

Department of Environment, Food & Agriculture and the Cabinet Office



Isle of Man
Government

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Consultation Summary & Department Responses:

**Reform of the Planning System - Public
Consultation in relation to Secondary Legislation**

Date: November 2019

We Asked - A Planning Action Plan was laid before Tynwald on 15 May 2018. It included a commitment to make changes to the existing Town and Country Planning Act, 1999. The Planning Act 2019 came into operation on the 20th October 2019. Whilst the Act was awaiting Royal Assent, a public consultation was carried out which sought views in relation to a number of pieces of secondary legislation which would be required to implement the changes made in the Act. The consultation is part of a joint project between the Department of Environment, Food and Agriculture and the Cabinet Office to take forward the Reform of the Planning System.

You said – there were 26 responses to the consultation which are summarised in the tables below. Responses were received from 5 Local Authorities, Manx Utilities, the Department of Infrastructure, the Alliance for Building Conservation the Isle of Man Antiquarian and Natural History Society, as well as developers and members of the public.

We Did - This report is a summary of the responses and the issues they raise. The emerging legislation will be informed accordingly. It is anticipated that this consideration by Tynwald will take place before the end of 2019. The quantitative responses are summarised in table 1 whilst the qualitative comments are summarised in table 2 (with the Government response set out).

Table 1 - Quantitative responses

Question	Yes	No	Not Answered
National Policy Directive Regulations			
Question NPD1: Do you think the above approach is broadly appropriate?	19	4	3
Question NPD2: Would you suggest any changes?	8	10	8
Development Procedure Order			
Question DPO1: Do you think there are any amendments to applications which SHOULD be allowed and WOULD NOT be allowed for under the proposed order?	6	13	7
Question DPO2: Do you think there are any amendments to applications which SHOULD NOT be allowed and WOULD be allowed for under the proposed order?	7	10	9
Question DPO3: Do you think an additional charge of £100 for hearings is fair and would encourage more appeals to be by written representations?	13	8	5
Question DPO4: Do you think the proposed target timescales for large/complex applications are reasonable?	22	1	3
Question DPO5: Do you agree that applicants should have the right to appeal against non-determination of applications?	17	6	3
Question DPO6: Do you think the changes identified would allow for electronic submissions and processing and that this is desirable?	17	5	4
Question DPO7: Do you think planning application validation requirements, as set out above are sufficient?	15	7	4
Question DPO8: Do you think the proposed requirements for site notices will make them sufficiently clear?	16	4	6
Question DPO9: Do you have any other comments on the proposed order?	17	5	4
Planning Committee Constitution Order			
Question PCCO1: Do you think the above approach is broadly appropriate?	19	1	6
Question PCCO2: Would you suggest any changes?	4	16	6

