

## DRAFT PROCEDURES FOR LDP EXAMINATIONS: COMMENTS AND RESPONSES

<u>Organisation</u>	<u>Paragraph(s) in Draft Procedures</u>	<u>Comments Received</u>	<u>Commission's Response</u>
Antrim and Newtownabbey Borough Council	8	Will the supporting text in Development Plan Practice Note 06 (DPPN 06) be a consideration?	Yes. See Paragraph 11 of the final procedures document.
	13-18	The information to be submitted to demonstrate soundness and the development of a database should be clarified.	The submitted information should address the soundness tests in Appendix 3. A new Appendix 4 indicates how a spreadsheet for responses might be structured.
	19-21	More information should be provided on the issues likely to result in a plan being considered to be fundamentally unsound.	The Commissioner will assess soundness against the tests in Appendix 3. Failure to take all necessary regulatory steps could result in a finding of unsoundness.
	23	More information should be provided on the arrangements and time periods for parties to narrow down the areas in dispute.	That will be for the parties concerned to organise amongst themselves within the parameters of the examination timetable.
	Appendix 3, Test P1	Under what circumstances would a plan timetable fail the procedural test?	The soundness tests will be considered in the round and an overall judgment formed (see Paragraph 11).
Ards and North Down Borough Council	8	Are the tests based on the wording of the Practice Note or on an interpretation of it? Is any variance anticipated?	The tests are taken from DPPN 06. Their interpretation and application to a particular plan will be matters for debate.
	8-10 and Appendix 3	Guidance on the interpretation of "take account" and "have regard to" should be provided.	The precise meaning of these phrases will be a matter for debate.

<p>Ards and North Down Borough Council (continued)</p>	<p>10</p>	<p>If representations do not state how the plan can be changed to make it sound, will they be considered? Should Councils exclude such representations? Will the Commission seek clarification from those making the representations?</p>	<p>All representations relevant to soundness will be considered. Councils must provide copies of all representations. The Commissioner will seek clarification where necessary.</p>
	16	Councils that do not record information in the format required by the Commission should not be disadvantaged.	Various formats may be acceptable but a Commissioner will not be appointed until the responses have been adequately organised and categorised (see Paragraph 22).
	17	Guidance in the form of a checklist on the evidence base and how up to date it needs to be would be helpful.	The evidence should address the soundness tests in Appendix 3. How up to date the information needs to be will vary depending on subject matter.
	17	More information should be provided on the preparation of topic papers.	Topic papers should set out the Council's views on the main issues arising from the representations, grouped by subject matter (see Paragraph 21).
	19-21	More information should be provided on the issues likely to result in a plan being considered to be fundamentally unsound.	The Commissioner will assess soundness against the tests in Appendix 3. Failure to take all necessary regulatory steps could result in a finding of unsoundness.
	23	More information should be provided on the arrangements and time periods for parties to narrow down the areas in dispute.	The reference to narrowing down areas in dispute has been omitted from the final procedures document.
	24	Where responses to information requests are overly lengthy, an executive summary should be required.	That is now provided for at Paragraph 30 of the final document.

<p>Ards and North Down Borough Council (continued)</p>	<p>25</p> <p>27</p> <p>32-34</p> <p>-</p>	<p>It is assumed that the Commission will agree the topics and issues with the parties taking part and in particular with the Council.</p> <p>How will the Commission decide whom to invite if no representation has been received? Will there be agreement among parties as to who should be invited?</p> <p>An outline of the structure of the report to the Department would be helpful.</p> <p>The procedures should give cognisance to unanticipated circumstances and allow for an element of flexibility.</p>	<p>That will be a matter for the Commissioner but it is not envisaged that there will be consultation with any of the parties.</p> <p>That will be a matter for the Commissioner but it is not envisaged that there will be consultation with any of the parties.</p> <p>The structure will vary from report to report depending on which soundness issues arise.</p> <p>A reference to flexibility has been added – see Paragraph 3.</p>
<p>Armagh, Banbridge and Craigavon District Council</p>	<p>17</p> <p>17</p> <p>24</p>	<p>The procedures should include soundness self-assessment checklist and self-assessment legal compliance checklists similar to those provided in England.</p> <p>Clarification on the form and content of topic papers would be useful.</p> <p>In regard to electronic transmission of information, it should be clarified what file size would be viewed as excessive.</p>	<p>In the Northern Ireland planning system, that is the Department's responsibility. This document deals only with examination procedures (see Paragraph 3).</p> <p>Topic papers may vary in form but they should set out the Council's views on the main issues arising from the representations.</p> <p>Paragraph 30 now clarifies that the maximum virtual file size will normally be 10 megabytes.</p>
<p>Belfast City Council</p>	<p>6</p>	<p>The legislation governing the right of hearing should be explained and all relevant extracts added as an appendix.</p>	<p>A reference to Section 10(7) of the 2011 Planning Act has been added at Paragraph 9.</p>

