Communities and Local Government

Changing or revoking a development consent order for nationally significant infrastructure (Planning Act 2008)

Consultation stage impact assessment

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November 2010
Department for Communities and Local Government

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Title:	Impact Assessment (IA)
Changing or revoking a Development Consent Order for nationally significant infrastructure (Planning Act 2008)	**IA No:** 0024
Lead department or agency:	**Date:** 28/09/2010
Department for Communities and Local Government	**Stage:** Consultation
Other departments or agencies:	**Source of intervention:** Domestic
Department for Energy and Climate Change Department for Environment, Food and Rural Affairs Department for Transport	**Type of measure:** Secondary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The Planning Act 2008 has established a new regime for the consenting of nationally significant infrastructure projects. Consent is granted through the making of a development consent order. As circumstances may change after the development consent order has been made, it is necessary for the new regime to also include procedures for making changes to, or revoking, a made development consent order. The change in circumstances could require either 'non-material' changes to a development consent order (i.e. relatively insignificant) or 'material' changes (i.e. significant, including revocation), and be requested by either the project's promoter or other persons as specified within the Planning Act. Without such procedures, the whole development consent order would have to be applied for again, and which would thereby entail a higher cost to the applicant.

What are the policy objectives and the intended effects?

To set out in regulations the procedures, and the fees payable, for seeking 'non-material' and 'material' changes to, or a revocation of, a development consent order and, where applicable, for seeking compensation. The objective is for the procedures to be sufficiently robust to ensure the potential impacts of the proposed changes can be thoroughly considered; enable legitimate rights to be heard; but not be onerous so as to be disproportionate. The consideration would be limited to issues raised about the proposed changes, and not allow for a re-opening of any debates about the rest of the development consent order. Fees should be payable to recover, as far as possible, the costs incurred by the examining body.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

(1) Introduce regulations which: require pre-application, application and examination stages for a 'material change' (including revocation) that are similar to those required for seeking the original development consent order, with a similar fees structure; a more simplified process for seeking a 'non-material change', with a simple flat rate fee; and a compensation procedure that is based on that which exists within the Town and Country Planning Act 1990. (Preferred Option)
(2) Do nothing, i.e. not introduce regulations.

The preferred option is (1) as it is essential to have a process that will enable changes to be made to a development consent order after it has been made. This option will constitute a cost savings for a promoter that needs or wants to make changes, as it would otherwise have to seek a whole development consent order permission all over again. Consideration has been given to constructing new procedures or utilising fewer of those that are currently required for a development consent order application. However, we believe neither approaches would provide the amount of transparency and thoroughness that are required to enable the policy objectives to be met. Development consent order application procedures remain relevant for a material change application, and so it would be inappropriate and unnecessary to deviate from them or create a completely new set of procedures.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 04/2013
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:.....  .....

Date: 1 November 2010

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £2m	**High:** £8m	**Best Estimate: £6m**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a		£0.08m	**£0.7m**
High	n/a		£0.30m	**£2.6m**
Best Estimate			£0.23m	**£2.0m**

Description and scale of key monetised costs by 'main affected groups'

Estimates show the cost of fees to applicants (businesses) over 10 years as a result of the change. These are the gross costs to applicants as a result of this change. NB: In net terms there is a saving to applicants as the costs of the fees under this change are lower than the likely costs in the absence of the changes (the do nothing).

Estimates presented for three scenarios, constructed on basis of the proportion of development consent orders that are changed. For central case this is 10 per cent for both material and non-material, split £1.7m and £0.3m respectively (10 year discounted).

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a		£0.34m	**£2.9m**
High	n/a		£1.2m	**£10.5m**
Best Estimate			£0.92m	**£8.0m**

Description and scale of key monetised benefits by 'main affected groups'

These are estimates of the costs likely to be incurred in the absence of these changes, i.e. they represent the gross benefit (costs avoided) from the change. Estimates presented for three scenarios, constructed on basis of the proportion of development consent orders that are changed. For central case this is 10 per cent for both material and non-material, split £4.6m and £3.4m respectively (10 year discounted).