Table 2 - Qualitative comments

Comment¹	Government Response	Change?
National Policy Directives – Would you raise any changes?		
The Cabinet Office should use independent experts with experience in similar places to help with resourcing (1)	The comment is noted. This relates to how the Cabinet Office resources work and as such is not considered relevant to the content of the regulations.	No
There should be a definition of "Strategic Purpose" (1)	It is accepted that there would be more clarity to define this. However, a balance needs to be struck between this and the need for some flexibility, particularly as NPDs are intended to allow quicker responses to changing circumstances. However, the proposals require NPDs to relate to issues with Development Plans which to some extent ensure they are strategic. The proposal was for the consultation to be accompanied by an explanatory document which sets out, "a summary of the information it supplied and a summary of the Cabinet Office's analysis, which has led to the production of the National Policy Directive (including why the issue needs to be addressed in the public interest, why it could not be appropriately resolved by other means and any discounted options)" it is agreed that this could usefully be clarified by adding specific reference to the strategic and defined purpose of the NPD being included within explanatory document (the content of the NPD is set out in the Bill).	Yes
Should be a requirement to explain how informed by public opinion (including initial stage) (1)	It is considered that this is adequately addressed by the proposed requirement for the production and publication of a Consultation Report which summarises what consultation undertaken was (and how), the main issues raised by the consultation, its responses to those issues and any proposed changes to the draft National Policy Directive.	No
The intended consequences must be fully articulated and assessed (1)	The proposal was for the consultation to be accompanied by an explanatory document which sets out, "a summary of the information it supplied and a summary of the Cabinet Office's analysis, which has led to the production of the National Policy Directive (including why the issue needs to be addressed in the public interest, why it could not be appropriately resolved by other means and any discounted options)". The Bill requires the NPD to include reasons and a statement of the anticipated impact and consequences of the policy and justification for the weight to be attached to the NPD.	No
There should be full disclosure of evidence base at the public consultation stage (1)	The requirement for a summary of the evidence base is considered adequate. This would not prevent full publication of evidence if that were considered reasonable, it is important to not unduly constrain the carrying out of consultation in the most appropriate way for each individual NPD. If Tynwald do not consider the evidence to be sufficient, they have the power to not approve the NPD.	No
There should be a review by an independent inspector (to make recommendations) (2)	There may be merit in having consideration by an inspector, perhaps a lighter touch version of the process for development plan documents. However, the benefits of this need to be weighed against the potential for this increased the time taken to produce NPDs and that they are intended to allow quicker responses to changing circumstances. On balance it is not considered that this should be made a requirement.	No
National Policy Directives should not be progressed (8)	The comment is noted. The decision to take forward NPDs was made through the development of the Action Plan. The current consultation relates to how they are progressed.	No

¹ Number in brackets is the number of respondents who raised this issue

Concerns with probity issues and/or impartiality of Cabinet Office (2)	It is proposed that rather than the Cabinet Office review and determine an initial proposal for an NPD, they should make a recommendation to CoMIN who will determine whether to progress the NPD. The decision on whether or not to adopt a final NPD is with Tynwald (this is set out in the Bill).	Yes
Amendment Applications - Do you think there are any amendments to applications which SHOULD be allowed and WOULD NOT be allowed for under the proposed order?		
It should be possible to amend the heights of fences and walls (1)	Comment is noted. It is proposed that amendment applications should relate to planning approval for a building, but could seek to amend the hard/soft landscaping and boundary treatments, this would depend on the circumstances of the case.	No
Corrections to boundary lines should be allowed for (1)	It is not clear whether this is the footprint of the building or the red line application site boundary. The former could potentially be via amendment application (depending on the circumstances of the case). It is not considered that a change to the red-line boundary is a minor amendment.	No
More than one minor amendment should be allowed (2)	There is a concern that multiple amendment applications that individually may be minor might cumulatively be of more impact. The limitation to one amendment is considered to be an important safeguard. It would not prevent a full application being submitted (as is the case now).	No
Concerns over implementation and enforcement impacts (1)	The comments are noted. The enforcement policy indicates that regularisation is encouraged, and the ability to have amendment applications may be helpful in circumstances where there has been a deviation from the approved plans but there is an overall approval.	No
Remedy for applicant if the amendment application is not determined (1)	It is important to strike a balance between legislation which deals with the issues and legislation which is unduly complex. It is not considered necessary to have an appeal mechanism for non-determination of an amendment application, as a full application could be submitted (and then appealed). This would not prevent a complaint to the Tynwald Commissioner for maladministration due to failure to act.	No
Amendment Applications - Do you think there are any amendments to applications which SHOULD NOT be allowed and WOULD be allowed for under the proposed order?		
Amendment should not enable houses to be taken out of first time buyers bracket (1)	Comment is noted. The provision of affordable housing (including first time buyer schemes) within a planning approval is governed by a Section 13 legal agreement and as such could not be changed via an amendment application.	No
Approval of amendments to an application originally approved should not extend the 4-year implementation period of the original application (1)	Comment Is noted and agreed with – that is the intention.	No
Amendments should be to the physical appearance or layout, and alterations to conditions should continue to be distinct (1)	Comment is noted and agreed with, the intention is that applications to amend conditions would remain a separate process.	No
The use of 15 m2 as a maximum is too large, in that it could enable the provision of additional parking, garaging, etc. Suggest 15 m3 instead, to rely on volume rather than area (1)	One of the proposed safeguards is that the proposal does not result in a net increase in the overall footprint of a building by 10% or 15 square metres (whichever is less) – as this is the figure used in Class 14 (extension of dwelling house) in the Permitted Development Order 2012. However, this raises the potential for a 10%/15 metre increase via an amendment application and then a further extension immediately upon completion (under permitted development). On balance it is considered that the best approach to avoid this incremental change (which could cumulatively be problematic) is to clarify that amendment applications must result in no the size of the external footprint – although the shape may be different (and subject to assessment)	Yes