<p>Belfast City Council (continued)</p>	<p>10</p> <p>10</p> <p>10</p> <p>11</p> <p>12</p> <p>14-17</p> <p>16</p> <p>19-21</p> <p>34</p>	<p>Forms for making representations should be written in plain English and include guidance notes.</p> <p>Methods of making representations other than using forms, such as Citizen Space and e-mail, may be more accessible.</p> <p>Parties should be reminded that representations will be published.</p> <p>Guidance and examples would be useful on how co-operation between objectors sharing a common cause might be achieved.</p> <p>Clarity or examples should be provided on when written submission will suffice or oral evidence might be beneficial.</p> <p>A checklist should be provided of the documents required by statute and other documents that would be desirable.</p> <p>All the data headings required in the database should be specified.</p> <p>It would be useful to clarify the role of the Department at the initial assessment stage.</p> <p>The report should be circulated to the relevant planning authority.</p>	<p>The Commission recommends using forms similar to those in Annex A to DPPN 09 (see Paragraph 13) but the precise wording is a matter for the Councils.</p> <p>Use of forms such as those in DPPN 09 is more likely to capture the information needed to constitute an effective representation.</p> <p>As explained in Appendix 1, all information presented to the Commission is processed in accordance with the Data Protection Act.</p> <p>It is appreciated that such co-operation can happen only where the persons concerned are already aware of each others' views.</p> <p>People will have to decide for themselves whether they wish to be heard. It is not for the Commission to offer advice.</p> <p>A checklist has been added to the document (see Appendix 5).</p> <p>Appendix 4 recommends how a spreadsheet for responses might be structured.</p> <p>The Commissioner will carry out the initial assessment. The Department will not be involved at that stage (see Paragraph 10).</p> <p>Release of the report will be a matter for the Department (see Paragraph 41).</p>
---	---	---	--

Belfast City Council (continued)	-	Indicative timeframes should be given for each stage of the process, including the pre-hearing, hearing and reporting stages.	The current expectation is that Commissioner involvement will last on average nine to twelve months per plan (see Paragraph 7). The duration of individual stages is likely to vary from plan to plan.
Causeway Coast and Glens Borough Council	-	Generally content with the draft procedures.	-
Community Places	-  Appendix 3  Appendix 3, Test C2  Appendix 3, Test CE1  Appendix 3, Test CE 4  31	A checklist with key questions and guidance on evidence should be provided.  The Commission should work with the Department to produce guidance on soundness and the soundness tests.  Guidance on how “take account of” will be determined would be useful.  Where there are cross-boundary conflicts, how will these be managed?  How will the Commission assess whether a plan is reasonably flexible?  Parties should be invited to notify the Commission if they intend to have legal representation and all other interested parties should be made aware of this.	Evidence should address the soundness tests are set out in Appendix 3.  It is not the Commission’s role to provide guidance. Account will be taken of DPPN 06 when conducting examinations.  The precise meaning of “take account of” will be a matter for debate.  Depending on the circumstances, a plan might be found to be unsound if it seriously conflicts with a plan for an adjoining district.  The Commission will assess this in light of the evidence and arguments presented to it.  The Commission cannot require parties to say in advance who will be representing them.
Derry City and Strabane District Council	-	There should be a commitment to review these procedures.	A statement has been added at Paragraph 3 stating that the procedures will be kept under review and updated as necessary.

