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# Comparison of the planning systems in the four UK countries

Research Paper13/39 19 June 2013





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This paper describes and compares the current land use planning systems operating in the four UK countries. In particular given the changes introduced by the UK Government that affect the system in England, it compares the extent to which similar changes have so far been made in the other parts of the UK. It also describes future changes for each country that are in the pipeline.

*This paper has been prepared as an initiative of the Inter-Parliamentary Research and Information Network (IPRIN) with contributions from research staff working for each of the four UK legislatures.*

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## Summary

This paper describes and compares the current land use planning systems operating in the four UK countries. In particular given the changes introduced by the UK Government that affect the system in England, it compares the extent to which similar changes have so far been made in the other parts of the UK. It also describes future changes for each country that are in the pipeline.

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

Although the basic structures of the four systems are similar there are differences in the detail and in how each system works. Recent changes introduced by the UK Coalition Government have seen a greater divergence between the system in England and the other three countries in the last couple of years. England, Scotland and Northern Ireland each have their own primary planning legislation, although this will not be fully in force in Northern Ireland until 2015. The Welsh Government has announced plans to introduce a Draft Planning Reform Bill by the end of 2013.

# 1 The Legislative Framework

## **England**

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

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

## **Northern Ireland**

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

Under the [Planning Act \(Northern Ireland\) 2011](#) the majority of planning functions will transfer in 2015 from central government to local authorities.

Until then the [Planning \(Northern Ireland\) Order 1991](#) remains the principal piece of planning legislation for Northern Ireland. It places a general duty on the Department of the Environment (DOE) to formulate and co-ordinate policy for ensuring consistent development of land and the planning of that development. It sets out the role of the Department with regards to development control, enforcement and development plan functions. Powers have been extended by the [Planning \(Amendment\) \(Northern Ireland\) Order 2003](#) and the [Planning Reform \(Northern Ireland\) Order 2006](#) making provisions for the DOE to reform and improve the planning process.

## **Scotland**

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

- The [Town and Country Planning \(Scotland\) Act 1997](#) is the basis for the planning system and sets out the roles of the Scottish Ministers and local authorities with regard to development plans, development management and enforcement. This Act was substantially amended by the [Planning etc. \(Scotland\) Act 2006](#).
- The [Planning \(Listed Buildings and Conservation Areas\) \(Scotland\) Act 1997](#) is mainly concerned with the designation and protection of listed buildings and conservation areas. This Act was amended by the [Historic Environment \(Amendment\) Scotland Act 2011](#).

## **Wales**

Most parts of the town and country planning system in Wales are devolved. However the primary legislative framework is broadly the same as in England, although there are some differences in both primary and related subordinate legislation as it applies to Wales. It operates at two levels:



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

The principal legislative framework for the planning system in Wales is provided by the:

- [Town and Country Planning Act 1990](#);
- [Planning and Compulsory Purchase Act 2004](#); and
- [Planning Act 2008](#).

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

Following the “yes” vote in the March 2011 Referendum and a move to part 4 of the [Government of Wales Act 2006](#), the Assembly now has competence to pass Acts in the general area of Town and Country Planning. The Welsh Government has announced its intention to bring forward a Planning Reform Act for Wales during the Fourth Assembly (2011-2016).

## **2 National planning policy and guidance**

### ***England***

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

- [Planning policy for traveller sites](#), March 2012.
- [Technical Guidance to the National Planning Policy Framework](#), March 2012, provides additional guidance to local authorities on development in areas at risk of flooding and in relation to mineral extraction.

Planning Policy Statement 10 on [Planning for Sustainable Waste Management](#) was not replaced by the NPPF and still exists.

Following a major [external review](#) on all planning practice guidance, the Government is currently undertaking a process of updating, revising and cancelling a large amount of existing planning guidance which was not cancelled by the NPPF.

### ***Northern Ireland***

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

Generally planning in Northern Ireland is the responsibility of the Department of the Environment (DOE) and operates on a single regional (i.e.: Northern Ireland) basis. However, Regional Strategic Planning and development policy is the responsibility of the Department of Regional Development (DRD).

The [Regional Development Strategy \(RDS\)](#) produced by the DRD offers a strategic and long-term perspective on the future development of Northern Ireland up to 2035. Its purpose is to deliver the spatial aspects of the PfG and is therefore a framework for planning across Northern Ireland. The [Strategic Planning \(Northern Ireland\) Order 1999](#) requires all Departments to “have regard to the RDS” in exercising any function in relation to development.”

