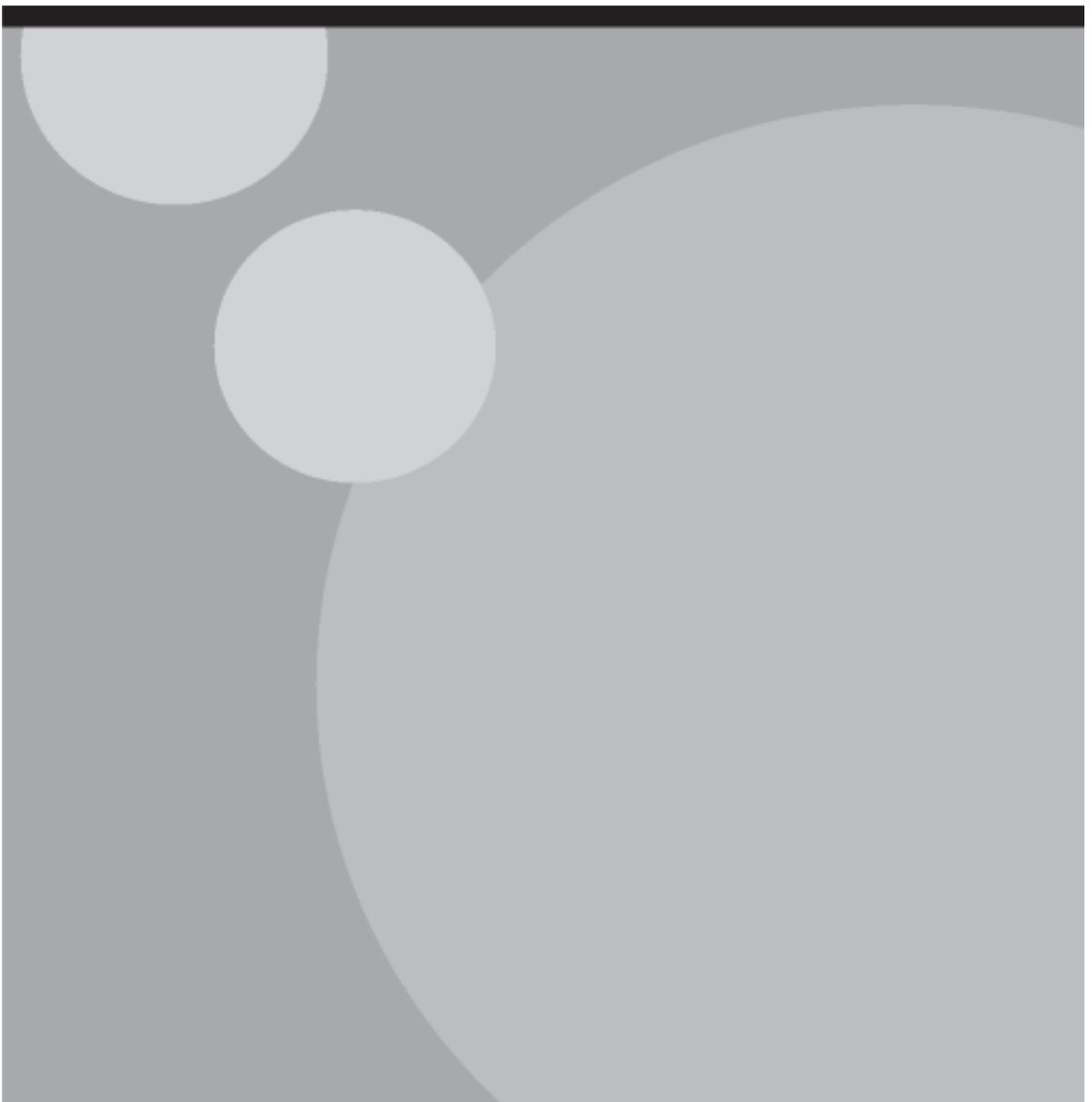




## Planning Act 2008

Consultation on proposed changes to the suite of guidance documents for the major infrastructure planning regime





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This document/publication is also available on our website at [www.communities.gov.uk](http://www.communities.gov.uk)

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## Summary of consultation details

### Scope of the consultation

<b>Topic of this consultation:</b>	This consultation is on the proposed changes to the suite of guidance documents for the major infrastructure planning regime.
<b>Scope of this consultation:</b>	This consultation is to ensure that the proposed changes achieve their aim of improving the clarity of the documents and the effect of the Planning Act 2008. Amendments to these documents will be considered as a result of the consultation responses.
<b>Geographical scope:</b>	The proposals in this document would, if taken forward, apply to England, Wales and Scotland in accordance with the scope of the Planning Act 2008.
<b>Impact Assessment:</b>	There is no impact assessment for these proposals because the majority of the guidance documents are non statutory in nature and because the proposed changes will not in themselves generate costs or savings .

