



Procedures for revoking or making changes to  
development consent orders for nationally significant  
infrastructure projects

**Consultation**



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development consent orders for nationally  
significant infrastructure projects

**Consultation**

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# Summary of consultation details

## Scope of the consultation

<b>Topic of this consultation:</b>	This consultation is on the draft regulations that set out the procedures for revoking or making changes to a development consent order for nationally significant infrastructure that has been granted by the Infrastructure Planning Commission (IPC) or the Secretary of State. Although the present Government has announced that the IPC will be abolished, these regulations are still needed to enable such a development consent order to be changed or revoked.
<b>Scope of this consultation:</b>	This consultation is to ensure that the legislation appropriately reflects what is needed to implement the relevant parts 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>	A consultation stage impact assessment is being published alongside this consultation document.

## Basic information

<b>To:</b>	This consultation is aimed at any person or organisation that has an interest in an application for nationally significant infrastructure that will be considered by the Infrastructure Planning Commission. It will include infrastructure promoters, infrastructure regulators, statutory consultees, local authorities, business communities, civic and environmental organisations, 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 published on 1 November 2010 and ends on 24 December 2010.
<b>Enquiries:</b>	Paul Lancaster Tel: 0303 444 1597 Email: <a href="mailto:MIP.changesandrevocations@communities.gsi.gov.uk">MIP.changesandrevocations@communities.gsi.gov.uk</a>
<b>How to respond:</b>	Responses can be submitted by email to: <a href="mailto:MIP.changesandrevocations@communities.gsi.gov.uk">MIP.changesandrevocations@communities.gsi.gov.uk</a>  Alternatively, hard copy responses should be sent to:

	<p>Paul Lancaster          Planning - Major Infrastructure Division          Department for Communities and Local Government          Zone 1/J6          Eland House          Bressenden Place          London          SW1E 5DU</p>
<b>Additional ways to become involved:</b>	<p>The department periodically holds events on changes to the planning regime, as well as giving presentations and talks at relevant conferences and meetings.</p>
<b>After the consultation:</b>	<p>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. 23 March 2011.</p> <p>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></p>
<b>Compliance with the Code of Practice on Consultation:</b>	<p>This consultation will be carried out for eight weeks because many of the proposals, and underlying principles, have been consulted on previously as part of consultations on the application and examination procedures relating to an application for a development consent order.</p>

## Background

<b>Getting to this stage:</b>	<p>There was a public consultation on the Planning white paper between May and August 2007. The Planning Bill was introduced to Parliament in November 2007, and received Royal Assent in November 2008.</p> <p>Previous consultation documents have sought opinions on a range of topics relating to statutory consultees for national policy statements, and the application and examination procedures relating to an application for a development consent order. This is the fourth in the series, and which sets out procedures which are proposed for enabling a development consent order to be changed or revoked.</p>
<b>Previous engagement:</b>	<p>There has been significant engagement and a number of publications on the earlier regulations on which these procedures are based, namely those covering pre-application procedure; applications; Environmental impact assessments; examinations and decision making.</p>

# Chapter 1

## About the consultation

- 1.1 The Planning Act 2008 ('the Planning Act' or 'the Act') made provision for a new independent body, the Infrastructure Planning Commission (IPC), to take over responsibility for considering and deciding on major infrastructure applications, and for the Government to produce national policy statements which will set out the national need for infrastructure and set the policy framework for IPC decisions.
- 1.2 Secondary legislation is needed to provide the procedures for making changes to, or revocation of, a development consent order for nationally significant infrastructure projects granted by the IPC or the Secretary of State. This consultation is on the draft regulations that are intended to fulfil this requirement.
- 1.3 The IPC was set up under the previous Government. The present Government has already announced that it will abolish the unelected IPC and replace it with an efficient and democratically accountable system that provides a fast-track process for major infrastructure projects. The Government intends to establish a major infrastructure planning unit, but in the interim the IPC will continue to consider applications for nationally significant infrastructure projects, as defined in the Act.

## How to respond

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

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

Or by post to:

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

Please let us have your comments no later than 24 December 2010.

## **The consultation criteria**

- 1.5 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.
- 1.6 The criteria below apply to all 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 with consideration given to longer timescales where feasible and sensible, however this consultation will last for 8 weeks because the principals on which we are consulting have been consulted on previously in the context of applications to the IPC.
  - 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.
- 1.7 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.

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 Individual responses will not be acknowledged unless specifically requested.
- 1.12 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:

DCLG Consultation Co-ordinator  
Zone 8/J6  
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 previous Government set out detailed proposals for the reform of the planning system for nationally significant infrastructure projects in the Planning white paper, *Planning for a Sustainable Future*, which was published on 15 May 2007. The white paper was subject to public consultation between May and August 2007.
- 2.2 Following this consultation, the previous Government introduced a Bill to create a new system for dealing with development consent for nationally significant infrastructure projects. The Planning Bill was introduced to Parliament on 27 November 2007, and received Royal Assent on 26 November 2008 as the Planning Act 2008<sup>1</sup>.
- 2.3 This Act made provision for:
- A new independent body, the Infrastructure Planning Commission (IPC), to take over responsibility for considering and deciding such applications. Decisions will be based primarily on national policy statements.
  - National policy statements produced by Government for nationally significant infrastructure. These will integrate environmental, social and economic objectives, including climate change commitments, for the delivery of sustainable development. They will set out the national need for infrastructure development.
  - A new duty on promoters to ensure that proposals are properly prepared and consulted on before they submit an application for nationally significant infrastructure projects.
- 2.4 Many of the detailed procedures have already been implemented by regulations and rules. A list of these procedures is at Annex 1.
- 2.5 The draft regulations that are being consulted on here are those at Annex 2.

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

## Chapter 3

### **Aim of the consultation**

- 3.1 This consultation aims to give you the opportunity to comment on the draft of the regulations that will prescribe the procedures for dealing with changes to, and revocation of, a development consent order.
- 3.2 Although the Government has announced that the IPC will be abolished and a major infrastructure planning unit established to take its place, it is the Government's intention to retain a streamlined process for dealing with major infrastructure projects.
- 3.3 For as long as the processes already established by secondary legislation continue to be used there will be a need for a further process by which necessary changes to, and revocation of, a development consent order are dealt with. The Planning Act says that an application for a change to a development consent order must be made in the prescribed manner. The draft regulations on which we are now consulting will prescribe what that actually means in practice. The draft of the regulations is at Annex 2.

# Chapter 4

## Principles explained

### **CORRECTIONS**

4.1 The regulations on changes and revocations will not cover corrections to a development consent order. Corrections are covered in Schedule 4 to the Act. However they are briefly mentioned here because we think it is important to highlight at the outset that there is a difference in the treatment of minor errors which are treated as a correction to a development consent order and a change or revocation. By putting changes and revocation in this context it helps to explain what may be covered by regulations on changes and revocations.

4.2 For information, corrections are covered in Schedule 4 to the Act as follows:

Schedule 4 paragraph (1)(3)

A correctable error is an error or omission which -

- (a) is in a part of the decision document which records the decision, and
- (b) is not part of the statement of reasons for the decision.

Schedule 4 paragraph (1)(2)

The decision document is -

- (a) in the case of an order granting development consent, the order;
- (b) in the case of a refusal of development consent, the document recording the refusal.

4.3 A correction may only be made if certain conditions are met, these are not relevant in respect of defining a correction but are broadly that the appropriate authority (i.e. the authority that granted the development consent order - either the IPC or the Secretary of State) receives a request for the correction in writing, before the specified time limits; or that the appropriate authority notifies the applicant in writing of the error and of its intention to correct the error. The appropriate authority must also inform the relevant local planning authorities. The appropriate authority would then issue a correction notice.

4.4 Neither Schedule 4 to, nor section 119 of, the Act defines a correction, nor does it provide powers to define a correction. It is, however, implicit that corrections are only those changes that restore the consent order or the refusal to what was intended to be issued but which suffered from what was effectively human error in its compilation.

### **CHANGES AND REVOCATIONS**

4.5 Changes and revocations are covered in Schedule 6 to the Act. The terms used are 'non-material changes' and 'material changes'. A revocation would be a material change.

- 4.6 The Act does not define non-material or material, nor does it provide any power to define these terms by regulation. Whether a change is to be treated as material or non-material is left to the discretion of the authority to which the application is submitted. By implication a material change will be a change that is more significant than a non-material change. However, there is no clear dividing line between the two.
- 4.7 For non-material changes the Act provides powers to prescribe an application process; and the publicity, consultation and notification duties of the authority that receives the application. There are no powers to prescribe how the appropriate authority should examine an application for a non-material change or about how they make their decision.
- 4.8 For material changes the Act provides powers to prescribe the pre-application requirements; the application process, including what information must be provided; an examination process; a decision making process; and a notification process.
- 4.9 These procedures will be prescribed by regulation, but because of the lack of clarity about the type of application that is likely to come forward under each category it will be necessary to frame the regulations widely.

#### **PUBLIC BODIES**

- 4.10 On 24 May 2010 the Government announced a review of public bodies. The list of statutory consultees included in the draft regulations will be updated before the regulations come into force to reflect any changes made as part of that review.

#### **HABITATS**

- 4.11 We propose to amend regulation 81 of the Conservation of Habitats and Species Regulations 2010 (SI 2010/490) to make it clear that the assessment procedures contained in article 6(3) of the Habitats Directive would also apply to any changes made to a development consent order, as well as to the original grant of the development consent order.

#### **MARINE ENVIRONMENT**

- 4.12 A development consent order for a project that affects the marine environment may include deemed licences under Part 2 of the Food and Environment Protection Act 1985, consents under Part 2 of the Coast Protection Act 1949 and, from April 2011, Marine Licences under Part 4 of the Marine and Coastal Access Act 2009. Changes to such deemed marine consents will be dealt with by the Marine Management Organisation and the devolved administrations (as appropriate) and are outside the scope of this consultation.

# Chapter 5

## Regulations on non-material changes

### **POWERS IN THE ACT AND THE POLICY INTENTION**

5.1 Working within the powers contained in the Act it is intended to prescribe a simplified scheme for non-material changes. This will be significantly quicker than the fuller scheme that is necessary for material changes because the policy intention is that non-material changes will be insignificant or unsubstantial changes with negligible impact.

### **APPLICANTS**

5.2 For non-material changes it is intended to provide for a simplified scheme. This will require an application to the appropriate authority, i.e. the authority that granted the original development consent order (either the IPC or the Secretary of State).

5.3 It is intended that the application will be made in writing and will contain:

- details of the applicant
- agents name, if any
- the reference number of the development consent order that has been granted
- details of the change requested
- any documents and plans necessary to support the application
- confirmation that the applicant is either: the person who applied for the development consent order that they wish to change, or their successor in title; or a person with an interest in the land to which the order relates; or any other person for whose benefit the development consent order has effect
- if so requested, paper copies of the application and supporting papers

5.4 The application must be accompanied by the application fee, which will be a fixed fee of £6,534. A breakdown of how this fee has been calculated is at Annex 3.

5.5 This is all that it is intended to be required of the applicant for a non-material change.

### **APPROPRIATE AUTHORITY**

5.6 The Act makes the authority that receives the application responsible for consultation and publicity and contains powers to prescribe requirements in respect of this. There are also powers to prescribe those persons whom the authority must notify about the decision it makes.

5.7 It is intended to prescribe that the authority must publicise the application in the same way as the applicant would have publicised its original application. This should ensure, as far as is possible, that those persons

who saw the publicity for the original application will also see the publicity for the proposed non-material change. To give effect to this the provisions in these regulations are based on the provisions of regulation 4 of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2009/2264)<sup>2</sup>.

- 5.8 The authority will also be required to consult those persons who were consulted about the original application, the relevant local authority and any other person they think appropriate.
- 5.9 The authority will also be required to notify its decision to each person that it consulted and each person that made a relevant representation.

**Consultation question 1:**

**Do you have any comments on the application process for non-material changes? In particular do you think the balance is right between simplicity of process and transparency and opportunity for third parties to comment?**

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<sup>2</sup> Document can be found at <http://www.legislation.gov.uk/ukxi/2009/2264/contents/made>

# Chapter 6

## Regulations on material changes

### POWERS IN THE ACT AND THE POLICY INTENTION

- 6.1 The policy assumption is that a material change is likely to be significant and/or substantial and that consequently it is likely to have an impact on third parties. These third parties may be people who commented on the original application or who, given the content of the application, chose not to comment. If there is a request for a significant and/or substantial change to the development consent order that was granted then our view is that third parties should be given the opportunity to make representations about that change irrespective of whether or not they commented on the original application. To do otherwise would remove people's legitimate right to be heard and would weaken the legitimacy of the regime. If a proposed change does not have significant or substantial effects we would expect it to be treated as a non-material change.
- 6.2 We also want to clearly signal that the policy intention here is that these provisions should be used only where the proposed change to the development consent order is one that could not have been foreseen at the time of the original application. These provisions are not intended to allow an application to be made in stages, as that would weaken the provisions on applications which are very clear that there must be full consultation and that people must have sufficient facts on which to comment. Consequently, the provisions in the draft regulations attached at Annex 2 are deliberately full and robust.
- 6.3 There is also a further compelling reason for a robust process to deal with material changes and that is to comply with our obligations on environmental impact assessments. This is a European requirement which has been implemented through The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263)<sup>3</sup>. This ensures that applications for a development consent order are subject to the required environmental impact assessment. Any significant changes to the development consent order must also be assessed. A recent ruling in the Baker Case (CO/397/2007) about how changes or extensions to existing development should be assessed in conjunction with that development was made in the high court. The effect of the ruling is that when determining whether an environmental impact assessment is required, authorities must look at the effect of the development, as modified, and not at just the modification alone.
- 6.4 However, we have been careful to ensure that the regulations do not allow for a reconsideration of the original application for the development

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<sup>3</sup> Document can be found at <http://www.legislation.gov.uk/uksi/2009/2263/contents/made>



consent order that has been granted because that decision has already been taken.