[Planning policy statements \(PPS\)](#) set out the DOE’s policy on particular aspects of land-use planning. Produced by the DOE they set out the main planning considerations that the DOE takes into account in assessing proposals for various forms of development and are relevant to the preparation of development plans.

### **Scotland**

The Scottish Government sets out the purpose of the Scottish planning system and its specific land use policies in the [Scottish Planning Policy](#). Spatial aspects of Scottish Government policies are set out in the [National Planning Framework for Scotland 2](#). Both of these documents are currently under review, with updated versions due to be completed during the latter part of 2013. More detailed subject specific advice and guidance is set out in a series of [Planning Advice Notes](#) and [Planning Circulars](#).

### **Wales**

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

Updates to national planning policy are issued for consultation and then incorporated into the latest version of PPW. [Planning Policy Wales \(Edition 5\)](#) is the latest version of PPW, issued as an online document only, in November 2012.

[Minerals Planning Policy Wales](#) provides the equivalent planning policy framework for mineral extraction and related development.

[Technical Advice Notes](#) (TANs) contain detailed guidance in specific areas. There is an equivalent series for minerals, known as [Minerals Technical Advice Notes](#) (MTANs). There are currently 21 topic based TANs and two MTANs.

## **3 Regional planning/strategies**

### **England**

The Coalition Agreement of May 2010 said that the UK Government would “rapidly abolish Regional Spatial Strategies and return decision-making powers on housing and planning to local councils.”<sup>1</sup> Legal challenges had delayed the revocation and the abolition of regional spatial strategies, but the process has now been completed, as of 20 May 2013. Some individual policies from certain regional spatial strategies remain. Further details about what remains for each strategy is published by the UK Government in a “Post Adoption Statement” for each region.

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

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<sup>1</sup> HM Government, [The Coalition: our programme for government](#), May 2010

To ensure that cross-boundary planning within England continues, the UK Government has introduced a “duty to cooperate” with neighbouring authorities. This means that public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities set out in the NPPF. This duty must be reflected in any Local Plan.

### **Northern Ireland**

See Section 2 above.

### **Scotland**

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

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

The process for developing and examining an SDP is very similar to that explained in Section 4 on Local Development Plans below. The key difference is that Scottish Ministers have the final say on modification, adoption or rejection of an SDP.

### **Wales**

There is no statutory regional planning in Wales at present. However the [Wales Spatial Plan](#) is a statutory framework to guide spatial policy development throughout Wales. The spatial plan comprises six delivery areas (Central, North East Wales, North West Wales, Pembrokeshire, Swansea Bay and South East Wales) and a “statement of delivery” has been produced for each area.

The plan seeks to integrate the spatial aspects of national strategies, including social inclusion, economic development, health, transport and environmental policy. The first Wales Spatial Plan was published in 2004, with an update being produced in 2008. Although it is a statutory document, it does not form part of the formal “development plan” for Wales. However Local Planning Authorities must have regard to the spatial plan when developing their Local Development Plans.

The *Independent Advisory Group* on the future of the planning system in Wales has recommended the establishment of a statutory framework for strategic regional planning and the production of Strategic Development Plans (SDPs) at a regional level that would become part of the formal “development plan”. Individual Local Development Plans would be required to conform to the relevant SDP.

## 4 Local Development Plans

### **England**

The NPPF (see Section 3) directs that each Local Planning Authority should produce a Local Plan for its area.<sup>2</sup>

According to the NPPF Local Plans should be aspirational but realistic. They should set out the strategic priorities for the area and be drawn up over an “appropriate” time scale, normally a 15 year horizon. The Local Plan should be based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the duty to co-operate and other legal requirements. The Secretary of State has powers, under Section 21 of the [Planning and Compulsory Purchase Act 2004](#), to modify a Local Plan at any time before it is officially adopted, if he/she believes that it is “unsatisfactory”. The Secretary of State can also direct that any plan be submitted for approval. Local Plans can be reviewed in whole or in part to respond flexibly to changing circumstances, but if this happens, must be open again to public consultation and examination if a material change is to be made.