Amendment applications that affect the highway need to be reconsidered by the Department of Infrastructure (1)	Noted. If an amendment application creates a new access or material changes an existing/approved access then it is not envisaged that it could be approved, and so would require a full application (which the Department of Infrastructure would have the opportunity to comment on). This could be clarified	Yes
Permitted Development allows for changes so amendments not required (1)	Permitted Development only applied to a development that is complete, therefore cannot be used to change a development during or prior to the construction phase. This is a relevant point in considering the potential to amend an application to enlarge it as an amendment plus Permitted Development could result in a cumulative difference between original application and final building (See above).	No
Amendments should not be allowed (5)	The comment is noted. The decision to take forward amendment applications was made through the development of the Action Plan. The current consultation relates to how they are progressed.	No
Concerns over competency of builders (1)	This comment is unrelated to planning	No
Do you think an additional charge of £100 for hearings is fair and would encourage more appeals to be by written representations?		
Concern over reduced ability to appeal, including in some cases that articulating information by writing or orally requires different skills and some people may be more comfortable in one method than the other (7)	Given the need to consider equalities issues, it is considered that provision be made for the appeal to be held by hearing if the inspector deems that any participant would be unduly disadvantaged by the hearing being by way of written representations.	Yes
Fee should be higher (3)	It is considered that the introduction of a relatively modest fee strikes a balance between encouraging written representations/increased cost recovery and avoiding costs to participants in the planning process.	No
Do you agree that applicants should have the right to appeal against non-determination of applications?		
There should be a 3 rd party right of appeal against non-determination (2)	There can be delays to the determination of an application because the applicant is compiling additional information to address points raised, or to prepare amendment proposals (often improvements) to respond to issues raised through consultation. It is considered that the introduction of a 3 rd party appeal against non-determination could force the determination of borderline schemes (potentially approvals) when through negotiation a better scheme could have been achieved.	No
There should be no right if the reason was to do with any of the Island's advertised statuses, like Biosphere, Dark Skies, the beach cleaning, heritage, nature reserve etc. (1)	Comment is noted, however it is not considered that the presence of designations should prevent timely decision making (especially noting powers to insist applicants provide additional information within 21 days or applications can be deemed withdrawn)	No
Workload concerns/impact (2)	Comment is noted, however it is hoped that by having longer timelines for larger applications appeals against non-determination should only be very rare.	No
Competency concerns if things are not being done on time (2)	Comment noted. Having a remedy for non-determination is considered a helpful addition to the planning system, but given wider changes to the planning system and staffing is anticipated to be only in exceptional circumstances.	No
Do you think the changes identified would allow for electronic submissions and processing and that this is desirable?		
Plans need clear measurements on them (not just a scale) (3)	Comment is agreed with – provision for this could be included.	Yes
Important to have the ability to zoom in with plans retaining clarity (1)	Schedule 1 of the existing DPO includes a requirement for plans to be provided at given scales.	No