- 6.5 It is not possible to have a number of different processes for material changes depending on how significant the change would be because that would effectively be defining material change, and the Act does not provide the power to do that. Even if it were possible to create a myriad of application schemes it would in our view create uncertainty and confusion and would not be our preferred approach.
- 6.6 As the impact of a material change could be as significant as the impact of the original application, it is intended that the process for such a change will be closely modelled on the process for the original application. The advantage of this is that this process has already been the subject of full consultation<sup>4</sup> and has been refined in response to comments received. The various elements of the application process were found, after consultation, to be necessary. Our view is that they would also be necessary elements of any process that deals with material changes.
- 6.7 There is a further advantage to using the same process and that is that those involved will already be familiar with the process. We must of course ensure that there are no unnecessary burdens on those involved, so we intend to make it clear in the regulations that the developer is not required to resubmit information already submitted but can cross refer as appropriate. Only new information related to the change applied for needs to be provided with the application. We think it is reasonable to expect that the amount of information that it is necessary to submit will reflect the size of the intended change, and in this respect the size of the application should be self limiting.

#### **INTENDED SCOPE OF REGULATIONS**

- 6.8 For material changes it is intended to provide a full and robust application process.

#### ***Pre-application***

##### *Pre-application procedure - consultation*

- 6.9 It is intended that the applicant will be required to carry out a pre-application process that is comparable to that required for the original application. We intend to prescribe that the applicant must consult:

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<sup>4</sup> Two consultations covered a range of topics including pre-application, application, examination and fees. The documents can be found at <http://www.communities.gov.uk/archived/publications/planningandbuilding/consultationpreapplication>  
<http://www.communities.gov.uk/archived/publications/planningandbuilding/consultationexaminationnsips>

- the statutory consultees who were consulted about the original application
- relevant local authorities
- persons with an interest in the land to which a proposed application relates
- the person who has the benefit of the development consent order (if not the applicant)
- any other person the appropriate authority requires the applicant to consult

*Pre-application procedure – requirement to notify the appropriate authority*

6.10 It is intended that the applicant will be required to notify the appropriate authority to whom the application will be made (i.e. either the IPC or the Secretary of State) of its proposed application by sending to it the pre-application consultation material.

*Pre-application procedure – consulting local community*

6.11 It is intended to require the applicant to produce a statement explaining how it will consult the local community. As already happens with the original application for development consent, the applicant will be required to consult the relevant local authority about this statement. The applicant will then be required to publish the statement and to carry out the consultation in accordance with it.

*Pre-application procedure – publicising a proposed application*

6.12 It is intended that the applicant will be required to publicise a proposed application in the same manner in which the original application was publicised. To give effect to this we intend to use the provisions of regulation 4 of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2009/2264)<sup>5</sup>. As before, there will be a duty on the applicant to take account of responses to the consultation and publicity.

**Consultation question 2:**

**Do you think the pre-application process covers that which is necessary? Is there anything else you would like to see included, or anything you would like to see excluded?**

***Submission of an application***

6.13 It is intended that the application will be made in writing and will contain:

- details of the applicant
- details of the agent, if any
- the reference number of the development consent order that has been granted
- details of the land to which the application relates
- an explanation of the purpose and effect of the application

<sup>5</sup> Document can be found at <http://www.legislation.gov.uk/uksi/2009/2264/contents/made>

- confirmation that the applicant is either: the person who applied for the development consent order that they wish to change, or their successor in title; or a person with an interest in the land to which the order relates; or any other person for whose benefit the development consent order has effect
- details of the applicant's interest in the land to which the application relates
- if the applicant is a local planning authority, evidence of the matters specified in paragraph 3(5)(a), (b) or (c) of Schedule 6 to the Act
- if the IPC is the appropriate authority and the Secretary of State is the applicant, evidence of the matters specified in paragraph 3(6) (a) or (b) of Schedule 6 to the Act
- a statement that identifies which information submitted as part of the original application is still correct and relevant, and which information has been updated (this provision has been included to avoid the need for resubmission of information which has not changed)
- any plans and documents necessary to support the application (as before, note that this will not require the resubmission of unchanged plans and documents)
- a statement as to whether the application involves environmental impact assessment development
- a report of the pre-application consultation. The applicant will also be required to make consultation responses available to the appropriate authority, if so requested
- a statement that the applicant has complied with the pre-application consultation and publicity requirements
- if requested by the appropriate authority, paper copies of the application

### ***Application fee***

6.14 The application fee will be calculated in broadly the same manner as for the original application - see The Infrastructure Planning (Fees) Regulations 2010 (SI 2010/106)<sup>6</sup>. This reflects the fact that an application for a material change is expected to be significant and/or substantial, and as mentioned previously if it is not significant or substantial we would expect it to be treated as a non-material change and dealt with through the simplified process outlined above. There will, however, be one slight change as, unlike for a development consent order application, there is no concept of a 'formal acceptance stage' for an application for material change. The appropriate authority will still need some funding to undertake its initial work upon receipt of an application, and so a fee of £4,500 will still be payable at that stage. However, the fee at the pre-examination stage has been reduced by that £4,500 so as to reflect the overall reduction in processes that the appropriate authority will undertake.

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<sup>6</sup> Document can be found at <http://www.legislation.gov.uk/ukxi/2010/106/contents/made>

### ***Environmental impact assessment***

- 6.15 It is intended that an application for a material change will be treated as a 'subsequent application' as defined in The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 SI 2009/2263<sup>7</sup>. The effect of this will be that the appropriate authority must not grant consent for a material change unless it has either taken the environmental information into account, or it has given a screening opinion to the effect that an updated environmental statement is not required to enable it to determine the application.
- 6.16 The policy intention is that an application for a material change should require consideration of, and possible amendment to, the environmental impact assessment submitted with the original application. If this is not necessary then careful consideration should be given as to whether the change is in fact non-material. Of course environmental factors are not the only way in which communities can be significantly or substantially affected by an application, but the requirement or otherwise of an amended environmental impact assessment may be one indication of whether the proposed change should be treated as material or non-material.
- 6.17 It is not intended that any material changes are consented without first considering environmental information.

### ***A submitted application***

- 6.18 If an applicant proceeds to submit an application it is intended that they notify those persons that were consulted at the pre-application stage, and that they publicise the application. The format for this notification and publicity will broadly follow that for the pre-application stage. The reason for requiring notification and publicity at this stage is that the application may well have changed following the pre-application consultation, and it is important that third parties are able to comment on the application actually submitted.
- 6.19 If the applicant proposes to acquire more land by compulsory acquisition, then it will be a requirement to notify persons interested in that land.

### **Consultation question 3:**

**Is the information required to be submitted with an application appropriate? Are the consultation, notification and publicity requirements appropriate? Is there anything you think should be done differently?**

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<sup>7</sup> Document can be found at <http://www.legislation.gov.uk/uksi/2009/2263/contents/made>

## ***Examination***

6.20 Before the appropriate authority makes its decision on an application we intend to prescribe that it must follow an examination procedure, unless the change is one of those described in paragraphs 6.27 and 6.28. This procedure will broadly follow that for an application that is specified in The Infrastructure Planning (Examination Procedure) Rules (SI 2010/103)<sup>8</sup>.

### **Consultation question 4:**

**Do you think there are any aspects of the examination process that it is not appropriate to use for the examination of a material change?**

## ***Compulsory acquisition***

6.21 If an application for a material change includes a request for authorisation for the compulsory acquisition of land it is intended that sections 122 to 134 of the Act will apply.

## ***Decision***

6.22 It is intended that the provisions of sections 104 and 105 of the Act will be applied to decisions made by the appropriate authority. Regard should be had to the relevant national policy statement and to the local impact report.

6.23 The provisions of The Infrastructure Planning (Decisions) Regulations 2010 (SI 2010/305) will also apply<sup>9</sup>. These apply specific considerations to specific types of applications.

6.24 It is intended to prescribe that the appropriate authority must give a written statement of its reasons for granting a material change. This statement should be sent to the applicant, to persons consulted, to relevant local authorities and to anyone who has made a relevant representation. Where the appropriate authority is the Secretary of State, it should send it to the Commission. Where the appropriate authority is the Commission, it should send it to the Secretary of State. The statement must also be published.

### **Consultation question 5:**

**Is there anything else that you think should be taken into account in making the decision?**

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<sup>8</sup> Document can be found at <http://www.legislation.gov.uk/uksi/2010/103/contents/made>

<sup>9</sup> Document can be found at <http://www.legislation.gov.uk/uksi/2010/305/contents/made>

### ***Effect of a decision***

6.25 It is intended that the effect of a decision to make a material change to a development consent order should be the same as that specified in paragraph 2(12) of Schedule 6. Namely that if a material change is made to a development consent order the original order will continue in force as amended, unless of course the change is a revocation of the order.

### ***Compensation***

6.26 It is intended to provide a procedure for dealing with any compensation claims that may be submitted following a material change to a development consent order. This will be based on the principles for assessing compensation contained in the Town and Country Planning Act 1990 at sections 107–118<sup>10</sup>.

### **CHANGES TO DEVELOPMENT CONSENT ORDERS WITHOUT AN APPLICATION BEING MADE**

6.27 The Act provides that the appropriate authority may make a change to a development consent order without an application being made if the appropriate authority decides that the order contains a significant error that it would not be appropriate to correct using the correction provisions of Schedule 4. The Act does not define the circumstances when this would be appropriate nor does it provide the power to so define.

6.28 The Act also provides that the Secretary of State may make a change to a development consent order without an application being made if the development would contravene community law or convention rights, or if there are exceptional circumstances that make this necessary.

6.29 It is intended to provide that before any changes are made without an application the appropriate authority must give notice of its intention to the following: the person for whose benefit the development consent order has effect, the relevant local authorities, persons with an interest in the land and the statutory consultees. The proposed change must also be publicised in the same way that an application would be publicised and an opportunity for comment must be given.

### **Consultation question 6:**

**Do you have any other comments on the proposals in this document?**

### **Consultation question 7:**

**An impact assessment is being published alongside this document. Do you have any comments on the data used in this assessment?**

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<sup>10</sup> Document can be found at <http://www.legislation.gov.uk/ukpga/1990/8/contents>

# Chapter 7

## **Complete list of consultation questions**

### **Non-material changes**

Consultation question 1:

Do you have any comments on the application process for non-material changes? In particular do you think the balance is right between simplicity of process and transparency and opportunity for third parties to comment?

### **Material changes**

Consultation question 2:

Do you think the pre-application process covers that which is necessary? Is there anything else you would like to see included, or anything you would like to see excluded?

Consultation question 3:

Is the information required to be submitted with an application appropriate? Are the consultation, notification and publicity requirements appropriate? Is there anything you think should be done differently?

Consultation question 4:

Do you think there are any aspects of the examination process that it is not appropriate to use for the examination of a material change?

Consultation question 5:

Is there anything else that you think should be taken into account in making the decision?

### **General**

Consultation question 6:

Do you have any other comments on the proposals in this document?

Consultation question 7:

An impact assessment is being published alongside this document. Do you have any comments on the data used in this assessment?