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

See page 11 onwards for details. Central case is based on 45 development consent orders per annum and 10 per cent (for both material and non-material) likely to come forward for change. Sensitivities provided for 5 per cent and 15 per cent. Eighty per cent of material changes assumed to be by a single commissioner with the remaining 20 per cent conducted by a panel. Table 8 below shows the detailed estimates for the cost per case in the do-nothing scenario, with Tables 1 and 2 showing the costs for non-material and material changes respectively as a result of the change.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: 0.23	**AB savings: 0.92**	**Net: 0.69**	**Policy cost savings:**	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			06/04/2011		
Which organisation(s) will enforce the policy?			IPC		
What is the annual change in enforcement cost (£m)?			Nil		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:**	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	19
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	19
Small firms Small Firms Impact Test guidance	No	19
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	19
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	19
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	19
Human rights Human Rights Impact Test guidance	No	19
Justice system Justice Impact Test guidance	No	19
Rural proofing Rural Proofing Impact Test guidance	No	19
Sustainable development Sustainable Development Impact Test guidance	No	19

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Planning Bill: Impact Assessment (Published 27 November 2007, CLG)
2	Annex to the Planning Bill Impact Assessment: Royal Assent (Published 30 January 2009, DCLG)
3	Impact Assessment of fees to be charged by the Infrastructure Planning Commission, and the examination procedure rules (at end of Explanatory Memorandum, located at - http://www.legislation.gov.uk/uksi/2010/106/notes/contents?type=em)
4	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2009/No.2264)
5	The Infrastructure Planning (Examination Procedure) Rules 2010 (SI 2010/No.103)
6	The Infrastructure Planning (Fees) Regulations 2010 (SI 2010/No.106)
7	Planning Act 2008: The Infrastructure Planning (Fees) Regulations 2010 - Guidance
8	Draft regulations – The Infrastructure Planning (Miscellaneous Provisions) Regulations 2011

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs										
Annual recurring cost										
Total annual costs	0.22	0.22	0.22	0.22	0.35	0.22	0.22	0.22	0.22	0.22
Transition benefits										
Annual recurring benefits										
Total annual benefits	0.88	0.88	0.88	0.88	1.3	0.88	0.88	0.88	0.88	0.88

* For non-monetised benefits please see summary pages and main evidence base section

Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Policy context

The Planning Act 2008 (the Act) provided for the replacement of multiple and overlapping consent regimes for nationally significant infrastructure with a new single consent regime, with decisions being taken by an Infrastructure Planning Commission (IPC) within a framework of national policy statements set by ministers. It placed a new duty on promoters of such infrastructure projects to ensure that proposals are properly prepared and consulted on before they submit an application to the IPC.

The Government has announced that the IPC will be abolished and a major infrastructure planning unit established to take its place. However, it is the Government's intention to retain a streamlined process for dealing with these projects. Until the IPC is abolished it will continue to receive and process the applications.

Consent is given through the making of a development consent order that is submitted as part of an application. Detailed procedures to be followed for the pre-application, application, examination and decision stages for a development consent order have already been consulted on and implemented through regulations. Schedule 6 of the Act sets out a framework for how a development consent order may be changed or revoked after it has been made, and for the payment of compensation in certain circumstances. It provides for the Secretary of State to make regulations that prescribe the procedures to be followed. Without regulations it is not possible for part of a development consent order to be changed, or an entire development consent order to be revoked, under this consents regime once it has been made.

Schedule 6 of the Act

Under Schedule 6, a development consent order may be subject to 'non-material changes', 'material changes' or 'revocation'. The Act does not define non-material or material, nor does it provide a power for these terms to be defined, and therefore more fully distinguished, in regulations. Consequently, it will be left to the discretion of the 'appropriate authority' to decide whether a proposed change to a particular development consent order is to be considered as non-material or material. The appropriate authority will normally be the authority which made the original development consent order and thereby granted the original consent, i.e. either the IPC or the Secretary of State.

NON-MATERIAL CHANGES

The Act enables the Secretary of State to prescribe an application process and which includes the publicity, consultation and notification duties required of the appropriate authority. It does not provide for prescribing how such an application should be examined or a decision made. Under the Act, those who are able to make such an application are – the applicant for the original development consent order or their successor in title; or a person with an interest in the land to which the development consent order relates; or any other person whose benefit the development consent order has effect.

