

Development Plan

Practice Note

PRACTICE NOTE

10

Submitting Development Plan Documents for Independent Examination

December 2019

1. Preamble

1.1. This Development Plan Practice Note (DPPN) is designed to guide planning officers, and others engaged in the planning system, through the key requirements for the submission of a development plan document (DPD) to the Department¹ to cause an independent examination (IE). It deals primarily with procedures as well as good practice. It forms part of a series of practice notes stemming from the **Planning Act (Northern Ireland) 2011** (the 2011 Act) and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear. In this practice note, any references to sections are references to sections of the 2011 Act and any references to regulations are references to regulations of the **Planning (Local Development Plan) Regulations (Northern Ireland) 2015** (the LDP Regulations), unless otherwise stated.

1.2. Where appropriate, this practice note will therefore highlight:

- 1) Relevant legislation;
- 2) Procedural guidance;
- 3) Definitions;
- 4) Best practice examples / relevant case law.

1.3. This guidance is not intended to replace the need for judgement by planning officers in the local development plan making process. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note² and legislation, the provisions of the legislation will prevail.

¹ Department means the Department for Infrastructure unless otherwise stated. The Department for Infrastructure came into being on 8 May 2016 and the Department of the Environment was dissolved in accordance with the Departments Act (Northern Ireland) 2016 and The Departments (2016 Act) (Commencement) Order (Northern Ireland) 2016.

² Please ensure you are considering the most up to date version of Development Plan Practice Note 10 on the Department's website at www.infrastructure-ni.gov.uk and the Planning Portal at www.planningni.gov.uk and the most up to date planning legislation on the UK legislation website at www.legislation.gov.uk, which is also available via the Department's website.

2. Introduction

- 2.1. This practice note focuses on the key legislative requirements for the submission of a DPD by the council to the Department for IE, which is carried out by an independent examiner. It covers requirements for the availability of submission documents and the publicity of the IE. Detailed procedures for the independent examination are the remit of the appointed independent examiner and are not covered within this practice note. This practice note aims to ensure a consistent approach is undertaken in relation to the procedural and information requirements which are necessary for an effective and efficient process.
- 2.2. After a DPD, (the draft Plan Strategy (PS) or draft Local Policies Plan (LPP)), is published and before it can be adopted it must undergo an IE. The PS is initially subject to IE and then adopted, then later in the plan preparation process the LPP is subject to IE and then adopted. When both the PS and LPP have been adopted they together comprise the local development plan (LDP) for a given council area.

3. Legislative context

- 3.1. **Part 2 of the 2011 Act** sets out the general requirements for local development plans. Section 10 deals with the IE of the DPD, both the PS and LPP. A council must submit every DPD to the Department to cause an IE. In particular, section 10(2)(b) states that a council must not submit a DPD to the Department unless it considers that the document is ready for IE. Therefore, the council should consider whether the document is ready to be tested for soundness and if it satisfies the requirements relating to the preparation of the DPD. Failure of a council to satisfy itself as to a DPD's readiness for IE may ultimately result in the document being found unsound at IE.
- 3.2. In accordance with section 10(4) the Department must cause an IE to be carried out by the Planning Appeals Commission (PAC) or a person appointed, herein referred to (unless specifically stated) as 'the independent examiner', unless it intends to make a direction under section 11(2) or 15(1) to direct the council to withdraw or modify a DPD, respectively. Under section 10(5), the Department

must not appoint a person other than the PAC, to carry out an IE unless, having regard to the timetable prepared by the council under section 7(1), the Department considers it expedient to do so.

3.3. An IE is a public examination of a DPD that is commenced, conducted and concluded by an independent examiner. Section 10(6) states that the purpose of the IE is to determine, in respect of the DPD:

- whether it satisfies the requirements of sections 7 (Preparation of timetable) and 8 (Plan Strategy) or, as the case maybe, sections 7 (Preparation of timetable) and 9 (Local Policies Plan), and any regulations under section 22 (Regulations) relating to the preparation of DPDs; and
- whether it is sound.