# Annex 1

## List of topics being addressed through secondary legislation and guidance

### **Statutory consultees for national policy statements**

- regulations setting out the list of statutory consultees (*came into force 22 June 2009*)

### **Pre-application consultation and application procedures**

- procedures for pre-application consultation on proposed applications, and the format and content of applications submitted to the IPC (*regulations came into force 1 Oct 2009*)
- model provisions for draft development consent orders (*regulations came into force 1 Oct 2009*)
- transposition of the obligations in the Environmental Impact Assessment and Habitats Directives to the new regime (*regulations came into force 1 Oct 2009*)
- guidance from the Secretary of State on pre-application consultation to which promoters should have regard (*published Sept 2009*)
- guidance from the Secretary of State on what could be classed as 'associated development', for which the IPC can grant development consent as part of a nationally significant infrastructure project (*published Sept 2009*)

### **IPC examinations/interested parties**

- procedural rules which will govern examinations of applications (*regulations came into force 1 March 2010*)
- guidance from the Secretary of State on how an application should be examined by the IPC (*published Feb 2010*)

### **IPC decisions/compulsory acquisition**

- prescribed matters which the IPC will have to take into account in its decisions on applications (*regulations came into force 1 March 2010*)
- guidance on how the IPC should decide on applications which request compulsory acquisition of land (*published Feb 2010*)

### **Fees**

- fees that are to be charged by the IPC (*regulations came into force 1 Mar 2010*)
- guidance from the Secretary of State on how fees are to be charged by the IPC (*published Feb 2010*)

### **Changes to, or revocation of, a development consent order**

- procedures for pre-application, application, examination and making decisions for changes to, or revocation of, a Development Consent Order, and the fees that are to be charged (*regulations scheduled to come into force in Apr 2011*)



# Annex 2 Draft regulations

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## STATUTORY INSTRUMENTS

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**2011 No.**

### **INFRASTRUCTURE PLANNING**

#### **The Infrastructure Planning (Miscellaneous Provisions) Regulations 2011**

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - - - - *6th April 2011*

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The Secretary of State, in exercise of the powers conferred by sections 4, 104(2)(c), 105(2)(b) and 127(7) of, and paragraphs 2, 4, and 6 of Schedule 6 to, the Planning Act 2008(a), makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Infrastructure Planning (Miscellaneous Provisions) Regulations 2011 and shall come into force on 6<sup>th</sup> April 2011.

**Interpretation**

2.—(1) In these Regulations—

“affected person” means a person whose name has been given to the appropriate authority in a notice under regulation 21;

“AONB Conservation Board” means a conservation board established by order under section 86 of the Countryside and Rights of Way Act 2000 (establishment of conservation boards)(b);

“application” means an application for—

(a) a change to a development consent order under paragraph 2(1) of Schedule 6 to the 2008 Act (non-material changes); or

(b) an order to change or revoke a development consent order under paragraph 3(1) of Schedule 6 to the 2008 Act,

and “applicant” shall be construed accordingly;

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(a) 2008 c.29. See section 235 for the meaning of “prescribed”.

(b) 2000 c.37. Section 86 was amended by the Planning and Compulsory Purchase Act 2004 (c.5), sections 118(2), 120, Schedule 7, paragraph 23(a) and (b), Schedule 9 and by the Natural Environment and Rural Communities Act 2006 (c.16), section 105(1), Schedule 11, Part 1, paragraph 164(c).

“appropriate authority” means—

- (a) in a case where a Panel or the Council made the order granting development consent to which a proposed application or an application relates, the Commission;
- (b) in a case where the Secretary of State made the order to which a proposed application or an application relates, the Secretary of State;

“EIA development” has the same meaning as given by regulation 2(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(a);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but in electronic form;

“Examining body” means—

- (a) where the Commission is the appropriate authority, the single Commissioner or the Commissioners appointed in accordance with regulation 22;
- (b) where the Secretary of State is the appropriate authority, the Secretary of State or any person appointed by the Secretary of State to examine an application on their behalf;

“fire and rescue authority” has the same meaning as in section 1 of the Fire and Rescue Services Act 2004 (fire and rescue authorities)(b);

“Integrated Transport Authority” has the same meaning as in section 77 of the Local Transport Act 2008 (change of name of passenger transport authorities and PTAs)(c);

“internal drainage board” has the same meaning as in section 1 of the Land Drainage Act 1991 (internal drainage districts and boards)(d);

“interested party” means—

- (a) the applicant;
- (b) each statutory party;
- (c) each relevant local authority;
- (d) the Greater London Authority if the land is in Greater London; and
- (e) each person who has made a relevant representation;

“the land” means the land to which a proposed application or an application relates, or any part of that land;

“local resilience forum” has the same meaning as in regulation 4 of the Civil Contingencies Act 2004 (contingency planning) Regulations 2005(e);

“police authority” means an authority established under section 3 of the Police Act 1996 (establishment of police authorities)(f);

“proposed application” means an application which a person proposes to make for an order under paragraph 3(1) of Schedule 6 to the 2008 Act;

*[“regional development agency” means a regional development agency established under section 1 of the Regional Development Agency Act 1998 (establishment)(g);]*

*[“Regional Planning Body” means a body recognised by the Secretary of State under section 2 of the Planning and Compulsory Purchase Act 2004 (regional planning bodies)(h);]*

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(a) S.I. 2009/2263.  
(b) 2004 c.21. Section 1 was amended by the Civil Contingencies Act 2004 (c.36), section 31(1), Schedule 2, Part 1, paragraph 10(1) and (2).  
(c) 2008 c.26.  
(d) 1991 c.59.  
(e) S.I. 2005/2042.  
(f) 1996 c.16.  
(g) 1998 c.45.  
(h) 2004 c.5.

“relevant local authority “ means each local authority within the meaning given by section 102(5) (interpretation of Chapter 4: “interested party” and other expressions) subject to the modification that “the land” means the land to which a proposed application or application relate;

“relevant Northern Ireland Department” means the Northern Ireland Department responsible for the matter to which an application or proposed application relates (if more than one department is responsible, the reference is to all of them);

“relevant representation” means a representation which—

- (a) is about an application;
- (b) is made to the appropriate authority;
- (c) is received by the appropriate authority not later than the relevant deadline specified under these Regulations; and
- (d) does not contain material—
  - (i) about compensation for compulsory acquisition of land or of an interest in or right over land;
  - (ii) about the merits of policy set out in a national policy statement; or
  - (iii) that is vexatious or frivolous;

“Renewable Energy Zone” means zones designated under section 84 of the Energy Act 2004 (exploitation of areas outside the territorial sea for energy production)(**a**);

“representation” includes evidence, and reference to the making of a representation includes the giving of evidence;

“statement of common ground” means a written statement prepared jointly by the applicant and any interested party, which contains agreed factual information about the application;

“Strategic Health Authority” means an authority established under section 13 of the National Health Services Act 2006 (strategic health authorities)(**b**);

“statutory undertaker” has the same meaning as in section 127 (statutory undertakers’ land);

“the Act” means the Planning Act 2008; and

“written representation” means the full particulars of the case which a person puts forward in respect of an application and includes any supporting evidence or documents.

(2) Any reference in these Regulations to a section solely by number is a reference to a section so numbered in the Act.

## PART 1

Application for a change, which is not material, to a development consent order

### General

3. The regulations in this Part apply in relation to an application for a change which is not material to a development consent order under paragraph 2(1) of Schedule 6 to the Act.

### Application

4.—(1) The application must be made to the Commission.

(2) The application must be in writing and must contain the following—

- (a) the name and address of the applicant;
- (b) the name and address of an agent, if appointed;

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(a) 2004 c.20.  
(b) 2006 c.41.

- (c) the Commission's reference for the development consent order to which the application relates;
- (d) details of the change being applied for;
- (e) any documents and plans considered necessary to support the application;
- (f) a statement that the applicant is either—
  - (i) the person who applied for the development consent order to which the application relates or a successor in title;
  - (ii) a person with an interest in the land to which the development consent order relates; or
  - (iii) any other person for whose benefit the development consent order has effect<sup>(a)</sup>;
- (g) details of the applicant's interest in the land; and
- (h) if requested by the Commission, 3 paper copies of the application and other supporting documents and plans.

(3) Any plans, drawings or sections provided shall be no larger than A0 size, shall be drawn to an identified scale (not smaller than 1:2500) and, in the case of plans, shall show the direction of North.

(4) Where a plan comprises 3 or more separate sheets a key plan must be provided showing the relationship between the different sheets.

#### **Fee for application**

5.—(1) The Commission must charge the applicant a fee of £6,534 in respect of an application.

(2) At the same time that an application is made to the Commission as appropriate authority the fee must be paid to the Commission.

(3) If the applicant fails to pay the fee, the Commission need not consider the application until payment is received by the Commission.

#### **Publicising the application**

6.—(1) The Commission must publish a notice of the application, which must include the matters prescribed by paragraph (2),—

- (a) for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the land is situated;
- (b) once in a national newspaper;
- (c) once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and
- (d) where the application relates to offshore development—
  - (i) once in Lloyd's List; and
  - (ii) once in an appropriate fishing trade journal.

(2) The matters which the notice must include are—

- (a) the name and address of the applicant;
- (b) a statement that the applicant has made an application to the Commission for a change, which is not material, to be made to a development consent order;
- (c) a summary of the main elements of the application;
- (d) a statement that any documents, plans and maps showing the nature and location of the land, which were submitted with the application, are available for inspection on the

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(a) See section 156.

Commission’s website or can be obtained from the Commission at the times set out in the notice;

- (e) a statement as to whether a charge will be made for copies of any of the documents and, if so, the amount of any charge;
- (f) the latest date on which those documents, plans and maps will be available for inspection (being a date not earlier than the deadline in sub-paragraph (h));
- (g) details of how to respond to the publicity; and
- (h) a deadline for receipt of those responses by the Commission, being not less than 28 days following the date when the notice is last published.

#### **Duty to consult**

7.—(1) The Commission must consult the persons specified in paragraph (2) about the application by sending them a copy of the notice referred to in regulation 6.

(2) The persons to be consulted are—

- (a) each person that was, in accordance with section 56, notified of the application for the development consent order which is the subject of the application; and
- (b) any person the appropriate authority considers should be consulted.

(3) The Commission shall make available in accordance with regulation 46 all responses to the publicity and consultation

#### **Notification of decision**

8. If a change is made to a development consent order, the appropriate authority must notify its decision on an application to—

- (a) each person that was consulted about the application; and
- (b) each person that made a relevant representation in response to the publicity or consultation.

## **PART 2**

### **Changes to, and revocation of, orders granting development consent under paragraph 3(1) of Schedule 6 to the Act**

#### **General**

9.—(1) The regulations in this Part apply in relation to—

- (a) a proposed application;
- (b) an application;
- (c) the decision-making process in relation to such an application;
- (d) the making of a decision on such an application;
- (e) the effect of any such decision; and
- (f) the compensation payable in consequence of an order under paragraph 3(1) of Schedule 6 to the Act.

(2) In this Part “application” means an application for an order under paragraph 3(1) of Schedule 6 to the Act but does not include an application for an order under paragraph 3(6) of Schedule 6 to the Act.

#### **Duty to consult**

10. The applicant must consult the following about a proposed application—

- (a) each person that was consulted about the application for the development consent order which is the subject of the proposed application;
- (b) any person who has the benefit of the development consent order to which the application relates, unless that person is also the applicant;
- (c) any other person or authority who does not fall within paragraph (a) and is—
  - (i) listed in column 1 of the table in Schedule 1 to these Regulations, who must be consulted in the circumstances specified in relation to each such person in column 2 of that table;;
  - (ii) an authority which, in relation to the proposed application, is a relevant local authority;
  - (iii) a person who is within one or more of the categories set out in section 44;
- (d) the Greater London Authority if the land to which the proposed application relates, or any part of it, is in Greater London; and
- (e) any other person the appropriate authority requires the applicant to consult

**Timetable for consultation under regulation 10**

**11.—**(1) The applicant must, when consulting a person under regulation 10, notify the person of the deadline for the receipt by the applicant of the person’s response to the consultation.

(2) A deadline notified under paragraph (1) must not be earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the consultation documents.

(3) In paragraph (2) “the consultation documents” means the documents supplied to the person by the applicant for the purpose of consulting the person.

**Duty to notify appropriate authority of proposed application**

**12.—**(1) The applicant must supply the appropriate authority with such information in relation to the proposed application as the applicant would supply to the appropriate authority for the purpose of complying with regulation 10 if the applicant were required by that regulation to consult the appropriate authority about the proposed application.

(2) The applicant must comply with paragraph (1) on or before commencing consultation under regulation 10.

**Duty to consult local community**

**13.—**(1) The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed application, people living in the vicinity of the land.

(2) Before preparing the statement, the applicant must consult each local authority which, in relation to the application, is a relevant local authority, about what is to be in the statement.

(3) The deadline for the receipt by the applicant of a local authority’s response to consultation under paragraph (2) is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation documents.

(4) In paragraph (3) “the consultation documents” means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under paragraph (2).

(5) In preparing the statement, the applicant must have regard to any response to consultation under paragraph (2) that is received by the applicant before the deadline imposed by paragraph (3).

(6) Once the applicant has prepared the statement, the applicant must publish it in a newspaper circulating in the vicinity of the land.

(7) The applicant must carry out consultation in accordance with the proposals set out in the statement.



(8) The applicant shall make available, at the request of the appropriate authority, all responses to the publicity and consultation carried out in accordance with this regulation.

### **Publicising a proposed application**

**14.**—(1) The applicant must publish a notice, which must include the matters prescribed by paragraph (2) of this regulation, of the proposed application—

- (a) for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the land is situated;
- (b) once in a national newspaper;
- (c) once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and
- (d) where the proposed application relates to offshore development—
  - (i) once in Lloyd’s List; and
  - (ii) once in an appropriate fishing trade journal.

