, and to facilitate and manage development, rather than mainly controlling undesirable forms of development;
- stronger collaborative working across a range of stakeholders; and
- a better match of resources and processes to priorities and improved value for money for all users of the planning system through more proportionate decision-making mechanisms.

### **THE PLANNING REFORM PROGRAMME: KEY ELEMENTS**

The changes proposed for the planning system will see a move from a unitary, centralised system, where central government not only sets policy but also deals with all planning applications, to a two-tier system similar to that in operation in England, Scotland, Wales and the Republic of Ireland.

Fundamental reviews of planning systems across the rest of the UK have served to highlight the inadequacy of existing processes, and the need to improve efficiency and effectiveness in the management of planning. In line with these developments, the reform process in Northern Ireland has already highlighted a number of areas where improvements can be made, and opportunities for streamlining a system that has been criticised for its bureaucratic and burdensome nature in the past.

Following implementation of the RPA, the 11 new district councils will have responsibility for the majority of key planning functions, including:

- local development planning;
- development management (excluding regionally significant applications); and
- enforcement.

Local government will also assume responsibility for associated resources, including finance and funding, accommodation, assets and Planning Service staff who will transfer with the relevant planning functions.

Following the transfer of planning functions, it is intended that central government will have responsibility for regional planning, planning policy, determination of regionally significant applications, legislation, oversight, guidance for councils, audit, governance and performance management.

In order to progress the necessary changes, the consultation paper identified six key elements for change by 2011 within the reform process, namely:

- **Planning Policy Statements**
- **Development Plans**
- **Development Management**
- **Permitted Development**
- **The Appeals System**
- **Funding/Fees**

In addition, the paper indicated three related elements of the planning system that were being afforded due consideration as to whether or not they may form an integral part of the reformed service, although it was recognised that significant further work would be required to develop detailed proposals in these areas. The three areas identified were:

- **Third Party Appeals**
- **Enhanced Enforcement powers and Criminalisation of development without planning permission**
- **Developer Contributions**

A brief description of each element is provided below.

### **Planning Policy Statements**

The Regional Development Strategy and Planning Policy Statements (PPSs) combine as the key planning documents that shape future development outcomes across Northern Ireland. PPSs provide operational policy and guidance on a range of planning issues (e.g. industrial development, enforcement and the built heritage) and set out the main planning considerations that are taken into account in assessing proposals for various forms of development. In turn, they inform the preparation of development plans. Given the current system of central delivery of all planning functions in Northern Ireland (at both the strategic and operational levels), these statements can be overly detailed. Elsewhere in the UK and the Republic of Ireland, PPSs (or their equivalents) do not incorporate detailed operational policy.

One of the proposals in the reform programme was that PPSs should move from providing operational guidance and advice to providing strategic direction and regional policy advice, which would then be interpreted locally in development plans. It was also proposed that the content and process associated with PPS production would reflect the desire to produce shorter, more focused documents, in a shorter timescale.

The intention was that PPSs would set out the policy framework to achieve high level strategic objectives at a regional level, but retain sufficient flexibility to permit decisions to be taken based on local circumstances. As such, PPSs would, in future, only contain context, direction and such policy detail that the Department deemed necessary, with increased use of complementary documentation, such as separately produced supplementary or best practice guidance.

The Department's initial draft screening found that, as these proposals were not concerned with actual policies contained within individual PPSs, there was no evidence to suggest that the

proposals would have a differential impact on any of the Section 75 groups but, instead, they had the potential to help ensure that there was comprehensive policy on certain land use topics that could be applied equally to the different circumstances arising throughout Northern Ireland. The individual planning policies contained in PPSs will continue to be subject to equality screening by the Department and, where appropriate and in line with statutory duty, full EQIA. However, as part of the consultation exercise, the Department sought feedback on this conclusion.

### **Development Plans**

Development Plans allocate appropriate land for differing types of land use. They establish the main planning requirements which developers are expected to meet in respect of particular zoned sites while also showing designations such as conservation areas, areas of outstanding natural beauty, sites of local nature conservation importance etc. Development Plans apply regional policies at the appropriate local level and inform the general public, statutory authorities, developers and other interested parties of the policy framework and land use proposals that will guide development decisions.

In accordance with the RPA decisions, the new district councils will become responsible for drawing up their own local development plans, while central government will retain responsibility for regional planning. DRD and DOE are working together to develop proposals as to how central government will exercise its regional planning role, which in broad terms will be to set the regional strategy and vision for Northern Ireland and provide an appropriate regional planning framework within which the new district councils will develop their own local development plans.

Fundamental to reform is the provision of an effective, up-to-date development plan system. The Department proposed to introduce a new local development plan system which would operate within the two-tier planning system envisaged under the RPA, whereby planning functions will be administered by both district councils and the Department. The proposals were intended to:

- speed up the plan preparation process;
- ensure more effective participation from the community and other key stakeholders early in plan preparation; and
- ensure a more flexible approach that is responsive to change and capable of faster review.

The new local development plan system will provide more clarity and predictability for developers, the public and other stakeholders. It will also assist the new 11 district councils to target action to tackle social need and social exclusion. It was proposed that legislation should be put in place to require district councils to submit draft local development plans to central government for scrutiny to ensure they are aligned with central government plans, policy and guidance.

Development plans, as drawn up by the Planning Service, are currently subject to equality screening and assessment, as applicable. This will continue to be a requirement after 2011 but will rest with the new district councils when responsibility for local development plans moves to local government.

### **Development Management**

At present the Planning Service is responsible for processing all applications for planning permission (approx 20,500 applications were received in 2008-09). Many of these applications (75%) relate to local residential developments, a responsibility that it is proposed will pass to the new district councils.

In line with other reforms, it is inevitable that the planning application system must change, not only to provide a more modern, responsive, fair, predictable and efficient system, but also one that

coordinates local decision-making with regional strategies. Development management (as opposed to its predecessor, development control) is likely to make a significant contribution to the modernisation of the planning system as part of the transfer of functions to district councils, highlighting distinctions between types of application and providing proportionate processes for dealing with applications that have either a regional, major or local significance.

It is widely acknowledged that a reformed application system must become more proportionate, more efficient and more responsive to the needs of all users. This will enable the new district councils and their elected members to deliver on the ambitions and priorities for the communities they serve. In addition, it is proposed that district councils will have greater scope to focus resources on those development proposals which are of the greatest economic and social benefit in their areas. The proposals will also encourage increased community engagement at an earlier stage in the process and, as such, facilitate the inclusion and consideration of the views of communities with the greatest social need who might otherwise be excluded.

### **Permitted Development**

Through the reform programme, the Department has been examining the scope for extending permitted development rights with regard to certain householder, minor and non-householder developments, including those associated with small scale renewable energy technologies.

The Department has explored the scope for widening existing householder, minor and non-householder permitted development rights, together with a consideration of the scope for introducing additional categories of permitted development, with the intention of reducing the number of minor applications in the system, while mindful of the need to protect the interests of neighbours, the wider community and the environment. This work included relevant screening under Section 75.

The Department also proposes to extend permitted development for small scale renewable energy generation to non-residential land uses, including commercial, industrial, agricultural and public sector development and has carried out a public consultation on this issue. This work also included relevant screening under Section 75.

### **Appeals System**

The planning appeals system in Northern Ireland is delivered by the Planning Appeals Commission (PAC), an independent body established to decide a wide range of appeals and to report on various matters under planning and related legislation.

The number of appeals received by the PAC has in recent years risen from 762 in 2004/05 before peaking at 2765 in 2006/07. It has since dropped to 1493 in 2007/08 and, more recently, to 515 in 2008/09<sup>4</sup>. In keeping with the aims of the reform agenda the appeal proposals sought to improve the planning appeals system by tackling delaying factors and by providing an appeals system which is more proportionate to the type and complexity of each appeal. The proposals were informed by similar proposed changes to the appeals systems in the rest of the UK.

It is widely acknowledged that some of the existing appeals processes are disproportionately complex, while some administrative processes could also be streamlined. Building on best practice, the reformed system is likely to incorporate a number of significant changes to the existing system while retaining the core principle that an applicant has the right to appeal a planning decision. This must remain central to a democratic and accountable planning system.

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<sup>4</sup> PAC Chief Commissioner's Annual Report April 2008 to March 2009.

## **Funding**

The implementation of the RPA, in conjunction with the reform programme, will potentially have implications for the funding of the planning system, and for the fee structure. The Department needs to assess how these proposed reforms will impact on funding and what revisions may be required as a result. This work will be carried out by the Department during 2010 and will undertake all relevant equality screening and EQIA as appropriate.

## **Third Party Appeals**

To date, in common with other parts of the UK, there is no mechanism for third party appeals in the Northern Ireland planning system but it is an issue that has been debated in the past. As responsibility for planning is transferred to district councils it is the intention that the planning system will be increasingly 'front loaded' with opportunities for third party engagement, thereby extending the openness and transparency of the system. A third party appeals system was not one of the Department's reform proposals. However, the Department used the consultation process to find out the views on and level of support for the introduction of third party appeals to the Northern Ireland planning system.

## **Enforcement/Criminalisation of development without planning permission**

As part of the reform programme the Department reviewed existing enforcement provisions to ensure that they were sufficiently robust, and also considered whether any new proposals should be developed in line with those brought in elsewhere (e.g. Scotland). The Department also sought views from the consultation process on whether or not there was a wide support for criminalisation of development without permission within the reformed planning system.

## **Developer Contributions**

Through the consultation paper, the Department sought views on the contribution that the development industry might make to the provision of infrastructure (such as roads, water and sewerage) necessary for Northern Ireland's economic and social improvement.

## **The Reform Programme and Section 75**

In summary, it can be seen that the reform programme is multifaceted and combines a number of elements that will combine together up to and beyond 2011 to define a reformed planning system. The draft strategic EQIA at a strategic level aimed to help establish the strategic direction of the programme, and ensure that Section 75 statutory obligations are woven into the reform proposals.

The Department is keen to see Section 75 principles applied at each stage of the reform programme. The diagram at appendix 1 summarises this process.

## **POLICY AIM**

The reforms are set in the context of the overall objective of improving the Northern Ireland economy, while promoting social inclusion, sustainable communities and personal health and well-being, as well as promoting viable and vital towns and city centres and helping to create shared spaces that are accessible to all and where people can live, work and socialise. This principal objective must also balance with the need to protect the environment and heritage, and will contribute to sustainable development.

Taken together, it is envisaged that the reforms will not only improve the efficiency and effectiveness of the planning system but will also create a planning system that provides transparency in decision-making, and gives confidence to its users.

In summary, the reform programme aims to bring about improvements in the planning system to ensure that it:

- supports the future economic and social development needs of Northern Ireland and manages development in a sustainable way, particularly with regard to large, complex or strategic developments;
- is delivered at the right level with the appropriate managed processes for regionally significant, major, local and minor applications;
- has streamlined processes that are effective, efficient and improve the predictability and quality of service delivery; and
- allows full and open consultation and actively engages communities.

## SECTION 3: CONSIDERATION OF AVAILABLE DATA AND RESEARCH

In keeping with the Equality Commission for Northern Ireland Guide to the Statutory Duties and EQIA Guidelines, data has been drawn from a wide range of sources, both quantitative and qualitative, to help inform the impact assessment process. Given that the scope of the reform programme is so broad, it is likely that the policy has the potential to impact across the entire population of Northern Ireland, a breakdown of which is provided below:

**TABLE 1: NORTHERN IRELAND POPULATION PROFILE BY SECTION 75 GROUNDS**

<b>Section 75 Ground</b>	<b>Northern Ireland Population</b>	
<b>Gender</b>	Male	49.1%
	Female	50.9%
<b>Age</b>	0 to 9	13.11%
	10 to 19	14.07%
	20 to 29	14.36%
	30 to 39	13.48%
	40 to 49	14.31%
	50 to 59	11.50%
	60 to 69	9.31%
	70 to 79	6.26%
80 and Over	3.59%	
<b>Religion (Community Background)</b>	Catholic	43.8%
	Protestant	53.1%
	Other Religion	0.4%
	No Religion or None Stated	2.7%
<b>Political Opinion</b> (Based on seats in the NI Assembly October 2008)	DUP	36 seats
	UUP	18 seats
	Alliance	7 seats
	SDLP	16 seats
	Sinn Fein	27 seats
	PUP	1 seat
	Green	1 seat
	Independent	1 seat
	Ind Health Coalition	1 seat
<b>Marital Status</b> (based on over 16s)	Single (never married)	33.1%
	Married	48.45%
	Re-married	2.67%
	Separated	3.84%
	Divorced	4.12%
	Widowed	7.81%
<b>Dependent Status</b> (based on households with children between 0 and 15 or a person between 16 and 18 in full-time education)	Dependent Children	36.47%
	No Dependent Children	63.53%
<b>Disability</b> (based on households with one or more person with a limiting long-term illness)	Disabled	41.21%
	Not Disabled	58.69%

<b>Ethnic Group</b>	White	99.15%
	Irish Traveller	0.10%
	Mixed	0.20%
	Indian	0.09%
	Pakistani	0.04%
	Bangladeshi	0.01%
	Other Asian	0.01%
	Black Caribbean	0.02%
	Black African	0.03%
	Other Black	0.02%
	Chinese	0.25%
	Other Ethnic Group	0.08%
<b>Sexual Orientation</b>	Research indicates that 10% of a population is LGB. (Source: Rainbow Project July 2008)	

Source: Northern Ireland Census 2001 Key statistics ((except Age & Gender, NISRA 2008 Mid-Year Population Estimates)

### IN-HOUSE DATA SOURCES

In order to fully inform the proposals, the Planning Service has been involved in a number of different engagement activities, including a major conference in November 2007. This was attended by approximately 200 delegates and addressed by the Environment Minister.

A questionnaire developed for the conference was posted on the Planning Service website for 10 weeks, with 243 responses. Key findings are summarised below:

- Agents/architects represented the largest proportion of respondents (39%), followed closely by members of the public (36%) and then developers (9%).
- The responses indicated that current levels of satisfaction with the planning system were low, with three quarters of respondents rating their satisfaction with the development plan and development control processes as either 'poor' or 'very poor'.
- Development control (now development management) was clearly ranked by respondents as the number one priority area in need of reform (42%), well ahead of development plan (28%), administration (15%) and enforcement (14%).
- Key areas of priority for development control related to arrangements and response time with consultees, improving the speed of the decision-making process and managing applications in a proportionate manner.
- In terms of development plan, the areas that respondents felt needed addressed as a highest priority related primarily to the need to improve the speed and responsiveness of plan preparation. The need for improved engagement and consultation with other bodies was also highlighted as an area of key priority.
- The priority area identified by respondents in relation to enforcement was the need for increased deterrents e.g. higher fines and prosecutions.
- Respondents were also given the opportunity to provide general comments and suggestions in relation to the reform programme. A total of 320 additional comments were provided. These comments varied greatly in nature - from broad observations to specific ideas and from strong criticisms to constructive suggestions.
- Two of these responses referred to Section 75 groups: one commented that planners should be required to assume responsibility for increased dangers to users (especially children) of small rural roads and one asked what Planning Service was doing to allay public concerns and perceptions that some area plans are drawn up on a politically motivated basis to prevent development and an increase in the population of a certain side of the community.

Officials have also been engaged in research and have been liaising with their counterparts in planning throughout the UK and Ireland.

In addition, a series of face-to-face meetings have been held with internal and external stakeholders in Northern Ireland, including other government departments, the Planning Appeals Commission, representative bodies such as Community Places, Northern Ireland Environmental Link, the Construction Employers Federation, the Institute of Directors, the Confederation of British Industry, the Northern Ireland Local Government Association and others.

The Department was also assisted in developing its reform proposals by Professor Greg Lloyd who was appointed as an independent expert on planning to advise the Minister on how best to take forward the reform agenda.

The Planning Reform consultation paper, published in July 2009, was informed by these various engagements and was developed from the earlier Emerging Proposals paper, which was posted on the Planning Service website in October 2008. Since then the Minister and planning officials have been involved in a number of conferences, dinners and meetings with interested parties and key stakeholders. Feedback on the emerging proposals was positive and this continued with the more comprehensive reform proposals, which have been broadly welcomed.

### **Commissioned Research**

In June 2009 the Department commissioned experts led by the Social Research Centre<sup>5</sup> to support them in developing the draft EQIA at a strategic level and to provide a commentary on potential impacts that may be associated with the reform programme, either at the present time or at some time during its future implementation. The commentary, which was included in the draft EQIA at a strategic level and is repeated in this final document, highlights various equality issues and equity considerations across the planning system.

In the context of the reform programme, due regard for the need to promote equality of opportunity in line with Section 75 should help to highlight all possible examples of differential participation by Section 75 grounds, and evidence of any disproportionate impact of the proposals on such grounds. In practice, these effects can relate to either the substantive outcomes of planning decisions *or* the procedural process of how decisions are made. Further, in reflecting on these considerations it is important to bear in mind that those affected by planning decisions may extend far beyond those who directly access the services delivered by the Planning Service (i.e. 'clients'), including those who currently do not access the planning system and, as a consequence, may have unmet needs and rights. Comprehensive monitoring data, supported by a coherent monitoring strategy, is seen as an important step in providing a considered reflection on the accessibility, use and uptake of the wide range of services delivered by any planning system operating at both a regional and local level.

In equality proofing any planning reform proposal it is important to understand how planning decisions could potentially impact on groups associated with any of the nine Section 75 categories. It may be useful to understand how each of the categories could be affected by both the substantive outcomes (i.e. expressed as specific physical, land use development) of the planning process and the different procedural processes used in making planning decisions but it is recognised that the focus of the current planning reform programme is on the latter.

In terms of substantive impacts, some groups may have been directly affected by past land use planning decisions and their identity and lifestyle may be differentiated from mainstream society in

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<sup>5</sup> Consultancy support was provided by the Social Research Centre, led by Eileen Beamish, in association with John Kremer (Kremer Consultancy Services), Dr. Geraint Ellis (School of Planning, Architecture and Civil Engineering QUB), and Fiona Cassidy (Jones, Cassidy & Jones Solicitors)..

the way they relate to land use and the spatial features of the built environment. Consideration of substantive impacts will be much more significant as the reform programme moves into the implementation stage (2011 onwards) but examples might include:

(Details of the Reference shown in brackets are included in Appendix 2)

- There is an established literature that shows how different cultural practices or economic activities associated with different ethnic groups may be reflected in the built environment and which may, under some circumstances, clash with the values of mainstream society, as projected through the regulatory planning system. Travellers in particular suffer multifaceted deprivation as a direct consequence of planning decisions that result in many families living on unauthorised sites, with poor access to services and with negative consequences for health and access to other services such as education. (Ref. 4)
- Gender: It has become recognised that the built environment may have differential impacts by gender due to how gendered lifestyles and relations are played out and reproduced in urban space. (Ref 5b).
- Age: The way in which both children and older people are able to access services and facilities has been shown to potentially result in negative consequences for health and well-being. (Ref 8 and 9)
- Disability: The physical barriers faced by those with disabilities are better known. (Ref 13)

In terms of procedural impacts, other literature (Ref 2) highlights the following critical points:

- Planning decisions are made in a variety of ‘policy processes’, which may include those decided through the judgement of experts (e.g. setting housing projections), the semi-judicial context of public inquiries, or by politicians in the context of representative democracy.
- Each of these processes will be more or less accessible depending on the attributes of a person. For example, those who are able to engage in ‘expert’ planning discourse (or who can afford an advocate) will have an advantage in expert-led or technocratic policy processes. Those who have poor literacy or fluency in English may therefore find some processes more difficult to influence than others. This may impact on, for example, those with a disability or those whose first language is not English.
- The different Section 75 categories are likely to be characterised by a mix of attributes that may result in collective advantage or disadvantage according to policy process.