Important to specify file type (e.g. PDF) (2)	Agree that this would be helpful, however the DPO should say of whatever file type(s) and sizes may be required by the Department.	Yes
Importance of paper records (1)	This is noted, however the move towards more electronic working is considered to be key to making the planning system more efficient and effective.	No
Internet security concerns (1)	Noted and internet and data security is very important, but this is not considered to be a reason to retain paper-based methods of working.	No
Easy to miss an e-mail (1)	Communication is via e-mail where an address is provided and it is a matter for the person as to how they monitor their in-box.	No
There should be a printable site notice available (As under legislation the LA has to display a site notice on their notice boards) (1)	The requirement under 5(3)(b) for the Local Authority to display site notices is considered unreasonable as we move towards electronic working, and also given the availability of display space and the number of applications may be impracticable. If the LA fail to do this, it is unclear what remedy the Department, applicant or other parties may have. It is proposed to replace this with provision that the LA <u>may</u> take such steps as they feel are reasonable to publicise applications.	Yes
The viewing of documents on-line is difficult for larger applications given the way that files are named/numbered – there should be a naming convention (1)	Comment is noted, however relates to detail of website management rather than the content of the secondary legislation. The ordering of documents in accordance with document type started earlier in 2019, however the key could usefully be added to the website.	No
Do you think planning application validation requirements, as set out above are sufficient?		
Development bond in case large scheme not completed (1)	Section 13 of the planning act allows for legal agreements to be entered into to control the use/development of land. The point is noted but is not considered relevant to validation requirements (i.e. having sufficient information to understand the proposed development).	No
Concerns over increased cost / complexity (2)	Noted, however a balance needs to be struck between avoiding requiring unnecessary information for every application when it is only required occasionally, and ensuring that applications have sufficient information to be determined without delays (including having to ask for more information and then re-advertise the application). On balance it is considered that the requirement in relation to Environmental Impact Assessment could be removed from the validation requirements.	Yes
Need for up-to-date checklist (1)	Noted – this is outside the regulations but will be considered alongside it.	No
Trees and open space should be referenced (1)	In discussion with the DEFA Arboricultural Officer it is considered that tree information is not always required and so it is better to be able to discuss requirements on a case-by-case basis (and powers exist to require additional information after validation but prior to determination). In terms of open space, again this may not always be required. The Department has published an Operational Policy in relation to Section 13 agreements and the information required.	No
The proposed requirements are not onerous (2)	Noted	No
The minimum information required by Department of Infrastructure to assess an application is set out in their Pre-Application Advice Guidance V1.1 and the revised Manual for Manx Roads (1)	It is understood that the Pre-Application Advice Guidance has not been subject to public consultation nor formally published. The content of the Manual for Manx Roads is noted, although is also a very detailed and technical document. There will be cases where this level of information is required, and the order gives DEFA the ability to require further information prior to determination. However, it is not considered that such information is required in every case, and as such should not be part of the minimum requirements for an application to be validated.	No