### Basic Information

<b>To:</b>	This consultation is aimed at any person or organisation that has an interest in an application for a major infrastructure project that will be considered by the Secretary of State. This includes promoters of major infrastructure projects, infrastructure regulators, statutory consultees, local authorities, business communities, civic and environmental organisations, and members of the public.
<b>Body/bodies responsible for the consultation:</b>	Department for Communities and Local Government (Planning – Major Infrastructure Division).
<b>Duration:</b>	Consultation begins on 13 April 2012 and ends on 6 July 2012.
<b>Enquiries:</b>	Hilary Patel Tel: 0303 444 3479 Email: <a href="mailto:MIP-LightTouchReview@communities.gsi.gov.uk">MIP-LightTouchReview@communities.gsi.gov.uk</a>
<b>How to respond:</b>	Responses can be submitted by email to: <a href="mailto:MIP-LightTouchReview@communities.gsi.gov.uk">MIP-LightTouchReview@communities.gsi.gov.uk</a>  Alternatively, hard copy responses should be sent to:  Hilary Patel Planning - Major Infrastructure Division Zone 1/J6 Department for Communities and Local Government Eland House Bressenden Place London SW1E 5DU
<b>Additional ways to become involved:</b>	The department periodically holds events on changes to the planning regime, as well as giving presentations and talks at relevant conferences and meetings.
<b>After the consultation:</b>	A summary of responses to the consultation will be published on the Department's website within three months of the closing date of the consultation, i.e. 6 October 2012.  Information on the department's consultation is available from: <a href="http://www.communities.gov.uk/corporate/publications/consultations">www.communities.gov.uk/corporate/publications/consultations</a>

<b>Compliance with the Code of Practice on Consultation:</b>	This consultation will be carried out for 12 weeks. The proposals form part of a continuing conversation on the review, which started as part of the scoping for the major infrastructure planning clauses for the Localism Act 2011.
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### Background

<b>Getting to this stage:</b>	<p>The Planning Bill was introduced to Parliament in November 2007, and received Royal Assent in November 2008. The original guidance documents were publicly consulted on and brought into force in 2009 - 2010.</p> <p>Consultation for the major infrastructure clauses of the Localism Bill took place in 2011. The Localism Act received Royal Assent in November 2011 and the Planning Act will be amended when the relevant sections of the Localism Act are commenced on 1 April 2012.</p> <p>During the passage of the Localism Bill through Parliament, a number of representations were received by users of the major infrastructure planning regime about suggestions for amendments to the guidance which underpins the Planning Act.</p>
<b>Previous engagement:</b>	There has been significant engagement with a range of external partner organisations which have informed the proposed amendments to these guidance documents.

This consultation document was first published on 13 April 2012.

# Chapter 1

## About the consultation

1.1 This consultation will run for 12 weeks. The consultation is open to anyone who wishes to respond.

1.2 The consultation documents are available online at: [www.communities.gov.uk/planningandbuilding/publications/consultations/](http://www.communities.gov.uk/planningandbuilding/publications/consultations/)

## How to respond

1.3 The Government welcomes your views on the proposals set out in this consultation paper. Consultation responses should be submitted by email to:

[MIP-LightTouchReview@communities.gsi.gov.uk](mailto:MIP-LightTouchReview@communities.gsi.gov.uk)

Or by post to:

Hilary Patel  
Planning-Major Infrastructure Division Zone 1/J6  
Department for Communities and Local Government  
Eland House,  
Bressenden Place  
London  
SW1E 5DU

Please let us have your comments no later than **6 July 2012**. Individual responses will not be acknowledged unless specifically requested.

## The consultation criteria

1.4 The Government has adopted a code of practice on consultations. Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), the criteria in the *Code of Practice on Consultation* should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

1.5 The criteria below apply to all formal UK national public consultations on the basis of a document in electronic or printed form.

- Formal consultation should take place at a stage when there is scope to influence the policy outcome;
- Consultations should normally last for at least 12 weeks;
- Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;

- Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
- Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation;
- Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

1.6 Representative groups are asked to give a summary of the people and organisations they represent and, where relevant, who else they have consulted in reaching their conclusions when they respond.