It is important that the screening documents recognise that shifting the way planning decisions are made from one process to another could impact on the ability of different groups to influence that decision.

In order to ensure that future policies are sufficiently evidence-based, it is recognised that appropriate data gathering systems should be put in place in the future to consider not only those who use but also those who do not use various planning services. While this data gap may have traditionally characterised the planning system in Northern Ireland, as elsewhere, there are indications of a growing realisation of the value of such data for effective system control and management. For example, the Scottish Government (Ref 18) has completed a study that has attempted to examine whether those involved in the planning system are representative of the broader population. In summary, this report found that:

- In the case studies examined (N=3), those who volunteered views to the planning authority came from a particular cross section of the community, dominated by the middle aged and the elderly.
- People under 35 were largely absent from the process.
- Retired people dominated the responses.

- White Caucasians dominated responses in the three case studies.
- Evidence was unclear but it appears that those people in full time employment were also under-represented among respondents.
- Women were slightly more likely than men to become involved in the planning process, but significantly more likely to oppose an application.

The broad picture shown in this research seems to be also reflected in the work of the private Saint Consulting Group, who undertake an annual opinion survey<sup>6</sup> of objections to development. There are also isolated examples of studies (Ref 19) that have looked at the ‘client’ group of specific areas of planning activity, such as conservation areas, and again insights gained from such research can help inform the emerging reform programme.

There are two further issues that have a key bearing on understanding who may be affected by the planning reforms:

- Although the Scottish data outlined above may suggest that certain groups are over-represented in some areas of planning activity, the fact that some groups are apparently absent should not necessarily be taken as an indication that they will not be affected by any proposal. It should be borne in mind that a group may be absent from such processes because the existing procedures may serve to exclude them (e.g. hidden ‘chill factors’), and some thought must be given as to how the planning reforms are likely to ameliorate or extenuate such processes. It is likely that an insight into this issue can only be gained through direct contact with under-represented groups, i.e. those that do not use the planning system.
- It may be inappropriate to consider the ‘clients’ of the planning system as being just those who access planning services such as appeals and applications – the outcome of the planning system affects all of society in terms of its land use outcomes, with obvious implications for differential impact on one or more of the nine Section 75 categories.

## **STRATEGIC SOURCES**

All government policies and reform proposals, including planning reform, are informed by a number of key strategic documents, notably the following cross-departmental strategies:

- Race Equality Strategy;
- Gender Equality Strategy;
- Sexual Orientation Strategy and Action Plan 2006-2009; and,
- Ageing in an Inclusive Society – strategy for older people.

(This list is not exhaustive.)

## **SOURCES EXTERNAL TO PLANNING SERVICE**

There follows a synopsis of other data sources which have been referenced and will continue to be drawn upon during the reform programme, of which this final EQIA at a strategic level forms a part.

- **Northern Ireland Census Data**

A census of the population is normally taken every ten years and is carried out by the Census Office for Northern Ireland. The census provides essential statistical information about the population and households for all parts of the country. The most recent results available are from the 2001 census returns.

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<sup>6</sup> 2009 Saint Index- Headline results (Saint Consulting).

- **Indicators of Equality and Diversity in Northern Ireland**

Published on 12 January 2007, this is the fifth in a series of reports from a research project commissioned by the Office of the First Minister and Deputy First Ministers to study the development of indicators of diversity and equality in Northern Ireland. Through reviewing and extensively analysing existing NI statistics and research, the report aims to develop an 'equality and diversity picture' of the region; to identify key indicators of change over time; and to consider the potential of existing data to provide useful indicators of equality and diversity.

- **Statement on Key Inequalities in Northern Ireland**

Published by the Equality Commission for Northern Ireland in October 2007, the statement seeks to highlight the range and breadth of the equality agenda in Northern Ireland and to set out some of the inequalities that remain to be addressed.

- **Northern Ireland Multiple Deprivation Measure 2005**

Published by NISRA, May 2005, the report identifies small area concentrations of multiple deprivation across Northern Ireland. The report includes a series of maps which set out each domain of deprivation and the overall Multiple Deprivation Measure.

- **Social Trends**

Social Trends is an annual publication produced by the National Statistics Office. An established reference source, it draws together social and economic data from a wide range of government departments and other organisations to paint a broad picture of society today, and how it has been changing.

- **Continuous Household Survey**

The Continuous Household Survey provides a regular source of information on a wide range of social and economic issues in Northern Ireland, and has been running since 1983. The survey is based on a random sample of 4,500 domestic addresses. Interviews are sought of all adults aged 16 and over in the selected households.

- **Northern Ireland Life and Times Survey**

The Northern Ireland Life and Times Survey, launched in the autumn of 1998, monitors the attitudes and behaviour of people in Northern Ireland annually to provide a time-series and a public record of how attitudes and behaviour develop on a wide range of social policy issues.

- **Households Below Average Income**

The DSD's Annual Households Below Average Income Report uses household disposable incomes, adjusted for household size and composition, as a proxy for material living standards or, more precisely, for the level of consumption of goods and services that people could attain given the disposable income of the household in which they live.

- **Family Resources Survey**

The Family Resources Survey collects detailed data on income levels, resources and financial circumstances of individuals and households for the period from April 2002 to the end of March 2003.

- **Northern Ireland Crime Survey**

The Northern Ireland Crime Survey is carried out by Central Survey Unit on behalf of the Northern Ireland Office. It is a household survey which has been running as a continuous survey since January 2005. It was first carried out as a one-off survey in 1994/5 and was repeated in 1998, 2001 and 2003/4. The main purpose of the survey is to collect information about levels of crime and public attitudes to crime. The information is collected by interviewing people to find out about

crimes they may have experienced, including those that were not reported to the police. Respondents are also asked their views about the level of crime and how much they worry about crime.

- **Regional Trends**

Regional Trends is a comprehensive regular source of official statistics for the Statistical Regions of the United Kingdom (Scotland, Wales, Northern Ireland and the Government Office Regions within England) produced by the National Statistics Office. It includes a wide range of demographic, social, industrial and economic statistics, covering aspects of life in the regions.

- **Labour Force Survey**

The Labour Force Survey (LFS) is a quarterly sample survey carried out by interviewing people about their personal circumstances and work. It is the biggest regular household survey in Northern Ireland and provides a rich and vital source of information about the labour force using internationally agreed concepts and definitions. The LFS provides information on labour market structure, employment, ILO (International Labour Organisation) unemployment, economic activity, groups within the labour market.

- **2005 Labour Force Survey Religion Report**

The 2005 Labour Force Survey Religion Report presents information from the 2005 Labour Force Survey on the labour market characteristics of Protestants and Roman Catholics in Northern Ireland.

- **Women in Northern Ireland**

Women in Northern Ireland is a quarterly publication produced by the Department of Enterprise, Trade and Investment. This publication contains key facts and figures about women in Northern Ireland. It covers the areas of employment, unemployment, economic inactivity, education, childcare provision and representation in public life.

- **Child and Family Poverty in Northern Ireland**

Published in April 2006, the report was commissioned by the OFMDFM (Office of the First Minister and Deputy First Minister) and provides an analysis of the levels and composition of child and family poverty and social exclusion.

- **Equality Mainstreaming - Policy and Practice for Lesbian, Gay and Bisexual (LGB) People**

This research report was commissioned by the Equality Directorate of OFMDFM prior to devolution, with the aim of providing a 'broad evidence base to assist statutory bodies in effectively considering LGB issues in the development of policy and practice'.

## SECTION 4: ASSESSMENT OF IMPACTS

In bringing forward proposals under the reform programme, the Department is aware that in each of the key elements there may exist the potential for impacts (whether positive or negative) on one or more of the Section 75 grounds. It must be acknowledged that not all impacts will be adverse, and even within one Section category there may be both adverse and positive effects. For example, greater use of web-based systems may positively impact on certain people with a disability (e.g. those with restricted physical mobility) while having an adverse impact on those who have difficulties interacting with computer systems (e.g. those with sensory or learning difficulties).

The focus of the reform programme is primarily on procedural impacts and not substantive impacts. Operating within the broad terms of reference of the planning system reform programme, as laid out in the Programme for Government, and taking into account existing research, the following section highlights the potential procedural impacts.

### **Between men and women generally**

- ***Procedural Impact (i.e. planning system)***

There is some evidence from other parts of the UK that women may be somewhat more likely to become involved in the planning process and also significantly more likely to oppose an application (hence a positive impact). These findings may reflect on related evidence which suggests that those who are more active in the labour market may be less likely (or able) to engage with the planning process, given that, in general terms, women are more likely than men to be either economically inactive or to be working part-time. It is also possible that women feel a greater sense of stewardship over the environment, and respond to development proposals accordingly.

### **Persons of different age**

- ***Procedural Impact (i.e. planning system)***

Existing research would indicate that those who are aged 50 years and above are over-represented in the planning system (a positive impact) while those under 35 are largely absent (an adverse impact). Once more, it is likely that engagement with planning systems is likely to be influenced by availability and ease of access which in turn may be determined by employment status. For example, those in full-time work are least likely to engage with planning services while those who have retired from work are most likely.

Older people living in rural areas or on disadvantaged housing estates have difficulty accessing the sorts of opportunities that most people in society can often take for granted, perhaps including access to planning systems. This is a particular issue for pensioners in rural areas who are more likely to be in poverty than those in urban areas. For older women, in particular, participation can be further constrained by pensioner poverty. There is also evidence to suggest that exclusive reliance on e-technology and computer-based application systems can inadvertently serve to further marginalise such populations.

### **Persons with a disability and persons without**

- ***Procedural Impact (i.e. planning system)***

Given typical application procedures that apply to any form of engagement with the public sector, it is likely that those with a disability will find it more difficult to access a planning system, whether in Northern Ireland or elsewhere. While, in common with many public authorities, the Planning Service has already introduced a number of positive action measures to help overcome obstacles to engagement it has been shown that those with a disability still perceive that they face obstacles when trying to access public and social services - such as transport, housing and financial services. Once more, while reliance on computer-based systems may increase accessibility for some

(including those with a disability), for others it may create obstacles, also including those with a disability.

#### **Persons of different marital status**

- *Procedural Impact (i.e. planning system)*

Available evidence would suggest that the existing planning services may be less accessible and available to those with competing family commitments.

#### **Persons of different religious belief**

- *Procedural Impact (i.e. planning system)*

It has been estimated that there could be up to 150 separate religious groupings in Northern Ireland at the present time. Access to public services in general must accommodate this rich diversity of personal beliefs.

While there may be no strong indication that religious belief will impact on the regional dimensions to the reformed planning system, given the correlation between political opinion and community background/religion, there may be concerns, whether real or perceived, that the political allegiance of elected members could reflect in decision-making at district council level, whether in relation to planning issues or other council functions.

#### **Persons of different political opinion**

- *Procedural Impact (i.e. planning system)*

The strong correlation between political opinion and community background / religious belief in Northern Ireland would suggest that the comments applied to religious belief can be read across to this ground as well.

#### **Between persons with dependants and persons without**

- *Procedural Impact (i.e. planning system)*

Dependency status may differentially impact on access and availability of planning services, given its recognised effect on employment status.

#### **Persons of different racial group**

- *Procedural Impact (i.e. planning system)*

There may be barriers associated with the planning system for those whose first language is not English, and in particular where documents are of a technical nature. Lack of availability of translation services for those not fluent in English may also create an impediment. It has also been found that the planning system can be used as an outlet for discriminatory behaviour against some racial groups, particularly Travellers, through objections to planning applications, not made on the basis of the land use characteristics of the proposed development, but the ethnicity of the proposed occupants.

#### **Persons of different sexual orientation**

- *Procedural Impact (i.e. planning system)*

There is no indication or evidence that an individual's sexuality will adversely affect his or her's access to the planning system.

**TABLE 2: SUMMARY OF POTENTIAL SUBSTANTIVE AND PROCEDURAL IMPACTS BY SECTION 75 GROUNDS (Details of the References shown in brackets are included in Appendix 2)**

S.75 groups	Procedural impacts of planning	
		Comment
Gender	**	<p>There is evidence that shows women can be better represented in participative processes (Ref 6) and how policies can be gender proofed (Ref 7).</p> <p>The Scottish Executive (Ref 18) found that women were slightly more likely than men to become involved in the planning process, but significantly more likely to oppose an application.</p>
Age	**	<p>Children have been largely neglected in decision-making in planning and to properly include them requires alternative, more creative participative processes (Ref 10)</p> <p>Older people appear to be over-represented amongst those responding to planning consultation (Ref 11) and there is evidence that older people respond differently to different methods of participation (Ref 12).</p> <p>The Scottish Executive found that those who volunteered views to the planning authority came from a particular cross section of the community i.e. the responses were dominated by white Caucasians, the middle aged (&gt;35 years of age) and the elderly. (Ref 18).</p>
Persons with a disability	**	<p>There is evidence that those with disabilities could be excluded from decision-making processes (Ref 14) and that developers' attitudes towards disability can be highly varied (Ref 15), although recent work may suggest that these adverse effects may have been ameliorated following recent amendments to the legislation.</p> <p>Available research (Ref 24) indicates that adults with a disability and children with a disability have the highest risk of poverty before social transfers, at 77% and 70% respectively in 2004-05. After social transfers the risk of poverty for adults with a disability was 26% and children with a disability was 37%.</p>
Marital status	*	<p>It is assumed that marital status is a characteristic of the wider society and as such married people will not experience any disproportionate effects of different methods of decision-making.</p> <p>However, available evidence (Ref 25) suggests that those who are separated will tend to have the highest rate of poverty, followed by those who are divorced and then single people.</p>
Religious beliefs/ Political opinion <sup>7</sup>	**	<p>While there may be no strong indication that religious belief will impact on the regional dimensions to the reformed planning system, given the correlation between political opinion and community background/religion, there may be concerns, whether real or perceived, that the political allegiance of elected members could reflect in local planning decisions at district council level and in particular where elected members are directly involved in any decision-making process. These anxieties should be duly acknowledged in any emerging proposals.</p>
S.75 groups	Procedural impacts of planning	
		Comment
		<p>There is evidence that certain sections of some religious groups (e.g. young Protestant men) may have attributes such as low literacy rates that may act as a barrier to full participation in some planning processes.</p>

<sup>7</sup> Religious belief and political opinion have been merged for the purpose of this analysis on the basis that in Northern Ireland there is a strong correlation between voting behaviour and religious background.

		It has been estimated that there could be up to 150 separate religious groupings in Northern Ireland at the present time. Access to the planning system must accommodate this rich diversity of personal beliefs.
Persons with dependents	**	Whilst no evidence could be found that could confirm that those with dependents are differentially impacted by different planning processes, greater domestic commitments could discourage involvement in the planning system. It is conceivable that dependency status may differentially impact on access and availability of planning services, given its recognised effect on employment status.
Racial group	**	There is evidence that suggests that different racial groups are differentially affected by the range of ways decisions are made in planning (Ref 2). There is also guidance on how participation can be improved for ethnic minorities (Ref 3) and specifically how Travellers can be better involved in the Northern Ireland planning system (Ref 4).  There may be barriers associated with the planning system for those whose first language is not English, and in particular where documents are of a technical nature. Lack of availability of translation services for those not fluent in English may also create an impediment.
Sexual orientations	*	There is no indication that an individual's sexuality will adversely affect their access the planning system.  It is assumed that people with different sexual orientations are characteristic of the wider society and as such will not experience any disproportionate affects of different methods of decision-making. There is some specific research undertaken on gay citizenship in Belfast, providing some evidence (Ref 17), although extrapolation on planning procedures is difficult to make.

Note:

\*\*\*\* = established and significant negative impact

\*\*\* = potential significant negative impact

\*\* = potential impact, evidence not established

\* = insignificant or no impact

**TABLE 3: NEW TSN CONSIDERATIONS**

<b>New TSN Dimension</b>	<b>Comment</b>
Health and Mortality	There is a clear relationship between deprivation and health outcomes with those in deprived areas tending to experience worse health outcomes, while also suffering from increased morbidity and mortality (Ref 21).

## **SECTION 5: CONSIDERATION OF MEASURES TO MITIGATE POTENTIAL ADVERSE IMPACT / ALTERNATIVE POLICIES TO PROMOTE EQUALITY**

The Department deliberately cast the net wide in describing and analysing data that may relate to the reforms of the planning system. It is also worth noting that the Department has a track record of responding positively to the needs of particular groups through previous revisions to its existing systems. For example, the Disability Discrimination Act 1995 (and successive amendments) have been responded to by the introduction of a number of positive action measures designed to make the service and the built environment more accessible to those with a wide range of disabilities. The reform programme will continue to aspire towards best practice in this regard and welcomes the fresh impetus it has provided.

This final EQIA at a strategic level also shows the complex nature of the planning system, and the potential for impacts both positive and negative on so many groups linked to Section 75 grounds. While it is anticipated that the majority of changes that will accompany the reform programme will, by their very nature, have a positive impact on Section 75 groups, on those occasions where there is the potential for the promotion of equality of opportunity and/or adverse impact then the Planning Service is keen to explore any possible mitigating measures or alternative approaches.

The Department is content that the planning reform proposals will continue to help meet the aspirations as laid out by the Executive, to encourage economic growth along with the development of a peaceful, prosperous, fair and healthy society.

As indicated in the draft EQIA at a strategic level, the Department is committed to taking action as set out below to further enhance the mainstream of Section 75 statutory obligations within the reform programme.

1. Existing data on those who do, or do not, engage with the planning system is less than substantial. The Department therefore commits to take action to develop a Monitoring Strategy that will incorporate information on relevant Section 75 categories, in accordance with best practice and the Equality Commission's Guidance on Section 75 Monitoring. This Monitoring Strategy will be developed for implementation in the context of the reformed planning system from 2011-12 onwards.
2. Despite this historical absence of data, the Department recognises that, in Northern Ireland as elsewhere, all members of the community may not always have had equality of access to the planning system. Indeed, this was part of the original rationale for the Department's funding of organisations such as Disability Action and Community Places. In bringing forward proposals under the key elements of the reform programme, the Department will remain alert to these issues and will aim to ensure that the reformed planning system is as user-friendly and inclusive as possible.
3. The Department will commit to engage widely during the continued development and implementation of the reform programme, including with representatives of those groups who may be at risk of adverse impact. Race, age and disability have already been identified as Section 75 categories that may warrant further attention to ensure that the reformed planning system is inclusive and genuinely accommodates those with particular needs.