The NPPF gave a 12 month period for local authorities to update their existing Local Plans to conform with the NPPF. This means that by the end of March 2013 Local Planning Authorities should have either have updated their plans, or weight will in future only be given to them in so far as they are consistent with the NPPF. Not all Local Planning Authorities have updated their Local Plans and some authorities do not have a plan in place at all. The UK Government has said that “decision-takers may also give weight to relevant policies in emerging plans.”<sup>3</sup>

For further information see the section on Plan Making in England in the [National Planning Policy Framework](#).

### **Northern Ireland**

Below Regional Planning for Northern Ireland as a whole is Area Planning which is defined by Development Plans. The DOE currently prepares these plans (also known as Area Plans) for each Local Government District. These are proposed through consultation with the local council and the local community. A Development Plan informs interested bodies (general public, statutory authorities, developers etc.) of the policy framework and land use proposals that will be used to guide development proposals in their local area.

All Development Plans are required to be in line with the RDS and PPS (see Section 2). Development Plans may be in the form of Area Plans, Local Plans or Subject Plans:

- An Area Plan: covers a large area such as a whole district council, or group of councils.
- A Local Plan: covers an area within a district council, such as a town centre.
- A Subject Plan: covers a particular issue rather than geographical area, such as houses of multiple occupancy.

Policy guidance for the preparation of development plans is set out in the DOE’s [Planning Policy Statement \(PPS\) 1: General Principles](#).

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

<sup>3</sup> HC Deb 19 March 2013 [c627W](#)

One of the major issues is the lack of Development Plan coverage in Northern Ireland, leaving many areas without an adopted plan. When considering planning applications, the rest of the UK gives added weight to development plan policies through plan-led systems. This is not the case in Northern Ireland; while legislation in 2006 introduced a plan-led system, this will not be commenced until Northern Ireland is covered by Development Plans.

### **Scotland**

Local Development Plans cover the whole of Scotland and identify sites for new developments and set out policies that guide decision making on planning applications. Each planning authority is required to publish and then update Local Development Plan(s) covering their area at least once every five years.<sup>4</sup>

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

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

Having had regard to the representations received to the main issues report, a planning authority must publish a proposed plan, which is subject to a minimum of six weeks public consultation. Following the close of public consultation, the planning authority may modify the plan in response to representations received. The plan will then be submitted to Scottish Ministers, along with the proposed action programme. If there are any unresolved representations then Scottish Ministers will appoint a Reporter to examine the proposed plan. The reporter will conduct an examination and produce a report with recommendations for the planning authority. A Reporter's recommendations are generally binding on the planning authority. The authority must then modify and re-publish the plan, publicise its intention to adopt the plan and submit it to Scottish Ministers. The planning authority can adopt the plan after 28 days, unless directed not to by Scottish Ministers.

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

### **Wales**

The [Planning and Compulsory Purchase Act 2004](#) introduced a statutory requirement for each of the 25 Local Planning Authorities to produce a Local Development Plan (LDP). The LDP sets out proposals and policies for the future use of all local land, and is the main development plan document in Wales, replacing the previous system of Unitary Development Plans (UDPs). The LDP covers a period of ten to fifteen years and should reflect national planning policy in Wales and also have regard to the Wales Spatial Plan.

The Local Planning Authority prepares a deposit plan, which is a full draft of the LDP.<sup>5</sup> This plan represents the preferred strategy for the area. The Planning Inspectorate (on behalf of

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<sup>4</sup> In Scotland the Planning Authorities are local councils and the National Park Authorities

<sup>5</sup> In Wales the Local Planning Authorities are the 22 Unitary Authorities and the three National Park Authorities.

the Welsh Government) then examines the deposit plan and other related documents. The aim of the public examination is to ensure that the plan is 'sound', and that the views of all those who have commented have been considered.

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

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

## **5 Neighbourhood/community plans**

### ***England***

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

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

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

If proposals pass the referendum, the Local Planning Authority is under a legal duty to bring the neighbourhood plan into force. Once it is in force, it becomes part of the legal framework and planning decisions for the area must be taken in accordance with it, as well as the Local Plan for the wider area (see Section 4).

### ***Northern Ireland***

Neighbourhood/community plans are not provided for under the current planning system. Community planning is to be introduced under the *Local Government (Reorganisation) Bill*,<sup>6</sup> which is the final piece of Reform of Public Administration (RPA) legislation to be introduced to the Assembly spring/summer 2013. Under the Bill local authorities will be required to produce and publish a community plan for their area.<sup>7</sup> This will take place when functions transfer from central government to local authorities in 2015.