3.4. Regulations 20-22 set out the requirements for the submission of documents for IE, the availability of submission documents and the publicity of the IE.

3.5. It is a statutory requirement that the PS (section 8(4)(a)) and LPP (section 9 (4)(a)) must be prepared in accordance with the plan timetable. Regulation 6 requires the council to include indicative dates for each stage of the preparation of the local development plan from the commencement of the LDP process up to its conclusion at the adoption of the local policies plan. It must set out the timings of the publication for the preferred options paper and the development plan documents as well as accompanying documents such as the Sustainability Appraisal (SA) including Strategic Environmental Assessment (SEA).

3.6. It is a statutory requirement that the PS (section 8(4)(b)) and LPP (section 9(4)(b)) must be prepared in accordance with the council's Statement of Community Involvement (SCI). The preparation of the LDP commences with the publication of the council's Preferred Options Paper (POP), followed by the preparation and adoption of the PS and LPP, respectively.

4. How a DPD progresses from the representation stage to submission to the Department.

- 4.1. Regulation 20(1) requires that once the DPD has been published council must consider representations and counter representations.
- 4.2. The council should endeavour to prepare a sound DPD in the first instance, as set out in sections 8 or 9, and also Part 4 of the LDP Regulations. These legislative requirements set out the process and the form and content of the DPD. Further advice in relation to taking account of relevant policies and strategies, preparation of a robust evidence base, and involving stakeholders and the community can be found within the suite of DPPNs.
- 4.3. Following receipt of representations to the DPD, the council will consider the issues raised. The impact of any new information and the implications for the soundness of the DPD should also be considered. The council may decide, for example, to revisit the evidence base or engage with the relevant parties to determine how to address the issue(s). Ultimately the council will consider each issue raised and determine whether there will be:
 - **NO CHANGE** - Determines that the DPD as prepared is sound and does not need to be changed.
 - **MINOR CHANGES** - Notes the issues and whilst determines that the DPD as prepared is sound, proposes minor changes that could be acceptable, which would not impact upon the soundness of the DPD.
 - **FOCUSSED CHANGES** - Identifies that an unforeseen issue has arisen and considers that changes are required to ensure that any impact upon the soundness of the DPD is addressed.
 - **FUNDAMENTAL CHANGES** - Agrees that an issue is fundamental and goes to the heart of the DPD and withdraws the DPD.
- 4.4. **No change** – A council determines that the DPD as prepared is sound. However, the Council may wish to submit supporting information to substantiate the position.

- 4.5. **Minor Changes** - As part of a council's submission, to the Department a list of proposed minor changes to the DPD may be submitted that have not been subject to consultation. (See paragraph 6.8) The independent examiner will not treat those changes as part of the proposed plan to be examined. However, they may consider it appropriate for these to be discussed at IE. Necessary minor editing changes for factual correction do not require public consultation. These changes could be listed as an attached schedule to accompany the LDP when submitted for examination. However, as above the examiner may consider it appropriate for some or all of the Council's proposed changes to be discussed at the IE.
- 4.6. The Council should be mindful when determining whether a change is minor or whether it ought to be incorporated as a focussed change. If this decision is finely balanced, then a cautious approach is advised in relation to consultation.
- 4.7. **Focussed Changes** - The purpose of this non-statutory administrative stage is to assist in dealing with exceptional circumstances that may arise between publication of a DPD and its submission to the Department. Following publication of and consultation on the DPD, council may wish to make changes to the document to ensure that issues impacting upon the soundness of the DPD are addressed, these should be presented in the form of a 'Focussed Changes' Addendum (see paragraph 6.10). Focussed changes should only be made in exceptional circumstances, particularly as the DPD should already have been prepared whilst taking account of the tests of soundness. Timing implications for the LDP timetable/SCI should be considered and amended as necessary. The council may need to consider the cumulative impact of the range of issues raised and decide if the DPD as prepared is ready for IE or whether they should consider making focussed changes. Focussed changes may be necessary, for example:
- where there has been a sudden major change in local circumstances;
 - where new regional planning policy and/or guidance has been introduced; or
 - following consideration of representations, the Council identify an unforeseen soundness issue.