(2) The matters which the notice must include are—

- (a) the name and address of the applicant;
- (b) a statement that the applicant intends to make an application to the appropriate authority;
- (c) a summary of the main elements of the proposed application;
- (d) a statement as to whether the proposed application involves EIA development;
- (e) a statement that the documents, plans and maps showing the nature and location of the land are available for inspection free of charge at the places (including at least 1 address in the vicinity of the proposed development) and the times set out in the notice;
- (f) the latest date on which those documents, plans and maps will be available for inspection (being a date not earlier than the deadline in sub-paragraph (i));
- (g) whether a charge will be made for copies of any of the documents, plans or maps and the amount of any charge;
- (h) details of how to respond to the publicity; and
- (i) a deadline for receipt of those responses by the applicant, being not less than 28 days following the date when the notice is last published.

(3) The applicant must arrange for a notice of the proposed application, which must include the matters specified in paragraph (2) of this regulation, to be displayed—

- (a) at, or as close as reasonably practicable to, the land at a place accessible to the public;
- (b) where the proposed application relates to development which consists of, or includes, a linear scheme exceeding five kilometres in length, the notice must be displayed at intervals of not more than five kilometres along the whole proposed route of the works, except where this is impracticable due to the land in question being covered in water.

### **Duty to take account of responses to consultation and publicity**

**15.**—(1) Paragraph (2) applies where the applicant—

- (a) has complied with regulations 10 to 14; and
- (b) proposes to go ahead with making an application.

(2) The applicant must, when deciding whether the application that the applicant is actually to make should be in the same terms as the proposed application, have regard to any relevant responses.

(3) In paragraph (2) “relevant response” means—

- (a) a response from a person consulted under regulation 10 that is received by the applicant before the deadline imposed by regulation 11 in that person’s case;

- (b) a response to consultation under regulation 13 that is received by the applicant before any applicable deadline imposed in accordance with the statement prepared under regulation 13, or
- (c) a response to publicity under regulation 14 that is received by the applicant before the deadline imposed in accordance with regulation 14 in relation to that publicity.

### **Applications – general**

- 16.**—(1) The application must be made to the appropriate authority.
- (2) The application must be made in writing and must contain the following—
- (a) the name and address of the applicant;
  - (b) the name and address of an agent, if appointed;
  - (c) the Commission’s reference for the development consent order to which the application relates;
  - (d) details of the land and the change being applied for;
  - (e) an explanatory memorandum explaining the purpose and effect of the application;
  - (f) a statement that the applicant is either—
    - (i) the person who applied for the development consent order to which the application relates or their successor in title;
    - (ii) a person with an interest in the land to which the development consent order relates; or
    - (iii) any other person for whose benefit the development consent order has effect;
  - (g) details of the applicant’s interest in the land;
  - (h) where the appropriate authority is a local planning authority, evidence of the matters specified in paragraph 3(5)(a), (b) or (c) of Schedule 6 to the Act;
  - (i) a statement which—
    - (i) identifies the extent to which the information submitted with the initial application for an order granting development consent in accordance with regulations 5 and 6 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) is correct and relevant to the application; and
    - (ii) where necessary updates the parts of this information that relate to the application;
  - (j) any documents and plans considered necessary to support the application;
  - (k) a statement as to whether the application involves EIA development;
  - (l) a consultation report;
  - (m) a statement that the applicant has, in relation to a proposed application that has become an application, complied with regulations 10 to 15;
  - (n) any plans, drawings or sections provided shall be no larger than A0 size, shall be drawn to an identified scale (not smaller than 1:2500) and, in the case of plans, shall show the direction of North;
  - (o) where a plan comprises three or more separate sheets a key plan must be provided showing the relationship between the different sheets; and
  - (p) if requested by the appropriate authority, three paper copies of the application and other supporting plans and documents.
- (3) The applicant shall make available, at the request of the appropriate authority, all responses to the consultation carried out in accordance with regulations 10 to 14.
- (4) In this regulation—

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(a) S.I. 2009/2264.

“consultation report” means a report giving details of—

- (a) what has been done in compliance with regulations 10 to 14 in relation to a proposed application that has become the application,
- (b) any relevant responses, and
- (c) the account taken of any relevant responses; and

“relevant response” has the meaning given by regulation 15.

### **EIA development**

**17.—**(1) An application shall be treated as a subsequent application for the purposes of the following provisions in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(a)—

- (a) regulation 3 (prohibition on granting consent without consideration of environmental information);
- (b) regulation 6 (procedure for establishing whether environmental impact assessment is required);
- (c) regulation 18 (subsequent application to EIA development); and
- (d) regulation 19 (subsequent application not complying with EIA requirements).

(2) References in the regulations referred to in paragraph (1) to “the Commission” and “the relevant authority” shall be construed as references to the “appropriate authority”.

### **Fees for applications**

**18.—**(1) Subject to paragraph (2), the Commission must charge the fees set out in Schedule 2 to these Regulations in respect of an application.

(2) No fee is chargeable in respect of an application under paragraph 3(5) of Schedule 6 to the 2008 Act.

### **Notice of an application**

**19.—**(1) Notice of an application must be given by the applicant to—

- (a) each person for whose benefit the development consent has effect;
- (b) each authority which, in relation to the application, is a relevant local authority;
- (c) the Greater London Authority if the land is in Greater London;
- (d) each person who is within one or more of the categories set out in section 57 as regards the land;
- (e) the Commission where the appropriate authority is the Secretary of State or the Secretary of State where the appropriate authority is the Commission; and
- (f) the persons listed in column 1 of the table in Schedule 1 to these Regulations, in the circumstances specified in relation to each such person in column 3 of that table.

(2) The notice must include—

- (a) the name and address of the applicant;
- (b) a statement to the effect that an application has been made to the appropriate authority;
- (c) any reference applied to that application by the appropriate authority;
- (d) a summary of the main proposals;
- (e) a map showing details of the location of the development, which the application relates to;

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(a) S.I. 2009/2263.

- (f) a statement saying whether the application involves EIA development;
- (g) a statement that a copy of the application and its accompanying documents, plans and maps are available for inspection free of charge at the places (including at least one address in the vicinity of the land) and times set out in the notice;
- (h) the latest date on which those documents will be available for inspection being a date not earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the notice;
- (i) a statement as to whether a charge will be made for copies of any of the documents and if so the amount of any charge;
- (j) details of how to make representations (giving notice of any interest in, or objection to, the application); and
- (k) a deadline for the receipt by the appropriate authority of those representations being not less than 28 days following the date on which the person receives the notice.

### **Publicising an application**

**20.**—(1) The applicant must publish a notice of the application, which must include the matters specified in paragraph (2) of this regulation, in the same manner as is prescribed in relation to a proposed application, by regulation 14.

(2) The matters which the notice must include are—

- (a) the name and address of the applicant;
- (b) a statement to the effect that an application has been made to the appropriate authority;
- (c) the reference, if any, applied to the application by the appropriate authority;
- (d) a summary of the main proposals, specifying, where relevant, the location or route to which the application relates;
- (e) a statement saying whether the application involves EIA development;
- (f) a statement that a copy of the application and its accompanying documents, plans and maps are available for inspection free of charge at the places (including at least one address in the vicinity of the land) and times set out in the notice;
- (g) the latest date on which those documents will be available for inspection (being a date not earlier than the deadline date under sub-paragraph (j));
- (h) a statement as to whether a charge will be made for copies of any of the documents and if so the amount of any charge;
- (i) details of how to make representations (giving notice of any interest in, or objection, to the application); and
- (j) a deadline for the receipt by the appropriate authority of those representations being not less than 28 days following the date that the notice is last published.

### **Notice of person interested in land to which compulsory acquisition request relates**

**21.**—(1) This regulation applies where an application includes a request for authorisation to acquire compulsorily land or an interest in or right over land (“a compulsory acquisition request”).

(2) The applicant must give to the appropriate authority a notice specifying the names, addresses for service and contact details of the affected persons.

(3) The notice must be given within the period of 10 working days immediately following the deadline set in regulation 19(2)(k).

(4) A person is an “affected person” for the purpose of this regulation if the applicant, after making diligent inquiry, knows that the person is interested in the land to which the compulsory acquisition relates or any part of that land.

### **Appointment of the Examining body**

- 22.—(1) This regulation applies where the Commission is the appropriate authority.
- (2) The Commission must decide whether the Examining body is to consist of a single Commissioner or more than one Commissioner.
- (3) The Commission must then—
- (a) appoint the Examining body;
  - (b) notify all those who in accordance with regulation 19 have been notified about the application of the appointment of the Examining body and give details of who has been appointed; and
  - (c) where more than one Commissioner has been appointed, appoint one of those Commissioners to chair the Examining body.
- (4) Before making an appointment under paragraph (3) the Commission must consult—
- (a) any Commissioners the Commission thinks it appropriate to consult, and
  - (b) the chief executive of the Commission.
- (5) In making an appointment under paragraph (3), the Commission must have regard to any views expressed—
- (a) by any of the other Commissioners who have been consulted in accordance with paragraph (4)(a), or
  - (b) by the chief executive of the Commission.
- (6) Where the Commission has appointed a single commissioner to be the Examining body, if the Commission subsequently decides that the application should instead be examined by more than one commissioner, the Commission may appoint additional commissioners.
- (7) Before making an appointment under paragraph (6) the Commission must consult—
- (a) any Commissioners the Commission thinks it appropriate to consult, and
  - (b) the chief executive of the Commission.
- (8) In making an appointment under paragraph (6), the Commission must have regard to any views expressed—
- (a) by any of the other Commissioners in accordance with paragraph (7)(a), or
  - (b) by the chief executive of the Commission.

### **Additional appointments to the Examining body**

- 23.—(1) Paragraphs (2) and (3) apply at any time after the initial members of the Examining body have been appointed under regulation 22.
- (2) The Commission may appoint a Commissioner to be a member of the Examining body.
- (3) If at any time the Examining body has only two members or a single member, the Commission shall appoint another Commissioner so that the Examining body again has at least three members.
- (4) A person appointed under paragraph (2) becomes a member of the Examining body in addition to any person who is otherwise a member of the Examining body.

### **Replacement of the Commissioner appointed to be the chair of the Examining body**

- 24.—(1) Paragraph (2) applies where a person appointed to be the chair of the Examining body ceases to hold the office of the Commissioner.
- (2) The person appointed to chair the Commission must appoint a member of the Examining body to chair the Examining body.
- (3) A person may be appointed under paragraph (2) even though that person was not a member of the Examining body when the vacancy arose.

### **Membership of Examining body where application relates to land in Wales**

**25.**—(1) This regulation applies where the application relates to land in Wales (even if it also relates to land not in Wales).

(2) The Commission must appoint Commissioners to the Examining body with a view to securing that, if reasonably practicable, at least one of the members of the Examining body is--

- (a) a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers, or
- (b) a Commissioner who is within paragraph (3).

(3) A Commissioner is within this regulation if, when appointed to be a member of the Examining body, the Commissioner is one notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated for the purposes of this section as being a Commissioner within paragraph (2)(a).

### **Functions of the Examining body**

**26.**—(1) The Examining body has the functions of—

- (a) examining an application; and
- (b) where the Commission is the appropriate authority, making a report to the Commission on the application setting out the Examining body's—
  - (i) findings and conclusions in respect of an application; and
  - (ii) recommendation as to the decision to be made on an application; and
- (c) where the Secretary of State is the appropriate authority, making a report to the Secretary of State on the application setting out the Examining body's—
  - (i) findings and conclusions in respect of an application; and
  - (ii) recommendation as to the decision to be made on an application.

(2) It is for the Examining body to decide how to examine an application.

### **Initial assessment of issues**

**27.** The Examining body must make such an initial assessment of the principal issues arising on an application as the Examining body considers appropriate.

### **Preliminary meeting and other meetings**

**28.**—(1) After the initial assessment of the principal issues the Examining body must hold a preliminary meeting.

(2) The Examining body must invite to the preliminary meeting—

- (a) the applicant, and
- (b) each other interested party.

(3) The Examining body must give at least 21 days' notice of the date, time and place of the preliminary meeting to all those it is required to invite to the meeting and to any other person it chooses to invite.

(4) The Examining body must, at the same time as giving notice of the preliminary meeting, notify all those invited to it of the matters to be discussed at the preliminary meeting.

(5) The purposes of the preliminary meeting are—

- (a) to enable invitees present at the meeting to make representations to the Examining body about how the application should be examined; and
- (b) to discuss any other matter the Examining body wishes to discuss.

(6) The Examining body shall preside at the preliminary meeting and shall determine—

- (a) the procedure at the preliminary meeting;
- (b) the matters to be discussed;
- (c) the amount of time to be allocated—
  - (i) to each matter; and
  - (ii) for making any oral representations.

(7) As soon as practicable after the end of the preliminary meeting, the Examining body must prepare a note of the proceedings, and make the note available in accordance with regulation 46 to all interested parties and anyone who attended the preliminary meeting.

(8) The Examining body may hold further meetings for the purposes of the examination of an application and where it does so, the Examining body shall arrange for such notice to be given of any meeting as appears to the Examining body to be necessary.