Requirement should be added to show elevations of heights in relationship to adjoining properties (1)	Noted – this is important in some cases, and the order gives officers the power to request further information post validation but prior to determination if that information is needed for that case. However, it is not considered that such information is required in every case, and as such should not be part of the minimum requirements for an application to be validated.	No
Do you think the proposed requirements for site notices will make them sufficiently clear?		
Administration should use addresses and titles of applications as given by applicant; not change to uprl addresses or changes in title without consulting applicant (1)	Comments are noted and internal process will be reviewed. It is important that applications contain accurate information. This is considered operational detail that does not need to be specified in the order.	No
Agents should not have to put up yellow forms that should be up to applicant. It is not cost effective for agent to do this job (1)	Article 5 of the Order states that: '(3) No later than the publication date the Department must- (a) Send a copy of the notice to the applicant requiring the applicant to...' Whilst it could be argued that sending the notice to the applicant's agent, was sending it to the applicant, at least one agent has expressed the view that the notices cannot be sent to the agent, but must be sent to the applicant. It is agreed that this is an opportunity to clarify this situation.	Yes
Clarify wording re: risk of responding after 21 days – i.e. decision may be made (2)	Comment noted, and this could be reflected in guidance but it is important that the DPO is not unduly prescriptive.	No
Comments should not be accepted after 21 days (2) but should be extended to 28 days (1)	It is considered unreasonable to refuse to accept comments after 21 days, and to extend the 21 day consultation period may unnecessarily delay smaller and simpler applications.	No
People may not know what 'lawful' use is (1)	Additional guidance could be provided, but this level of detail is not considered appropriate on a site notice.	No
There should be more publicity (e.g. radio) (1)	Noted, it is important to strike a balance between reasonable publicity and making efficient use of resources. It is not considered radio adverts of planning applications is appropriate. Work is ongoing to roll-out the system for people to sign up to e-mail alerts for planning applications in their area.	No
Do you have any other comments on the proposed order?		
3rd Party Appeal rights should be extended to non-government organisations (4)	The current DPO requires those who wish to be considered for Interested Person Status to explain the relationship between land they own/occupy and the application site. This is expanded on in the Operational Policy about how land might be impacted on by a development. It is not considered that independent bodies, which may have no oversight elected members with public accountability, should have the ability to instigate appeals in relation to planning applications which do not impact on property they might own/occupy. However, the participation of such bodies in the planning process, for example by commenting on planning applications, is welcomed. Furthermore, the weight attached to comments received is not a product of whether or not someone is eligible for IPS.	No
Appeals (including 3rd party) should support claims with technical evidence (1)	It is important that appeals relate to planning issues, and the IPS operational policy is intended to prevent IPS (and resulting appeals) being afforded on the basis of non-material issues. To further require appeal requests to provide technical information may result in people with legitimate concerns being able to appeal (see also proposed changes about new issues/information being raised at appeal).	No

Concern over potential to amend and improve live applications (2)	The concern seems to be that the respondents believe the proposals introduce the ability to refuse significant changes to live applications. The proposals include, "make explicit provision for the submission of amended/additional information, the Department to have discretion to refuse to accept such information if it so significantly alters the proposal that a fresh application should be made and discretion for additional publicity". The discretionary element of this is emphasised.	No
Concerns over reduced rights to appeal (2)	The proposals are part of a wider package of measures to facilitate engagement in the planning process, to front load the process (so issues are not raised for the first time during appeal hearings) and to avoid spurious appeals.	No
Concerns about Increased Cost / Complexity (2)	The changes are intended to clarify a number of issues, provide clearer legislation and introduce a number of targeted changes. It is not anticipated that they will significantly increase costs (the validation requirements for example are intended to ensure information is submitted up front rather than during the process, but are not necessarily a requirement for additional information overall).	No
Manx National Heritage should not be included as a government department (1)	The rationale for this is not clear, however it is considered that it is appropriate that Manx National Heritage has some status, as a statutory organisation.	No
Minister should not need to review whole file to determine an appeal (2)	If the Minister were to only consider the Inspector's report, it would require him/her to determine an application for example for a building without looking at the elevations. It is considered reasonable that he/she may consider the whole file (within the context of an Inspector's report).	No
New issues may arise through the appeal process so should be added or considered by the inspector (1)	The intention was to prevent new issues being raised (with what is 'new' being decided by the inspector). However, noting the comments it would be simpler (and give the inspector the flexibility to deal with unforeseen issues) to: <ul style="list-style-type: none"> refine the reasons for appeal so that for objectors this must relate to material planning issues that were referenced in duly made written submissions prior to determination, and for the applicant must set out, referring to specific material planning considerations, why they do not agree with the decision. If the appeal is against a refusal on the grounds of lack of information then the appeal request must explain why the applicant considers the information submitted prior to determination was sufficient; and indicate that a proposal may not be materially altered during the appeal process as this would be more properly dealt with by the submission of a fresh application. 	Yes
Planning Appeals should not be determined by the Minister (5)	The Town and Country Planning Act sets out that the Inspector provides recommendations in a report to the Department for it to determine an appeal. Consequently it is for the Minister to make the final decision and not the Inspector. The matter was considered as part of the Planning Review but the Council of Ministers concluded that they believed it was right for the Minister, who is a locally elected politician, to make the final decision on appeals, rather than an unelected planning inspector who is generally based off-island.	No
A definition of development should be provided (1)	Development is defined in the Planning Act	No
The timescales for determination are supported by Department of Infrastructure as long as they include the minimum information required by the Manual for Manx Roads (for 21 day response) and, if there is a Transport Assessment or Environmental Impact Assessment they should have 42 days to respond (1)	The comments are noted. In relation to the amount of information to be required – the Department of Infrastructure's separate comments in relation to validation requirements have been addressed. It is noted that if the Department has concerns about an application due to lack of information, they are able to object to the application on that basis (and should be able to do so within 21 days). In terms of Environmental Impact Assessment, the target timescale is intended to allow for negotiations, amended/additional information, the need for potential re-consultation, consideration by Planning Committee (including deferral for a site visit). In some cases however, an application	No