4. The Department will ensure that all forms of consultation will be made accessible to all sections of the community, including written documents as well as the timing, management and location of consultation events.

5. Where a new issue/policy emerges through the programme of reform, over and above those key elements already identified, that issue/policy will also be subject to appropriate screening and, if necessary, an equality impact assessment (EQIA).

6. As the reform programme is rolled-out, and the new planning system is created, there will be an expectation on both central and local government to ensure that Section 75 obligations continue to be mainstreamed through regional and local planning systems.

### **Conclusion**

This process has provided the Department with an opportunity to demonstrate that Section 75 statutory obligations are at the heart of the reform programme. While the Department's initial screening exercise indicated that significant effects on each of the Section 75 categories were not anticipated, the draft EQIA at a strategic level was undertaken in order to offer a timely reflection on progress made to date, to consider the potential procedural impacts in greater detail and to begin the process of identifying those occasions during future implementation where it will be important to next apply the checks and balances that Section 75 affords. Some very useful feedback was obtained through the consultation on the draft EQIA at a strategic level, which will help the Department develop its Monitoring Strategy as it moves forward. Through the operation of due diligence in this manner, the Department can make sure that fair treatment and the promotion of equality of opportunity remain a priority for the entire planning system up to and beyond 2011.

## **SECTION 6: CONSULTATION ON PROPOSED POLICIES AND DRAFT EQIA AT A STRATEGIC LEVEL**

### **Consultation**

Consultation on the Reform of the Planning System in Northern Ireland commenced on 6 July 2009 with the publication of the proposals paper: 'Reform of the Planning System in Northern Ireland: Your chance to influence change'. The draft EQIA at a strategic level was published at the same time. There was a very encouraging response to the consultation paper, with 264 responses received. In general, strong support was expressed for the majority of the reform proposals. Fourteen direct responses were received to the draft EQIA at a strategic level, which included feedback on both equality issues and also on the reform proposals. Similarly, equality related issues were made throughout many of the general responses to the overall Reform consultation paper.

During the 12 week consultation period a series of consultation roadshow events were undertaken. The roadshow events formed the central part in a process of encouraging engagement and response to the Reform Proposals before the closing date of 2 October 2009. They were organised and facilitated by a team of event managers and independent planners who, together with key Planning Service personnel, attended a mixture of day and evening events in each of the new eleven council areas to hear the views and opinions of those who came along.

Aside from being publicly advertised, over 1,500 invitations (written and e-invites) were issued to a wide range of sectors, including the business community, environmentalists, councils, community and voluntary groups and other organisations, and 1,000 fliers were issued to libraries, leisure centres, council offices and civic centres. In total, almost 500 people took up the invitation and came along to one or more of the events.

### **Equality Profile of Attendees**

Of the 480 participants, 191 completed and returned an equality feedback form. This represents a response rate of just under 40%. Upon further analysis (shown in Appendix 3) the following points can be made:

- of the 191 respondents, 57% were male and just over 30% were female (with the rest not responding or declining to comment);
- looking at the age profile, no-one was under 18 years old; 4.7% were aged 19-25 years; the two highest age groups were 26-35 years and 56-65 years with 18.8% each; 15.7% were 36-45 years; 16.2% were 46-55 years and just over 10% were aged 65 years and over;
- 60% were married and just under 20% were single with the rest declining to comment or not responding;
- 46% had dependants, 35% did not and the rest did not respond;
- 33% of participants stated that their community background was Protestant; 31% Catholic; 10% neither; 2% 'other'; and the remainder declined to respond;
- 79% of respondents said they were white and the rest declined to respond or left the question unanswered;
- 75% stated they were not disabled, 7% stated they were, and the rest did not respond.

This paper is the final EQIA at a strategic level, taking account of the responses to the planning reform consultation and the roadshow events. This paper is being published at the same time as the government response to the outcome of the planning reform consultation.

## **SECTION 7: DEPARTMENT RESPONSE TO CONSULTATION**

There were 14 responses to the draft EQIA at a strategic level, although a number of comments on equality were made by respondents in their consultation responses. The comments to the draft EQIA are contained in a table at Appendix 4, including the Department's response to them. Below we highlight some of the general comments and those which relate to specific reform proposals.

### **General Comments**

A number of respondents welcomed the Department's reform programme and the opportunity it offers to address barriers and shortcomings in the current planning system and to further promote equality of opportunity and good relations at all levels of the planning system and its delivery of services across Northern Ireland. They also welcomed the fact that the draft EQIA was published at the same time as, and in conjunction with, the consultation paper and relevant screening documents. The Department's commitment to the development of a future monitoring strategy was also welcomed.

Respondents welcomed and endorsed the stated outcomes of the programme in terms of ensuring a system more capable of discharging the statutory obligations to have due regard to the need to promote equality of opportunity and stronger collaborative work across a range of stakeholders.

The accommodation needs of members of the Traveller community were raised by a number of respondents as a priority issue, as was the need for greater understanding and recognition of the needs of Section 75 groups in rural areas. A number of respondents suggested that the groups most likely to be affected by the reforms were the elderly, young couples and low income families. In a number of responses, this was raised in the context of concerns about second homes and buying for investment in coastal communities.

There was support for the commitment that local authorities would be expected to mainstream due regard for the need to promote equality of opportunity and without prejudice to same, regard for the desirability of good relations in local planning systems, compliant with Section 75. However, some concern was also expressed in relation to the resource implications that might arise. Reference was also made to the revised Section 75 guidance, which is anticipated from the Equality Commission this year.

There was recognition by some that the assessment in equality terms of the full implications of some of the proposed changes would not be fully realised until later stages in the process, particularly at the implementation stage. However, this was also a cause for concern in relation to the potential implications for local authorities in implementing the new planning system.

The transfer of responsibility from central to local government was a recognised as a key element of the reforms and it was suggested that the EQIA should have more fully explored the area of religion / political opinion as there may be a requirement for mitigating measures arising from the need for councillors to make decisions that are not based on community background or political allegiances.

Third party appeals and the rights of objectors were raised by a number of respondents as an equality issue.

In terms of mitigation, it was suggested that there was a need for education of the public on how to access the planning system more effectively, and the provision of technical and legal advice to assist applicants and objectors. It was suggested that community groups and charitable groups working with the various disadvantaged groups in society must be given the opportunity to access simplified documentation and to attend training sessions designed to show how the various stages

of the new system will work. It was also suggested that information should be provided and disseminated in a clear, comprehensible form and made available electronically, but also in a paper and in oral form to those less able to deal with large, formal documentation. The scope to use other forms of media, such as radio and television, for communicating the changes was also identified.

The following sections look at individual policy areas and the government's response.

## **PLANNING POLICY**

The Department's commitment outlined in the draft EQIA at a strategic level to continue to subject individual planning policies contained within Planning Policy Statements (PPSs) to equality assessment in line with statutory duties was welcomed. It was recognised that while there is no evidence to suggest that a PPS in itself will result in differential impact on any of the Section 75 groups, the development of policy directions set out in PPSs should be evidence-based.

One respondent suggested that the presumption in favour of development is in itself an inequality and to be truly impartial there should be no presumption either for or against development.

A number of respondents highlighted the need for the Department to establish strong oversight mechanisms and use the powers of direction to ensure that equality of opportunity is promoted at council level across all equality categories and for vulnerable groups within these. In particular, issues in relation to housing needs and Travellers and national minorities were identified in some consultation responses. In addition, a number of recommendations were made in relation to PPSs and any supplementary guidance, relating to issues such as Travellers needs; carrying out analysis of existing inequalities; ensuring equality screening; ensuring councils have regard to S75 and Section 67 (Race Relations), and so on.

### **Department's Response**

By March 2011, the Department intends to have in place an up-to-date suite of PPSs in their current format, as well as a new PPS1 (which will set out the general principles to be observed under the reformed planning system for formulating planning policy, making development plans and exercising development management powers). This suite of PPSs, together with the revised Regional Development Strategy (RDS), will provide a robust and consistent planning policy framework within which the new councils will be able both to prepare the first round of local development plans and to manage development. This planning framework will give some scope for development plans to provide local policies which complement or amplify regional policy. The Department will provide transitional advice and guidance for district councils on how this will be implemented.

The current planning policy context for Travellers is set out in the RDS and particularly in PPS12. Following the transfer of planning functions, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance. Development plan proposals will continue to take full account of the accommodation needs of the travelling community through the Housing Needs Assessment prepared by the Housing Executive either by zoning land suitable for Travellers' sites or setting out site selection criteria. This will enable local solutions (including the provision of advice on site selection and management) to be developed for particular local circumstances in consultation with the local travelling community and their representative organisations as well as the local settled community. This provides the opportunity for all sections of the community

(settled and nomadic) to have their needs considered as part of mainstream district council planning and housing decision making processes.

The Department recognises the importance of equal treatment of Travellers and the settled community in the planning system. In preparing a new Planning Policy Statement 1 on the general principles that will underpin the operation of the modernised planning system, the Department will give consideration to the best way of promoting equality of opportunity for all sections of the community. As at present, all Planning Policy Statements will continue to be subject to equality screening and assessment as appropriate. The policy content will be a matter for consideration when each PPS is being prepared / revised.

## **DEVELOPMENT PLAN**

A wide range of equality-related and more general comments were received from respondents to the draft EQIA at a strategic level in relation to the development plan proposals. The key equality issues raised included:

- significant opposition, for equality and other reasons, to the proposal that the Department should give independent examiner(s) the power to determine the most appropriate procedures to be used when dealing with representations to the local development plan;
- local development plans should explicitly seek to redress key inequalities in housing and promote social inclusion;
- councils should be required to zone land for Traveller sites in their development plan where the Housing Needs Assessment (HNA) shows need rather than leaving it to be determined through individual applications;
- councils should be required to consult the travelling community/traveller groups in order to identify suitable locations for sites to meet the needs identified in the HNA;
- the need for development plans to address social and affordable housing, particularly in coastal communities where second homes and buying for investment is an issue;
- the Department using its oversight, guidance, audit, governance and performance management processes to ensure that the reformed planning system and future council policy and procedures are inclusive and genuinely accommodate those with particular needs;
- local development plans and community plans should be closely linked in order to achieve a coherent approach to identifying and addressing social need, social inclusion and equality of opportunity;
- the need to establish additional baseline data and improve monitoring systems to ensure regular monitoring and review of local development plans;
- through the test of robustness (to be known as Soundness), as well as plan monitoring and review, particular attention should be paid to issues such as the high level of segregation in housing on grounds of community background, the lack of suitable housing for disabled people, homelessness and the lack of adequate housing and accommodation for Travellers;
- local development plans should be subject to EQIAs and there would be benefit requiring a statement of good relations in local development plans which would set out how the plan will address separation and promote sharing; and
- the 'social' dimension of the proposed Sustainability Appraisal provides an important mechanism to address rural proofing and Section 75 priorities.

### **Department's Response**

The key aspect of the local development plan proposals which has changed following further detailed consideration, and in response to the feedback received, is in relation to the proposal to give the PAC or other independent examiner the power to determine the most appropriate method to deal with representations at plan independent examinations. The aim was not to stifle debate at the

independent examination or to stop certain stakeholders from contributing: it was simply to enable the independent examiners to better manage the examination process. However, the Department has taken into consideration the strength of opposition, in particular the potential for detrimental effects on some Section 75 groups, and has decided not to proceed with this proposal. Therefore, the current provision for oral hearings will remain. As such, any person who makes a representation seeking a change to the Plan Strategy or Site Specific Policies and Proposals document (to be known as the Local Policies Plan) will be given the opportunity, if so requested, to appear at the independent examination and be heard by the PAC or other independent examiner.

In relation to the other local development plan issues raised, the Department would respond as follows:

- local development plan legislation and the test of ‘soundness’ will require district councils to ensure they have met the preparation requirements of a local development plan, which includes taking account of central government plans, policy and guidance and that there is a robust evidence base for the decisions made on policies contained within the plan;
- district councils will be required to have their Statement of Community Involvement (SCI) in place before any public consultation on the local development plan can begin. The SCI will set out the councils approach to community consultation for the plan and will include any measures required to meet Section 75 obligations, including consultation with Travellers and others, as appropriate. The Department considers that the SCI will enable district councils to carry out more inclusive and effective community consultation on their local development plans. It will also help better promote equality of opportunity and community relations through increased awareness of community participation and involvement;
- on the specific issue of social and affordable housing, land zoning and Travellers, the Department notes the comments made. The adequate provision of social and affordable housing is a matter for planning policy and is currently set out in the RDS and PPS12. The current planning policy context for Travellers is set out in the RDS and in PPS12 it allows for plans to identify specific sites to meet needs such as traveller sites. Following the transfer of planning functions, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance;
- there will also be a statutory requirement for district councils to monitor the implementation of their local development plans which will include any policy for the provision of land for Traveller accommodation, social and affordable housing and so on; and
- sustainability appraisals will include a ‘social dimension’ and detailed guidance on SAs will be prepared in due course. Furthermore, following the transfer of planning functions, the requirement for rural proofing and for local development plans to be subject to equality screening and EQIA, as appropriate, will apply to district councils in the same way as it currently applies to central government.

In summary, following the transfer of planning functions, when responsibility for local development plans moves to local government, Section 75 statutory obligations will continue to apply to district councils. It is envisaged that the new local development plans will be effective tools in assisting district councils to fulfil their duties under Section 75 of the Northern Ireland Act to have due regard to the need to promote equality of opportunity and good relations. This will help address issues such as housing and accommodation for Travellers. While the test of ‘soundness’ will not include detailed policy considerations, it will include the requirement for local development plans to take account of central government plans, policies and guidance such as PPS 12.

## **DEVELOPMENT MANAGEMENT**

There was a broad welcome for proposals to create a more responsive, fair, predictable and efficient planning application system which focuses on shaping and facilitating appropriate development opportunities. Some concern was expressed in relation to the proposed thresholds and the potential that they might mean that some significant developments in rural areas would be excluded from being subject to pre application community consultation.

There was support for the introduction of statutory pre-application community consultation for regionally significant and major developments. A number of comments were made in relation to how such engagement should be conducted to ensure it is inclusive and effective, and that targeted action is taken if required so that, for example, older people, disabled people, Travellers, migrant worker families, social groups with low educational attainment, literacy rates and so on are properly engaged.

Some respondents recommended that pre-application community consultation should also be considered for applications for Traveller sites and it was suggested that due to their contentious nature it may be advantageous to adopt a different approach to pre-application community consultation which involves mediation skills. It was also suggested that although Traveller transit sites may not meet the threshold criteria for regionally significant developments, they should be treated as regionally significant and handled by identified officers in Planning Service because of their regional significance to the Traveller community across Northern Ireland.

One respondent also suggested that consideration should be given to expanding the list of statutory consultees to include the local rural and urban community infrastructure, learning from the Community Council model developed in Scotland.

### **Department's Response**

The proposed development hierarchy (consisting of regionally significant, major and local developments) is intended to ensure that application procedures are proportionate and responsive to each of the three different types of development category. The Department will revise the details and proposals for the hierarchy, taking into account some of the views expressed through the consultation process, particularly in relation to amending and aligning some of the thresholds (including housing).

In addition, in light of responses to the consultation paper the Department will give district councils some discretion to issue a request to the Department that an application for local development be dealt with as a major development. This would provide flexibility to respond to exceptional and specific local circumstances where, in the opinion of the district council, pre-application community consultation might be considered appropriate. The Department intends to provide guidance to district councils in relation to the circumstances where this may be appropriate.

Applications for regionally significant development will form the top tier of development proposals which are considered essential to increasing the sustainable economic growth of Northern Ireland. These applications will be critical to the delivery of the Executive's regional investment priorities. By their very nature they will involve a relatively small number of large scale applications with strategic implications for the whole of Northern Ireland, for example, regional infrastructure and certain types of commercial development.

In light of the travelling community's distinctive local needs, particularly in relation to decisions on sites for accommodation, the Department considers that these are best addressed in their relevant local context as applications for local development rather than at the regional level.

The current planning policy context for Travellers is set out in the RDS and particularly in PPS12. Following the transfer of functions, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance. Development plan proposals will continue to take full account of the accommodation needs of the travelling community through the Housing Needs Assessment prepared by the Housing Executive either by zoning land suitable for Travellers' sites or setting out site selection criteria. This will enable local solutions (including the provision of advice on site selection and management) to be developed for particular local circumstances in consultation with the local travelling community and their representative organisations as well as the local settled community.

The Department notes the comments in relation to ensuring effective engagement and consultation. The issues raised will be taken in account by the Department as it moves forward with the primary and subordinate legislation programme and also with the preparation of guidance on issues such as pre-application community consultation and so on. Similarly, the feedback in relation to consultees has been noted. Although the list of consultees has not yet been finalised, it is intended that the relevant bodies (statutory consultees) which must be consulted by the planning authority will be identified in subordinate legislation.

## **APPEALS**

In relation to appeals, the key proposals that resulted in equality issues being raised included the proposal to reduce the time limit for making an appeal and the proposal to give the PAC power to decide the most appropriate appeal method. There was support for reducing the time limit within which appeals must be made from the current 6 months, though with mixed views on the appropriate time period. There was some agreement that 6 months is unnecessarily long and it was highlighted that, in the context of Article 6 of the European Convention on Human Rights (ECHR), decisions affecting the civil rights of all parties, including the applicant and objectors, require to be determined within a reasonable time.

The proposal to provide the PAC with the statutory powers to enable it to decide the appropriate appeal method provoked a high response. One respondent recognised that the fair hearing provisions of the ECHR do not necessarily require an oral hearing, and others felt that a written appeal may place all participants on a more equal level than the semi-judicial nature of oral appeals. However, the majority of respondents opposed the proposals and a number expressed concern that the written representation method had the potential to disadvantage marginalised groups, including potentially some 24% of adults in Northern Ireland who have the lowest levels of literacy competence. People with disabilities were also said to be potentially disadvantaged by the removal of such a right.

### **Department's Response**

The Department intends to reduce the time limit for submitting an appeal to 4 months with legislative powers to be provided to change this time period through subordinate legislation at a later date, if appropriate.

The aim of the proposal to give the PAC the power to determine the more appropriate appeal mechanism was not to stifle debate at appeals or to stop certain stakeholders from contributing; it was simply to enable the Planning Appeals Commission to better manage the appeals process. However, having carefully considered all the responses and in light of the widespread opposition and concerns raised, the Department will not proceed with this proposal.

### **THIRD PARTY APPEALS**

The issue of third party appeals attracted a high number of responses to the overall consultation paper and also in relation to the draft EQIA at a strategic level.

A number of respondents supported the introduction of third party appeals, with many indicating that it should be a limited or restricted right to avoid vexatious challenges. Some suggested it was necessary, from an equality perspective, to protect against inadequate community consultation.

One respondent suggested that third party rights to challenge the determination are severely limited and this raises the scope of Article 6 of European Convention on Human Rights.