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<sup>6</sup> The Bill is expected to come to the Assembly before summer recess 2013. However there is a [consultation document](#) that is publically available.

<sup>7</sup> During the Assembly passage of the [Planning Act \(Northern Ireland\) 2011](#) it was indicated that a statutory link will be made between community plans and local government plans which will be provided in the Local Government (Reorganisation) Bill.



## **Scotland**

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

## **Wales**

There is no equivalent right in Wales at the moment to the power introduced by the [Localism Act 2011](#) for communities in England to produce Neighbourhood Development Plans. The [Independent Advisory Group](#) on the future of the planning system in Wales suggested an alternative that Community and Town Councils and other broad-based community organisations should be encouraged and empowered to work with their Local Planning Authority to identify and take forward Supplementary Planning Guidance for their communities, translating and developing policies and allocations in LDPs for local implementation.

As in other parts of the UK there is a [Community Planning system](#) in place requiring local authorities to produce a community strategy to improve local service delivery.

# **6 Nationally Significant Infrastructure Projects**

## **England**

The [Planning Act 2008](#) introduced a new development consent process for Nationally Significant Infrastructure Projects (NSIPs). NSIPs are usually large scale developments (relating to energy, transport, water, waste water or waste) which require a type of consent known as “development consent”.

The 2008 Act has subsequently been amended by the [Localism Act 2011](#) – this abolished the Infrastructure Planning Commission established by the 2008 Act – responsibility for decisions on these projects now rests with the relevant Secretary of State. The [National Infrastructure Directorate](#) of the Planning Inspectorate will make recommendations to help inform the Secretary of State’s decision. The decisions on these projects should be made in line with [National Policy Statements](#) (NPS) approved by the UK Parliament.

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

## **Northern Ireland**

Development falls within three types of categories for the purpose of decision making. These are:

- Major development - multiple housing, commercial and government and civic types of development.
- Intermediate development – single dwellings.
- Minor development - mainly residential alterations and extensions.

Nationally significant infrastructure projects are the same as major developments under Article 31 of the [Planning \(Northern Ireland\) Order 1991](#). Such projects have regional

significance and are dealt with centrally by the Strategic Planning Division within Planning DOE. Intermediate and minor development is dealt with by the Local Planning Division.

### **Scotland**

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

- National developments: Developments designated as of national significance in the National Planning Framework for Scotland.
- Major developments: Nine classes of large scale development are defined as major developments in the [Town and Country Planning \(Hierarchy of Developments\) \(Scotland\) Regulations 2009](#).
- Local Developments: Any development which is not a national or major development is automatically categorised as a local development.

National developments are designated in the [National Planning Framework for Scotland 2](#), which was considered by the Scottish Parliament to establish the necessity of these developments. Any objection to an application for a national development can only be made on an issue of detail, as its inclusion in the [National Planning Framework for Scotland 2](#) is deemed to have established the need for that development.

### **Wales**

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

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

## **7 Neighbourhood Development Orders/Community right to build orders**

### **England**

In addition to providing for Neighbourhood Development Plans, the [Localism Act 2011](#) also allows communities to produce *neighbourhood development orders* and *community right to build orders*. The Local Planning Authority must provide support.

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

A *community right to build order* is a type of neighbourhood development order. It is an order which gives permission for small-scale, site-specific developments by a community group, without the need for planning permission.

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



### **Northern Ireland**

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

### **Scotland**

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

### **Wales**

There are no equivalent orders in Wales at the moment.

## **8 Permitted Development Rights**

### **England**

Permitted development rights (PD rights) are rights to make certain changes to a building or land without the need to apply for planning permission. These derive from a general planning permission granted by the UK Parliament in the [Town and Country Planning \(General Permitted Development\) Order 1995](#) (the 1995 Order), rather than from permission granted by the Local Planning Authority. Schedule 2 of the 1995 Order lists separate classes of permitted development.

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

In some circumstances Local Planning Authorities can suspend PD rights in their area. They have powers under Article 4 of the 1995 Order to remove PD rights. While Article 4 directions are confirmed by Local Planning Authorities, the Secretary of State must be notified, and has wide powers to modify or cancel most Article 4 directions at any point.

### **Northern Ireland**

A similar system operates with the [Planning \(General Development\) Order 1993](#) granting planning permission for certain types of permitted development. The order has been amended several times since it was first introduced.