	may require an Environmental Impact Assessment but be able to be progressed more quickly. It is therefore not considered to extend (double) the formal consultation period for Environmental Impact Assessment applications (which may unnecessarily delay some applications), but this does not preclude any consultee for asking for more time to make comments. The Department welcomes any opportunity to work with Department of Infrastructure to facilitate their constructive engagement in the planning process.	
Local Authorities should be eligible for Interested Person Status in relation to applications for adjoining Local Authority Areas (1)	It is considered that, subject to them making material comments about how a development may impact on land within their administrative area, this is a sensible suggestion. There are several examples of development being near the border and the nearest settlement being in a different Local Authority area.	Yes
Those who had Interested Person Status in relation to the original application should be consulted on any amendments to that application (1)	Comment is noted, however as set out in the consultation document, " Given these restrictions on what can be applied for and then what must be refused, it is not considered that requirements for either publicity or an appeal process are appropriate (and indeed would undermine the intention in the Action Plan to "Reduce bureaucracy and ensure a proportionate approach to very minor changes"), also noting that applicants would not be prevented from submitting a fresh full application (which then has an appeal process)".	
Planning Committee Constitution Order – Would you suggest any changes?		
To avoid any conflict of interest with constituency matter, the Chair should be an MLC (1)	The proposal is that that the Chair shall be the DEFA Member for Planning, or such other MHK or MLC as by the Minister for DEFA, unless that person is unable to attend a meeting or is unable to take part in an item due to declaring an interest. There is always the potential for a Conflict of interest with any MHK having a departmental role (as Minister or Member).	No
Concerns over minute taking (1)	It is important that there is accurate minute taking. Where someone feels the minutes are inaccurate the Department has added a file note, however it is not considered practical to have the minutes agreed by those other than Members (although they are checked by officers also).	No
Documentation must be easy to understand (1)	Agreed, and this is always the aim (although can be difficult with technical subject matter). It is not considered that this should be set out in the legislation.	No
Quorum should be 5 (1)	Give the potential for conflicts of interest and unavoidable absences for committee, having a quorum of 5 is likely to reduce the ability of the committee to meet regularly (currently fortnightly) and determining applications without unnecessary delay.	No
Probity Concerns (2)	The proposal to have committee members appointed by CoMIN, and the committee operate on the basis of a Constitution Order (which must be laid before Tynwald) are intended to provide clarity moving forwards. The committee currently (and is proposed to continue to) meet in public and publish agendas/minutes. There is also a published Code of Conduct.	No
The requirements should include specialist training for Committee Members to give them the strategic perspective needed for the role (1)	The Code of Conduct (last updated in 2018) includes this provision. Regular training sessions are held with Planning Committee Members, and have included presentations not only from different parts of DEFA (e.g. Ecology and Trees), but from other parts of Government (including the Department of Infrastructure and Public Health).	No