### **Procedural decisions**

**29.**—(1) The Examining body must, either at or after the preliminary meeting or any other meeting, in the light of the discussion at the meeting make such procedural decisions as the Examining body considers appropriate.

(2) As soon as practicable after making any procedural decision, the Examining body must notify all interested parties of the decision.

(3) In this regulation “procedural decision” means a decision about how an application is to be examined.

### **Timetable**

**30.**—(1) At the preliminary meeting, or as soon as practicable after the end of that meeting, the Examining body must set the timetable for its examination of an application specifying in the timetable—

- (a) the date by which written representations must be received by the Examining body;
- (b) the period within which the Examining body will ask questions in writing and seek further written information about—
  - (i) any matter contained in an application or a relevant representation;
  - (ii) any written representation; and
  - (iii) any other matter it considers relevant to its examination of an application;
- (c) the period within which the applicant will have the opportunity to comment in writing on—
  - (i) any relevant or written representations; and
  - (ii) any responses to written questions received from an interested party or others;
- (d) the period within which any interested party will have the opportunity to comment in writing on—
  - (i) any relevant and written representations; and
  - (ii) any responses to written questions received from an interested party or others;
- (e) the period within which the applicant and any interested party must agree a statement of common ground;
- (f) the date by which any interested party must notify the Examining body of their wish to be heard at an open-floor hearing;
- (g) the date by which any affected person must notify the Examining body of their wish to be heard at a compulsory acquisition hearing;
- (h) the date of any issue-specific hearing;

- (i) the date by which any summaries of relevant and written representations must be received by the Examining body; and
  - (j) such other deadlines as the Examining body considers necessary.
- (2) The Examining body must send the timetable to all interested parties and any other person it has invited to the preliminary meeting.
- (3) The Examining body may subsequently vary the timetable; and as soon as practicable after doing so it must notify the variation to all interested parties and any other person it has invited to the preliminary meeting.

### **Written representations**

**31.**—(1) The Examining body's examination of an application is to take the form of consideration of written representations about the application.

(2) Paragraph (1) has effect subject to—

- (a) any requirement under regulations 33, 34, or 35 below to cause a hearing to be held; and
- (b) any decision by the Examining body that any part of the examination is to take a form that is neither—
  - (i) consideration of written representations, nor
  - (ii) consideration of oral representations made at a hearing.

(c) An interested party must ensure that any written representation that party may wish to make is received by the Examining body by the date specified in the timetable set under regulation 30, or otherwise under this regulation, by the Examining body.

(3) The Examining body may at any time specify the date (being a date not earlier than the end of a period of 21 days) by which a written representation to be submitted from an interested party must be received by the Examining body.

(4) The Examining body may permit a written representation to be made by any person who is not an interested party.

(5) Any person, other than the applicant, who submits a written representation, must identify in their written representation those parts of the application with which they agree and those parts with which they do not agree, and must state the reasons for such disagreement.

(6) The Examining body must provide all interested parties with the opportunity to comment in writing on any written representation relevant to the examination of the application or specified matters.

(7) The Examining body may in writing request—

- (a) a specified number of additional copies of any representation;
- (b) responses to questions posed by the Examining body about the matters contained in any representation; and
- (c) such further information about the matters contained in any representation as the Examining body may specify;

and shall specify the date by which these must be received by it.

(8) Any person who receives a request in accordance with paragraph (7) above must ensure that the additional copies, responses to written questions or further information are received by the Examining body by the date specified.

(9) The Examining body may disregard any written representations, responses to questions or further information received after the date, or the expiry of the period, specified for their receipt.

(10) The Examining body must make all written representations, responses to written questions and further information received by it available in accordance with regulation 46 as soon as is practicable.



### **Relevant representation**

32.(1) An interested party must ensure that their relevant representation is received by the appropriate authority by whichever is the later of the deadlines for receipt of representations included in the notice given in accordance with regulation 19 and the notice published in accordance regulation 20.

(2) Any interested party who submits a written comment on any relevant representation must ensure that it is received by the appropriate authority by whichever is the later of—

- (a) the date on which the preliminary meeting is held; or
- (b) the date specified in the timetable referred to in regulation 30.

(3) The appropriate authority may require in writing any person who has submitted a relevant representation or written comment to provide—

- (a) a specified number of additional copies of the representation or comment; and
- (b) such further information about the matters contained in the representation or comment as the appropriate authority may specify,

and may specify the date by which the copies or information must be received by it.

(4) Any person required to provide additional copies or further information must ensure that the additional copies or further information have been received by the appropriate authority by the date specified.

(5) As soon as practicable after receipt of any relevant representations, written comments on relevant representations or further information requested under paragraph (3)(b) the appropriate authority must make the representations, comments or information available in accordance with regulation 46.

### **Hearings about specific issues**

33.—(1) Paragraphs (2) and (3) apply where the Examining body decides that it is necessary for the Examining body's examination of the application to include the consideration of oral representations about a particular issue made at a hearing in order to ensure--

- (a) adequate examination of the issue, or
- (b) that an interested party has a fair chance to put the party's case.

(2) The Examining body must cause a hearing to be held for the purpose of receiving oral representations about the issue.

(3) At the hearing, each interested party is entitled (subject to the Examining body's powers of control over the conduct of the hearing) to make oral representations about the issue.

### **Compulsory acquisition hearings**

34.—(1) This regulation applies where the application includes a request for authorisation to compulsorily acquire land or an interest in or right over land (a "compulsory acquisition request").

(2) The Examining body must fix, and cause each affected person to be informed of, the deadline by which an affected person must notify the Commission that the person wishes a compulsory acquisition hearing to be held.

(3) If the Commission receives notification from at least one affected person before the deadline, the Examining body must cause a compulsory acquisition hearing to be held.

(4) At a compulsory acquisition hearing, the following are entitled (subject to the Examining body's powers of control over the conduct of the hearing) to make oral representations about the compulsory acquisition request--

- (a) the applicant;
- (b) each affected person.

### **Open-floor hearings**

**35.**—(1) The Examining body must fix, and cause the interested parties to be informed of, the deadline by which an interested party must notify the Commission of the party's wish to be heard at an open-floor hearing.

(2) If the Commission receives notification from at least one interested party before the deadline, the Examining body must cause an open-floor hearing to be held.

(3) At an open-floor hearing, each interested party is entitled (subject to the Examining body's powers of control over the conduct of the hearing) to make oral representations about the application.

### **Notification of hearings**

**36.**—(1) In fixing, and causing persons to be informed of, a deadline under regulation 34 or regulation 35, the Examining body must ensure that the deadline is at least 21 days after the date on which notice of the deadline is given.

(2) The Examining body may disregard any request for an open-floor hearing or for a compulsory acquisition hearing to be held which is received after the deadline.

(3) As soon as practicable after the expiry of the deadline the Examining body must notify—

(a) all interested parties of the date, time and place fixed for any open-floor hearing or issue-specific hearing; and

(b) affected persons of the date, time and place fixed for a compulsory acquisition hearing,

and ensure that at least 21 days' notice is given of any hearing.

(4) The Examining body may vary the date, time and place fixed for any hearing and must give such notice of any variation as appears to it to be reasonable.

(5) The place at which a hearing is to be held shall be determined by the Examining body in consultation with the applicant and, where the Examining body is satisfied, having regard to the nature of the application, that it is reasonable to do so, the Examining body may direct that different parts of a hearing shall be held at different locations.

(6) Unless the Examining body otherwise directs, the applicant must not later than 21 days before the date fixed for the commencement of a hearing—

(a) post and maintain a notice of the hearing in a conspicuous place or (in the case of an application for an order making provision for land-based linear works more than 5 kilometres in length) at intervals of not more than 5 kilometres on, or as close as is reasonably practicable to, the land to which the application relates;

(b) post and maintain a notice of the hearing in one or more places where public notices are usually posted in the area to which the proposals contained in the application relate; and

(c) publish a notice of the hearing by local advertisement in the area in which the proposals contained in the application are to have effect.

(7) In this regulation "by local advertisement" means—

(a) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated; and

(b) where the Examining body maintains a website for the purpose of advertisement of applications, by publication of the notice on the website.

(8) Where a direction has been given under paragraph (5), paragraph (6) shall have effect with the substitution—

(a) for references to the hearing, of references to the part of the hearing which is to be held at a place specified in the direction; and

(b) for references to the application, of references to that part of the application which is to be the subject of that part of the hearing.

(9) Any notice posted pursuant to paragraph (6)(a) or (b) must be readily visible to and legible by members of the public; but where, without any fault or intention of the applicant, the notice is removed, obscured or defaced before the commencement of the hearing, the applicant shall be treated as having complied with the requirements of those sub-paragraphs if the applicant has taken reasonable steps for the protection of the notice and, if need be, its replacement.

(10) A notice of a hearing posted or published pursuant to paragraph (6) must contain a statement of the date, time and place of the hearing, and of the section of the Act under which the application has been made, together with a description of the proposals contained in the application sufficient to identify the location of the proposed development with or without reference to a specified map, and details of a place where a copy of the application can be inspected.

### **Procedure at hearings**

**37.—**(1) The Examining body shall preside at any hearing and shall determine the procedure at the hearing.

(2) At the start of the hearing the Examining body shall identify the matters to be considered at the hearing, and any matters on which the Examining body requires further explanation from—

- (a) the persons entitled under regulations 33, 34 or 35 to make oral representations; or
- (b) any other person permitted by the Examining body to make oral representations.

(3) Any oral representations must be based on either the relevant or written representations made by the person by whom or on whose behalf the oral representations are made; and where those relevant or written representations exceed 1500 words the person by whom they were made must prepare a summary.

(4) Without prejudice to the Examining body's discretion as to the conduct of the hearing, nothing in paragraph (2) or (3) precludes a person from referring to issues which they consider relevant to the examination of an application but which are not issues identified by the Examining body pursuant to paragraph (2) or included in their relevant or written representations.

(5) The Examining body(a) shall be responsible for the oral questioning of a person giving evidence ("A") except where, in the view of the Examining body, oral questioning of A by another person ("B") is necessary in order to ensure—

- (a) adequate testing of any representation; or
- (b) that B has a fair chance to put B's case.

(6) The Examining body may refuse to permit the oral questioning of persons giving evidence, or may require such questioning to cease, if it appears to the Examining body that permitting such questioning or allowing it to continue (as the case may be) would have the effect that the timetable referred to in regulation 30 could not be met.

(7) The Examining body may proceed with a hearing in the absence of a person entitled to appear at it.

(8) The Examining body may from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

(9) Any person entitled or permitted to make oral representations at a hearing may do so on that person's own behalf or be represented by any other person.

(10) The Examining body may permit any person, in addition to those who are entitled under regulations 33, 34 or 35, to make oral representations at a hearing.

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(a) By virtue of section 101(2), any oral questioning of a person making representations at a hearing may be carried out on the Examining body's behalf by a barrister, solicitor or advocate appointed under section 101(1) of the 2008 Act.

### **Hearings: general provisions**

- 38.**—(1) The following provisions of this section apply—
- (a) to a hearing under regulation 33,
  - (b) to a compulsory acquisition hearing regulation 34, and
  - (c) to an open-floor hearing regulation 35.
- (2) The hearing—
- (a) must be in public, and
  - (b) must be presided over by one or more of the members of the Examining body.
- (3) It is for the Examining body to decide how the hearing is to be conducted.
- (4) In particular, it is for the Examining body to decide—
- (a) whether a person making oral representations at the hearing may be questioned at the hearing by another person and, if so, the matters to which the questioning may relate;
  - (b) the amount of time to be allowed at the hearing—
    - (i) for the making of a person's representations; or
    - (ii) for any questioning by another person.
- (5) The Examining body's powers under paragraphs (3) and (4) are subject to paragraph (2).
- (6) Although the Examining body's powers under paragraphs (3) and (4) may be exercised for the purpose of controlling exercise of an entitlement under regulations 33, 34 or 35 those powers may not be exercised so as to deprive the person entitled of all benefit of the entitlement.
- (7) In making decisions under paragraph (4)(a), the Examining body must apply the principle that any oral questioning of a person making representations at a hearing (whether the applicant or any other person) should be undertaken by the Examining body except where the Examining body thinks that oral questioning by another person is necessary in order to ensure--
- (a) adequate testing of any representations, or
  - (b) that a person has a fair chance to put the person's case.
- (8) The Examining body may refuse to allow representations to be made at the hearing if the Examining body considers that the representations—
- (a) are re irrelevant, vexatious or frivolous,
  - (b) relate to the merits of policy set out in a national policy statement,
  - (c) repeat other representations already made (in any form and by any person), or
  - (d) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

### **Hearings: disruption and supervision**

- 39.**—(1) Where an interested party or any other person behaves in a disruptive manner at a hearing, the Examining body may decide to do any one or more of the following--
- (a) exclude the person from all, or part, of the remainder of the hearing;
  - (b) allow the person to continue to attend the hearing only if the person complies with conditions specified by the Examining body;
  - (c) exclude the person from other hearings;
  - (d) direct that the person is allowed to attend other hearings only if the person complies with conditions specified by the Examining body.