1.7 The full consultation code of practice may be viewed at:

<http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>

## Will my comments be made public?

1.8 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

1.9 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

1.10 The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

1.11 Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

Communities and Local Government Consultation Co-ordinator  
Zone 4/H3 Eland House  
London SW1E 5DU  
or by e-mail to: [consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk)

## Chapter 2

### Context of the consultation

2.1 The Planning Act 2008<sup>1</sup> (“the Planning Act”) is a development consent regime for nationally significant infrastructure projects in the fields of energy, transport, water, waste water, and waste. These projects are commonly referred to as major infrastructure projects and will be throughout this document. Through the Localism Act 2011 (“the Localism Act”) the Government made significant changes to the regime. The Localism Act provides for the abolition of the Infrastructure Planning Commission and the transfer of responsibility for decision making to the Secretary of State<sup>2</sup>.

2.2 Though the Secretary of State bears legal responsibility for it, the Government has made the decision to delegate responsibility for accepting and examining applications to the Planning Inspectorate (“the Inspectorate”). Where the guidance refers to the Secretary of State users should bear in mind that, in practice, the Inspectorate will carry out most functions on the Secretary of State’s behalf except for decision-making, and it will be to the Inspectorate that all communications should be directed in the first instance. The relevant provisions of the Localism Act will be commenced on 1 April 2012. Where the guidance refers to the Planning Act, unless otherwise stated, it should be read as the Planning Act as amended by the Localism Act.

2.3 The suite of guidance documents underpinning the Planning Act were consulted on and enacted between 2009 and 2010. Eight guidance documents were published: Guidance for Local Authorities; Guidance on the Pre-Application Consultation Process; Examinations Guidance; Associated Development Guidance; Application Form Guidance; Fees Guidance; Compulsory Acquisitions Guidance and Modal Provisions Guidance. The Localism Act removes the statutory basis for the Modal Provisions Guidance.

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<sup>1</sup> Document can be found at <http://www.legislation.gov.uk/ukpga/2008/29/contents>

<sup>2</sup> ‘Secretary of State’ in this document should be read as ‘the Secretary of State with responsibility for the relevant policy area’. Applications relating to energy projects will be decided by the Secretary of State for Energy and Climate Change; those relating to transport by the Secretary of State for Transport, hazardous waste by the Secretary of State for Communities and those for waste water will be a joint decision by the Secretary of State for Communities and the Secretary of State for the Environment.

## **Chapter 3**

### **Aim of the consultation**

3.1 This consultation aims to give you the opportunity to comment on the proposed changes to the guidance documents underpinning the major infrastructure planning regime. The proposals are not seeking to make any regulatory changes.

3.2 The Government is committed to keeping the major infrastructure planning regime responsive and to ensuring the system meets the needs of all its users. The overarching aim of the proposed changes across the suite of documents is to improve the clarity of the documents and to clarify the effect of the legislation

3.3 There are six documents being consulted on: a new document - Guidance on the Pre-Application Process, which is the result of merging and expanding the Guidance for Local Authorities and the Guidance on the Pre-Application Consultation Process, as well as the Associated Development Guidance; Examinations Guidance; Fees Guidance; Application Form Guidance and Compulsory Acquisitions Guidance.

3.4 Unless otherwise stated, the consultation is seeking views on each document as a whole, rather than on specific proposals. A breakdown of the amendments is presented on a document by document basis below.

## Chapter 4

### The Pre-Application Process Guidance

4.1 The Guidance on the Pre-Application Process is a new document resulting from a merger of the Guidance for Local Authorities with the Guidance on the Pre-Application Consultation Process, expanded to cover the key Pre-Application processes, such as environmental impact assessments and advice on drafting a Development Consent Order. The aim is for this document to be the initial point of reference for users of the regime.

4.2 The other changes include advice on the consultation process for offshore developments and advice on using the Rochdale Envelope<sup>3</sup> approach. In addition, changes have been made to the document to bring it into line with the Localism Act and to make it easier to read.

4.3 The guidance also clarifies that an application may include alternative or variant proposals which will then be scrutinised during the examination. Options should only be included in exceptional cases where, following full public consultation and environmental assessment, the alternative options are either finely balanced or public opinion is polarised.

#### **Consultation question 1:**

Is it appropriate to merge the LA guidance with the Pre-Application consultation guidance?

#### **Consultation question 2:**

Is the Pre-Application Process Guidance easy to follow?