The 1993 Order gives Planning DOE the power to remove or limit PD rights in protected or sensitive environments such as conservation areas or AONBs and for development where an Environmental Impact Assessment is required. PD rights can also be removed through conditions attached to planning permission.

### **Scotland**

A similar regime operates in Scotland. Certain categories of development, as set out in the [Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992](#), are automatically deemed to have planning permission. The categories of development that enjoy PD rights were recently amended under the provisions of the [Town and Country Planning \(General Permitted Development\) \(Scotland\) Amendment Order 2011](#). As in England, PD rights can be removed or amended through Article 4 directions, which are generally made by planning authorities. Article 4 directions do not need Scottish Ministerial approval.

## **Wales**

As in England the types of development defined as permitted in Wales are set out in the 1995 Order (See Section 8). Although many parts of Schedule 2 are the same for both England and Wales there are some differences. The Welsh Government will consult on any proposed changes to the 1995 Order and does not always introduce the same changes as those introduced by the UK Government for England. For example a recent change in England allows for retail unit (class A1) or financial/professional services unit (class A2) to be converted into residential use without planning permission. This change hasn't been made in Wales to date.

Also as in England PD rights are more restricted in "designated areas" and Article 4 Directions can be used to remove PD rights and the Welsh Ministers have similar powers to the Secretary of State in England (see Section 8).

Research commissioned by the Welsh Government into the development management process has recommended that it should extend PD rights to cover more substantive or defined alterations or improvements to a single dwelling (i.e. extensions, conversions and so on), and also should consider extending permitted development to include the construction of a single dwelling where this is in accordance with a current LDP.

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

## **9 Use Classes**

### **England**

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

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

A further category, called 'sui generis' ('unique') exists to cover other uses.

Planning permission is normally required for changes of use within the same classes and for certain changes of use between some of the classes.

### **Northern Ireland**

A similar system of permitted development within use classes operates in Northern Ireland. The [Planning \(Use Classes\) Order \(Northern Ireland\) 2004](#) frees certain activities from planning control and is applied to single definable uses of land or buildings. The most common uses are categorised into 'classes' for which there are eleven categories.

## **Scotland**

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

## **Wales**

The 1987 Order (see Section 9 England above) also applies in Wales. However the Welsh Ministers can make their own modifications to the order and so there are differences.

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

# **10 Appeals/Planning Inspectorate**

## **England**

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

Where an application has been rejected by a Local Planning Authority, the applicant has the right of appeal to the Secretary of State. In practice, the normal procedure is for the appeal to be decided by a planning inspector in the name of the Secretary of State, either after considering written representations or – in larger developments – after a hearing. The Secretary of State also has powers to “recover” an appeal, to take the decision himself. There is no third party right of appeal, nor any further right of administrative appeal beyond a decision by the Secretary of State (even if taken in his name by a planning inspector). Judicial review of a Secretary of State’s decision is possible but not normally suited to planning cases, except for major developments. The Planning Inspectorate also examines Local Plans (see Section 4).

## **Northern Ireland**

[The Planning Appeals Commission \(PAC\)](#) is an independent appeals body which operates under the [Planning \(Northern Ireland\) Order 1991](#). The PAC’s operation falls into the following two categories:

- Decisions on Appeals – the Commission makes decisions on all appeals against Departmental decisions on a wide range of planning and environmental matters.
- Hearing and Reporting on Public Inquiries/Hearings – the Commission makes recommendations on a wide range of cases referred to it by the Department. The final decision in these matters is taken by the relevant Department.

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

## **Scotland**

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

- **Local Review Body:** Every Planning Authority is required to produce a “scheme of delegation” which sets out a list of local developments that can be determined by an appointed person, normally a planning officer, rather than Councillors at a committee. If a planning decision was taken by a planning officer under a scheme of delegation then any appeal will be made to the council’s Local Review Body and not Scottish Ministers. A local review body is made up of at least three elected members who were not involved in the original decision.
- **Scottish Ministers:** If a planning decision was taken by Councillors then any appeal against that decision will be made to Scottish Ministers. Planning appeals made to Scottish Ministers are considered by a Reporter appointed by the [Directorate for Planning and Environmental Appeals](#) (DPEA). In most instances the appeal decision is made by the Reporter on behalf of the Scottish Ministers. However, in a small number of cases the Reporter does not issue the decision, but submits a report with a recommendation to the Scottish Ministers, who make the final decision. Most appeals are decided by means of written submissions.