### **Representations not made orally may be made in writing**

- 40.**—(1) Paragraph (2) applies where--

- (a) a person asks the Examining body to be allowed to make oral representations about the application at a hearing,
- (b) the person does not (for whatever reason) make the representations orally at a hearing,
- (c) written representations from the person are received by the appropriate authority before the Examining body completes the Examining body's examination of the application, and
- (d) the written representations state that they are ones that the person asked to be allowed to, but did not, make orally at a hearing.

(2) The Examining body must consider the written representations as part of the Examining body's examination of the application if they are relevant representations.

### **Site inspections**

**41.**—(1) The Examining body may make an unaccompanied inspection of any site to which the application or specified matters relate before or during its examination of the application without giving notice of its intention.

(2) The Examining body may, before the completion of its examination of the application,, inspect any site to which the application or specified matters relate in the company of any interested party or their representative.

(3) Where the Examining body intends to make an inspection of the kind referred to in paragraph (2), it must notify all interested parties of the date, time and place at which it proposes to make the inspection.

(4) The Examining body shall not be bound to defer an inspection of the kind referred to in paragraph (2) where an interested party is neither present nor represented at the time appointed.

### **Completion of examination**

**42.** When the Examining body has completed its examination of the application, it must inform each interested party of that fact.

### **Procedure after completion of examination**

**43.**—(1) The Examining body must make a written report to the appropriate authority.

(2) The report must include the Examining body's—

- (a) findings and conclusions in respect of the application; and
- (b) recommendation as to the decision to be made on the application.

(3) If after the completion of the Examining body's examination, the appropriate authority—

- (a) differs from the Examining body on any matter of fact mentioned in, or appearing to the appropriate authority to be material to, a conclusion reached by the Examining body; or
- (b) takes into consideration any new evidence or new matter of fact,

and is for that reason disposed to disagree with a recommendation made by the Examining body, the appropriate authority shall not come to a decision which is at variance with that recommendation without—

- (i) notifying all interested parties of the appropriate authority's disagreement and the reasons for it; and
- (ii) giving them an opportunity of making representations in writing to the appropriate authority in respect of any new evidence or new matter of fact.

### **Further information**

**44.**—(1) The Examining body may at any time before the completion of its examination of an application request further information or written comments from an interested party, who must supply such information by the date and in the manner specified by the Examining body.

(2) The Examining body shall on receiving any further information or written comments within the specified period, consider whether or not a further opportunity to comment in writing should be given to all interested parties and, if so, the Examining body shall specify a period for making any further written comments.

(3) The Examining body may disregard any information or written comments received after the date specified or in a manner other than that specified.

### **Additional copies**

**45.**—(1) The Examining body may at any time before the completion of its examination of an application request from any interested party additional copies of any document sent to the Examining body during the examination and specify the period within which and the manner in which the copies are to be supplied.

(2) The interested party must supply the copies within the period and in the manner specified by the Examining body.

### **Availability and inspection of representations and documents**

**46.**—(1) Relevant representations, written representations or documents must be made available by the Examining body to all interested parties and to anyone who requests an opportunity to inspect and take copies of them.

(2) A relevant representation, written representation or document shall be taken to be available where all interested parties are notified of—

- (a) publication of the representation or document on a website;
- (b) the address of the website;
- (c) the place on the website where the representation or document may be accessed, and how it may be accessed;
- (d) details of where and when copies of representations and documents may be inspected;
- (e) details of where and when representations and documents may be copied; and
- (f) whether a charge will be made for copies of any representation or document available for inspection and if so the amount of any charge.

(3) Where the applicant or an interested party is under an obligation to give to any person who so requests an opportunity to inspect and take copies of any representation or document, the opportunity shall be taken to have been given where that person is notified of—

- (a) publication of the representation or document on a website;
- (b) the address of the website;
- (c) the place on the website where the representation or document may be accessed, and how it may be accessed;
- (d) details of where and when copies of the representation or document may be inspected;
- (e) details of where and when any representation or document may be copied; and
- (f) whether a charge will be made for copies of any representation or document available for inspection and if so the amount of any charge.

(4) In this regulation “document” means any notice, report or other document required or authorised to be sent or prepared under this Schedule.

### **Making the decision**

**47.**—(1) In deciding an application the appropriate authority must have regard to--

- (a) any national policy statement which has effect in relation to development of the description authorised by the development consent order, which is the subject of the application, (a "relevant national policy statement"),

- (b) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009,
- (c) any matters prescribed in relation to development of the description authorised by the development consent order which is the subject of the application, and
- (d) any other matters which the appropriate authority thinks are both important and relevant to its decision.

(2) The appropriate authority must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of paragraphs (3) to (7) applies.

(3) This paragraph applies if the appropriate authority is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.

(4) This paragraph applies if the appropriate authority is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the appropriate authority being in breach of any duty imposed on it by or under any enactment.

(5) This paragraph applies if the appropriate authority is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.

(6) This paragraph applies if the appropriate authority is satisfied that the adverse impact of the proposed development would outweigh its benefits.

(7) This paragraph applies if the appropriate authority is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

(8) The Infrastructure Planning (Decisions) Regulations 2010(a) shall apply in relation to the decision of the appropriate authority, subject to the following modifications—

- (a) each reference to “an application” shall be deemed to be a reference to an application as defined in regulation 9(2);
- (b) for “decision-maker” substitute “appropriate authority” in each place where the words occur;
- (c) for “order granting development consent” substitute “order” in each place where the words occur; and
- (d) in regulation 6, for “Panel or Council” substitute “appropriate authority”.

(9) In deciding an application the appropriate authority may disregard representations if the appropriate authority considers that the representations—

- (a) do not relate to the application;
- (b) are vexatious or frivolous;
- (c) relate to the merits of policy set out in a national policy statement;
- (d) relate to compensation for compulsory acquisition of land or of an interest in or right over land; or
- (e) relate to the compensation payable as a consequence of an order being made.

(10) The appropriate authority may disregard any representations which are received—

- (a) after the date specified for their receipt by the appropriate authority; or
- (b) in a manner other than that specified by the appropriate authority.

### **Decision-making by the Examining body**

**48.—**(1) The making of a decision by the Examining body requires the agreement of a majority of its members.

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(a) S.I. 2010/305.

(2) The Commissioner appointed to be the chair of the Examining body has a second (or casting) vote in the event that the number of members of the Examining body agreeing to a proposed decision is the same as the number of members not so agreeing.

### **Notification of decisions**

49. The appropriate authority must give written notice of its decision on an application to each person who it is required by regulation 51 to provide a copy of the statement of its reasons for its decision on an application.

### **Notice of authorisation of compulsory acquisition**

50.—(1) This regulation applies if an order under paragraph 3(1) of Schedule 6 to the Act (“the order”) includes provision authorising the compulsory acquisition of land.

(2) In this regulation—

“the order land” means--

- (a) in a case where the order authorises the compulsory acquisition of a right over land by the creation of a new right, the land over which the right is to be exercisable;
- (b) in any other case where the order authorises the compulsory acquisition of land, the land authorised to be compulsorily acquired;

“the prospective purchaser” means--

- (c) in a case where the order authorises the compulsory acquisition of a right over land by the creation of a new right, the person for whose benefit the order authorises the creation of the right;
- (d) in any other case where the order authorises the compulsory acquisition of land, the person authorised by the order to compulsorily acquire the land.

(3) After the order has been made, the prospective purchaser must--

- (a) serve a compulsory acquisition notice and a copy of the order on each person to whom paragraph (4) applies, and
- (b) affix a compulsory acquisition notice to a conspicuous object or objects on or near the order land.

(4) This paragraph applies to any person who, if the order were a compulsory purchase order, would be a qualifying person for the purposes of section 12(1) of the Acquisition of Land Act 1981 (c 67) (notice to owners, lessees and occupiers).

(5) A compulsory acquisition notice which is affixed under paragraph (3)(b) must--

- (a) be addressed to persons occupying or having an interest in the order land, and
- (b) so far as practicable, be kept in place by the prospective purchaser until the end of the period of 6 weeks beginning with the date on which the order is published.

(6) The prospective purchaser must also publish a compulsory acquisition notice in one or more local newspapers circulating in the locality in which the order land is situated.

(7) A compulsory acquisition notice is a notice in the prescribed form--

- (a) describing the order land,
- (b) in a case where the order the compulsory acquisition of a right over land by the creation of a new right, describing the right,
- (c) stating that the order includes provision authorising the compulsory acquisition of a right over the land by the creation of a right over it or (as the case may be) the compulsory acquisition of the land, and
- (d) stating that a person aggrieved by the order may challenge the order only in accordance with section 118 of the Act.



(8) A compulsory acquisition notice which is affixed under paragraph (3)(b) must also name a place where a copy of the order granting development consent may be inspected at all reasonable hours.

### **Statement of reasons**

**51.**—(1) The appropriate authority must prepare a written statement of its reasons for deciding to make an order under paragraph 3(1) of Schedule 6.

(2) The appropriate authority must provide a copy of the statement to the following—

- (a) the applicant;
- (b) any statutory party;
- (c) each relevant local authority;
- (d) the Greater London Authority if the land is in Greater London;
- (e) any person who has made a relevant representation; and
- (f) the Commission where the appropriate authority is the Secretary of State or the Secretary of State where the appropriate authority is the Commission.

(3) The appropriate authority must publish the statement in such manner as the appropriate authority thinks appropriate.

### **Effect of decision**

**52.**—(1) Subject to paragraph (2), if a change, which is material, is made to a development consent order under the power conferred by paragraph 3(1) of Schedule 6 to the Act—

- (a) the development consent order continues in force; and
- (b) the change to the development consent order takes effect from the date on which the notice of the appropriate authority's decision is notified under regulation 49, or if the change to the order is required to be made by order contained in a statutory instrument, the date specified in the order making the change.

(2) If under the power conferred by paragraph 3(1) of Schedule 6 to the Act a development consent order is revoked, the revocation shall take effect—

- (a) from the date specified in the order making the revocation; or
- (b) where there is no date specified, the date on which the order making the revocation is made.

## **PART 3**

### **Changes to, and revocation of, orders granting development consent under paragraph 3(1)**

#### **General**

**53.** The regulations in this Part apply where the appropriate authority proposes to make an order under paragraph 3(1) in the circumstances described in paragraphs 3(3), 3(6) or 3(7) of Schedule 6 to the 2008 Act.

#### **Notice**

**54.**—(1) Before making an order the appropriate authority must give notice of its intention to consider making such an order to—

- (a) each person for whose benefit the development consent has effect;
- (b) each authority which, in relation to the application, is a relevant local authority;

- (c) the Greater London Authority if the land is in Greater London;
  - (d) each person who is within one or more of the categories set out in section 57 as regards the land;
  - (e) the Commission where the appropriate authority is the Secretary of State or the Secretary of State where the appropriate authority is the Commission; and
  - (f) the persons listed in column 1 of the table in Schedule 1 to these Regulations, in the circumstances specified in relation to each such person in column 3 of that table, subject to the modification that each reference to the “application” shall be deemed to be a reference to the “proposed order”.
- (2) The notice must include—
- (a) a copy of the proposed order;
  - (b) any documents or plans considered necessary to support the proposed order;
  - (c) a statement saying whether the proposed order involves EIA development;
  - (d) a statement that—
    - (i) the appropriate authority is satisfied as to the matters described in paragraph 3(3) of Schedule 6 to the Act;
    - (ii) the appropriate authority is satisfied as to the matters described in paragraph 3(6) of Schedule 6 to the Act; or
    - (iii) the Secretary of State is satisfied as to the matters described in paragraph 3(7) of Schedule 6 to the Act;
  - (e) a statement that a copy of the proposed order and any accompanying documents and plans are available for inspection free of charge at the places (including at least one address in the vicinity of the land) and times set out in the notice;
  - (f) the latest date on which those documents will be available for inspection being a date not earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the notice;
  - (g) a statement as to whether a charge will be made for copies of any of the documents and if so the amount of any charge;
  - (h) details of how to make representations (giving notice of any interest in, or objection to, the proposed order); and
  - (i) a deadline for the receipt by the appropriate authority of those representations being not less than 28 days following the date on which the person receives the notice.

### **Publicising a proposed order**

**55.—**(1) The appropriate authority must publish a notice, which must include the matters specified in paragraph (2), in the same manner as is prescribed in relation to a proposed application by regulation 14.

- (2) The matters which the notice must include are—
- (a) the name and address of the appropriate authority;
  - (b) a statement to the effect that the appropriate authority is considering making the proposed order;
  - (c) the reference of the appropriate authority;
  - (d) a summary of the main proposals in the proposed order;
  - (e) a statement saying whether the proposed order involves EIA development;
  - (f) a statement that a copy of the proposed order and any accompanying documents, plans and maps are available for inspection free of charge at the places (including at least one address in the vicinity of the land) and times set out in the notice;

- (g) the latest date on which those documents will be available for inspection (being a date not earlier than the deadline date under sub-paragraph (j));
- (h) a statement as to whether a charge will be made for copies of any of the documents and if so the amount of any charge;
- (i) details of how to make representations (giving notice of any interest in, or objection, to the proposed order); and
- (j) a deadline for the receipt by the appropriate authority of those representations being not less than 28 days following the date that the notice is last published.