MATERIAL CHANGES

The Act enables the Secretary of State to prescribe the pre-application requirements; the application process; examination and decision making processes; and a process for notifying the decision. An application for revocation would be treated as a material change to a development consent order.

Under the Act, those who are able to make an application for a material change are:

(a) The applicant for the original development consent order, or their successor in title; a person with an interest in the land to which the development consent order relates; or any other person for whose benefit the development consent order has effect.

(b) A local planning authority if a development has been started but abandoned on land, all or part of which is in the local planning authority's area, and where amenity of other land in that authority's area or an adjoining area is adversely affected by the condition of the uncompleted development land.

(c) Where the IPC is the appropriate authority, the Secretary of State can make an application to it where, if a development was carried out in accordance with a granted development consent order, there would be a contravention of Community law or any of the Convention rights (as defined in the Act), or if there are other exceptional circumstances that would make it appropriate to consent a material change (including a revocation). If the Secretary of State is the appropriate authority in these circumstances, then the Secretary of State can consider making such a material change without the submitting of an application.

(d) The Act further provides for the appropriate authority to make a change to a made development consent order without an application being made, if that authority decides the development consent order contains a 'significant error' but which would not be appropriate to correct using correction provisions that are set out in Schedule 4 of the Act (see below). However, the Act does not define, or provide the power for the Secretary of State to define, the circumstances for when this action would be appropriate.

CORRECTION OF ERRORS

Schedule 4 of the Act enables any minor errors in the drafting of the made development consent order to be treated as a 'correction', and so would not be addressed under the proposed Schedule 6 procedures or therefore within this impact assessment. Such a correction would simply restore the text of a development consent order to what it was intended to be, but which was incorrectly altered during its drafting.

COMPENSATION

Schedule 6 of the Act also sets out the circumstances in which a claim for compensation could be made if a change (including revocation) is made to a development consent order. Its provisions allow for a claim to be made by a person with an interest in the land, or for whose benefit the development consent order has effect. It would have to be shown they had incurred expenditure in carrying out work which is rendered abortive by the change or revocation, or have otherwise sustained loss or damage which is directly attributable to the change or revocation. The Schedule allows for regulations to be made by the Secretary of State, including concerning the assessment of compensation payable, and addressing a depreciation of the value of an interest in land.

Policy objectives

The key policy objective is to ensure there are procedures in place to enable a development consent order to be changed or revoked after it has been made. This will avoid the need for an infrastructure provider to have to submit an application for the whole scheme again if it needs or wants to seek changes. Instead, the application will be limited to just the changes being sought. The regulations will also enable the opportunity provided for in the Act for certain other interested parties to seek a change or revocation, in the circumstances so prescribed in the Act. There is also a need to enable changes to be made to a development consent order which would reflect any change that may have subsequently occurred in Community law or Convention rights, and thereby avoid a possible breach of these and potential liability for a paying of damages.

The procedures are not intended as an opportunity for a development consent order to be applied for in stages. Instead they are to provide for the circumstances where a proposed change to a development consent order is one that could not have been foreseen at the time of submitting the original application. A separate process exists for where an applicant is required to seek subsequent approvals for any elements of an applied for development consent order that could not have been given consent at the time the development consent order was made. These are referred to as ‘requirements’ in the Planning Act 2008, the approvals for which are sought from the local planning authority.

It is essential the procedures for making changes to a development consent order are sufficiently robust so as to enable a thorough and transparent consideration of the issues, but without being onerous or disproportionate. They must also maintain a legitimacy of the consent regime by ensuring legitimate rights to be heard. The procedures must ensure an adherence to environmental legislation, such as on environmental impact assessment.

The matters that can be addressed during the application and examination processes will be limited to those that are relevant for a consideration of the proposed changes. It will not be possible, for example, for parties to re-open other arguments that were made during the consideration of the original development consent order if they are not deemed relevant for a consideration of the proposed changes. It is for the appropriate authority to be satisfied that any issues are relevant.