#### **Consultation question 3:**

Do you believe the new Pre-Application Process Guidance covers the right range of topics and describes them effectively?

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<sup>3</sup> The “Rochdale Envelope” refers to two cases – R. v Rochdale MBC ex parte Milne (No. 1) and R v Rochdale MBC ex parte Tew [1999] and r. v Rochdale MBC ex parte Milne (Mo. 2) [2000] and addresses applications made with outline planning permissions.

## Chapter 5

### Associated Development Guidance

5.1 Guidance on Associated Development has been amended to take account of the Localism Act amendments, and clarify the existing guidance in a number of areas. In particular, it has been clarified that in tightly constrained circumstances (where it would offset the impacts of nearby future development which the Secretary of State is reasonably satisfied will be applied for), a degree of overcapacity may be applied for as associated development (for example higher capacity cables for an offshore renewables project where it is known that a future development is planned nearby).

**Consultation question 4:**

Do you think the revised Guidance on Associated Development is sufficiently clear?

**Consultation question 5:**

Is the range of associated development allowed to be consented in principle as part of a DCO appropriate?

## Chapter 6

### Examinations Guidance

6.1 The Examinations Guidance has been refreshed to bring it into line with the Localism Act and it has been made more concise in the process. The guidance also seeks to clarify some of the Examination Procedure Rules, where there has been confusion in the past. For example, there are now sections detailing the purpose of the preliminary meeting and better explaining specific issue hearings (Rule 7 & Rule 13). The guidance also addresses the process for making changes to a Development Consent Order post submission.

**Consultation question 6:**

Is the Examinations Guidance easy to follow?

**Consultation question 7:**

Do you believe the Examinations Guidance covers everything it should?

## Chapter 7

### Compulsory Acquisitions Guidance

7.1 The guidance relating to the compulsory acquisition of land has been refreshed to bring it into line with the Localism Act and has been made more concise in the process. In addition, it clarifies that after the abolition of the Infrastructure Planning Commission, the Planning Inspectorate will handle requests for certification under sections 127, 131 and 132 of the Planning Act.

**Consultation question 8:**

Is the Compulsory Acquisitions Guidance easy to follow?

**Consultation question 9:**

Do you believe the Compulsory Acquisitions Guidance covers everything it should?

## Chapter 8

### Fees Guidance

8.1 The majority of the proposed amendments to the Fees Guidance are changes as a result of the Localism Act coming into force. In addition, the worked examples have been removed until more evidence of actual costs becomes available.

**Consultation question 10:**

Do you agree that the worked examples of likely fees should be removed from the Fees Guidance until more evidence of actual costs becomes available?

**Consultation question 11:**

Is the Fees Guidance easy to follow?

**Consultation question 12:**

Do you believe the Fees Guidance covers everything it should?

## **Chapter 9**

### **Application Form Guidance**

9.1 The Application Form Guidance has been refreshed to bring it into line with the Localism Act and has been made more concise in the process.

**Consultation question 13:**

Is the Application Form Guidance easy to follow?

**Consultation question 14:**

Do you believe the Application Form Guidance covers everything it should?

## Chapter 10

### Complete list of consultation questions

**Consultation question 1:**

Is it appropriate to merge the LA guidance with the Pre-Application consultation guidance?

**Consultation question 2:**

Is the Pre-Application Process Guidance easy to follow?

**Consultation question 3:**

Do you believe the new Pre-Application Process Guidance covers the right range of topics and describes them effectively?

**Consultation question 4:**

Do you think the revised Guidance on Associated Development is sufficiently clear?

**Consultation question 5:**

Is the range of associated development allowed to be consented in principle as part of a DCO appropriate?

**Consultation question 6:**

Is the Examinations Guidance easy to follow?

**Consultation question 7:**

Do you believe the Examinations Guidance covers everything it should?

**Consultation question 8:**

Is the Compulsory Acquisitions Guidance easy to follow?

**Consultation question 9:**

Do you believe the Compulsory Acquisitions Guidance covers everything it should?

**Consultation question 10:**

Do you agree that the worked examples of likely fees should be removed from the Fees Guidance until more evidence of actual costs becomes available?

**Consultation question 11:**

Is the Fees Guidance easy to follow?

**Consultation question 12:**

Do you believe the Fees Guidance covers everything it should?

**Consultation question 13:**

Is the Application Form Guidance easy to follow?

**Consultation question 14:**

Do you believe the Application Form Guidance covers everything it should?

General

**Consultation question 15:**

Do you have any other comments on the proposals in these documents?