Those in favour of introducing third party rights see it as a fundamental component of a reformed planning system which is fair and accessible to all and a system which is founded on principles of equality and genuine engagement. By contrast, those against the introduction of such rights believe that the planning system has enough opportunities for engagement. They said that this fact, together with the reforms proposing a much more front-loaded system of community involvement, will negate the need for any such system. In fact, some feared that their introduction could cause further delays in what they see as an already slow and inefficient system.

Some respondents suggested that the emphasis on a formal 'paper' approach to all aspects and phases of the planning process disadvantages the less literate sections of the population and not introducing third party appeals would throw this balance further out of kilter. Careful consideration must also be given as to how the less literate are to be kept abreast of these matters and thus informed and empowered to play a proper role in the system.

Other respondents recommended that third party rights of appeal should be introduced with a legal-aid fund available to individual objectors and small community and residents' groups with insufficient funds, to enable them to contest appeals effectively.

### **Department's Response**

Whilst no formal proposal for third party rights of appeal was included in the planning reform consultation paper, it is evident from the responses received that there is a clear division of opinion with strong views for and against their introduction.

The reformed planning system has been designed to front-load arrangements for community consultation, engagement and involvement in the planning process in order to shape and influence better outcomes. The Department has decided that further consideration of third party appeals should be deferred until the extensive changes to the planning system under planning reform and implementation of RPA have settled down and are working effectively. The Department does not therefore intend to make provision for third party appeals in the current round of planning reform proposals.

On the specific issue of whether the absence of third party rights of appeal raises the scope of Article 6 ECHR, it has been the opinion of the courts in Great Britain that a combination of the opportunities for input by third parties of their views relating to planning applications and the ability to have recourse to Judicial Review is sufficient to satisfy the requirements of Article 6 of the European Convention on Human Rights. The judgment in the Foster Judicial Review case delivered in the High Court of Justice in Northern Ireland in January 2004 reached a similar conclusion.

## **ENFORCEMENT AND CRIMINALISATION**

The key equality related issues raised in relation to the enforcement proposals was that the needs of Travellers who have no alternative culturally sensitive accommodation should be taken into consideration before enforcement action is served.

Other responses also suggested that enforcement penalties need to be more realistic to ensure compliance.

### **Department's Response**

The Department intends to proceed to introduce legislation so that retrospective planning applications should attract a multiple of the normal planning fee. The level will be determined at a later stage and included in subordinate legislation. Fixed Penalty Notice powers in respect of a breach of an Enforcement Notice or Breach of Condition Notice will also be introduced. In addition, the Department intends to give consideration to measures which would help ensure that levels of fines are commensurate with the breach of planning control

In relation to potential enforcement action, the Department notes the comments made in relation to Travellers and can confirm that, as PPS 9 indicates, the Department has a general discretion to take enforcement action against a breach of planning control when it regards it as expedient to do so having regard to the provisions of the development plan and any other material considerations. This policy will continue to apply to district councils following the transfer of responsibility for planning functions.

## **DEVELOPER CONTRIBUTIONS**

A number of comments were received in the context of equality issues and developer contributions, with the suggestion that the contributions sought from developers could be used to promote greater equality and good relations through the needs identified in community and local development plans.

### **Department's Response**

The Planning Reform consultation document was used as a suitable vehicle through which to initiate debate on the issue of seeking contributions from developers for the provision of general infrastructure, beyond that already required to mitigate the site specific impact of a development proposal and make it acceptable in planning terms. The comments made by respondents have been noted. The issue of developer contributions will require further consideration at Executive level, particularly in relation to those Departments with responsibility for the funding and provision of infrastructure, in order to determine the way forward.

## **CULTURE CHANGE, CAPACITY AND PERFORMANCE MANAGEMENT**

In relation to capacity building, the key equality issues raised related to the need to keep community and voluntary groups informed of the changes to the planning system as they are brought forward. One respondent reiterated the Department's view that there needs to be appropriate data gathering systems to establish who does not use or engage with the planning system. It was also suggested that, when drafting and planning the new service, specific action should be taken to ensure that the 'chill' factors associated with the current system are fully identified and addressed at all levels to ensure any barriers to participation and engagement are removed as far as possible.

In respect of Travellers, it was suggested that there should be a fair and sensitive approach to consultation and that this may require a degree of capacity building or community development before meaningful participation can take place. It was suggested that professional planning staff (at Department and council level) will need to be given the skills to enable them to be more proactive and creative in their approach to consulting Travellers. It was also recommended that an outreach programme of public education, informed media debates, independent planning advice as well as public awareness should be developed to ensure that all those involved in the planning process have the necessary knowledge, skills and competencies to effectively use and engage with the reformed planning system.

### **Department's Response**

The Department notes the comments on these issues, particularly in relation to data gathering systems and better understanding of who does / does not engage with the planning system. These issues will be taken into account by the Department as it develops its future Monitoring Strategy. Similarly, the comments on engagement and participation have been noted. Officials will also continue to work with other sectors to explore how best to raise awareness and enhance capacity and understanding within the system to ensure readiness for the changes that will arise through the implementation of the RPA and planning reform.

## **SECTION 8: DEVELOPMENT OF FUTURE MONITORING STRATEGY**

As indicated in the draft EQIA at a strategic level, the Department recognises that there is a need to gather more relevant information, both quantitative and qualitative, on the equality-related issues linked to planning reform.

The Department has committed to developing a future monitoring strategy to monitor the impact of the reform programme on users of the planning system. In order to do this effectively, the Department will also work with others to ensure that appropriate action is taken (by the Department and others as appropriate) to increase the available information and knowledge in this area.

The focus of the Department's Monitoring Strategy will be to assess the impacts that the reforms to the planning system are having on section 75 groups in Northern Ireland. It is not intended to manage or monitor the role of the individual councils in implementing the equality obligations that will be their responsibility under S75 of the Northern Ireland Act 1998.

The Monitoring Strategy will be prepared over the coming year so that it can be implemented from 2011-12 onwards. The Department will take account of the responses to the Planning Reform consultation paper and the draft EQIA at a strategic level when developing the Monitoring Strategy.

The Monitoring Strategy is likely to incorporate the following elements, though this may be subject to some revision over the coming months as the more detailed work is taken forward and as the legislation for the reforms to the planning system progresses through the Assembly process.

### **Purpose of the Monitoring Strategy**

- to set out how the Dept intends to monitor the impact of the reforms to the planning system on users of the planning system

### **Time Period Covered**

- likely to be at least 4 years

### **Key Activities / Commitments**

- this will be set out on a year by year basis

e.g. Year One might include -

- Develop methods for gathering relevant baseline information – potentially through planning application process, customer surveys etc.
- Engage with ICT providers and local government to identify opportunities for any relevant information gathering related to S75 to contribute to baseline
- Identify relevant categories and data collection mechanisms to ascertain impact of key planning reforms on S75 groups, e.g. carry out research to assess impact of pre application community consultation on S75 groups

e.g. Year Two might include -

- Identify relevant categories and data collection mechanisms to ascertain impact of other key planning reforms on S75 groups, e.g. carry out research to assess whether requirements to demonstrate 'robustness' has any negative or other impact on S75 groups

- Identify and commission appropriate research to contribute to enhanced baseline information on, e.g. specified S75 groups

**Progress Reporting**

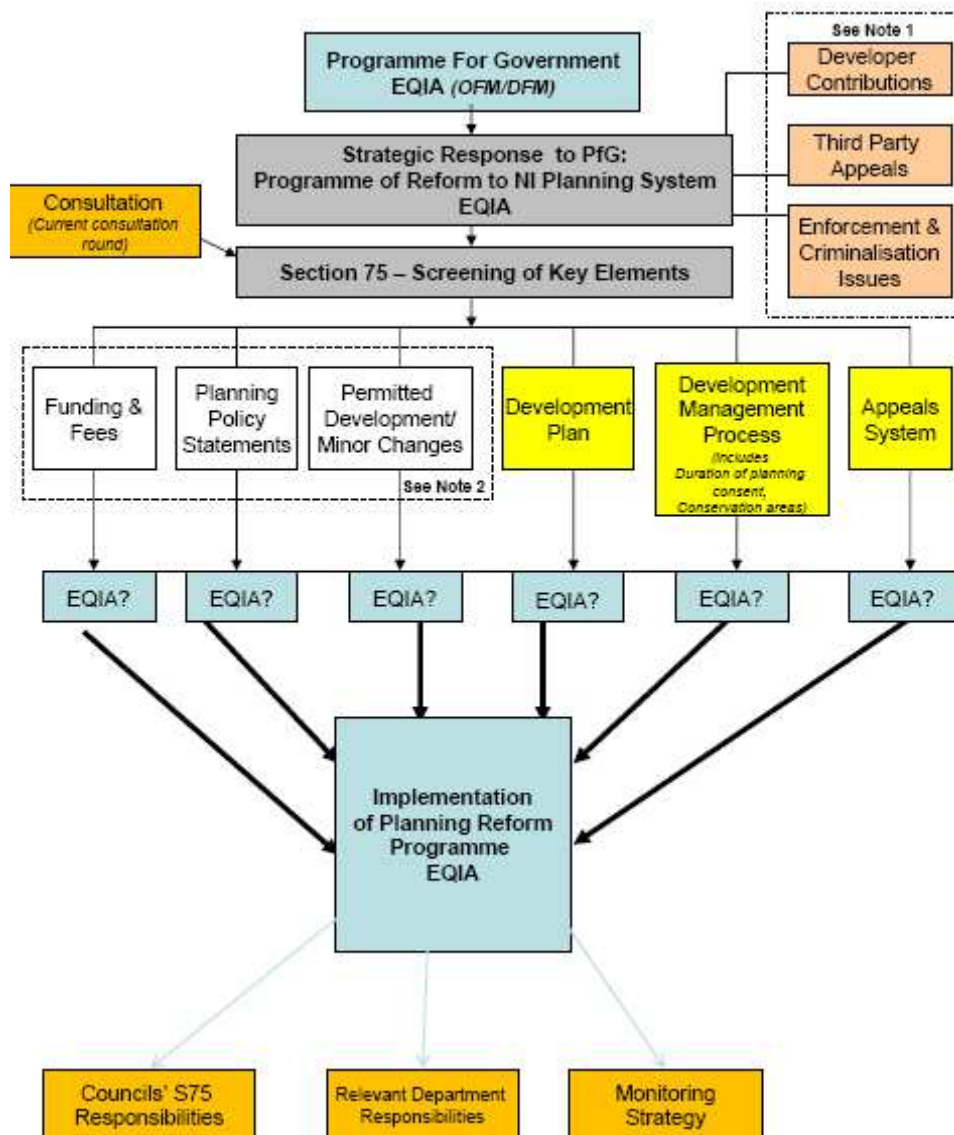
- Annual Report to ECNI as part of Department's report on its Equality Scheme

**Publication**

- The Monitoring Strategy will be produced and posted on the Department's website from 2011-12.

# APPENDIX 1:

## Section 75 and the Reform of the Northern Ireland Planning System



## **Notes to Accompany Appendix 1**

### **Note 1: Developer Contributions, Third Party Appeals, Enforcement and Criminalisation Issues**

At the time of the draft EQIA at a strategic level, proposals in these areas were not definitive. Instead, the Department wanted to find out from the consultation process whether or not there was a wide support for the introduction of third party appeals, and also for various revisions to the enforcement regime, including the possible introduction of criminalisation of development without planning permission. Depending on the outcome of the consultation, it was indicated that further consideration may be given to the issues, and if required, more detailed proposals will be prepared and screening documents developed. This remains the position.

In addition, the consultation paper was used to initiate debate on the issue of wider developer contributions beyond site specific mitigation. Consultation responses will be considered in light of the funding and infrastructure responsibilities of a range of central government departments. Any possible resulting work may be subject to separate equality considerations.

### **Note 2:**

#### **Funding and Fees**

At the time of the draft EQIA at a strategic level, the Department identified the need to undertake appropriate equality screening in relation to any new funding arrangements which result from the reform process. This will be taken forward as required during 2010.

#### **Permitted Development**

Proposals for extending permitted development rights together with associated EQIA screening assessments were published as part of a separate public consultation exercise launched in October 2009. The consultation period ended in January 2010 and any comments received will be carefully considered in the analysis of responses which is currently underway.

#### **Planning Policy Statements**

The Department's initial draft screening found that, as these proposals are not concerned with actual policies contained within individual PPSs, there is no evidence to suggest that the proposals will have a differential impact on any of the Section 75 groups but, instead, they have the potential to help ensure that there is comprehensive policy on certain land use topics that can be applied equally to the different circumstances arising throughout Northern Ireland. The individual planning policies contained in PPSs will continue to be subject to equality screening by the Department and, where appropriate and in line with statutory duty, full EQIA. Following the consultation exercise, this remains the Department's position.

## APPENDIX 2 - REFERENCES / BIBLIOGRAPHY

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**APPENDIX 3 - PLANNING REFORM STAKEHOLDER ENGAGEMENT EVENTS**  
**ANALYSIS OF EQUALITY RETURNS**

	Derry	Enniskillen	Cookstown	Lisburn	Bangor	Belfast	Coleraine	Downpatrick	Ballymena	Armagh	Antrim	TOTAL	% OF TOTAL
<b>Evaluation forms returned:</b>	21	11	16	27	20	30	13	15	9	20	9	191	
<b>Are you:</b>													
Male	13	8	10	16	11	14	9	8	7	8	5	109	57.1%
Female	8	0	4	5	7	10	4	5	2	9	4	58	30.4%
No response	0	3	2	6	2	6	0	2	0	3	0	24	12.6%
<b>What age group are you in?</b>													
<18	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
19-25	1	1	1	0	1	4	0	0	0	1	0	9	4.7%
26-35	6	2	3	5	1	6	1	2	1	5	4	36	18.8%
36-45	4	3	2	4	3	6	1	2	0	5	0	30	15.7%
46-55	5	1	3	6	6	1	3	4	0	2	0	31	16.2%
56-65	3	1	3	4	3	5	3	3	3	3	5	36	18.8%
>65	2	0	1	1	3	2	5	2	4	0	0	20	10.5%
Decline to comment	0	0	1	1	1	0	0	1	1	1	0	6	3.1%
No response	0	3	2	6	2	6	0	1	0	3	0	23	12.0%
<b>Are you:</b>													
Single	5	3	1	4	3	9	3	3	0	4	2	37	19.4%
Married	13	5	12	16	13	15	9	9	8	11	5	116	60.7%
Other	1	0	0	0	1	0	1	0	0	2	1	6	3.1%
Decline to comment	2	0	0	1	1	0	0	1	1	0	1	7	3.7%
No response	0	3	3	6	2	6	0	2	0	3	0	25	13.1%
<b>Do you have dependants?</b>													
Yes	10	5	11	11	13	9	7	6	4	9	3	88	46.1%
No	9	3	1	9	4	15	5	4	4	8	5	67	35.1%

Decline to comment	2	0	0	1	1	0	1	2	1	0	1	9	4.7%
No response	0	3	4	6	2	6	0	3	0	3	0	27	14.1%
	<b>Derry</b>	<b>Enniskillen</b>	<b>Cookstown</b>	<b>Lisburn</b>	<b>Bangor</b>	<b>Belfast</b>	<b>Coleraine</b>	<b>Downpatrick</b>	<b>Ballymena</b>	<b>Armagh</b>	<b>Antrim</b>	<b>TOTAL</b>	<b>% OF TOTAL</b>
<b>Do you consider your community background to be:</b>													
Catholic	11	4	6	5	3	9	6	6	0	8	2	60	31.4%
Protestant	4	2	4	12	9	8	3	2	6	6	7	63	33.0%
Neither	3	2	1	1	2	4	1	4	2	0	0	20	10.5%
Other	1	0	0	0	1	1	1	0	0	0	0	4	2.1%
Decline to comment	2	0	1	3	2	2	1	1	1	3	0	16	8.4%
No response	0	3	4	6	3	6	1	2	0	3	0	28	14.7%
<b>Is your ethnic background:</b>													
White	19	8	12	20	15	24	11	10	8	15	9	151	79.1%
Chinese	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
Indian	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
Pakastani	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
Traveller	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
Black African	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
Black Caribbean	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
Black Other	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
Other	0	0	0	0	0	0	0	1	0	0	0	1	0.5%
Decline to comment	2	0	0	0	2	0	1	2	1	2	0	10	5.2%
No response	0	3	4	7	3	6	1	2	0	3	0	29	15.2%
<b>Do you consider yourself to have a disability?</b>													
Yes	1	8	0	1	0	1	0	1	2	0	0	14	7.3%
No	18	0	12	19	17	23	13	10	6	17	9	144	75.4%
Decline to comment	2	0	0	0	1	0	0	2	1	0	0	6	3.1%
No response	0	3	4	7	2	6	0	2	0	3	0	27	14.1%

## Appendix 4 - Table of Responses to draft EQIA at a strategic level and Departmental Response

### 1. Equality Commission for Northern Ireland

#### **General Comments**

The Commission welcomes the opportunity to comment on the Planning Service's Consultation Paper and Draft Equality Impact Assessment (EQIA). The Commission will comment on policy issues where these have identifiable equality implications, in accordance with our priorities.

We generally welcome the Department's reform programme with its aim to ensure that Northern Ireland has a modern, efficient and effective planning system which will support the Executive in delivering on its key priorities.

In 2007 the Equality Commission published a Statement on Key Inequalities in Northern Ireland. This sets out our view that housing is a basic human need and provides a foundation for family and community life. Good quality, affordable housing in safe, sustainable communities is essential to ensuring health, wellbeing and a prosperous society. Yet there are pockets of deprivation where sections of our society experience severe housing need, homelessness and poor housing. Geography (urban / rural) should also not create a barrier to adequate housing.

The Commission's Statement on Key Inequalities highlights inequalities such as the high level of segregation in housing on grounds of community background, the lack of suitable housing for disabled people, homelessness and the lack of adequate housing and accommodation for black and minority ethnic people and Travellers.

For Travellers in particular it has been demonstrated that there are serious barriers associated with the current planning system and that the current policy approach (across the UK) is failing to meet Travellers' needs.

The planning system has a key role to play in facilitating the meeting of these needs by the appropriate public authority and reducing exclusion, both at a strategic and service delivery level. The current reform process offers a unique opportunity to address the barriers and shortcomings inherent in the current planning system and build a system which responds to the needs of Northern Ireland's diverse population. The reform process also represents a real opportunity to further promote equality of opportunity and good relations at all levels of the planning system and its delivery of services across Northern Ireland.

The Commission welcomes the Department's commitment to ensuring that Section 75 principles and best practice are mainstreamed into the reform programme. We particularly endorse the stated outcomes of a 'system more capable of discharging the statutory obligations to have due regard to the need to promote equality of opportunity' and 'stronger collaborative work across a range of stakeholders'.