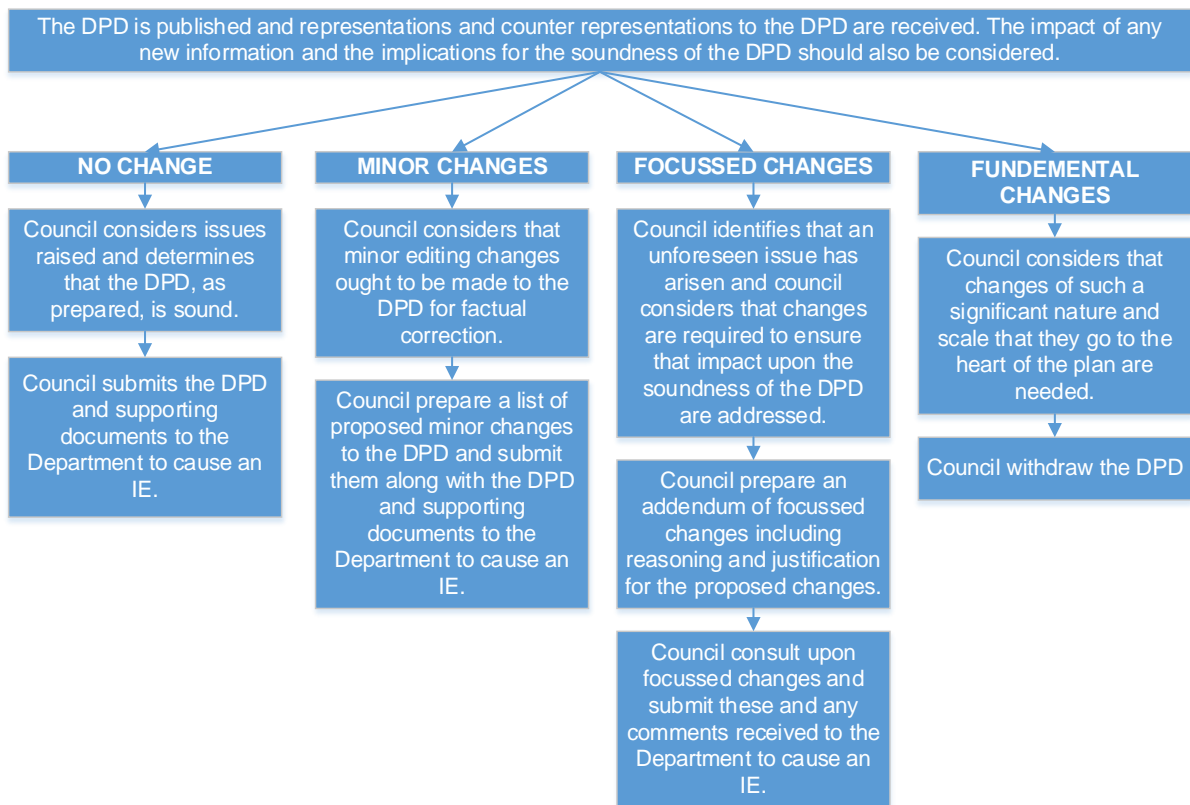
- 4.8. A council may need to revisit and update its evidence base and consider if focussed changes to the DPD would be appropriate to be satisfied that the DPD is ready for IE. These focussed changes should be small in number and reflect key pieces of evidence, but should not go to the heart of the DPD affecting only limited parts of it.
- 4.9. The focussed changes should be set out in an addendum³ to the original DPD including reasoning and justification for the proposed changes. The council should consider the impact of such changes on the overall soundness of the DPD, the integrated Sustainability Appraisal process and other supporting assessments.
- 4.10. In order for the focussed changes to be considered at the IE satisfactory consultation should take place, therefore a council should prepare, publish and consult upon the focussed changes. The addendum of focussed changes together with an SA and other statutory assessments (as required) should be published for consultation for a period of 8 weeks which corresponds to the timeframe specified in regulation 16. Comments made on Focussed Changes can only address and relate to the soundness of proposed focussed changes, as this consultation is not an opportunity to add to the previous representations or to make new comments on parts of the original DPD. It is also recommended that the Council publish comments to focussed changes as soon as reasonably practicable after the expiry of the consultation period. There is no need for a Council to comment on the responses received to Focussed Changes Addendum (see paragraph 6.10)
- 4.11. Any proposed focussed changes are without prejudice to the examiners final recommendations following consideration of issues through the IE.
- 4.12. **Fundamental Changes** – Where a council considers that fundamental changes are needed and are of such a significant nature and scale as to go to the heart of the plan. Such fundamental changes could have implications regarding the soundness of the plan. Therefore the Council will need to consider the extent to