Scottish Ministers also appoint DPEA Reporters to hold Development Plan examinations into objections to development plans (see Sections 3 and 4).

## **Wales**

As outlined in Section 10 above the Planning Inspectorate is an Executive Agency of both the UK Government and the Welsh Government. The inspectorate as it operates in Wales is effectively a branch of the Executive Agency as a whole. There is an agreement between the Welsh and UK Governments on the inspectorate’s work programme.

In Wales the Planning Inspectorate duties include responsibility for the processing of planning and enforcement appeals, holding public examinations into LDPs and reporting on planning applications called in for decision by the Welsh Ministers. It also now considers certain NSIPs in Wales (see Section 7 above). As in England and Scotland most decisions on planning appeals are made by the Inspectorate on behalf of the Welsh Ministers. However a few appeals are ‘recovered’ and the decision is made by the Minister, who considers a recommendation from the Planning Inspectorate.

# **11 Planning Advice Services**

## **England**

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

The Government’s [Planning Portal](#) provides information, interactive guides and other resources about how to use the planning system in practice.

[Planning Aid England](#), run by the Royal Town Planning Institute, supports communities and individuals with planning issues in England.

## **Northern Ireland**

Northern Ireland does not have an advice service similar to England. Planning DOE and its associated divisional/area offices offer an advisory role and information and guidance on the planning system, making applications and fees etc.

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

## **Scotland**

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

## **Wales**

Like Northern Ireland there is no equivalent at present to the advice service that operates in England. The [Independent Advisory Group](#) on the future of the planning system in Wales has recommended setting up a Planning Advisory and Improvement Body for Wales.

[Planning Aid Wales](#) is an independent charity providing advice on all aspects of land use planning in Wales.

# **12 Community Infrastructure Levy/ Developer Contributions**

## **England**

### *Community Infrastructure Levy (CIL)*

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

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

### *Section 106 agreements*

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

Planning obligations to support new development must help meet the objectives of the Local Plans and Neighbourhood Development Plans for a particular area. The NPPF (see Section

2) sets out that a planning obligation should only be sought where it meets all of the following tests:

- it is necessary to make the development acceptable in planning terms;
- it is directly related to the development; and
- it is fairly and reasonably related in scale and kind to the development.

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

In April 2013 the UK Government published best practice guidance for local authorities on the [Community Infrastructure Levy](#). This clarifies the relationship between the CIL and section 106 agreements. The basic premise is that there should be no double charging to developers of the CIL and section 106 agreements for the same purpose.

There is a transition period, to phase out Section 106 obligations and encourage the use of CIL at the end of which there will be a limitation on the use of pooled section 106 obligations (i.e. contributions from different agreements going towards a specific infrastructure project) in England and Wales. The UK Government is currently consulting on extending the transition period from April 2014 to April 2015.<sup>8</sup>

### **Northern Ireland**

Article 40 of the [Planning \(Northern Ireland\) Order 1991](#) as amended enables the DOE to enter into Planning Agreements ("Article 40 agreements") for the purpose of facilitating, regulating or restricting the development or use of the land. With this in mind the Department can negotiate legal agreements with developers, in conjunction with granting planning permission, which set out contributions to be paid to the Department to offset the impact of development, known as "developer's contributions".

[Planning Policy Statement 13 "Transportation and Land Use"](#) puts responsibilities on developers to bear the costs where a development necessitates the provision of additional transport infrastructure including improving access by public transport, walking and cycling.

It is considered that while provision exists, this facility is very much under used. In the rest of the UK developers' contributions can be used for affordable housing, whereas currently this is not the case in Northern Ireland. However the [Draft Housing Strategy](#) for Northern Ireland states that it is Department for Social Development's intention to use developer's contributions to increase the supply of housing.

### **Scotland**

Developer contributions in Scotland are normally secured under the provisions of Section 75 of the [Town and Country Planning \(Scotland\) Act 1997](#), commonly known as "Section 75 agreements". In essence, a Section 75 agreement is a contract between the Planning Authority and the landowner (and possibly future landowners, depending on the terms of the agreement) which requires the landowner to restrict or regulate the use of their proposed development or mitigate against any potential negative impacts of that development through means set out in the agreement. This can include making a payment to the Planning Authority towards the development of associated infrastructure, e.g. expanding a school or

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<sup>8</sup> Department of Communities and Local Government, [Consultation on Community Infrastructure Levy further reforms](#), April 2013



improving a road. The issues covered by a Section 75 agreement are normally matters that cannot be enforced through a condition attached to planning permission.