#### **Equality Impact Assessment**

The Commission acknowledges that the EQIA is conducted at a strategic level and that in general substantive impacts will need to be addressed at implementation stage by the relevant planning authority. We welcome the Department's commitment to continue to subject individual planning policies contained within Planning Policy Statements (PPS) to equality assessment in line with their statutory duties.

The Commission recognises the effort the Department has made in compiling this EQIA at strategic level. We commend the Department for this comprehensive and accessible document, which in terms of structure and content complies with Commission guidance.

We also welcome the fact that the draft EQIA at a strategic level is published at the same time as, and in conjunction with, the planning reform consultation paper and relevant screening documents.

### **Specific comments on the policy proposals**

#### **Aim of the policy**

The Commission generally agrees with the aims and objectives of the reform proposals and welcomes the Department's efforts to reform the planning system in order to improve the efficiency and effectiveness of the planning system and to create a planning system that provides transparency in decision-making and gives confidence to its users.

#### **Recommendation**

We recognise that the Department is committed to ensuring that Section 75 is mainstreamed into the reform programme. However, in light of the inequalities which exist in terms of housing and the potential which the reform has to address these, we would recommend that the following are explicitly included as additional aims of the reform initiative:

- to ensure that the planning system is accessible to all sections of society and adequately addresses the needs of Northern Ireland's diverse population; and
- to further promote equality of opportunity and good relations at all levels of the planning system.

#### **Planning Policy Statements**

We recognise that the Department's intention is that PPSs would set out the policy framework to achieve high level strategic objectives at a regional level, but retain sufficient flexibility to permit decisions to be taken based on local circumstances.

While there is no evidence to suggest that a PPS in itself will result in differential impact on any of the Section 75 groups it is crucial that the development of its policy direction is evidence-based.

Leadership will be central to ensuring that equality of opportunity is integral to the reformed planning system. It is crucial that the Department develops strong oversight mechanisms and uses its powers of direction to ensure that equality of opportunity is promoted at council level across all equality categories and for vulnerable groups within these. In particular, in respect of assuring Traveller needs, strong central guidance is required in Northern Ireland.

Travellers are recognised as a distinct racial group protected from unlawful racial discrimination by the Race Relations (Northern Ireland) Order 1997. They are also acknowledged as being one of the most marginalised and excluded groups in our society. Multiple disadvantages which characterise Travellers' lives include poor living conditions and negative attitudes and behaviours from many within the settled community. This contributes to a cycle of deprivation which impacts on the Traveller community's ability to be involved in many decision-making processes, including those relating to land use planning. This can lead to planning decisions that poorly reflect Travellers' needs and are based on racial stereotypes of Travellers.

If the Northern Ireland planning system is to establish parity between the settled and Traveller communities, in line with the guarantees contained in Article 5 of the Council of Europe Framework Convention for the Protection of National Minorities, it is vital that the housing needs of both are adequately reflected at every level of the policy hierarchy and that it contains unequivocal statements of the legitimacy and special needs of the Traveller community, including those related to nomadism.

Localised needs assessments prepared at council level may prove insufficient to address the needs of those that retain nomadism as a key cultural practice.

The 3-tier hierarchy of regionally significant, major and local developments proposed by the Department mainly reflects the needs and lifestyles of the settled community.

In light of the nomadic lifestyle which many among the Traveller community wish to pursue, Traveller transit sites for example are of regional significance to the Traveller community across Northern Ireland and their existence or absence have implications that extend beyond individual council areas. Yet such sites may not meet the threshold criteria for regionally significant developments as currently proposed.

Unless an integrated, centralised and pro-active approach is adopted to meeting the accommodation needs of the Traveller community, there is a great risk that the current fragmented approach to the provision of accommodation for Travellers across a range of departments and agencies continues and that the needs of this community will continue to be inadequately addressed.

Regarding planning applications from the Traveller Community it would be the Commission's preferred option if these were to be treated as regionally significant and decided by the Department.

### **Recommendation**

That consideration should be given to planning for Traveller accommodation to be deemed a regionally significant matter and therefore retained as a centralised function of the Department.

To ensure that the specialist knowledge is available which is required to deal effectively with applications from the Traveller community (e.g. knowledge of planning policies in relation to travellers, liaison with Travellers organisations and councils who may have responsibility for management of transit sites, knowledge about different types of sites, different layout requirements etc) the DoE Planning Service should identify appropriate senior members of staff as specialist contacts for Traveller issues.

Should the department consider this recommendation impracticable and decisions of planning applications from Travellers be devolved to local government, the Commission recommends the following:

- that Travellers' accommodation needs as identified by the Housing Executive's needs assessments are specifically included as strategic objectives within future PPSs;
- that future Planning Policy Statements should explicitly establish a regional minimum provision of all types of culturally sensitive accommodation for Travellers; and contain a statement on 'Planning and Travellers', detailing how Travellers' needs should be reflected in Development Plans, indicating minimum levels of site provision and noting policies on enforcement and development control, to ensure that councils, when drawing up local development plans, adequately address the needs of the Traveller community.

Any complementary documentation, such as separately produced supplementary or best practice guidance, should take account of and be worded in line with the Equality Commission's good practice guidance outlined in the Traveller Guide.

Going forward, the Commission would recommend that the Department, prior to drafting strategic Planning Policy Statements, undertakes a comprehensive analysis of existing inequalities and needs to inform the strategic objectives.

Strategic planning policy statements as well as the individual planning policies contained in PPS should be subjected to equality screening.

Any supplementary guidance by the Department should be written to ensure that local interpretation by councils takes into account the duty on public authorities to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. (S 75 (2) Northern Ireland Act 1998) and the specific race relations duty on councils to have due regard to the need to promote equality of opportunity, and good relations, between persons of different racial groups ( S 67 Race Relations (Northern Ireland) Order 1997.

### **Development Plans**

The Commission welcomes the objectives which the proposals for a new local development plan system seek to meet.

We particularly welcome more effective participation from the public and other key stakeholders early in the plan preparation process when proposals are at a formative stage, a stronger link between the evidence base and plan policies and proposals as well as a strong link between community plans and local development plans. We also welcome the introduction of the power to decline determination of applications where the consultation has not been carried out as required.

We would wish to emphasise however that, to ensure these objectives are met, it is crucial that council practice and procedure adopted post – Review of Public Administration (RPA) are designed to ensure stakeholder engagement during pre-application and other consultation processes is open, timely and fully inclusive.

We would ask that the Department use its responsibility for oversight, guidance for councils, audit, governance and performance management to ensure that the reformed planning system in general and future council policy and procedure in particular are inclusive and genuinely accommodate those with particular needs. This applies in particular to age, disability, race and persons with dependants which the Department's identifies as Section 75 groups warranting further attention.

We welcome the proposal that a district council's statement of community involvement must be in place before any public consultation on the local development plan. We also support the proposal that a programme management scheme must be submitted to, and agreed by, central government before the plan preparation process begins.

It is crucial in our view that local development plans and the forthcoming community plans as part of RPA are closely linked in order to achieve a coherent approach to identifying and addressing social need, social inclusion and equality of opportunity.

In terms of plan monitoring and review we welcome the Department's proposal to establish additional baseline data and improve monitoring systems to ensure regular monitoring and review of local development plans.

### **Recommendation**

Local development plans should explicitly seek to redress key inequalities in housing and promote social inclusion.

In light of the key inequalities in housing and communities identified in the Commission's Statement on Key Inequalities in Northern Ireland we would urge the Department to ensure that as part of the test of robustness as well as plan monitoring and review particular attention is paid to issues such as the high level of segregation in housing on grounds of community background, the lack of suitable housing for disabled people, homelessness and the lack of adequate housing and accommodation for Travellers.

### **Development Management**

The Commission welcomes the Department's aim to create a more responsive, fair, predictable and efficient planning application system which focuses on shaping and facilitating appropriate development opportunities.

We would support the introduction of statutory pre-application community consultation for regionally significant and major developments.

In relation to form, method and techniques for consultation we would like to draw the Department's attention to the Commission's guidance for public authorities on consulting and involving children and young people, the *Good Practice Guide to Promote Racial Equality in Planning for Travellers* as well as Commission guidance on equality impact assessments which contain best practice for consultation.

The Department may also wish to consult the guide on community engagement recently published by the Equality and Human Rights Commission in Britain which complements our own guidance.

### **Recommendation**

Given the good relations issues that exist between the Traveller community and the settled community the Commission would recommend that some form of pre-application community consultation (i.e. the requirement in some circumstances for consultation before a planning application is submitted) should also be considered for applications for Traveller sites. This could be a mediation type process, particular in cases of planning disputes involving Travellers and the settled community, based on the training resources prepared by Belfast Traveller Support Group to facilitate contact, cooperation and the exchange of information between the two communities at an early stage.

### **Appeals**

The Commission is concerned that the removal of the automatic right to be heard in person may have a negative impact on some disabled people and people who are disadvantaged through low levels of literacy. A study estimated that some 24 per cent of adults in Northern Ireland (over 250,000 people based on current estimates of working age population) performed at the lowest levels of literacy competence.

### **Recommendation**

We would urge the Department to ensure that the Planning Appeals Commission's criteria for determining the most appropriate appeal method promote equality of opportunity, for example as regards people with a learning disability, people whose first language is not English or people who have low levels of literacy competence.

**Capacity Building**

As the new planning system is introduced there will be a need to keep community and voluntary groups informed of the changes. As the Department recognises in its draft EQIA, it is important to put in place appropriate data gathering systems to establish who does not use or engage with the planning system. When drafting and planning the new service specific action should be taken to ensure that the chill factors and barriers associated with the current system as outlined in the draft EQIA are fully identified and addressed at all levels by the reformed system to ensure any barriers to participation and engagement are removed as far as possible.

In particular in respect of Travellers it is important to recognise and establish a fair and sensitive approach to consultation. It may require a degree of capacity building or community development before meaningful participation can take place. Planning Service professional staff (at Department and Council level) will need to be given the skills to enable them to be more proactive and creative in their approach to consulting Travellers.

**Recommendation**

An outreach programme of public education, informed media debates, independent planning advice as well as public awareness should be developed to ensure that all those involved in the planning process have the necessary knowledge, skills and competencies to effectively use and engage with the reformed planning system.

**Government response**

The Department notes the comments made by the Equality Commission with regards to the aims of the reform initiative. As the consultation paper recognises, one of the key outcomes of the reforms should be a system more capable of discharging the statutory obligations to have due regard for the need to promote equality of opportunity.

Applications for regionally significant development (RSD) will form the top tier of development proposals which are considered essential to increasing the sustainable economic growth of Northern Ireland. These applications will be critical to the delivery of the Executive's regional investment priorities. By their very nature they will involve a relatively small number of large scale applications with strategic implications for the whole of Northern Ireland, for example, regional infrastructure and certain types of commercial development.

In light of the travelling community's distinctive local needs, particularly in relation to decisions on sites for accommodation, the Department considers that these are best addressed in their relevant local context as applications for local development rather than at the regional level.

The current planning policy context for Travellers is set out in the RDS and particularly in PPS12. Post Reform / RPA, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance. Following the transfer of planning functions, local development plan proposals will continue to take full account of the accommodation needs of the travelling community through the Housing Needs Assessment prepared by the Housing Executive either by zoning land suitable for Travellers' sites or setting out site selection criteria. This will enable local solutions (including the provision of advice on site selection and management) to be developed for particular local circumstances in consultation with the local travelling community and their representative organisations as well as the local settled community. This provides the opportunity for all sections of the community (settled and nomadic) to have their needs considered as part of mainstream district council planning and housing decision-making processes.

The Department recognises the importance of equal treatment of Travellers and the settled community in the planning system. In preparing a new Planning Policy Statement 1 on the general principles that will underpin the operation of the modernised planning system, the Department will give consideration to the best way of promoting equality of opportunity for all sections of the community. As at present, all Planning Policy Statements will continue to be subject to equality screening and assessment as appropriate. The policy content will be a matter for consideration when each PPS is being prepared / revised. However, at this stage, the comments put forward have been noted.

Following the transfer of planning functions, when responsibility for local development plans moves to local government, Section 75 statutory obligations will continue to apply to district councils. It is envisaged that the new local development plans will be effective tools in assisting district councils to fulfil their duties under Section 75 of the Northern Ireland Act to have due regard to the need to promote equality of opportunity and good relations. This will help address issues such as housing and accommodation for Travellers. While the test of 'soundness' will not include detailed policy considerations, it will include the requirement for local development plans to take account of central government plans, policies and guidance such as PPS12.

Proposed changes to Development Management set out new requirements for statutory pre-application consultation with the community for regionally significant and major development proposals. The aim is to better inform the relevant community and provide an opportunity for it to contribute its views before a formal planning application is submitted to the planning authority. This is an additional measure and does not take away the right of individuals and communities to express formal views during the application process itself.

In light of responses to the consultation paper the Department will give district councils some discretion to request to the Department that an application for local development be dealt with as a major development. This would provide flexibility to respond to exceptional and specific local circumstances where, in the opinion of the district council, pre-application community consultation might be considered appropriate. The Department intends to provide guidance to district councils in relation to the circumstances where this may be appropriate.

The aim of the proposal to give the PAC the power to determine the most appropriate appeal mechanism was not to stifle debate at appeals / independent examinations or to stop certain stakeholders from contributing; it was simply to enable the Planning Appeals Commission or independent examiners (where appointed) to better manage the appeals / examination process. However, having carefully considered all the responses and in light of the widespread opposition and concerns raised, the Department does not intend to proceed with legislation to allow the PAC or independent examiners (where appointed) to determine the most appropriate appeal method or the most appropriate procedures to be used in dealing with representations to the local development plan. The detailed rationale for this decision is reflected in the Government Response to the Public Consultation.

The Department notes the comments made in relation to consultation, participation and engagement. It is committed to working with others to ensure that the planning system is open and accessible, as well as contributing to initiatives to enhance capacity for all participants and stakeholders.

## 2. Northern Ireland Human Rights Commission

### **Planning reform and travellers**

The Commission has identified the accommodation needs of members of the Traveller community as a priority issue in relation to human rights compliance. The accommodation situation for Travellers in Northern Ireland has been highlighted by United Nations and Council of Europe experts in the monitoring of compliance by the United Kingdom with its international treaty obligations.

The Commission participated in April 2009 in the UK's examination by the UN body overseeing its compliance with obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Among the key issues raised by the UN in its subsequent Concluding Observations were the shortage of adequate sites for Travellers and the discriminatory effect of the Unauthorised Encampments (Northern Ireland) Order 2005. The UN recommended that the UK ensure the provision of sufficient, adequate and secure sites, that it review the Order and that it provide for suitable accommodation arrangements for Travellers.

At the regional level the Council of Europe, in relation to compliance with the UK's obligations under the Framework Convention for the Protection of National Minorities (FCNM), has also singled out the accommodation situation of Irish Travellers. In response to observations on the subject by the FCNM treaty monitoring body the UK stated that in Northern Ireland there was adequate funding for accommodation for Travellers but conceded that there were 'constraints' in obtaining the suitable sites needed, indicating this was a problem being actively addressed by the Department for Social Development (DSD) and the Housing Executive. Subsequently the Council of Europe's Committee of Ministers adopted a resolution in relation to the UK's compliance with the FCNM which included among its issues of concern:

'Hostility among some people within the local population and the resistance of certain local authorities to improving the availability of authorised sites have contributed to the fact that a number of Gypsies and Travellers continue to live on unauthorised sites and may face eviction orders.'

UN and Council of Europe treaty bodies have therefore placed emphasis on the need to ensure adequate accommodation arrangements for Travellers, a matter in which planning policy can play a significant role. The Commission concurs with the research evidence provided by the Department's draft Equality Impact Assessment on the policy which acknowledges the causal relationship between planning decisions and unsuitable accommodation as follows:

'Travellers in particular suffer multifaceted deprivation as a direct consequence of planning decisions that result in many families living on unauthorised sites, with poor access to services and with negative consequences for health and access to other services such as education.'

Whilst, unlike most provisions of the European Convention on Human Rights (ECHR), the Covenant and FCNM are not directly justifiable in the domestic courts, they are nevertheless binding in international law on the UK, including its devolved bodies. The Department therefore has to ensure that its policies are in compliance with the standards which the UK has ratified in human rights instruments. The policy development process should ensure there is a high priority given to progressing the recommendations of treaty bodies, and that reforms do not risk 'regressive steps' (i.e. the situation deteriorating rather than improving) in relation to the human rights issue in question.

Another core concept in human rights is that when an entitlement or obligation is created, there must be legal certainty ('prescribed by law') as to how to access or comply with it. This concept applies to planning legislation in relation to provision for Travellers sites, so that once legitimate clear criteria have been established, there must be a clear and certain process for obtaining the entitlement.

### **Planning Policy Statements**

Present Departmental policy in relation to Traveller accommodation is contained in policy number HC3 in Planning Policy Statement (PPS) 12. This sets out the criteria for provision in relation to grouped housing schemes, serviced sites and transit sites.

The Commission recently corresponded with the Department in relation to Traveller accommodation and draft PPS21, a Planning Policy Statement that relates to development in the countryside. Policy Planning Statements set out high-level planning rules and are therefore of key importance in setting out and providing legal clarity in relation to entitlements to provision. The Commission had queried potential ambiguities in the wording and meaning of a number of parts of the draft document. The Commission was grateful for the response of the Department which indicated that wording would be changed in order to remove any potential ambiguity in the policy provision in question (CTY1 of PPS21). The Department confirmed that this policy referred to the full range of Traveller accommodation set out in PPS12, and that policy in relation to social and affordable housing outside of settlements (CTY 5 of PPS21) did include group schemes for Travellers.

The Department's draft Equality Impact Assessment concludes that there is a potential differential impact between persons of different racial groups by the range of ways decisions are made in planning. Within the assessment of procedural impacts the following conclusion is listed:

'It has also been found that the planning system can be used as an outlet for discriminatory behaviour against some racial groups, particularly Travellers, through objections to planning applications, not made on the basis of the land use characteristics of the proposed development, but the ethnicity of the proposed occupants.'

The Commission concurs that there is risk of objections being made on the basis of racism rather than legitimate criteria. Objections motivated by racism but which are disguised as legitimate objections may be difficult to identify, meaning that a robust evidence-based process needs to be established to weed out illegitimate objections and not permit them to hold up applications. In addition to individual objections thwarting an application from Travellers, the same effect can occur on the basis of planning criteria which inadequately provide for Traveller sites; criteria which are unduly difficult to meet, or are ambiguous; or processes whereby there is no clarity in entitlements. The importance of legal certainty throughout the process again needs to be stressed.

One of the key proposals in the reforms is for the status of PPSs to be downgraded from the present position of providing operational guidance and advice to a position of providing strategic direction and regional policy advice which would then be interpreted by local councils into development plans. The Department notes that, unlike Northern Ireland at present, elsewhere in the UK and Ireland overarching policy guidance is strategic and is then translated into local development plans where detailed operational policy is often found. The Department identifies a number of problems with the present system in Northern Ireland prescribing universal policy on land use topics which differ in circumstance across the jurisdiction, and in that the present system can result in local policy issues not being adequately addressed.