### **Notification of decisions**

**56.** The appropriate authority must give written notice of its decision to each person who it is required by regulation 57 to provide a copy of the statement of its reasons for its decision.

### **Statement of reasons**

**57.—(1)** The appropriate authority must prepare a written statement of its reasons for deciding to make an order under paragraph 3(1) of Schedule 6 to the Act.

(2) The appropriate authority must provide a copy of the statement to the following—

- (a) the applicant;
- (b) any statutory party;
- (c) each relevant local authority;
- (d) the Greater London Authority if the land is in Greater London;
- (e) anyone who has made a relevant representation; and
- (f) the Commission where the appropriate authority is the Secretary of State or the Secretary of State where the appropriate authority is the Commission.

(3) The appropriate authority must publish the statement in such manner as the appropriate authority thinks appropriate.

### **Effect of decision**

**58.—(1)** Subject to paragraph (2), if a change, which is material, is made to a development consent order under the power conferred by paragraph 3(1) of Schedule 6 to the Act—

- (a) the development consent order continues in force; and
- (b) the change to the development consent order takes effect from the date on which the notice of the appropriate authority's decision is notified under regulation 56 , or if the change to the order is required to be made by order contained in a statutory instrument, the date specified in the order making the change.

(2) If under the power conferred by paragraph 3(1) of Schedule 6 to the Act a development consent order is revoked, the revocation shall take effect from—

- (a) from the date specified in the order making the revocation; or
- (b) where there is no date specified, the date on which the order making the revocation is made.

## PART 4

### Provisions about the assessment of compensation payable under paragraph 6 of Schedule 6 to the Act

#### Interpretation

59. In this Part—

“responsible authority” means—

- (a) the appropriate authority, in a case falling within paragraph 3(3) of Schedule 6 to the Act; or
- (b) the Secretary of State, in a case falling within paragraph 3(6) or (7) of Schedule 6 to the Act;

“the relevant order” means the order in consequence of which compensation is or may be payable; and

“the 1990 Act” means the Town and Country Planning Act 1990(a).

#### Claim for compensation

60.—(1) Any claim for compensation must be made to the responsible authority.

(2) A claim for compensation must be in writing and must contain the following—

- (a) the name and address of the claimant;
- (b) the name and address of an agent, if appointed;
- (c) a statement as to whether the claimant has an interest in the land to which the relevant order relates or is a person for whose benefit the development consent order has effect;
- (d) the responsible authority’s reference for the relevant order;
- (e) details of the expenditure, loss or damage which is the subject of the claim;
- (f) documentary evidence to support the claim;
- (g) if requested by the appropriate authority—
  - (i) three paper copies of the claim; and
  - (ii) other supporting documents.

(3) A claim for compensation must be made before the end of the period of 12 months that begins on the day after the day on which the appropriate authority gave notification of its decision in accordance with regulation 49 or 56.

(4) Any dispute as to the amount of compensation shall be referred to the Upper Tribunal for determination.

(5) In relation to the determination of any dispute as to the amount of compensation, the provisions of section 4 of the Land Compensation Act 1961(b) (costs) shall apply subject to the modification that for “acquiring authority” substitute “responsible authority” in each place where the words occur”.

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(a) 1990 c.8. Section 107 was amended by section 31 of and paragraph 13 of Schedule 6 to the Planning and Compensation Act 1991 (c.34). Section 109 was amended by section 40 of and paragraph 14 of Schedule 6 to the Planning and Compulsory Purchase Act 2004 (c.5) and by article 5 of S.I. 2009/1307. Section 110 was amended by section 204 of the Local Government (Wales) Act 1994 (c.19). Sections 111 and 112 were amended by sections 31 and 84 of and paragraphs 15(a) and 16 of Schedule 6 and Part 2 of Schedule 19 to the Planning and Compensation Act 1991 (c.34). Section 117 was amended by section 21 of and paragraph 10 of Schedule 1 to the Planning and Compensation Act 1991 (c.34). Section 280 was amended by section 406 of and paragraph 104(a) of Schedule 17 to the Communications Act 2003 (c. 21) and by article 5 of S.I. 2009/1307. There other amendments to the 1990 Act which are not relevant to these Regulations.

(b) 1961 c. 33. Section 4 was amended by S.I. 2009/1307.

### **Assessment of compensation**

**61.**—(1) In calculating the amount of any compensation for depreciation, it shall be assumed that planning permission? would be granted—

- (a) subject to the condition set out in Schedule 10 to the 1990 Act (condition treated as applicable to rebuilding and alterations), for any development of the land of a class specified in paragraph 1(b) or (c) of Schedule 3 to the 1990 Act (development not constituting development) subject to the modifications in paragraph (2) below.
- (b) for any development of a class specified in paragraph 2 of Schedule 3 to the 1990 Act.

(2) In paragraph 1(b) of Schedule 3 to the 1990 Act omit the words “after 1<sup>st</sup> July 1948”.

### **Apportionment of compensation for depreciation**

**62.**—(1) Where the compensation which becomes payable under paragraph 6 of Schedule 3 to the Act includes compensation for depreciation of an amount exceeding £20, the responsible authority—

- (a) if it appears to them to be practicable to do so, shall apportion the amount of the compensation for depreciation between different parts of the land to which the claim for that compensation relates; and
- (b) shall give particulars of any such apportionment to the claimant and to any other person entitled to an interest in land which appears to the authority to be substantially affected by the apportionment.

(2) In carrying out an apportionment under paragraph (1)(a), the responsible authority shall divide the land into parts and shall distribute the compensation for depreciation between those parts, according to the way in which different parts of the land appear to the authority to be differently affected by the order in consequence of which the compensation is payable.

(3) The claimant and any other person to whom particulars of an apportionment have been given under paragraph (1), or who establishes that he is entitled to an interest in land which is substantially affected by such an apportionment, if he wishes to dispute the apportionment, may require it to be referred to the Upper Tribunal;

- (a) for enabling the claimant and every other person to whom particulars of any such apportionment have been so given to be heard by the Tribunal on any reference under this section of that apportionment; and
- (b) for requiring the Tribunal, on any such reference, either to confirm or to vary the apportionment and to notify the parties of the decision of the Tribunal.”;

(4) Where on a reference to the Upper Tribunal under this regulation it is shown that an apportionment--

- (a) relates wholly or partly to the same matters as a previous apportionment, and
- (b) is consistent with that previous apportionment in so far as it relates to those matters,

the Tribunal shall not vary the apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.

(5) On a reference to the Upper Tribunal by virtue of paragraph (4), paragraphs (1) and (2), so far as they relate to the making of an apportionment, shall apply with the substitution, for references to the responsible authority, of references to the Upper Tribunal.

(6) In this regulation—

"interest" (where the reference is to an interest in land) means the fee simple or a tenancy of the land and does not include any other interest in it, and

"relevant order" means the order by which development consent is refused, or is granted subject to requirements other than those previously imposed by the development consent order.

### **Registration of compensation for depreciation**

**63.** Section 110 of the 1990 Act (registration of compensation for depreciation) shall apply subject to the following modifications —

- (a) in subsection (1)—
  - (i) omit the words “under section 107”; and
  - (ii) “for local planning authority” substitute “responsible authority”;
- (b) in subsection (2) insert the following—  
“(c) the Commission”; and
- (c) in subsection (3) omit the words “, or in a case falling within section 108 the relevant planning decision”.

### **General provisions as to compensation for depreciation**

**64.** Section 117 of the 1990 (general provisions as to compensation for depreciation) Act shall apply.

### **Compensation for Statutory Undertakers**

**65.** Where a statutory undertaker is entitled to compensation, the amount of compensation payable shall be an amount calculated in accordance with section 280 of the 1990 Act (measure of compensation to statutory undertakers, etc), subject to the following modifications—

- (a) omit subsections (1), (2)(c) and (6);
- (b) in subsection (2)—
  - (i) Before the words “Subject to subsections (4) and (6) ” insert “Where a statutory undertaker is entitled to an amount of compensation”,
  - (ii) for “to (6)” substitute “and (5)”.
- (c) for subsection (8) substitute the following—  
“In this section—  
“the relevant order” means—
  - (a) the order in respect of which compensation falls to be assessed; and
  - (b) in relation to compensation under section 279(4), the circumstances making it necessary for the apparatus in question to be removed or re-sited;“the appropriate Minister's certificate” means such a certificate as is mentioned in sections 127 and 128 of the Act.”

## **PART 5**

### **Miscellaneous**

#### **Closed evidence**

**66.—(1)** Nothing in these Regulations shall be taken to require or permit closed evidence to be disclosed to a person other than—

- (a) the Secretary of State;
  - (b) the parties; or
  - (c) a person of any description specified in a direction.
- (2) In this regulation—
- (a) “closed evidence” means any representation which is subject to a direction;

- (b) “direction” means a direction given by the Secretary of State under paragraph 2(6) of Schedule 3 to the Act;
- (c) “parties” means—
  - (i) the person who requested a direction; or
  - (ii) any person appointed under paragraph 4(2) of Schedule 3 to the Act to represent the interests of a person, who is prevented from inspecting or hearing closed evidence during the examination of an application for a development consent order, as a result of the direction.

**Form and Service of notices etc.**

**67.**—(1) Where under any provision of these Regulations a person is required to notify another person or body of something, that notification must be in writing.

(2) Any representation, notice or other document required or authorised to be sent under any provision of these Regulations may be sent—

- (a) by sending it by post, addressed to that person at that person’s usual or last known place of abode, or in a case where an address for service has been given by that person, at that address;
- (b) by sending it in a prepaid registered letter, or by recorded delivery service addressed to that person at that person’s usual or last known place of residence, or in a case where an address for service has been give by that person, at that address; or
- (c) subject to paragraphs (3) to (6), by electronic transmission to such address as may for the time being be specified by the person for that purpose.

(3) Where a representation, notice or other document required to be sent for any purpose of these Regulations is sent by electronic transmission, the requirement shall be taken to be fulfilled where the recipient of the representation, notice or other document has consented, either in writing or by electronic transmission, to the use of electronic transmission.

(4) Where the recipient of a representation, notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that representation, notice or other document, the sender must provide such a copy as soon as is reasonably practicable.

(5) A person may revoke their consent to the use of electronic transmission for any purpose of these Regulations by giving notice to that effect in writing or by electronic transmission, specifying the purpose for which electronic transmission may not be used and the date on which revocation is to take effect, being not less that seven days after the date on which the notice is given.

(6) A revocation under paragraph (5) shall take effect on the date specified in the notice.

**Allowing further time**

**68.** The appropriate authority may at any time and in any particular case allow further time for the taking of any step which must or may be taken by virtue of these Regulations.

**Amendment to the Infrastructure Planning (Compulsory Acquisition) Regulations 2010**

**69.** Form A in Schedule 1 to the Infrastructure Planning (Compulsory Acquisition) Regulations 2010(a) shall be amended as follows—

- (a) in the second paragraph, after the words “the Secretary of State” insert “[the Panel that has the function of deciding the application] [the Council of the Commission](d)”;
- (b) after the fourth paragraph, insert the following—

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(a) SI 2010/104.

“[the right can be purchased without serious detriment to the carrying on of the undertaking]

[any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them](d)”.

Signed by authority of the Secretary of State for Communities and Local Government

Name  
Parliamentary Under Secretary of State  
Department for Communities and Local Government

Date

## SCHEDULE 1 Regulations 10, 19 and 54

### Consultation and notification

**Table**

<i>Column 1; Consultee</i>	<i>Column 2; Circumstances when that person must be consulted about a proposed application.</i>	<i>Column 3; Circumstances when that person must be notified about an application.</i>
The Welsh Ministers	All proposed applications likely to affect land in Wales	All applications likely to affect land in Wales
The Scottish Executive	All proposed applications likely to affect land in Scotland	All applications likely to affect land in Scotland
The relevant Northern Ireland Department	All proposed applications likely to affect land in Northern Ireland	All applications likely to affect land in Northern Ireland
The Health and Safety Executive	All cases	All cases
The relevant Strategic Health Authority	All proposed applications likely to affect land in England and Wales	All applications likely to affect land in England
The relevant Health Board(a)	All proposed applications likely to affect land in Scotland	All applications likely to affect land in Scotland
Natural England(b)	All proposed applications likely to affect land in England	All applications likely to affect land in England
The Historic Buildings and Monuments Commission for England	All proposed applications likely to affect land in England	All applications likely to affect land in England
The relevant fire and rescue authority	All cases	All cases
The relevant police authority	All cases	All cases

(a) See section 2 of the National Health Service (Scotland) Act 1978 (c.29).

(b) See section 1 of the Natural Environment and Rural Communities Act 2006 (c.16).