The consent regimes under which the infrastructure projects were previously considered did not have a common approach to handling requests to change or revoke a development consent order. Some did not have specific procedures to enable the amendment of a development consent order, and so could require the re-submitting of a whole application all over again. The concept of a ‘non-material change’ does not exist in those other regimes. Major infrastructure projects that were considered under the Town and Country Planning Act 1990 were subject to that Act’s revocation and modification procedures, and approach to compensation. Those procedures, and their underlying principles, were drawn on for the equivalent provisions in the Planning Act 2008 and in the regulations we are proposing.

The introduction of a non-material change process will enable minor amendments to be made through the use of an appropriately simple procedure. The magnitude of significant impacts that could be caused by material changes will vary from case to case. Therefore, it is essential to introduce a process for material changes that will ensure appropriate publicity and consultation, and enable a thorough consideration of the issues by all relevant parties including the decision maker. The fees structure and levels should, as far as possible, reflect the costs incurred by the appropriate authority in processing the application.

Description of options

Option 1 – preferred option

Introduce regulations that set out the procedures for applying for and determining changes to, or revocation of, a development consent order after it has been made.

Schedule 6 of the Act provides the framework to which any procedures must adhere. Set out below is our preferred approach to each part of that framework. It is set out in the draft regulations The Infrastructure Planning (Miscellaneous Provisions) Regulations 2011, which has been prepared for public consultation. It is envisaged a final version of regulations would come into force in April 2011.

NON-MATERIAL CHANGES
The policy assumption is that these would not result in significant or substantial changes to a development consent order, and so a relatively simple procedure is proposed. For an applicant, it would mean submitting an application to the appropriate authority, and which contained details of the change that was requested and any documents necessary to support the proposal. The application must be accompanied by an application fee, which would be a fixed fee of £6,534. A breakdown of how this fee has been calculated is set out further below.

The Act requires the appropriate authority to be responsible for conducting the publicity and consultation. We propose that it must publicise this application in the same manner as the applicant would have publicised its original application for the development consent order which had been accepted for consideration by the IPC, using the same procedure as set out in The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. This is to ensure, as far as possible, that those persons who saw the publicity for the original application will also see the publicity for the proposed non-material change. The appropriate authority will be required to consult those persons who were consulted about the original application, the relevant local authorities and any other person they think appropriate. It will also be required to notify the decision to each person that it had consulted and each person that had made a representation about the proposed non-material change.

MATERIAL CHANGES (INCLUDING REVOCATION)
The policy assumption is that a material change is likely to be significant and/or substantial, and therefore will have significantly more of an impact on a development consent order than would a non-material change. As the impact of the proposed change could be from anything up to and including the impact of the original development consent order, then it is intended the stages for pre-application, application, examination and decision making will be closely modelled on those that are required for the original development consent order. Such a robust process will also ensure compliance of what is required under the European Directive for environmental impact assessments.

We have given some consideration as to whether other options for handling material change applications could involve the creation of a completely new set of procedures, or a more selective use of the existing development consent order procedures and which, for example, could depend on the nature of the proposed changes. However, in terms of the latter, we believe it would be impractical, create uncertainty and confusion to introduce a series of alternative stages to be followed, with the choice potentially being dependent on the likely magnitude of impact of the material change to a development consent order. Furthermore, such an approach would effectively be defining what a material change could be, whereas the Act does not provide a power for the Secretary of State to do this. The existing development consent order procedures remain relevant and appropriate for material change applications, and so there is no need, and it would be inefficient, to create a new set of procedures. In addition, utilising broadly the same procedures that are followed for an original development consent

order application will also mean those involved in a material change application will benefit from already being familiar with what is required of them, and how they can engage in the process.

The intention is for a proposed material change to be subject to the following procedures:

(1) Pre-application stage – prior to submitting an application the applicant will be required to: consult the same parties that an applicant for a proposed development consent order would have had to consult; notify the appropriate authority of its intention to submit an application for material change; produce a statement on how it intends to consult the local community, consult the local authorities on that statement, publish it and carry out that consultation; and it must publicise the proposed application in the same manner in which the original development consent order application was publicised.

It is appropriate to require the same publicity and consultation procedures as for the original development consent order application, as this ensures legitimate rights to be heard are maintained and would avoid any risk of significant details, which were not included in the original application, from not being subjected to a necessarily robust and transparent consultation process.