The Commission has no view on the administrative arrangements for planning policy development nor do we in principle have any objection to areas of general planning policy being devolved to a local level. However in matters that engage national compliance with human rights obligations the Commission is concerned that the state, in this case at sub-national (Northern Ireland) level, must maintain a binding framework. This is particularly relevant to Traveller sites where any reform which makes the provision of Traveller sites discretionary could facilitate discriminatory practices.

The Commission would therefore urge that explicit safeguards be provided within the new policy framework to ensure legal certainty over the provision of Traveller sites. The Commission notes the Department's assurance that the reform of PPSs would be subject to 'appropriate checks and balances' and 'subject to the proviso that any detailed local policies should be aligned with central government plans, policy and guidance, and would draw particular attention to this area of provision being included in such arrangements.

Other areas or initiatives that engage compliance with human rights obligations in relation to the fulfilment of the right to adequate housing could also be protected. For example measures such as obligations on developers to include provision for social housing or infrastructure (roads, sewerage etc) in developments are one way duties relating to the provision of affordable housing can be progressed.

### **Appeals and third party appeals**

The Commission notes the proposals in chapter five of the consultation document in relation to appeals. The Commission has not scrutinised every aspect of these proposals but would like to make the following observations on particular aspects of the reforms.

#### *Time limits for appeals*

The Commission concurs with the Department in that the six-month time limit on applicant appeals to the Planning Appeals Commission (PAC) is unnecessarily long for all the reasons set out in the consultation document, and because, in the context of Article 6 ECHR, decisions affecting the civil rights of all parties, including the applicant and objectors, require to be determined within a reasonable time.

#### *Determining the appeal method*

The fair hearing provisions of the ECHR do not necessarily require an oral hearing nor is there an automatic human right to cross-examination in proceedings of this nature. The cost of oral hearings in all cases as a matter simply of choice must be balanced against the desirability of efficiency and cost effectiveness. Each case must be examined on its own merits, however, and the Commission supports the proposal that the PAC be given the power to decide, applying published criteria and taking into consideration the applicant's preferred method, the most appropriate method for processing the appeal.

#### *Third-party planning appeals*

The planning legislation and the principles derived from it give third parties rights to make representations before a planning application is determined, and the planning authority is legally obliged to take into account all relevant representations received. In the pre-determination stage, it is hard to see that, in theory, there is an inequality of arms between third parties and the applicant.

However, third party rights to challenge the determination are severely limited and this raises the scope of Article 6 ECHR. Within the planning system, there is an unbalanced playing field in favour of the applicant. Objectors have no right of appeal and the cost of legal proceedings, especially for judicial review cases, is prohibitively expensive especially with the threat of having to pay another party's legal costs if the objector loses. Even success in judicial review proceedings will only address the procedural unfairness and not the substantive issues in the case or merits of a decision.

The Commission encourages the Department to consider providing for third party appeals. Although it is important that people have the right to object to decisions, we must avoid a situation whereby vexatious third party appeals interfere with the efficiency of the system and the Commission recommends therefore the appeal should not be an unlimited right. Criteria for appeal ought to be developed which include the need for the appeal to be grounded on issues of primary fact; for example it would not be appropriate if the objector wishes to appeal on grounds relating to matters of policy. The Commission is

mindful of the need for the planning process to be efficient and time delays can amount to a breach of the rights of all parties concerned. The Commission notes the Department's concerns in respect of the implications of third party appeals but considers that, properly drafted criteria and efficient processing together with consideration of the nature and form of appeal, leaves the balance of advantage on the side of a third party appeal system.

### **Government Response**

The Department notes the response from the Human Rights Commission.

The current planning policy context for Travellers is set out in the RDS and particularly in PPS12. Post RPA, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance. Post Review of Public Administration (RPA), development plan proposals will continue to take full account of the accommodation needs of the travelling community through the Housing Needs Assessment prepared by the Housing Executive either by zoning land suitable for Travellers' sites or setting out site selection criteria. This will enable local solutions (including the provision of advice on site selection and management) to be developed for particular local circumstances in consultation with the local travelling community and their representative organisations as well as the local settled community. This provides the opportunity for all sections of the community (settled and nomadic) to have their needs considered as part of mainstream district council planning and housing decision-making processes.

The Department recognises the importance of equal treatment of Travellers and the settled community in the planning system. In preparing a new Planning Policy Statement 1 on the general principles that will underpin the operation of the modernised planning system, the Department will give consideration to the best way of promoting equality of opportunity for all sections of the community. As at present, all Planning Policy Statements will continue to be subject to equality screening and assessment as appropriate. The policy content will be a matter for consideration when each PPS is being prepared / revised.

Following the transfer of planning functions, when responsibility for local development plans moves to local government, Section 75 statutory obligations will continue to apply to district councils. It is envisaged that the new local development plans will be effective tools in assisting district councils to fulfil their duties under Section 75 of the Northern Ireland Act to have due regard to the need to promote equality of opportunity and good relations. This will help address issues such as housing and accommodation for Travellers. In addition, as part of the plan scrutiny process, the Department will appoint the Planning Appeals Commission or independent external examiners to examine the local development plan on the basis of 'soundness' criteria and provide an advisory report to the Department. While the test of 'soundness' will not include detailed policy considerations, it will include the requirement for local development plans to take account of central government plans, policies and guidance such as PPS12. The Department will then consider the advisory report and issue a binding report to the district council. The district council will adopt the plan on the basis of the binding report.

The Department notes the comments made in relation to the appeals issues identified above. Following full consideration of all of the responses to the consultation paper and the draft EQIA at a strategic level, the Department can confirm that it will be taking a power to reduce the appeal period to 4 months but it will not be providing the PAC with the power to determine the most appropriate appeal mechanism. The rationale for these decisions is reflected in the Government Response to the Public Consultation.

In relation to third party appeals, it has been concluded that the Department will not make provision for third party appeals in the current round of planning reform proposals. Again, the detailed rationale for this conclusion is reflected in the Government Response to the Public Consultation.

### 3. Community Places

There are a number of equality considerations with the planning reform proposals. We have concerns that the proposals to remove the right to be heard in person will have a disproportionate effect on equality groupings particularly, young protestant males and rural dwellers.

The Traveller community is the only Section 75 group for which there is a specific planning policy (PPS12) and we feel that these proposals will have a significant impact on the Traveller Community.

Applications for Traveller accommodation should be processed as regionally significant. Specialist knowledge is required to deal effectively with these applications, i.e. knowledge of planning policies in relation to travellers, liaison with Travellers organisations, councils (who may have responsibility for management of transit sites), knowledge about different types of sites, different layout requirements, and mediation skills for consultation on this type of application. The numbers of applications for traveller sites are likely to be small in number; these skills would therefore be better located in a central team in the Department. In this way skills can be developed and applied to all applications for traveller accommodation, rather than planning officers in the new council areas dealing with them occasionally and therefore not having the necessary skills to process the applications effectively.

Applications for Traveller accommodation raise issues which are of strategic importance, are of more than local significance and impact on more than 1 single district council area. This is particularly the case for Transit sites which provide temporary accommodation where Travellers can legally stop in the course of Travelling. These sites will therefore affect a number of council areas. For example, it has been estimated that there is a need for 5 transit sites to meet need across NI. It is essential that an integrated approach is adopted for these applications, they should not be looked at in isolation across each council area.

Pre-application community consultation should be carried out for Traveller sites. Due to the contentious nature of Traveller sites it may be advantageous to adopt a different approach to pre-application community consultation which involves mediation skills.

The needs of Travellers who have no alternative culturally sensitive accommodation should be taken into consideration before enforcement action is served.

Councils should be required to zone land for Traveller sites in their development plan where the Housing Needs Assessment (HNA) shows need rather than leaving it to be determined through individual applications. Councils should be required to consult the travelling community / traveller groups in order to identify suitable locations for sites to meet the needs identified in the HNA.

As part of the tests of robustness for development plans the Department should ensure that land has been zoned for Travellers accommodation, where need has been identified through the HNA. As plans are monitored, they will therefore be required to show how they are implementing this and can be called to account if they do not provide land for Traveller accommodation.

It will be important to carry out a full EQIA for the issues e.g. Third Party Right of Appeal which are not presented as proposals in the consultation but identified as an opportunity to gather further views and comments on. It may have been more beneficial to consider the EQIA aspects of these issues from the outset

### **Government response**

The aim of the proposal to give the PAC the power to determine the more appropriate appeal mechanism was not to stifle debate at appeals / independent examinations or to stop certain stakeholders from contributing; it was simply to enable the Planning Appeals Commission or independent examiners (where appointed) to better manage the appeals / examination process. However, having carefully considered all the responses and in light of the widespread opposition and concerns raised, the Department does not intend to proceed with legislation to allow the PAC or independent examiners (where appointed) to determine the most appropriate appeal method or the most appropriate procedures to be used in dealing with representations to the local development plan. The detailed rationale for this decision is reflected in the Government Response to the Public Consultation. Therefore, the current provision for oral hearings will remain. As such, any person who makes a representation seeking a change to the Plan Strategy or Site Specific Policies and Proposals will be given the opportunity, if so requested, to appear at the independent examination and be heard by the PAC or other independent examiner.

Applications for regionally significant development (RSD) will form the top tier of development proposals which are considered essential to increasing the sustainable economic growth of Northern Ireland. These applications will be critical to the delivery of the Executive's regional investment priorities. By their very nature they will involve a relatively small number of large scale applications with strategic implications for the whole of Northern Ireland, for example, for regional infrastructure and certain types of commercial development.

In light of the travelling community's distinctive local needs, particularly in relation to decisions on sites for accommodation, the Department considers that these are best addressed in their relevant local context as applications for local development rather than at the regional level.

Proposed changes to Development Management set out new requirements for statutory pre-application consultation with the community for regionally significant and major development proposals. The aim is to better inform the relevant community and provide an opportunity for it to contribute its views before a formal planning application is submitted to the planning authority. This is an additional measure and does not take away the right of individuals and communities to express formal views during the application process itself.

In light of responses to the consultation paper the Department will give district councils some discretion to request to the Department that an application for local development be dealt with as a major development. This would provide flexibility to respond to exceptional and specific local circumstances where, in the opinion of the district council, pre-application community consultation might be considered appropriate. The Department intends to provide guidance to district councils in relation to the circumstances where this may be appropriate.

The current planning policy context for Travellers is set out in the RDS and particularly in PPS12 and it allows for plans to identify specific sites to meet needs such as traveller sites. Post Reform / RPA, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance.

Following the transfer of planning functions, district councils will be required to have their Statement of Community Involvement in place before any public consultation on the local development plan can begin. The SCI will set out the councils approach to community consultation for the plan and will include any measures required to meet Section 75 obligations including consultation with travellers, if appropriate. The Department considers that the SCI will enable district councils to carry out more inclusive and effective community consultation on their local development plans. It will also help better promote equality of opportunity and community relations through increased awareness of community participation and involvement.

Legislation and the test of 'soundness' will require district councils to ensure they have met the preparation requirements of a local development plan, which includes taking account of central government plans, policy and guidance and that there is a robust evidence base for the decisions made on policies contained within the plan. There will also be a statutory requirement for district councils to monitor the implementation of their local development plans, which will include any policy for the provision of land for Traveller accommodation.

In relation to enforcement, as PPS 9 indicates "The Department has a general discretion to take enforcement action against a breach of planning control when it regards it as expedient to do so having regard to the provisions of the development plan and any other material considerations". This policy will continue to apply to the district councils when they assume responsibility for planning, including enforcement.

#### **4. Rural Community Network**

Rural Community Network (RCN) is a regional voluntary organisation established by community groups from rural areas in 1991 to articulate the voice of rural communities on issues relating to poverty, disadvantage and equality. We have a membership of over 400 groups. We would like to include the following points as a precursor to our response that is attached.

RCN is committed to a rural community and networking approach to the planning and development of sustainable rural communities in order to address poverty, social exclusion and equality and to support work towards a shared future.

RCN welcomes the opportunity to comment on the Planning Service's consultation on Planning Reform. These are major proposals to put planning back at the heart of local democracy and the task of building confidence and trust in the new system cannot be underestimated. From RCN's perspective, reform is needed to ensure that we have a modern, efficient and effective planning system that supports "*An attractive and prosperous rural area, based on a balanced and integrated approach to the development of town, village and countryside, in order to sustain a strong and vibrant rural community contributing to the overall wellbeing of the region as a whole*" [Regional Development Strategy]. Some rural communities are changing with a shifting demography, inward migration and the transformation of the rural economy and local services. These changes require a re-imagining of relationships, services and how we use our increasingly limited resources within a wider political commitment to invest in and sustain rural communities. The current ongoing development of the Executive Rural White Paper is an expression of this commitment and the Planning Reform proposals need to take cognizance of the vision and objectives of this White Paper. Planning in Northern Ireland should also fundamentally aim to deliver the content and direction of the Programme for Government.

We would welcome clarity with regards to how 'rural community' is defined by the planning system as at one stage the Department for Regional Development defined 'rural' to include regional towns which in an indirect way promoted concentration of development.

We welcome the consultation events organised by the Planning Service across Northern Ireland and would strongly urge the Department to repeat these events, perhaps in partnership with the new local councils, once the Northern Ireland Executive has made its decision on planning reform. This would allow people to hear what changes have been implemented, what hasn't been taken on board and why. These post-consultation events would be critical in building trust between citizens and local communities and the new planning system and in showing respect for people's time and contributions. There is immense

cynicism with regards whether participation in consultation processes makes any impact on the final decisions taken. This is particularly true for many rural citizens and communities in light of the deep mistrust generated by the PPS14 debacle. The Department needs to model a new approach to consultation if they are serious with regards these reform proposals. Citizens and local communities need to be able to trace back to their contributions from the final decisions taken.

This was a lengthy consultation document and in many places quite technical focusing on using the expertise of those with in-depth knowledge of the planning system as opposed to the knowledge of citizens and communities. This is reflected, for example, in the fact that the consultation document does not ask views on Chapter 1 – the purpose of planning –, which might have encouraged wider engagement. We would hope that the final document is more user-friendly and more accessible as a symbol of a reformed planning system which wishes to build greater public understanding, trust and confidence. A compendium guide to the new planning system should eventually be published and linked with training workshops on its operation.

#### Chapter 1 – Purpose of Planning

We would welcome a stronger and clearer vision with regards the purpose of planning which focuses on creating communities that offer better choices for where and how people work and live. We would also welcome greater clarity in this chapter on the role of planning in promoting equality, building more diversity communities, and growing good community relations.

It might be helpful if this chapter also named some core ethical principles in planning, applicable to all who participate in the planning process: citizens, elected representatives, planners, business and developers. These might include, for example, that planning process participants should:

- Ensure that the planning process exists to serve the public interest.
- Recognize the rights of citizens to participate in planning decisions.
- Strive to give citizens (including those who lack formal organization and influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programmes;
- Strive to expand choice and opportunity for all persons in such a manner which facilitates their involvement in the development of plans that might impact on their quality of life choices, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
- Assist in the clarification of community goals, objectives and policies in plan-making;
- Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
- Strive to protect the integrity of the natural environment and the heritage of the built environment;
- Pay special attention to the interrelatedness of decisions and the long-term consequences of present actions.

#### Rural Proofing & Equality Impact Assessment

We have identified particular rural, equality and good relations impact issues in our consultation response. In general we would welcome a more integrated process by the Department by which their consultation proposals would integrate Section 75 and rural proofing considerations throughout the document. Outlined below are some key points raised in our response.

The purpose of an EQIA is two-fold; namely to identify adverse impact and to identify ways in which equality of opportunity and good relations might be better promoted. The identification of ways in which a policy can better promote equality of opportunity and good relations is not contingent on their first

being an identifiable adverse impact. We would welcome greater understanding in these proposals with regards the specific issues facing Section 75 groups in rural areas where disadvantage is increased through increased distance from job opportunities, access to services and transport. The failure to name that Northern Ireland is still very much a divided society and that planning has a significant role in either maintaining segregation or creating greater choices and opportunities for sharing and integration is a derogation of duty on the part of the Department.

The purpose of rural proofing is to assess how policies will work for rural people and places and to ensure that policies are implemented fairly and effectively. The benefits of rural proofing include better decision making, improved communication, strengthening relationships and capacity building. Whilst we welcome the Department's rural proofing checklist in Annex 10 of the Consultation Report it falls far short of the Rural Proofing Guidance developed by the Commission for Rural Communities [2009] including the absence of any evidence collated informing the judgements made.

We would strongly recommend a structured engagement between DARD, the Rural White Paper Stakeholders Forum and the Planning Reform Team to further examine the implications of planning reform for the sustainability of rural communities.

### **Specific Rural Proofing and EQIA Points**

The Statement of Community Involvement should be developed by all organisations and bodies in the Planning System and include specific reference as to how marginalised groups will be engaged with including those marginalised by geography. These standards would also apply to pre-application consultation processes for major and regional applications. They should also apply to the monitoring and review of local development plans and any other review and monitoring processes.

RCN strongly disagrees with the proposal to remove right to a public hearing as this removes a fundamental right to be heard in person and will adversely impact on many individuals within different Section 75 groups. Trust will not be built between the citizen and the new planning system by removing this right and fundamental safeguard.

The definition of countryside in the local development plan needs to go beyond analysis of landscape character and development pressure to include community infrastructure in the countryside and dispersed rural communities.

If the Sustainability Appraisal is serious with regards the 'social' dimension then it provides an important mechanism to address rural proofing and Section 75 priorities.

The threshold minimums for major developments are too high for all categories, particularly as these are linked to the requirement for a Pre-Application Consultation. Under the current proposals, there would be no Pre-Application Consultation required for 99 houses (Greenfield), or 49 houses (brownfield) or 19 houses (village) despite this size of developments clearly having a major impact on local communities. This is of particular relevance to rural communities.

We welcome the recognition of different settlement patterns between rural and urban in setting the proposed housing thresholds for major developments and would recommend that a similar analysis be applied to the other 7 categories outlined in Table 2 – Major Developments as well as Regional and Local Developments.

Consideration should be given to expanding the list of statutory consultees to include the local rural and urban community infrastructure learning from the Community Council model developed in Scotland.

The contributions sought from developers could be used to promote greater equality and good relations through the needs identified through the Community and Development Plans. They could also be used to ensure balanced regional development. Contributions should also be sought from residential developments as a development of 19 houses in a village will have significant infrastructure implications.

#### **Final Comments**

As a matter of good practice, we would also urge Planning Service to be much clearer about their system of analysis with regards how they are going to analyse the consultation responses, what criteria they are using and whether different weighting has been allocated to different criteria. For example will calls for greater transparency, democracy and sustainable development be given lower weighting to calls for economic development? Will sustainable development include community vitality or will it continue to refer solely to landscape and environment.

This response is informed by the work of Community Places and the Northern Environment Link and a pre-consultation session organised by Community Places and RCN. It has also been informed by the views of Mark Conway and Dr. Michael Murray from Queens University Belfast. We also conducted an extensive piece of research with Queen's University Belfast funded under INTERREG IIIB to develop new participatory approaches to strategic planning and multi-level governance in a rural setting (the SPAN project 2004- 2008).