Derry City and Strabane District Council (continued)	6	Do people making counter representations have a right to be heard and will flexibility be applied?	Counter objectors do not have a statutory right to be heard but the Commissioner may invite people to attend where their evidence could assist in determining the soundness of the plan (see Paragraphs 29 and 32).
	7	What is the likely timescale for the Commission to report to the Department?	This will differ from plan to plan depending on the complexity of issues. The Commissioner will announce an indicative date at the end of the last hearing session (see Paragraph 37).
	8 and Appendix 3	How will “soundness” and “take account of” be interpreted?	Soundness will be investigated using the tests set out in Appendix 3. The precise meaning of “take account of” will be a matter for debate.
	15	How many copies of the representations does the council need to send? Should they be hard copies? Should all counter representations be sent and not just the site-specific ones?	The Commission will need one electronic copy and two hard copies of every representation (see Paragraph 19). The Local Development Plan Regulations envisage that counter representations will be concerned only with site-specific matters.
	15	What is meant by the statement that no one need correspond directly with the Commission in order to register an interest?	That statement has been omitted from the final procedures document.
	19-21	The relationship, roles and correspondence protocols between the Council, the Department and the Commission’s Programme Officer need to be clarified.	The Programme Officer will be the main point of contact for councils and members of the public (see Paragraph 8).

<p>Derry City and Strabane District Council (continued)</p>	<p>24</p> <p>31</p> <p>Appendix 3, Test P3</p>	<p>Can paper copies of responses to information requests follow after the specified date?</p> <p>How will the Commission discourage undue legalism?</p> <p>How will sustainability appraisal, including strategic environmental assessment, and any other relevant assessments be examined?</p>	<p>The responses, whether submitted electronically or in hard copy, must reach the Commission on time unless there are compelling circumstances.</p> <p>The Commissioner will conduct the hearings in an inclusive manner and treat all participants equally (see Paragraph 36).</p> <p>The Commissioner will investigate whether the plan has been subject to sustainability appraisal and strategic environmental assessment in accordance with the relevant statutory provisions.</p>
<p>Fermanagh and Omagh District Council</p>	<p>-</p> <p>10</p> <p>16</p> <p>17</p>	<p>The procedures should be flexible enough to adapt to unanticipated circumstances.</p> <p>If representations do not state how the plan can be changed to make it sound, will they be considered? Should Councils exclude such representations? Will the Commission seek clarification from those making the representations?</p> <p>It would be helpful if the representations database was the same across all plan teams.</p> <p>Guidance, in the form of a checklist, on how the evidence base is considered and how up to date it needs to be would be helpful.</p>	<p>A sentence has been added at Paragraph 3 stating that the procedures will be applied flexibly and may be adapted.</p> <p>All representations relevant to soundness will be considered. Councils must provide copies of all representations. The Commissioner will seek clarification where necessary.</p> <p>Appendix 4 recommends how a spreadsheet for responses might be structured.</p> <p>The evidence should address the soundness tests in Appendix 3. How up to date the information needs to be will vary depending on subject matter.</p>

Fermanagh and Omagh District Council (continued)	24	Where representations are overly lengthy, an executive summary should be required.	That is now provided for at Paragraph 30 of the final document.
	27	How will the Commission decide whom to invite if no representation has been received? Will there be agreement among parties as to who should be invited?	That will be a matter for the Commissioner but it is not envisaged that there will be consultation with any of the parties.
	31	It is assumed that the Commission will agree the topics and issues with the parties taking part and in particular with the council.	That will be a matter for the Commissioner but it is not envisaged that there will be consultation with any of the parties.
	32-33	An outline of the structure of the report to the Department would be helpful.	The structure will vary from report to report depending on what soundness issues arise.
	Appendix 3	Clarification on how the Commission interprets terms such as “take account” and “have regard to” would also be helpful.	The precise meaning of these phrases will be a matter for debate.
Appendix 3, Test C4	It is assumed little weight will be given to the plans of neighbouring councils, unless adopted.	That will also be a matter for debate through the examination process.	
Housing Executive	22	Consideration should be given to timetabling examinations for statutory consultees who may have to attend a number of hearings.	A multitude of factors have to be considered when timetabling hearings, but pressures on consultees will be borne in mind.
Newry, Mourne and Down District Council	-	The Council welcomes the guidance and has no further comment to make.	-
Matrix Planning Consultants	6	A minimum of two Commissioners should undertake each examination.	The number of Commissioners will be decided on as case-by-case basis.