³³If the submitted plan is accompanied by an addendum of Focussed Changes on which appropriate consultation has taken place, the Focussed Changes addendum forms part of the plan

which the need for such fundamental change throws into doubt the overall soundness of the plan.

4.13. Figure 1 (below) sets out the various possible scenarios outlined above leading to the submission of a DPD to the Department, however as this is a new plan making process, it may be the case that with the passage of time other routes to IE will emerge.

Figure 1 – Indicative Illustration of How a DPD Progresses from the Representation Stage to Submission of a DPD to the Department.



5. Requirements to be met by the council before submitting the DPD and other documents for Independent Examination to the Department

- 5.1. The council has the following statutory requirements to meet before it submits a DPD to the Department for IE:
- 1) Under section 10(2)(a), it has complied with any relevant requirements contained in regulations under Part 2; and
 - 2) Under section 10(2)(b), it thinks the DPD is ready for IE.
- 5.2. Regulation 15 specifically states that before submitting a DPD to the Department for IE in compliance with section 10, the council must make the DPD and other documents available for inspection. It also states the places at which the documents are to be made available for inspection, send a copy of those documents to the statutory consultation bodies, give notice in the Belfast Gazette and by local advertisement of the title of the DPD and where and when it is available for inspection, and the requirements for publication of the DPD on the council's website.
- 5.3. The council should thoroughly assess and check the DPD prior to its submission to the Department in order to satisfy itself that it meets the legislative requirements and reduce the potential need for the DPD to be withdrawn by the council. Likewise, this approach should be applied to other documents, including supporting documents, which are submitted with a DPD.
- 5.4. Under section 11(1) a council can withdraw a DPD at any time before it is submitted to the Department for IE. Where these powers are exercised and a DPD is withdrawn, it must be done so in accordance with regulation 23. Withdrawing a DPD may occur, for example, if a council is not satisfied that it will meet the statutory requirements for the submission of the DPD and other documents for IE and/or the tests of soundness. A council may review and address any issues and publish the new DPD and other documents for public consultation at a later date in accordance with regulation 15. An action to withdraw by a council would

necessitate a revision of the plan timetable, which is provided for under regulation 7(5).