(2) Submitting the application - an application must include: a report of the pre-application consultation, with the consultation responses being made available to the appropriate authority if it so requested; any plans and documents that are necessary to support the application; and a statement that identifies what information submitted as part of the original application is still correct and relevant, and what information has been revised or added. In order to avoid unnecessary burdens of providing previously submitted information, the applicant is able to just cross-refer to information that was submitted in the original development consent order application, if that information is unchanged. A fee will be payable at this stage, so as to provide the appropriate authority with some funding to commence its initial consideration of the application.

When submitting the application the applicant must notify and publicise this in broadly the same manners that it did for the pre-application stage. This process is necessary as the application may have changed following the pre-application consultation, and it is important to alert the other parties to the submission of the final version of the application so that they may comment on it during the examination process.

(3) Pre-examination, examination and decision making – these stages will essentially be the same as those required for considering an application for a development consent order. Where the appropriate authority is the IPC, it will need to decide whether the application will be examined by an examining body that consists either of a single commissioner, a ‘normal panel’ of two or three, or a ‘large panel’ of more than three commissioners. The examining body must make an initial assessment of the principal issues arising from the application. It must then hold a preliminary meeting with the applicant and any other interested parties in order to discuss how the application should be examined, such as the process for undertaking written representations and whether any hearings should be held. Fees will be charged at the pre-examination and examination stages, and using the same approach as for a development consent order application. These are set out further below.

The provisions of sections 104 and 105 of the Act will apply to decisions made by the appropriate authority. When reaching its decision, it should have regard to the relevant national policy statement and to the local impact report. Where consent is given for a material change (and which is not for revocation), the original development consent order continues in force as then modified by that material change.

CHANGES TO A DEVELOPMENT CONSENT ORDER WITHOUT AN APPLICATION BEING REQUIRED

Where an application is not required to be made, prior to the decision being made on the proposed change the appropriate authority must give notice of its intention to consider making such an order to – 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 appropriate authority must also publicise a proposed change in the same way that a development consent order application would be publicised, and an opportunity given to comment.

COMPENSATION

The intended process for assessing claims for compensation, which may be made due to the granting of a change, is based on the compensation procedure in sections 107-118 of the Town and Country Planning Act 1990, subject to some modifications. These modifications are set out in the draft regulations The Infrastructure Planning (Miscellaneous Provisions) Regulations 2011. The procedure includes a requirement that a claim for compensation would have to be made within 12 months from when the decision about the material change was made. Any dispute about the amount of compensation would be referred to the Upper Tribunal for determination. Experience from the existing infrastructure regimes suggests that it is likely to be very rare for a claim for compensation to be made.

Costs and benefits of option 1

WIDER BENEFITS

Impact assessments published for the introduction of the Planning Bill in Parliament, and after Royal Assent of the Planning Act 2008, set out an analysis of the costs and benefits of establishing the new infrastructure consents regime. These documents can be found at:

http://www.communities.gov.uk/publications/planningandbuilding/planningbill

http://www.communities.gov.uk/publications/planningandbuilding/annexim pactassessment

These estimated that benefits of the new regime overall could be up to £300m a year, which includes £20m in administration savings to infrastructure scheme promoters, due to the quicker and more streamlined process for obtaining the development consent. These estimates form the context under which the costs and benefits for non-material and material changes applications are considered.

NON-FEE COSTS AND BENEFITS

This section considers the fees incurred by applicants for non-material and material changes. It then compares these to costs of full re-application in each case, which is the counter-factual in the absence of these changes. As such in net terms there are savings to applicants which are considered at the end of this section.

(1) Application for non-material changes:

As the promoter is able to cross-refer to documents it had previously produced and submitted for the original development consent order application, this will reduce the costs associated with producing documentation needed to support an application for a non-material change. It is also anticipated that the extent of the new documents that it does produce will be significantly less than would be required for a material change application (as well as for a development consent order application) given that the expected impact of the change is required to be relatively insignificant. The promoter is not required to undertake publicity and consultation at either pre-application or application stages. The examination is likely to be conducted through written representations and therefore avoid the expense of attendance at hearings. All of these points will minimise the promoter's non-fee administrational costs, and thereby be consistent with the

insignificant nature of the expected impacts of the changes. These costs will be significantly less than those for making an application again for a whole development consent order.