<p>Matrix Planning Consultants (<i>continued</i>)</p>	<p>6</p> <p>10-12</p> <p>13-18</p> <p>27</p>	<p>As the legislation does not rule out their participation, it should be taken as permissive for all who make representations.</p> <p>If any representations state that the plan is irredeemably flawed, it would be appropriate to call an exploratory meeting.</p> <p>Whilst this section is advisory, the word “should” should be replaced by “must” as that would make the approach appear mandatory.</p> <p>More detail is needed on how new evidence can be introduced without allegations of prejudice if no representations were previously received.</p>	<p>In addition to those who have a statutory right to be heard, the Commissioner may invite people to attend where their evidence could assist in determining the soundness of the plan (see Paragraphs 29 and 32).</p> <p>An exploratory meeting will be called if the Commissioner judges that the plan may be fundamentally flawed.</p> <p>The wording in the document is, and must be, aligned with the legislation governing local development plan examinations.</p> <p>The Commissioner’s task is to investigate soundness. All parties with an interest in a topic will be given an opportunity to comment on all the evidence relating to that topic.</p>
<p>Mid and East Antrim Borough Council</p>	<p>15</p> <p>16</p> <p>31</p>	<p>Further detail should be given as to how representations will be dealt with if they fail to address the soundness of the plan.</p> <p>The Department for Infrastructure should have a key role in facilitating the use by all Councils of the same database.</p> <p>Firmer language should be used about questioning between parties and undue legalism.</p>	<p>Persons who make representations seeking to change the plan have a statutory right to be heard, but the Commissioner’s report will concentrate on soundness (see Paragraphs 12 and 39).</p> <p>Appendix 4 indicates how a spreadsheet for responses might be structured.</p> <p>The language is deliberately flexible. Commissioners will seek to keep proceedings moving while gathering necessary information and ensuring fairness to all participants.</p>

Mid and East Antrim Borough Council (continued)	Appendix 3, Test P1	It should be clarified that plans will not be found unsound if they fail to adhere to the original or revised timetable.	A statement has been added at Paragraph 11 to explain that the tests will be considered in the round to form an overall judgment on soundness.
Mid Ulster District Council	10	What will occur if a representation does not deal with soundness?	Persons who make representations seeking to change the plan have a statutory right to be heard, but the Commissioner's report will concentrate on soundness (see Paragraphs 12 and 39).
	10	How will the Commission address representation and counter representations submitted in a disingenuous manner?	The Commissioner will take account of all representations which are relevant to determining the soundness of the plan.
	16	Representations should not have to be categorised by soundness test.	The model form in DPPN 09 allows people to specify the soundness test to which their representations relate. Where that information is provided, it will assist councils to categorise the representations.
Royal Town Planning Institute Northern Ireland	8-9	Will a plan be judged unsound if all but one of the tests are met? What will happen where there is a partial failure of a test?	A statement has been added to Paragraph 11 to explain that the tests will be considered in the round to form an overall judgment on soundness.
	18-22	There is inconsistency in wording between "fundamental concerns", "concerns" and "serious concerns".	Paragraphs 23 to 25 now make clear that the initial assessment is to identify and explore <u>fundamental</u> concerns.

Royal Town Planning Institute Northern Ireland (continued)	26	Consultees and neighbouring councils should be given more than three weeks' notice of the timetabling of the hearings and the topics and issues to be discussed.	An indicative timetable will be notified to participants about eight weeks before the opening date (see Paragraph 26). They will already be aware of the topics and issues raised. It is considered that three weeks' notice of the programme will be adequate but Paragraph 32 has been amended to make this a minimum period.
	27	Persons and organisations who will be invited to give evidence should be identified at the earliest possible stage.	The procedures have been amended to allow for the possibility of written evidence being sought from people who did not make representations. Should this happen, the relevant parties will be told at that stage (see Paragraphs 27 and 29).
	32	The context in which site visits would be relevant should be clarified.	Paragraph 36 has been amended to clarify that sites relevant to the soundness tests will where necessary be visited.
	Appendix 3	It should be noted that the tests are derived from DPPN 06 and supporting information from that Note should be included.	Paragraph 11 explains the derivation of the tests and has been amended to make clear that the supporting text of DPPN 06 will be taken into account in assessing soundness.