The relevant parish council, or, where the application relates to land Wales or Scotland the relevant community council	All cases	All cases
The Environment Agency	All proposed applications likely to affect land in England and/or Wales	All applications likely to affect land in England and/or Wales
The Scottish Environment Protection Agency	All proposed applications likely to affect land in Scotland	All applications likely to affect land in Scotland
The Commission for Architecture and the Built Environment	All proposed applications likely to affect land in England	All applications likely to affect land in England
<i>[The relevant Regional Development Agency]</i>	<i>All proposed applications likely to affect land in England and/or Wales</i>	<i>All applications likely to affect land in England and/or Wales]</i>
<i>[The relevant Regional Planning Body]</i>	<i>All proposed applications likely to affect land in England and/or Wales</i>	<i>All applications likely to affect land in England and/or Wales]</i>
The Equality and Human Rights Commission	All proposed applications likely to affect land in England and Wales	All applications likely to affect land in England and Wales
The Scottish Human Rights Commission	All proposed applications likely to affect land in Scotland	All applications likely to affect land in Scotland
The Commission for Sustainable Development	All cases	All cases
AONB Conservation Boards	All proposed applications likely to affect an AONB that is managed by a Conservation Board	All applications likely to affect an AONB that is managed by a Conservation Board.
Royal Commission on Ancient and Historical Monuments of Wales	All proposed applications likely to affect the historic environment in Wales	All applications likely to affect the historic environment in Wales
The Countryside Council for Wales	All proposed applications likely to affect land in Wales	All applications likely to affect land in Wales
The Homes and Communities Agency(a)	All proposed applications likely to have an effect on its areas of responsibility	All applications likely to have an effect on its areas of responsibility
The Joint Nature Conservation Committee	All proposed applications likely to affect the marine environment	All applications likely to affect the marine environment.
The Commission for Rural Communities	All proposed applications likely to affect rural communities in England	All applications likely to affect rural communities in England
Scottish Natural Heritage	All proposed applications likely to affect land in Scotland	All applications likely to affect land in Scotland
The Maritime and Coastguard Agency	All proposed applications likely to affect the maritime or coastal environment, or the shipping industry	All applications likely to affect the maritime or coastal environment, or the shipping industry.
The Marine and Fisheries	All proposed applications	Where the proposal would

(a) See section 2 of the Housing and Regeneration Act 2008 (c.17).

Agency	likely to affect the marine area in England and Wales	involve carrying on any activity in the marine area in England and Wales
The Scottish Fisheries Protection Agency	All proposed applications likely to affect the fisheries industry in Scotland	All applications likely to affect the fisheries industry of Scotland
The Civil Aviation Authority	All proposed applications relating to airports or which are likely to affect an airport or its current or future operation	All applications relating to airports or which are likely to affect an airport or its current or future operation
The Highways Agency	All proposed applications likely to affect road or transport operation and/or planning on roads for which the Secretary of State for Transport is the highway authority.	All applications likely to affect road or transport operation and/or planning on roads for which the Secretary of State for Transport is the highway authority.
Integrated Transport Authorities (ITAs) and Passenger Transport Executives (PTEs)	All proposed applications likely to affect transport within, to or from the relevant integrated transport area of the ITA or PTE	All applications likely to affect transport within, to or from the relevant integrated transport area of the ITA or PTE
The relevant highway authority	All proposed applications likely to have an impact on the road network or the volume of traffic in the vicinity of the proposal	All applications likely to have an impact on the road network or the volume of traffic in the vicinity of the proposal
Transport for London	All proposed applications likely to affect transport within, to or from Greater London	All applications likely to affect transport within, to or from Greater London
The Rail Passengers Council	All proposed applications likely to affect rail passenger transport	All applications likely to affect rail passenger transport
The Disabled Persons Transport Advisory Committee	All proposed applications likely to affect access to transport for disabled people	All applications likely to affect access to transport for disabled people
The Coal Authority	All proposed applications that lie within areas of past, present or future coal mining.	All applications that lie within areas of past, present or future coal mining.
The Office of Rail Regulation and approved operators(a)	All proposed applications likely to affect the rail transport industry	All applications likely to affect the rail transport industry
The Gas and Electricity Markets Authority	All proposed applications likely to affect gas and electricity markets	All applications likely to affect gas and electricity markets
The Water Services Regulation Authority	All proposed applications likely to affect the water industry in England and Wales	All applications likely to affect the water industry in England and Wales
The Water Industry Commission of Scotland	All proposed applications likely to affect the water	All proposed applications likely to affect the water

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(a) For the definition of “approved operators” see section 25 of the Planning Act 2008.

The relevant waste regulation authority	industry in Scotland All proposed applications likely to affect waste infrastructure	industry in Scotland All applications likely to affect waste infrastructure
The relevant internal drainage board	All proposed applications likely to increase the risk of flooding in that area or where the proposals relate to an area known to be an area of flood risk	All applications likely to increase the risk of flooding in that area or where the proposals relate to an area known to be an area of flood risk
The British Waterways Board	All proposed applications likely to have an impact on inland waterways or land adjacent to inland waterways	All applications likely to have an impact on inland waterways or land adjacent to inland waterways
Trinity House(a)	All proposed applications likely to affect navigation in tidal waters	All applications likely to affect navigation in tidal waters
The Health Protection Agency	All proposed applications likely to involve chemicals, poisons or radiation which could potentially cause harm to people	All applications likely to involve chemicals, poisons or radiation which could potentially cause harm to people
The relevant local resilience forum	All cases	All cases
Relevant statutory undertakers	All proposed applications likely to affect their functions as statutory undertakers	All applications likely to affect their functions as statutory undertakers
The Crown Estate Commissioners	All proposed applications likely to impact on the Crown Estate	All applications likely to impact on the Crown Estate
The Forestry Commission	All proposed applications likely to affect the protection or expansion of forests and woodlands	All applications likely to affect the protection or expansion of forests and woodlands

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Note to Table

“relevant”, in relation to a body, shall mean the body which has responsibility for the location where the development to which an application is sited or has responsibility for an area which neighbours that location.

## SCHEDULE 2

Regulation 18

### Fees

#### Interpretation

1.—(1) In this Schedule “application” means an application for an order under paragraph 3(1) of Schedule 6 to the Act.

(2) Any reference in this Schedule to a paragraph is a reference to a paragraph of this Schedule.

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(a) The Corporation of Trinity House of Deptford Strond.

(3) In this Schedule any reference to the receipt by the Commission of a payment by way of a fee is a reference to the Commission having received cleared funds in respect of the full amount of the fee.

(4) In these Regulations any reference to a failure to pay a fee is a reference to the Commission not having received cleared funds in respect of the full amount of the fee or having received payment of the full amount by cheque which has subsequently been dishonoured.

### **Fee to accompany an application**

2.—(1) At the same time that an application for an order under paragraph 3(1) of Schedule 6 to the Act is made to the Commission the fee specified in sub-paragraph (3) must be paid to the Commission.

(2) If the applicant fails to pay the fee, the Commission need not consider the application until payment is received by the Commission.

(3) The fee payable on making an application is £4,500.

### **Pre-examination fee**

3.—(1) The Commission must charge the applicant a pre-examination fee.

(2) Following a decision under regulation 22, the Commission must notify the applicant in writing, as soon as reasonably practicable, of the pre-examination fee.

(3) The pre-examination fee is—

- (a) where a single Commissioner will handle the application, £8,500;
- (b) where two or three Commissioners will handle the application, £25,500;
- (c) where more than three Commissioners will handle the application, £38,500.

(4) The pre-examination fee must be received by the Commission within the period of 28 days beginning with the date of the notice referred to in sub-paragraph (2).

(5) If the applicant fails to pay the pre-examination fee within the period specified in sub-paragraph (4), the Commission need take no further steps in relation to the application until payment has been received by the Commission.

### **Fee in respect of the handling of an application**

4.—(1) The Commission must charge the applicant a fee in respect of its examination of the application.

(2) The fee payable is the sum of—

- (a) an initial payment calculated in accordance with paragraph 5; and
- (b) a final payment calculated in accordance with paragraph 6.

### **Initial payment in respect of the handling of an application**

5.—(1) Following the preliminary meeting under regulation 28, the Commission must, as soon as reasonably practicable, give the applicant notice in writing of—

- (a) the number of estimated relevant days;
- (b) whether the application is to be examined by a single Commissioner, or 2 or more Commissioners, and in the latter case, the number of Commissioners who are to be appointed; and
- (c) the initial payment.

(2) In this paragraph—

“estimated relevant day” means a day estimated by the Commission as required for its examination of the application;

“initial payment” in relation to a notice under sub-paragraph (1) means—

- (a) where the examination is to be handled by a single Commissioner, £615 for each estimated relevant day;
- (b) where the examination is to be handled by two or three Commissioners, £1,340 for each estimated relevant day;
- (c) where the examination is to be handled by more than three Commissioners, £2,040 for each estimated relevant day.

(3) The initial payment must be received by the Commission within the period of 28 days beginning with the date of the notice referred to in sub-paragraph (1).

(4) If the applicant fails to pay the initial payment within the period specified in sub-paragraph (3), the Commission need take no further steps in relation to the application until payment has been received by the Commission.

### **Final payment in respect of the handling of an application**

6.—(1) Following notification of the completion of the examination, the Commission must, as soon as reasonably practicable, give the applicant notice in writing of the final payment.

(2) The final payment is—

- (a) where a single Commissioner has examined the application, £1,230 for each relevant day;
- (b) where two or three Commissioners have examined the application, £2,680 for each relevant day;
- (c) where more than three Commissioners have examined the application, £4,080 for each relevant day;

less the initial payment referred to in paragraph 5.

(3) In this paragraph “relevant day” means a day on which the Commission examined the application.

(4) The final payment must be received by the Commission within the period of 28 days beginning with the date of the notice referred to in sub-paragraph (1).

(5) If the applicant fails to pay the fee within the period specified in sub-paragraph (4), the Commission need take no further steps in relation to the application until payment has been received by the Commission.

### **Fee in respect of venue costs**

7.—(1) Where the applicant does not provide a venue for a hearing the Commission may charge a fee in respect of the venue costs.

(2) In sub-paragraph (1) “venue costs” means—

- (a) where the Commission causes a hearing to be held, the costs reasonably incurred by the Commission in respect of that hearing; or
- (b) where the Commission makes arrangements for a hearing to be held but it does not take place, the costs reasonably incurred by the Commission in respect of those arrangements.

(3) The Commission must notify the applicant in writing of the amount of the fee.

(4) The fee must be received by the Commission within the period of 28 days beginning with the date of the notice referred to in sub-paragraph (3).

(5) If the applicant fails to pay the fee within the period specified in sub-paragraph (4), the Commission need take no further steps in relation to the application until payment has been received by the Commission.

(6) In this paragraph “hearing” means a hearing held in accordance with these Regulations.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

## Annex 3

### Fees for non-material changes

Resource cost modelling for a non-material change application

<b>Process</b>	<b>Resource</b>	<b>Straightforward case</b>	<b>Complex case</b>
	<b>Involves (grade)</b>	<b>Time (days)</b>	<b>Time (days)</b>
Log the application and update the website	Executive Officer	1.00	2.00
Publicise the application/set deadline for written representations	Executive Officer	5.00	10.00
Consider the application and written representations; advise the commissioner	Grade 7	3.00	10.00
Make decision on application; draft the decision document	Commissioner	2.00	5.00
Prepare any revised development consent order	G6	2.00	4.00
Notify relevant parties of decision	EO	0.50	1.00

<b>Resource (grade)</b>	<b>Straightforward case</b>	<b>Complex case</b>
	<b>Time (days)</b>	<b>Time (days)</b>
Commissioner	2	5
Grade 6	1.5	3
Grade 7	3	10
Executive Officer	6.5	13
<b>Average resource</b>		
Commissioner	3.5	
Grade 6	2.25	
Grade 7	6.5	
Executive Officer	9.75	
<b>Resource</b>		
	<b>Day rate (£)</b>	
Commissioner	589	
Grade 6	357	
Grade 7	308	
Executive Officer	171	
<b>Average cost profile</b>		
Commissioner	£2,062	
Grade 6	£803	
Grade 7	£2,002	
Executive Officer	£1,667	
<b>Average fee</b>	<b>£6,534</b>	

#### Assumptions:

- Application is determined by a single commissioner.
- There is an equal split of applications – 50 per cent are ‘straightforward’ and 50 per cent are ‘complex’ cases. These are relative terms – both are less costly to process than applications for a material change.
- There are significant costs to the IPC for undertaking the publicity requirements – e.g. preparing relevant statements, making arrangements for plans to be available for local inspection, arrangements for placing of site notices, etc.
- A Grade 7 and a commissioner will need to undertake site visits for ‘complex’ cases.
- All applications are examined through written representations.
- The fee is payable regardless of whether the appropriate authority eventually rejects the application on grounds that it was not a valid non-material change under paragraphs 2(1) and 2(2) of Schedule 6 to the Planning Act 2008.
- Seventy-five per cent of applications are approved, and require Legal Grade 6 drafting.



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