6. Submission of documents for Independent Examination to the Department.

- 6.1. Section 10(3) states that (in addition to the submission of the DPD in accordance with section 10(1)) the council must also submit to the Department such other documents, or copies of documents and information as prescribed in regulations. This is to ensure that there is the necessary information for proper scrutiny of the DPD during the IE. **The Department will require one hard copy and one electronic copy of all documentation.**
- 6.2. For the purposes of section 10(3), regulation 20(2) prescribes the documents which a council must submit, along with the DPD, to the Department for IE and they are as follows:
- 1) the Plan Strategy Sustainability Appraisal report or, as the case may be, the Local Policies Plan Sustainability Appraisal report;
 - 2) the council's statement of community involvement (SCI);
 - 3) evidence that the council has complied with its SCI;
 - 4) copies of notices as follows:
 - a) notice of the address to which representations are to be sent in relation to the public consultation on the Preferred Options Paper
 - b) notice of the address to which representations are to be sent in relation to the public consultation on the DPD (i.e. Plan Strategy or, as the case may be, the Local Policies Plan)
 - c) notice of the address to which counter representations are to be sent in relation to representations made during the public consultation on the DPD (i.e. Plan Strategy or, as the case may be, the Local Policies Plan)
 - 5) the timetable;
 - 6) a statement setting out:

- a) a summary of the main issues raised in representations made in accordance with regulation 11(2) on the council's Preferred Options Paper, and
 - b) how those main issues have been taken into account in the preparation of the DPD;
- 7) a statement setting out:
- a) if representations/counter representations were made in accordance with regulation 16(2) or 18(2) respectively, the number of representations made and a summary of the main issues raised in those representations, or
 - b) that no such representations were made;
- 8) copies of any representations/counter representations made to the proposed development plan document, and
- 9) such supporting documents that in the opinion of the council are relevant to the preparation of the development plan document. (see para 6.5 – 6.12)

6.3. The Plan Strategy Sustainability Appraisal report and Local Policies Plan Sustainability Appraisal report incorporates Strategic Environmental Assessment (SEA).

6.4. Further to the requirements under section 10(1) and (3) and regulation 20(2), regulation 20(3) states that the council must also send to the Department the following documents:

- 1) where the development plan document is a plan strategy, a copy of that plan strategy, or
- 2) where the development plan document is a local policies plan:
 - a) a copy of that local policies plan, and
 - b) a copy of the adopted plan strategy.

Supporting Documents

- 6.5. For the purposes of section 10(3), regulation 20(2)(i) prescribes that Council must send to the Department such supporting documents as in the opinion of the Council are relevant to the preparation of the DPD. Paragraphs 6.5 – 6.12, set out a range of potential supporting documents.
- 6.6. Other assessments that support the preparation of the DPD, whether PS or LPP, include the Equality Impact Assessment (EQIA), Habitats Regulations Assessment (HRA) and Rural Proofing.
- 6.7. Under regulation 20(1) the council must consider representations and counter representations made under regulations 16 and 18. Regulation 20(g) requires Council to submit a statement setting out summary of the main issues raised in representations. It would be good practice to detail these representations to the DPD, the issues raised, and the council's consideration of those issues, in the form of a series of topic papers or a consultation report which can be submitted as supporting documents.
- 6.8. If the Council proposes minor changes, these should be contained in the submitted documentation. Such changes must not impact upon the soundness of the DPD and do not require public consultation (see paragraph 4.5).
- 6.9. Statements of Common Ground can be used to establish the main areas of agreement between two or more parties on a particular issue. These can be a useful way to evidence commitment and deliverability and can be refined as work on the DPD progresses.
- 6.10. If the council has prepared, published and consulted upon a Focussed Changes addendum, an amended/updated Sustainability Appraisal and any other supporting assessments (if required) prior to submission, comments made upon the focussed changes should be collated and submitted as part of the Council's submission to the Department. However, there is no need for Council to comment

on the responses received. This is to ensure that submission of the DPD can proceed in the most time efficient way.

- 6.11. When submitting a DPD, a council should also satisfy themselves that they are meeting the requirements of the independent examiner's procedures in relation to the information that will be required for IE (the PAC 'Procedures for Independent Examination of Local Development Plans' contain an Information Checklist for documents that will be needed by the Commission before the IE can proceed. The current Procedures can be found on the PAC website www.pacni.gov.uk).
- 6.12. A council must not submit a DPD unless it considers that the DPD is ready for IE. It may assist the council to use self-assessment documents and submit these to the Department as supporting documents to a DPD. Such documents will be useful in demonstrating a DPD has fulfilled legislative requirements.