#### **Government Response**

The Department notes the wide ranging response from the Rural Community Network (RCN), which addressed issues relating to the draft EQIA at a strategic level, rural proofing and many of the consultation proposals. A number of the substantive issues raised by RCN and others are addressed in the Government's Response to the Consultation, including for example, the decision, in light of the responses received, not to proceed with the proposals to give the PAC the power to determine the most appropriate appeal mechanism or the most appropriate procedures to be used in dealing with representations to the local development plan.

The aim of the proposal to give the PAC the power to determine the more appropriate appeal mechanism was not to stifle debate at appeals / independent examinations or to stop certain stakeholders from contributing; it was simply to enable the Planning Appeals Commission or independent examiners (where appointed) to better manage the appeals / examination process. However, having carefully considered all the responses and in light of the widespread opposition and concerns raised, the Department does not intend to proceed with legislation to allow the PAC or independent examiners (where appointed) to determine the most appropriate appeal method or the most appropriate procedures to be used in dealing with representations to the local development plan. The detailed rationale for this decision is reflected in the Government Response to the Public Consultation. Therefore, the current provision for oral hearings will remain. As such, any person who makes a representation seeking a change to the Plan Strategy or Site Specific Policies and Proposals will be given the opportunity, if so requested, to appear at the independent examination and be heard by the PAC or other independent examiner.

In relation to RCN's comments on the purpose of planning, it should be noted that this issue will be addressed in more detail in PPS1 and will be subject to debate and consultation as part of this policy preparation process.

Following the transfer of planning functions, there will be requirement for district councils to have their Statement of Community Involvement in place

before any public consultation on the local development plan can begin. The Department considers that the SCI will enable district councils to carry out more inclusive and effective community consultation on their local development plans. It will also help better promote equality of opportunity and community relations through increased awareness of community participation and involvement.

The definition of the countryside for planning purposes is a matter for planning policy and not the planning reform proposals. However, post RPA, local development plans will be required to take account of central government plans, policy and guidance and therefore, unless there is a change of policy, will continue to have regard to issues such as community infrastructure in the countryside and dispersed rural communities. Furthermore, there will be a requirement for local development plans to take account of community plans which themselves deal with issues such as community infrastructure provision and delivery. Indeed, one of the functions of the local development plans will be to deliver the spatial aspects of the community plan.

Sustainability appraisals will include a 'social dimension' and detailed guidance on SA will be prepared in due course. Furthermore, post Reform / RPA, the requirement for rural proofing and Section 75 priorities will continue to apply to district councils.

The proposed development hierarchy (consisting of regionally significant, major and local developments) is intended to ensure that application procedures are proportionate and responsive to each of the three different types of development category. Appropriate resources and decision-making arrangements will be tailored according to the scale and complexity of the proposed development type. In light of the responses to the consultation paper the Department will revise details of some of the thresholds for both regionally significant and major developments.

It is our intention to set out the relevant bodies (statutory consultees) that must be consulted by the planning authority in subordinate legislation. The list of consultees has not yet been finalised

The consultation document was used as a suitable vehicle through which to initiate debate on the issue of seeking contributions from developers for the provision of general infrastructure, beyond that already required to mitigate the site specific impact of a development proposal and make it acceptable in planning terms. The issue is not intrinsic to planning reform and the Department has no plans for the introduction of such a system. This issue will require further consideration at Executive level, particularly in relation to those Departments with responsibility for the funding and provision of infrastructure, in order to determine the way forward.

Additional comments will be taken in account by the Department as it moves forward with the primary and subordinate legislation programme and also with the preparation of guidance on issues such as pre-application consultation, thresholds for major applications, the development plan preparation process etc. The Department will also be undertaking further work in this area as it develops its EQIA Monitoring Strategy.

## **5. Sinn Féin**

### **Introduction**

In keeping with the approach of the Department of Environment's (DOE) consultation process, Sinn Féin's response incorporates comments on both the planning reform proposals and Equality Impact Assessment (EQIA).

Sinn Féin believes that planning policy must promote equality and promote prosperity in the interests of all citizens across the North, and on an all-island basis – not least along the border corridor.

Sinn Féin believes that all planning decisions must ensure adequate consultation, transparency, accountability and consistency.

In particular, the planning system must increasingly deliver its services with greater efficiency, effectiveness, economy and equality.

Sinn Féin has publicly and privately engaged with stakeholders, interested parties, individual citizens, wider groups, and those in the public and private sectors on a consistent basis in relation to reforming the planning system in these ways.

Sinn Féin has held discussions with the DOE and it is aware of our party's position on the detail of planning reform and related issues. We will continue this engagement as the various consultation proposals move to the next stage.

A summary of Sinn Féin's position on some of the key elements of the planning reform proposals is outlined below. However this is not an exhaustive submission and, given the complex and interlinked nature of the proposals, Sinn Féin intends to keep all the relevant issues under continuing consideration as they develop.

#### **Equality Impact Assessment**

Sinn Féin welcomes the DOE's decision to incorporate a full draft Equality Impact Assessment (EQIA) at a strategic level as an integral element of this consultation process on planning reform.

Sinn Féin welcomes the DOE's consistent recognition that the preliminary recommendations of the draft EQIA must be implemented in a way which both promotes equality of opportunity and / or mitigates any potential adverse impacts, in part furtherance of the Department's overall obligations under Section 75 of the NI Act 1998. Too often in the past, public authorities have opted for a minimalist approach that merely considered the mitigation of potential adverse impacts.

Sinn Féin welcomes the Department's commitment to the ongoing development of a structured Monitoring Strategy regarding the continuous impact of planning reform in the context of Section 75, as well as 'subsequent Section 75 activities that will continue to ensure that due regard for the need to promote equality of opportunity and regard for the desirability of good relations are mainstreamed within each stage of development and implementation of the reform programme up to and beyond 2011'. Sinn Féin believes that a full programme of these 'subsequent Section 75 activities' should be included in the final EQIA.

Sinn Féin notes the Department's recognition that planning reform proposals may particularly impact upon equality of opportunity for race, age and disability sectors. Sinn Fein advocates that the Department's EQIA Monitoring Strategy must, in particular, address any such potential impacts. Sinn Fein also believes that the EQIA Monitoring Strategy must now be constructed in a way that continuously considers and reviews equality impacts for all Section 75 groups. For instance, the draft EQIA logically drew a correlation between low literacy rates (e.g. among young Protestant men) and the ability to fully participate in the planning process. This is an example of the type of ongoing equality impact assessment that must be continued and developed to include

potential practical options for better promoting equality of opportunity.

Sinn Féin notes that the anticipated outcomes of the planning reform process include ‘a system more capable of discharging the statutory obligations to have due regard for the need to promote equality of opportunity’. Sinn Féin further notes the Department’s insistence on the importance of mechanisms being in place at local authority level ‘to ensure the mainstreaming of due regard for the need to promote equality of opportunity and without prejudice to same, regard for the desirability of good relations in local planning systems, compliant with Section 75’. Sinn Féin believes that the final EQIA should outline some of the mechanisms that should be applicable to local authorities in this regard.

**Planning Policy Statements** - Agree in principle. Planning Policy Statements must be in general conformity with Regional Development Strategies.

**Development Management** - Agree the principle of **Performance Agreements (PAs)**, but these PAs need to be both measureable and meaningful. We would propose that periodic reviews are conducted into the workings of these PAs in respect of both public confidence and successful outworking of such PAs.

**Pre-Application Discussions (PADs)** – Sinn Féin supports the concept of PADs, but believes clear direction and indications to the outcome of the proposals should be given following these discussions.

**Permitted Development** – Sinn Féin believes that there is a requirement for a form of management within permitted development. This would ensure that minor developments are in keeping with permissible scale and design.

**Notification** - Sinn Féin believes the introduction of ‘Neighbour’ notification and ‘Site’ notices as a statutory function, would ensure a more inclusive planning process.

**Appeals system** – Sinn Féin believes that the time limit for lodging an appeal should be a minimum of 3 months. We do not agree that PAC should have the power to choose the method of appeal. This decision should rest with the appellant. We also believe that the appellant should be allowed to introduce any material (either new material or original material) that they have available to them at the time of the appeal.

**Third Party Appeals** - Sinn Féin believes in the provision for Third Party Right of Appeals. A Third Party Appeals process would ensure wider public confidence in the planning process. There should be a requirement to facilitate an independent challenge to a planning decision.

**Developer Contributions** - Sinn Féin does not object to the general concept of developer contributions. However there is a requirement for very clear guidelines relating to any developer contributions to ensure equity, consistency, accountability and transparency.

**Enabling Reform** - There needs to be performance improvement based on measureable targets to ensure that there is sufficient capacity within the planning system. Performance indicators should be introduced to assist in the implementation of the Reform.

**Notification** - Sinn Fein believes the introduction of neighbour notification and site notices as a statutory function would ensure a more inclusive planning process.

### **Government response**

The Department notes the wide-ranging response from Sinn Fein, which addresses issues relating to the consultation proposals and the draft EQIA at a strategic level.

A number of the substantive issues raised are addressed in the Government's Response to the Consultation, including for example, the decisions to reduce the time limit for lodging an appeal to 4 months and the decision, in light of the responses received, not to proceed with the proposals to give the PAC the power to determine the most appropriate appeal mechanism or to restrict the introduction of new material at appeal, nor to proceed with the proposal to give the PAC and other independent examiners the power to determine the most appropriate method to deal with representations at local development plan independent examinations.

In relation to third party appeals, it has been concluded that the Department will not make provision for third party appeals in the current round of planning reform proposals. Again, the detailed rationale for this conclusion is reflected in the Government Response to the Public Consultation

In relation to developer contributions, the consultation document was used as a suitable vehicle through which to initiate debate on the issue of seeking contributions from developers for the provision of general infrastructure, beyond that already required to mitigate the site specific impact of a development proposal and make it acceptable in planning terms. As the issue is not intrinsic to planning reform, the feedback received has been noted and this issue will require further consideration at Executive level, particularly in relation to those Departments with responsibility for the funding and provision of infrastructure, in order to determine the way forward.

The Department will proceed with the development of its Monitoring Strategy, referred to in section 8 of the final EQIA at a strategic level, with a view to it being in place for implementation from 2011-12 onwards. It will address a number of the issues raised in Sinn Fein's commentary on the draft EQIA at a strategic level.

## **6. Lisburn City Council**

### **Introduction**

All designated public authorities are required under Section 75 of the 1998 NI Act to have **due regard** to the need to promote equality of opportunity across the nine designated groups. They also are required to have **regard** to the desirability to promote good relations across three groups (which are also included within the nine designated groups).

Government Departments and Councils are designated bodies. The Equality Commission has provided guidance as to how the above statutory duties may be implemented by public bodies.

### **What constitutes a policy**

It is worth making explicit what "policy" is taken as including. The Equality Commission guidance states, "policies covers all the ways in which an authority carries out or proposes to carry out its functions relating to Northern Ireland", and, "It is the likely impact (on the promotion of equality of opportunity) of

any of the authorities policies that has to be assessed”.

It is with some concern, therefore, that the following points are noted in respect of this EQIA and the implications in relation to the statutory duties that arise from its contents. This EQIA is concerned with potential procedural impacts while recognising that potential substantive impacts will have to be dealt with by the relevant planning authority (potentially local councils) when implementation occurs.

It may be argued that when the above definition of policy is taken into account and that it is the impact of any policies that is central to the promotion of equality of opportunity that it is inappropriate to omit the potential substantive impacts of such changes from the EQIA.

Indeed it may be argued that by explicitly stating that the substantive impacts will have to be dealt with by the new planning authority (and by implication this may indeed be local councils) the Department is not fully taking into account the potential impact of this change both on the designated Section 75 groups and indeed on those public bodies who, in future, will be charged with implementation.

The Department does state that it will provide advice and guidance regarding mitigating measures (for the substantive impacts) to the planning authority post 2011. By emphasising the 2011 date (as it impacts upon RPA for local government) this too may be an indication that by emphasising the procedural process to 2011, and that the substantive implementation period begins with the new council structures in 2011 that both these aspects should have been included within this EQIA. It may indeed be asked why advice or guidance could not be provided relating to mitigating measures for substantive impacts at this time. This would no doubt prove useful to those charged with implementation in the future.

#### **Possible Impacts on the Designated Groups**

There appears to be some ambiguity in the EQIA as to the potential impacts changes to the planning system could have on the designated groups. A number of groups (race, age, disability) are highlighted as in potential need of further work whereas overall the approach of this EQIA, following the Programme of Government EQIA, is that there is no adverse impact on the groups (taking the view that potentially all groups could benefit).

Indeed the following is stated on page 14, “The Departments initial draft screening found that, as these proposals are not concerned with *actual policies* contained within PPSs, there is *no evidence* to suggest that the proposals will have a differential impact on any of the Section 75 groups...” (and continues), “but, instead, they have the potential to help ensure that there is *a comprehensive policy* on certain land use topics that can be applied equally to the different circumstances arising throughout Northern Ireland”. To state that these proposals are not concerned with actual policies when all the activities of a public authority relating to carrying out its NI functions would be viewed as policy (within the ECNI “definition”) would appear disingenuous.

This statement again merely serves to emphasise that the Department appears to have taken the approach that “strategy” is not policy and if it is not policy it cannot have any adverse impact upon any group. It would seem contradictory therefore that implementation (and consequently possible adverse impact on the designated groups) occurs through policy but this will be the responsibility of the planning authority and/or local councils with some “advice and guidance” from the Department in relation to mitigating measures, post 2011.

At page 22 of the EQIA it is noted that “other literature” highlights that planning decisions are made in a variety of “policy processes”. This again underlines that “strategy” cannot be divorced from policy (as defined above) and the impacts (positive or negative) those policies may have on communities, groups or individuals.

The omission of substantive impacts and policies and their impact indicates that the potential changes to the planning system as presently impact assessed have not produced a robust and effective document on which future “equality proofed” implementation by local councils may proceed.

### **Addressing Inequalities**

The EQIA notes the importance of changes to the system with regard to “tackling social need and social exclusion”, identifying “unmet needs” and “unmet rights” as well as developing “active community engagement” as a mechanism to tackle such issues.

The emphasis on the generation of local development plans (and systems) by councils will it appears have to be designed along an evidence based approach which would obviously include all the “key elements” and “planning functions” that will return to local government and be “cross-referenced” to available data, IT hardware systems, information handling as well as taking account of the difficulties involved in obtaining “monitoring type” data for a number of the designated groups (eg. political opinion, sexual orientation etc.).

Two further points need to be made at this time. First, the revised Section 75 guidance from the Equality Commission is now due to be published in February 2010 and this we are led to believe will include reference to “equality action plans” (within the revised Equality Schemes of all public authorities) as well as the auditing of “key local inequalities”. This revised guidance will have implications for all public authorities, including Government Departments and local Councils. It would seem inappropriate therefore when data issues and inequalities are noted within the EQIA that no reference at all is made to the forthcoming ECNI guidance nor how Government Departments which are anticipated to be taking the lead as regards the identification of such “key inequalities” will progress this important matter. Secondly, to produce local key inequalities also will have implications for all public authorities, including councils.

The view appears to be that “regional data” alone will not be wholly appropriate to form the basis of a local audit of key inequalities and that local “research” will also be required. The implications of transferring planning functions to councils in the light of such related activity across all other functions of council would seem to indicate that a very specific view has been taken to this matter.

This in turn would appear to be supported by what is noted in the EQIA, namely that commissioned research was apparently undertaken by “experts” in June 2009 to assist with this “strategic” EQIA document. It would seem surprising, therefore, that on page 26 of the EQIA it is stated, “Until such time as the proposals have been consulted on, and agreed, it is not possible to be precise as to how and where these impacts may apply, and whether they will be positive or adverse in relation to groups attached to each Section 75 ground”.

It would appear that all the various concerns noted above are indications that this EQIA has not adequately taken on board the promotion of the statutory duties.

### **Implications for Council**

Process – with implementation beginning post RPA in 2011 the entire “process” of implementing and administering the changes to the planning system in effect appear to fall to local councils (with only advice and guidance coming from the relevant Government Department). The “inclusion” of planning functions (and any other functions that are decentralised to local government) will have to be accounted for within revised Equality Schemes, revised guidance, action and development plans and so on – again all this process falls to local councils.

Workload – across a range of areas there will be increased workloads for councils. Such areas include establishing and maintaining data systems, the auditing of inequalities, the monitoring of local usage of all services (including planning) and the redirecting of all such activity toward “social need” and “social exclusion” etc.

Resources – the EQIA while noting the importance of mainstreaming within each stage of development and implementation (of the reform programme) goes up to and beyond 2011. However, the EQIA because it is focussed on the procedural ends at 2011. The question of resources includes not just what resources will transfer with the transferring functions to councils but also all the potential resources implications associated with the promotion of the statutory duties which within this EQIA have not been addressed largely because of its focus on the procedural. There are, for example, resource implications in respect of – consultation/engagement, having (all) appropriate systems in place, developing the links to ECNI and other guidance/legislation, developing action plans within revised Equality Schemes as well as local (planning) development plans and systems, monitoring, dissemination as well as the prioritisation of future actions and plans across all activities and functions of (the new structure) council.

### **Conclusion**

The EQIA with its emphasis on the procedural has by its own admission deliberately omitted the substantive implementation of the proposed reforms. By so doing the potential impact on the Section 75 groups has been minimised but at the same time the onus on local councils to implement the reforms and identify adverse impact and mitigating measures within a totally new structure has been reinforced.

By not indicating possible impacts (adverse or otherwise) and possible mitigating actions at this time this too would indicate that, by default, it will be left to local councils to undertake all such activity.

There is an indication within the EQIA that there will be a need for “evidence based” systems to be in place to effectively implement the reforms but with no indication of how this issue (or indeed the others noted) should be addressed either by the Government Department or the local council.

Overall the EQIA provides little in the way of impacts on any of the designated groups (although as noted above some groups are identified as in need of further work) as the focus of the EQIA in itself prevents the identification of impacts and consequently how any adverse impact may be mitigated by the implementing body post 2011.

The promotion of the statutory duties would have been more appropriately addressed if the EQIA had focussed on the (substantive) impacts for the nine designated groups and how potential adverse impacts could be dealt with. It is the impact of the policy with which Section 75 is concerned and its impact on any group will indicate if it has promoted equality of opportunity or not.

### **Government response**

The Department notes the comments made by Lisburn City Council. As the Council recognises, the current statutory duties in relation to S75 apply to Departments and also to Councils.

Many of the planning functions that the Department currently undertakes, such as preparing development plans, and for which it is responsible for fulfilling its S75 duties, are transferring to local government in 2011. Therefore, the responsibility for delivering those requirement and fulfilling the associated S75

and related duties will also pass to councils at this time.

The comments provided by the Council will be taken into account by the Department as it moves forward with the primary and subordinate legislation programme and also with the preparation of guidance on issues such the development plan preparation process and so on. The Department will also be undertaking further work in this area as it develops its Equality Monitoring Strategy.