### **Wales**

Section 12 explains that the CIL applies in both England and Wales. Although most aspects of the planning system are devolved the CIL is seen as a tax and so is currently a reserved matter. The Welsh Government has issued its own [CIL guidance to the production of a charging schedule](#) saying that it expects that the evidence base supporting a charging schedule will include an up to date development plan. Local authorities in Wales are required to use 'appropriate available evidence' to inform their charging schedule.

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

Local Planning Authorities in Wales have been slower than some in England to adopt the CIL – however a number of Welsh authorities are now working alone or in collaboration to produce charging schedules. This is partly because of the further restriction on the use of Section 106 agreements at the end of the transitional period (see Section 12 England).

## **13 Future changes**

### **England**

The UK Government has stressed that the planning system should work proactively to support economic growth, but has recently been concerned that various aspects of the planning system are burdened by “unnecessary bureaucracy that can hinder sustainable growth.”<sup>9</sup> A number of reforms for England are now contained in the [Growth and Infrastructure Act 2013](#), which include:

- allowing planning applications to be decided by the Planning Inspectorate, if the local authority has a track record of consistently poor performance;
- allowing for planning obligations (Section 106 agreements) relating to affordable housing to be renegotiated to make a development economically viable again; and
- for certain commercial and business projects to be decided by the Planning Inspectorate through the NSIP process.

A number of other announcements on planning reform have also been made, which do not have provisions in the 2013 Act, including:

- to increase existing permitted development for certain telecommunications equipment, such as masts and antenna;
- to update revise and cancel a large amount of existing planning guidance which was not cancelled by the NPPF; and
- to make changes to the operation of the Community Infrastructure Levy.

### **Northern Ireland**

As described in Section 1 the [Planning Act \(Northern Ireland\) 2011](#) provides the legislative basis to radically reform the planning system and for the transfer of planning powers from

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<sup>9</sup> HC Deb 6 Sep 2012 [c31WS](#)

central government to local authorities by 2015. The 2011 Act effectively sees a shift from a land-use based planning system to one operating on the concept of spatial planning.

The *Planning (Northern Ireland) Bill 2012*) is currently with the Assembly with the aim of accelerating the introduction of a number of reforms to the planning system contained within the 2011 Act such as enhanced community planning, faster processing of planning applications, a faster and fairer appeals system etc. It is intended as an interim measure until it is possible to fully commence the 2011 Act in 2015 at which point it will be repealed and all functions will transfer to local authorities.

### **Scotland**

The Scottish planning system was substantially amended by the *Planning etc. (Scotland) Act 2006*, with enactment of the main provisions of that Act taking place up until 2010. Given this recent overhaul of the system, the Scottish Government has no plans for major legislative change. However, the Scottish Planning Policy and National Planning Framework are both currently under review and there may be some minor legislative changes under a proposed Scottish Government *Community Empowerment and Renewal Bill*.

### **Wales**

The Welsh Government has announced its intention to publish a White Paper and a *Draft Planning Reform Bill* before the end of 2013. An Independent Advisory Group (IAG) was set up and has produced a *detailed report on the future delivery of planning services* in Wales. The Welsh Government has not formally responded to this report but it is expected to inform the White Paper and Draft Bill, along with other research and evidence the Welsh Government has collected. Amongst other things the IAG report recommends the establishment of a statutory framework for strategic regional planning and the production of Strategic Development Plans (SDPs) in Wales. In England formal regional planning has recently been abolished.

In a Cabinet Statement on Energy in May 2013 the First Minister announced that there will be two separate planning Bills: a Planning Reform Bill and a Planning Consolidation Bill “to bring together all the existing acts and further streamline the planning process”.<sup>10</sup>

## **14 Further information**

### **England**

[House of Commons Library Research Briefings](#) are available online. The *Planning Portal* also provides information about the planning system in England (select **England** in the top right corner of the home page).

### **Northern Ireland**

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

### **Scotland**

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

### **Wales**

[National Assembly for Wales Research Service briefings](#) are available online. There is also a series of *Planning Quick Guides* on different aspects of the planning system in Wales. The *Planning Portal* also provides information about the planning system in Wales (select **Wales** in the top right corner of the home page).

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<sup>10</sup> Welsh Government, Carwyn Jones (First Minister), *Progress in implementing Energy Wales*, 14 May 2013