7. The Department's Role at Submission

- 7.1. The 2011 Act states that the Department must cause an IE unless it intends to direct a Council to modify or withdraw the DPD (sections 15(1) and 11(2)). The IE will determine whether or not the DPD satisfies the preparation requirements of the Act and LDP Regulations, and whether it is sound
- 7.2. In its capacity as a statutory consultation body, the Department is concerned with ensuring that Departmental plans and programmes are taken into account and will assess the DPD in line with regional policy throughout the LDP preparation process. It will indicate through its representations if there are concerns in relation to the soundness tests. The Department's representation will be considered alongside all others by the examiner.
- 7.3. Following receipt of the DPD the Department must cause an IE unless it determines it is necessary to direct a council to withdraw or modify the document. Such consideration may include instances where the Department is of the opinion

that the DPD is fundamentally flawed, for example where there is insufficient evidence to support proposals which represent significant departure(s) from regional policy, or other obvious procedural omissions contained in the LDP regulations or set out within a council's LDP timetable or SCI. This is not intended as an exercise in determining 'soundness' of a DPD or to fetter the role of the independent examiner, but rather to be satisfied that there is nothing in the body of documents which would prevent the DPD from progressing to independent examination.

Withdrawal of DPD

- 7.4. Under section 11(2) the Department has the power to direct the council to withdraw the DPD at any time after it has been submitted by the council to the Department. The Department will only exercise this power if, following consideration of the DPD, it is of the opinion that it is fundamentally flawed. For example where there is no evidence to support proposals which represent significant departure(s) from regional policy, or other obvious procedural omissions contained in the LDP regulations or set out within a council's LDP timetable or SCI. Where these powers are exercised and a DPD is withdrawn, it must be done so in accordance with regulation 23. The council may submit the new DPD and other documents at a later date in accordance with the statutory requirements. Subsequently, a council should ensure that their LDP timetable is kept up to date.

Intervention by the Department and Department's Default Powers

- 7.5. It should also be noted that under section 15(1) the Department may direct the council to modify a DPD at any time before it is adopted under section 12 if it thinks that the document is unsatisfactory. If the Department gives such a direction it must give reasons for doing so and the council must comply with the direction.
- 7.6. Furthermore the Department has default powers (section 16(1)) if it thinks that a council is failing or omitting to do anything it is necessary for it to do in connection with the preparation or revision of a DPD.

Consideration of Submission to the Department

- 7.7. The Department will aim to consider the Council's submission within 8 weeks. The timeliness will however depend on the complexity of DPD. If the Department decides to cause an IE, it will notify both the Independent examiner and the Council. This notification to the Council will advise who has been appointed to carry out the IE⁴ and will request that it forwards the submitted documentation directly to the independent examiner. At this point the Department is content that the independent examiner and the council shall correspond directly in terms of administration of the IE.
- 7.8. The independent examiner will set a date for the commencement of the public hearings and notify the council. Subsequently, the council should ensure that their LDP timetable is kept up to date and should not undertake a key stage in the preparation of their LDP if their timetable requires a revision.

8. Availability of submission documents

- 8.1. Regulation 21 sets out the statutory requirements for the availability of a DPD after a council submits it to the Department to cause an IE.
- 8.2. As soon as reasonably practicable after a council submits a DPD to the Department the council must make the following documents available for inspection at its principal offices and such other places in the district of the council as it considers appropriate:
- 1) a copy of the DPD,
 - 2) the documents specified in regulation 20(2), and
 - 3) such other documents as in the opinion of the council are relevant to the preparation of the DPD.