(2) Application for material changes:

The extent of the material changes being sought by the promoter will have a significant bearing on the amount of non-fee costs that it will incur. The more substantial the expected effects of the changes, the more likely the greater will be the amount of new documentation needed to support the application. This, in turn, is likely to impact on the amount of pre-application consultation required. As with non-material change applications, the promoter is able to cross-refer to documents it had previously produced and submitted for the original development consent order; this will reduce the costs associated with producing the documentation needed to support the material changes application. Also, other work which had been undertaken for the original development consent order application can also be drawn upon and thereby reduce the administrational costs and effort, for example the identification of, and engagement with, consultees.

The applicant will be required to fulfil publicity and notification requirements at the application stage, in line with its responsibilities for a development consent order application. The extent of the material changes will have a significant bearing on the nature and duration of the examination process, and therefore the amount of non-fee costs borne by the applicant at that stage, such as possible attendance at hearings and associated legal and other specialists' fees. However, in total, the non-fee administrational costs borne by the promoter is expected to be less than those for making an application again for a whole development consent order. Even if the proposed changes are so major that they could, in a sense, constitute a new development consent order application, the promoter would still benefit from the administrational work (and associated costs) it had undertaken for the original application.

FEE COST SAVINGS

(1) Fees payable for an application for non-material changes:

A fixed fee of £6,534 must be paid by the applicant, the calculation for which is set out in the tables below. Any change resulting from the application would only be for the benefit of the person applying, and it is reasonable that costs incurred by the appropriate authority in processing that application are recovered, as far as possible. The appropriate authority has the duty to publicise and notify about the application. However, it is not anticipated that the actual consideration (i.e. examination) of such an application would be particularly time consuming or costly, given that it will relate to matters that are non-material and therefore relatively insignificant. A simple fixed fee is considered appropriate in these circumstances.

If there was not a procedure to deal with non-material changes, then the applicant would have to submit a whole new application for the development consent order, and incur the higher fees that are payable for that significantly more extensive process. The underlying principles, and a detailed break-down of how development consent order application fees are calculated, are set out in the *Impact Assessment of fees to be charged by the IPC, and the examination procedure rules* (published in March 2010), which accompanied the introduction of The Infrastructure Planning (Fees) Regulations 2010. Further guidance and worked examples to aid interpretation of that fees structure is given in *The Infrastructure Planning (Fees) Regulations 2010: Guidance*.

Fees for a development consent order application are paid at different stages of the process – submitting the application, pre-examination and on commencement and then the conclusion of the examination. Table 1 of the development consent order fees impact assessment shows that

the total fees payable for a typical case is estimated at being either £75,000, £209,000 or £394,000 depending on whether it was examined by a single commissioner, normal panel of three commissioners or a large panel of up to five commissioners, respectively.

Using those as baseline figures, with the fee for a non-material change application being a flat rate of just £6,534, this will constitute significant cost saving for those typical cases of approximately £68,500, £202,500 and £387,500, respectively. As non-material changes will be heard by a single commissioner, the saving of around £68,500 is the most appropriate estimate. There would be further savings for the applicant, assuming that no hearings will be required for a non-material change examination, given that the venue costs for hearings are borne by the applicant.

Table 1: Cost modelling for non-material change application processes:

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

Resource	**Straightforward case**	**Complex case**
	Time (days)	**Time (days)**
Commissioner	2	5
Grade 6	1.5	3
Grade 7	3	10
Executive Officer	6.5	13
Average resource		
Commissioner	3.5	
Grade 6	2.25	
Grade 7	6.5	
Executive Officer	9.75	
Resource	**Day rate (£)**	
Commissioner	589	
Grade 6	357	
Grade 7	308	
Executive Officer	171	

Average cost profile		
Commissioner	£2,062	
Grade 6	£803	
Grade 7	£2,002	
Executive Officer	£1,667	
Flat rate fee	**£6,534**	

Assumptions:

(i) Application is determined by a single commissioner.
(ii) There is an equal split of applications – 50 per cent are 'straightforward' and 50 per cent are 'complex' cases. These are relative terms as, irrespective of how complex the case is, it will still be less costly to process than a material change application as they involve administering fewer and less complex procedures.
(iii) The resource requirement includes that needed for the appropriate authority to undertake the publicity and notification activities, such as preparing relevant statements, making arrangements for plans to be available for local inspection, arrangements for placing of site notices, etc.
(iv) A Grade 7 and Commissioner will need to undertake site visits for 'complex' cases.
(v) All applications are examined through written representations.
(vi) 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 of the Planning Act 2008.
(vii) 75 per cent of applications are approved, and require Legal Grade 6 drafting.