## **7. Northern Ireland Housing Executive**

The EQIA is based on how the Planning Service views its equality obligations

The EQIA is incomplete and has offered further EQIAs (e.g. funding the Planning system, Appeals system) of the reform programme if issues emerge.

All generally recognised accessibility issues e.g. language, literacy or sensory disability barriers, are addressed in the document.

The movement of powers from Department level to Council level is the main element of the reform. The basic issue relating to religion/political opinion is identified in the EQIA but is not fully explored in terms of mitigating measures. Councillors will be expected to make decisions that are not based on community background or political allegiances. This is important as all public bodies will be shaping new cohesion policies over the next few years based on reducing the importance of religion and community background.

It is important that controls are fully investigated. These could include EQIAs of Area plans (proposed in the reform), Housing Executive control over housing market inputs to plans and the Housing Executive becoming a statutory consultee on all major or regional planning applications. The role and function of 'community involvement' will also need some degree of quality control or standards to ensure effectiveness.

The proposals for pre-application consultation are significant and will need clear standards and controls. Housing community groups and tenants will need the capacity to become involved and Planning could become a Housing Community Network standard item. Consultation should have a standardised approach covering style, time periods, difficult to reach groups (including all equality groupings and marginalised groups who would never have become involved in planning decisions) and reporting. The report itself should be subject to further consultation as people may need to see the extent of support for or opposition to a particular proposal. Controls should be put in place to avoid 'hyped up' proposals being put forward in order to create illusions of effective consultation i.e. where the application is for much more than is really intended.

All aspects of the system need to take into account the equality dimension. Housing Executive tenants and customers tend to correlate with equality groups that require more diverse approaches to ensure equality and good relations are being considered. For example, older people, disabled people, Travellers, Migrant Worker families, Social groups with low educational attainment, literacy rates etc, will all require targeted actions to ensure they are properly engaged. Any removal of 'right to be heard in person' for example will differentially impact negatively on many of these groups.

The issue of third party right of appeal links with community engagement, pre-consultation reports and community planning. Given the territorial nature of

Northern Ireland any system will need clear controls to avoid vexatious or malicious objections. Alternatively the third party system will provide protection against inadequate community consultation in the first place.

In conclusion the equality analysis presented in this report is incomplete but mainly because it cannot be completed until further issues are considered. These issues are openly discussed in the report and there is recognition that the issues are areas where improvements can be made. The Housing Executive considers that it is also important to point out that there is an opportunity with this reform to make significant change to how equality and good relations are considered in public policy. This report hints at this opportunity and could set high standards for others to follow e.g.

- EQIAs of strategic planning decisions
- How major planning decisions affect the relationships between groups.
- How can communities be included?
- Communities mean much more than just those who previously decided to get involved i.e. it also includes children, families, public stakeholders, foreign nationals, disabled people etc.

There would be benefit also in requiring a statement of good relations in Area plans which would set out how the Plan will address separation and promote sharing.

#### **Government response**

The Department notes the comments from the NI Housing Executive. The comments provided will be taken in account by the Department as it moves forward with the primary and subordinate legislation programme and also with the preparation of guidance on issues such as pre application community consultation, the development plan preparation process etc. The Department will also be undertaking further work in this area as it develops its Equality Monitoring Strategy.

Following the transfer of planning functions, when responsibility for local development plans moves to local government, Section 75 statutory obligations will continue to apply to district councils. It is envisaged that the new local development plans will be effective tools in assisting district councils to fulfil their duties under Section 75. There will be requirement for district councils to have their Statement of Community Involvement in place before any public consultation on the local development plan can begin. The Department considers that the SCI will enable district councils to carry out more inclusive and effective community consultation on their local development plans. It will also help better promote equality of opportunity and community relations through increased awareness of community participation and involvement.

The proposals for Development Management set out new requirements for statutory pre-application consultation with the community for regionally significant and major development proposals. The aim is to better inform the relevant community and provide an opportunity for it to contribute its views before a formal planning application is submitted to the planning authority. This is an additional measure and does not take away the right of individuals and communities to express formal views during the application process itself.

The aim of the proposal to give the PAC the power to determine the most appropriate appeal mechanism was not to stifle debate at appeals / independent examinations or to stop certain stakeholders from contributing; it was simply to enable the Planning Appeals Commission or independent examiners (where appointed) to better manage the appeals / examination process. However, having carefully considered all the responses and in light of the widespread

opposition and concerns raised, the Department does not intend to proceed with legislation to allow the PAC or independent examiners (where appointed) to determine the most appropriate appeal method or the most appropriate procedures to be used in dealing with representations to the local development plan. The detailed rationale for this decision is reflected in the Government Response to the Public Consultation.

In relation to third party appeals, it has been concluded that the Department will not make provision for third party appeals in the current round of planning reform proposals. The detailed rationale for this conclusion is reflected in the Government Response to the Public Consultation

## **8. Causeway Coast Communities Consortium**

### **9. Portballintrae Residents Association**

The groups most likely to be affected by the changes in the planning system are: (a) the elderly (b) young couples and (c) low-income families. In recent years the development of second homes and buying for investment have resulted in the “ghost-town” effect, where large numbers of dwellings in coastal communities are unoccupied during the winter months. This leaves the remaining residents, many of whom are elderly, isolated and vulnerable, without neighbourhood support. The demand for second homes has also resulted in inflated house prices, so that young couples setting up home are unable to afford to buy houses in their home towns and villages and are forced to move elsewhere. Low-income families are disadvantaged by the shortage of social or affordable housing. Not an “inclusive society”.

Whilst the Planning Appeals Commission is independent in its decisions, experience has shown that objectors do not have equality in the appeals process. Not only is there no third-party right of appeal, but also, when they do take part in an appeal, they lack the financial resources to match the developers and their agents, who can afford to employ leading barristers well-versed in planning law.

This issue has not been addressed, so the inequality remains.

The presumption in favour of development is in itself an inequality. To be truly impartial there should be no presumption either for or against development.

- Third-party right of appeal should be introduced.
- There should be a legal-aid fund available to individual objectors and small community and residents’ groups with insufficient funds, to enable them to contest appeals effectively.

The planning system should include measures to ensure that the inequalities do not continue in future, that there are balanced communities, and that there is adequate provision of social and affordable housing.

Perhaps a separate use class for second homes would help to control the ratio of part-time to permanent residents.

Article 40 agreements could be used to set aside a percentage of the houses in each new development to be made available as affordable housing.

There is a need for education for the public on how to access the planning system more effectively, and technical and legal advice should be offered to assist applicants and objectors.

**Government response**

The Department notes the Causeway Coast Communities Consortium and Portballintrae Residents Association comments. The equality issues raised will be considered by the Department as it develops its Monitoring Strategy, to be developed for implementation from 2011 onwards. The response to the individual reform proposals, such as third party appeals, is reflected the Government Response to the Consultation.

The adequate provision of social and affordable housing is a matter for planning policy and is currently set out in the RDS and PPS12. Post Reform / RPA, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance.

**10. Individual**

Importance of coastal zone not acknowledged. Importance of tourism to economy etc. World heritage site, AONB etc.

Housing for young local families etc. Provision for OAPs. Not speculative developments.

**Government response**

The Department notes this response. The equality issues raised will be considered by the Department as it develops its Monitoring Strategy, to be developed for implementation from 2011 onwards.

**11. Portstewart Vision – The Community Forum**

The most glaring omission in an equality context is the absence of ‘Coastal Regions’. Only one reference in the entire document. Coastal communities have very different characteristics and needs from both Rural and Urban both of which are covered in specific planning policy statements. As so much of our area is coastal and seen as an important economic driver in the Tourism Industry, its unique needs and characteristics need to be acknowledged.

Other groups which need to be considered within a sustainable community are the elderly, low-income families and 1<sup>st</sup> home buyers. The local character and ambience of a location must be maintained so that we are not left with too many unsuitable builds resulting in non-affordability, isolation in streets of empty holiday houses. More houses do not mean more homes!

A responsibility of a reformed planning system should be to check validity / financial credibility of applicants, easily done by liaison with Companies

Registry and should be incorporated.

The role of the Planning Appeals Commission leaves the 'objectors' at a disadvantage. They are seen as negative and do not have equality. There is no third-party right of appeal and they are at a severe financial disadvantage to resource the process. Please find another term which is more positive. Objectors do not object to planning and development, only to inappropriate and unsuitable applications.

Allow sufficient time and funding to training Councillors, Council staff.

Ensure adequate Capacity building in Community.

Clear agreed criteria on any new processes to be introduced

Introduce Third-party right of appeal

Establish a legal-aid fund to enable concerned residents or community groups to contest appeals effectively

Research needs to be done to verify and quantify the degree of the perceived isolation of the elderly in the coastal regions so that mitigating action can be undertaken. This might mean revised targets for both policing and health provision in these areas.

Meanwhile a drive should be made to provide a proper supply of social/affordable housing, ring fenced, if possible, to prevent them becoming yet more second/investment opportunities. This would allow young families to buy in the town, redress the age imbalance and provide support for the elderly in their homes.

Clear definition of a Balanced Community should be established with adequate provision for social & affordable housing, support for commerce and economic drivers, care for the aging and quality open space.

### **Government response**

The Department notes the response from Portstewart Vision – The Community Forum, which relates to equality issues and also a number of the specific planning reform proposals. The equality issues raised will be considered by the Department as it develops its EQIA Monitoring Strategy, to be developed for implementation from 2011 onwards. The response to the individual reform proposals, such as third party appeals, capacity building and so on, is reflected the Government Response to the Consultation.

The adequate provision for social and affordable housing, support for commerce and economic drivers, open space etc. are all matters for planning policy. Following the transfer of planning functions, planning policy will continue to apply to council plans because local development plans will be required to take account of central government plans, policy and guidance.

The Department is committed to working with others to ensure that the planning system is open and accessible, as well as contributing to initiatives to enhance capacity for all participants and stakeholders. The Department will give the points raised further consideration as it makes its detailed preparations for the implementation of the reforms, including the transfer of responsibility for the new planning system to local government.

## 12. Castlerock Community Association

The emphasis on a formal 'paper' approach to all aspects and phases of the planning process disadvantages the less literate sections of the populace. The refusal to introduce third party appeals as a right would throw this balance further out of kilter, thus it must be retained. Careful consideration must also be given as to how the less literate are to be kept abreast of these matters and thus informed and empowered to play a proper role in the system.

There are clear gaps as regards the actual practical application of this almost exclusively theoretical document.

- a. Little is said about the trialling of the various aspects of the new system.
- b. No exemplars are provided to indicate what the new breed of submissions, applications, reports, and judgements might look like in practice. This work needs to be done to bring the system to life and for training purposes.
- c. No provision is made for the large resources and the sophisticated level of infrastructure planning which will be required to prepare all sections of society – the planners, the developers, the councillors, the community representatives and the public – adequately for their future roles.
- d. Careful preparation and extensive trialling and training are required to ensure that the whole system does not descend into chaos by cementing bad practice in particular during the transition period from the old to the new systems.
- e. Working parties of experts should be set up to draft a programme of trialling and blueprinting of documentation to be set in train as quickly as possible.
- f. A series of public meetings and specialised training seminars for the various interested parties should be evolved and put into practice as soon as possible, as time is already short.
- g. Community groups and charitable groups working with the various disadvantaged groups in society must be given the opportunity to access simplified documentation and to attend training and trialling sessions designed to show how the various stages of the new system will work.
- h. The information must be got out in a clearly comprehensible form and disseminated effectively not only in an electronic but also in a paper and in oral form to those less able to deal with large, formal documentation. Radio and TV programmes, information films are need here.
- i. Coastal dwellers must be shown the same special concern as townscapes and village dwellers and their interests thus be better protected and safeguarded in future. (see ICZM proposals)
- j. The document has much that shows promise to recommend it.
- k. The present system gives rise to the 'objector culture' while what is required is a positive aim to make the quality of planning and thus the quality of the overall environment paramount is, for this reason, very much to be welcomed.
- l. The declared aim to involve all sections of society must provide the necessary thrust towards a much more open and democratic system.

### **Government response**

The Department notes the comments from Castlerock Community Association. The comments raise a number of issues relating to access to and capacity within the new planning system.

The Department is committed to working with others to ensure that the planning system is open and accessible, as well as contributing to initiatives to enhance capacity for all participants and stakeholders. The Department will give the points raised further consideration as it makes its detailed preparations for the implementation of the reforms, including the transfer of responsibility for the new planning system to local government.

### 13. Derryhale Residents Association

#### **Introduction**

In our response, we have chosen to present our views as a short comment rather than use the response format provided. Our principle concern in relation to EQIA is cited on pg. 11 as "Those Affected by the Reform Programme". We are much less concerned by Section 75 legislation in which, it appears to us, there will be no groups who suffer significant disadvantage. In contrast we see the group who are most disadvantaged to be members of the General Public.

Anticipated outcomes (pg 12.) are worthy aspirations and undoubtedly when implemented, will be an improvement on the current perceptions of performance, as indicated in Appendix I. The Development Plan Process and Development Control System were rated poorly. The need (pg 20) to "improve engagement and consultation --was highlighted in an area of key priority".

"Front loading", defined as early consultation on "Preferred options for growth and development of an area with interested parties" is a welcome proposal. This proposal, to replace the limited opportunity to make representation at the "Issues stage" of planning, should reduce the chances of local dispute, but cannot be guaranteed to do so. Planning decisions may still be made which are perceived to disadvantage members of the public in general or as a smaller group of the community.

#### **Third Party Appeals.**

It is the view of Residents that there is much merit in providing a system of Third Party Appeals. At pg 16/17, the section on Third Party Appeals suggests that "Front loading" with "increased openness and transparency" will reduce or obviate the need for such appeals. This may well be so! If the department has confidence in this view, it should have no objection to providing a Limited Third Party Appeal system as outlined below. If no appeals are lodged the Departmental view will have been vindicated and any Third Parties similarly will be content. By contrast, if there is no appeal system, the Public may perceive yet again that their wishes have been disregarded. The former situation is "Win Win" whereas disallowing appeal legislation will lead to loss of confidence and support of Planning Reform.

The Residents' Association has outlined a scheme for a limited Third Party Appeal system elsewhere. In summary, we recognise that Third Party Appeals, as any appeal, should have substance and be based on fact. Vexatious appeals have no place in a Planning system. We advocate a screening test for any appeal. The appellant should prepare the appeal and present it in writing to a Screening Group which could, for example be a local statutory body or other as appointed by the Department. If this body finds that there is substance in the appeal, it would then recommend that the appeal should be heard by the Planning Commissioners or other appointed arbiter. The appeal, when heard, would be based on the original submission, unless there had been material alteration to the facts of the case.

The argument that Third Parties have recourse to justice in the High Court is not only unacceptable but is contrary to the expressed direction of European legislation in which the words "--not prohibitively expensive" appear. This advice is contained in the section *Access to Justice (Article 15a) EC Directive 2003135: The Public Participation Directive*.

The absence of any decision to implement Third Party Appeals is, in our opinion, the greatest deficiency in the consultation paper. The apparent intention to defer any decision is prevarication, in the hope that the need for a decision will become lost with the passage of time. The Minister deferred a decision at previous consultation. A second deferment is now proposed; how many times will this abdication of responsibility have to occur before action is taken?

The other two matters of concern listed for further consideration are:

- Enhancement of Enforcement powers and Criminalisation of Development without planning permission.
- Developer Contribution to national or local infrastructure.

### **Enforcement**

We have expressed the widely held view on previous occasions, that Developers appear to believe that "might is right". They have the resources, they have a business proposition and (in their view) the end justifies the means. Existing buildings or sites for preservation are on occasions destroyed by rogue developers prior to obtaining final planning permission approval. Such individuals appear to take the view that the derisory penalty which may be incurred is no deterrent to such action and at worst any fine may be incorporated into legitimate development costs. Given that supervision is limited at present, though hopefully may be enhanced by the reforms, and enforcement can only occur after a breach of planning law has occurred, it follows that a safeguard to ensure compliance would be enhanced if penalties were more realistic and the ultimate sanction of Criminal Prosecution was available.

### **Developer Contribution**

Previously we have expressed the view that the Developer has a responsibility to pay for costs, which would otherwise come from the public purse, that arise from work which he has undertaken in the course of his business activity. These can be regarded as part of the cost of conducting his business and can reasonably be recovered in the sale price of the product.

If the plea is made that the cost exceeds that which is recoverable in the sale price, then the Developer must decide if the project is viable. An exception to this may arise if the development benefits the national wealth and heritage. In such circumstances it may be that the Department, District Council or other appointed agent may agree to contribute to some of the infrastructure cost. Any such decision must be reasonable, realistic with a clear line of accountability for the decision.

Any development which benefits society and the general economic well being of the country, usually to be expected in regional or major developments, could reasonably be included in the cost of the project and supported by the taxpayer. Recovery of the taxpayers' contribution could be either through local council tax or a central tax component of rates. Examples of such projects would be water and sewerage charges. Once again the proportion of such costs must be realistic, transparent and have a clear line of accountability.

### **Summary**

The Residents' Association encourages the introduction of a Limited Third Party Appeal System. We support the principle that a breach of planning legislation e.g. commencing development prior to gaining full planning approval should be penalised in a realistic fashion and conclude that criminalisation of such acts may be the most effective means of ensuring compliance.

In the matter of the allied costs of providing necessary infrastructure for a development project, we take the view that costs which do not contribute directly to social and economic improvement of Northern Ireland should be the responsibility of the Developer and recovered by him/her in the sale price of the development.

In all three aspects of Planning Legislation, transparency and public accountability are paramount.

**Government response**

The Department notes the response from Derryhale Residents Association, which relates to primarily to a number of the specific planning reform proposals. The response to the individual reform proposals, such as the decision not to proceed with third party appeals in the current reforms; the decisions in relation to enforcement and increased fees for retrospective applications; and the decision not to proceed with proposals in relation to criminalisation are reflected in the Government Response to the Consultation.

Similarly, although the consultation document was used as a suitable vehicle through which to initiate debate on the issue of seeking contributions from developers for the provision of general infrastructure, beyond that already required to mitigate the site specific impact of a development proposal and make it acceptable in planning terms, the issue is not intrinsic to planning reform. The feedback received has been noted. This issue will require further consideration at Executive level, particularly in relation to those Departments with responsibility for the funding and provision of infrastructure, in order to determine the way forward.

**14. RTPI**

The right to be heard needs to be preserved.

Local member review bodies are not conducive to openness and democracy. Potential violation of human rights.

Because the reforms do not address wider issues like climate change, the impact of these necessary policy changes are not tested under EQIA.

**Government response**

The Department notes the response from the RTPI. The response to the individual reform proposals, such as Local Member Review Bodies, and the proposals to give the PAC the power to determine the most appropriate appeal mechanism or the most appropriate procedures to be used in dealing with representations to the local development plan at independent examination, are addressed in the Government Response to the Consultation.