⁴ Section 10(4) states that an IE will be carried out by (a) the planning appeals commission; or (b) a person appointed by the Department. Section 10(5) states that the Department must not appoint a person under subsection (4)(b) unless, having regard to the timetable prepared by the council under section 7(1), the Department considers it expedient to do so.

- 8.3. The council must notify the consultation bodies of the fact that the DPD and the documents (as detailed in paragraph 6.2 above) are available for inspection and the places and times at which they can be inspected. Furthermore, the council must notify any person who has made (and not withdrawn) a representation or counter representation in accordance with regulation 16(2) or 18(2), respectively, of those matters.
- 8.4. In accordance with regulation 21(e)-(f), the council must also give notice in the Belfast Gazette and by local advertisement⁵ of the fact that the DPD has been submitted to the Department. Furthermore, the council must publish this notice on its website.
- 8.5. In relation to making the submission documents available, the Council must comply with the requirements of its own SCI. It is important to note that if a Council gives a commitment to go beyond the minimum statutory requirements in its SCI, it must comply with that commitment.

9. Publicity of the Independent Examination

- 9.1. Regulation 22 sets out the statutory requirements for the council in reference to the publicity of the IE.
- 9.2. The council is responsible for the publicity of the IE for a DPD. Publicity allows those who have an interest in a DPD to be made aware of the forthcoming IE and to be able to prepare for it accordingly.
- 9.3. At least four weeks before the opening of an IE, the council must make public the time and place at which the examination is to be held and whether the PAC or a person appointed will carry out the IE and if the latter, the identity of that person. In relation to this information, council must:

- 1) notify the consultation bodies,

⁵ Under regulation 2 of the LDP Regulations, "local advertisement" means an advertisement for two successive weeks in at least one newspaper circulating in the district of the council.

- 2) give notice in the Belfast Gazette and by local advertisement,
- 3) publish it on its website, and
- 4) notify any person who has made (and not withdrawn) a representation or counter representation in accordance with regulation 16(2) or 18(2), respectively.

10. The Next Steps

- 10.1. An IE is a public examination of a DPD that is commenced, conducted and concluded by the independent examiner. The IE will examine 'soundness' of the DPD in terms of testing the principles, content and the preparation process against a list of key criteria. The 'Soundness' tests are set out in full in Development Plan Practice Note (DPPN) 06 'Soundness'.
- 10.2. Primarily, the role of the independent examiner is to determine:
 - 1) whether a DPD satisfies the requirements for the preparation of a plan timetable and plan strategy or, as the case may be, the preparation of a plan timetable and local policies plan, together with the requirements for the preparation of a DPD as prescribed by the LDP Regulations;
 - 2) whether a DPD is sound.
- 10.3. Any person who makes a representation seeking to change a DPD must, if they so request, be given the opportunity to be heard at the IE in line with section 10(7).
- 10.4. The independent examiner must consider representations and counter representations made in relation to a DPD. Representations and counter representations are made on the basis of the soundness tests. Therefore, in considering the representations, if it is identified that any aspects of the DPD are unsound, then the independent examiner may identify the need for modifications to the DPD to ensure it meets the soundness tests. These modifications will be reflected in the recommendations to the Department at the end of the IE.

- 10.5. Procedures for carrying out an IE as well as the timetable and general arrangements for each IE are matters for the independent examiner. Procedures for when the PAC hold an IE can be found on their website www.pacni.gov.uk.
- 10.6. The independent examiner, after concluding the public hearings and, in accordance with section 10(8), must make recommendations and give reasons for those recommendations (herein referred to as the “advisory report”).
- 10.7. In accordance with regulation 24(1) the independent examiner must send the advisory report to the Department for its consideration in terms of making a direction to the council regarding the adoption of the DPD. The time period for preparing and the submission date for the advisory report are a matter for the independent examiner.

**Department for Infrastructure
Strategic Planning Division
Clarence Court
10-18 Adelaide Street
BELFAST
BT2 8GB
Tel: 0300 200 7830**