(2) Fees payable for applications for material changes (including revocation):

The underlying principles, and a detailed break-down of how development consent order application fees are calculated, are set out in the *Impact Assessment of fees to be charged by the IPC, and the examination procedure rules* (published in March 2010). As the procedures for applying for, and examining, a material changes application are essentially the same as those for a development consent order application, it is considered appropriate for the fees structure and levels to be broadly the same. The only difference being that there is no concept of a 'formal acceptance stage' for a material change application. The appropriate authority will still need some funding to undertake the initial work upon receipt of an application, and so a fee of £4,500 will still be payable at that stage. However, the pre-examination stage fee has been reduced by that £4,500 so as to reflect the overall reduction in processes that the appropriate authority undertakes.

This means that the fees for a material change application will be as follows:

(a) Fee of £4,500 payable on making an application

(b) Pre-examination fee based on the number of commissioners handling the application: (a) £8,500 for a single commissioner; (b) £25,500 for two or three commissioners; or (c) £38,500 for more than three commissioners

(c) Examination fee which is based on a day rate that depends on the number of commissioners, and multiplied by the number of the relevant days that the examination takes. This fee is paid in two stages: (a) an initial payment which is half of the day rate multiplied by an estimated number of examination days that will be required, and (b) a final payment upon completion of the examination that consists of the full day rate multiplied by the number of actual examination days used minus the initial payment. The day rates are the same as those for a development consent order application, namely £1,230 for a single commissioner case, £2,680 for two or three commissioners, and £4,080 for more than three commissioners.

The number of examination days required will depend on the issues raised by an application, as well as the typical time-scales needed for administering the processes - such as making

arrangements for hearings, providing appropriate deadlines for receipt of responses to written representations, etc. These two elements are broken down in the development consent order application fees Impact Assessment as 'core consideration days' and 'additional time days', with the two added together to give the total examination days (or 'relevant days'). The total number of days required for a material changes examination could vary considerably from case to case, as it will be dependent on the nature of the changes that are proposed. For a development consent order application, the number of days that were estimated for a typical examination, as set out at page 49 in the development consent order fees impact assessment, is as follows:

(a) Single commissioner – total of 47 days
(b) Normal panel – total of 65 days
(c) Large panel – total of 85 days

For illustration purposes, the equivalent number of days for a material change application is estimated by using a figure of 25 per cent of those days. This allows for a range of relatively simple and more complex cases within each commissioner size category, and also reflects that the appropriate authority may not deem it appropriate to charge for some days during which it is only awaiting receipt of written responses, or for expressions of interest for attendance at hearings, etc., and therefore would not charge those as 'relevant days' of examination for the purposes of charging the day rate. This yields the following total examination days (rounded):

(a) Single commissioner – total of 12 days
(b) Normal panel – total of 16 days
(c) Large panel – 21 days

Using the development consent order application fees as the baseline, this gives fees cost savings under a material change applications process of £47,000 for single commissioner, £136,000 for normal panel, and £265,000 for large panel cases, as set out in the table below.

Table 2: gross cost and net saving for material changes

Application Stage	Single Commissioner	Normal Panel	Large Panel
Submitting application	£4,500	£4,500	£4,500
Pre-examination	£8,500	£25,500	£38,500
Examination: Daily fee rate Typical length Total examination fee (rounded)	 *£1,230* 12 days £15,000	 *£2,680* 16 days £43,000	 *£4,080* 21 days £86,000
Total fees for a typical material changes application	**£28,000**	**£73,000**	**£129,000**
Total fees for a typical development consent order application	£75,000	£209,000	£394,000
Savings due to the use of a material changes application process	**£47,000**	**£136,000**	**£265,000**

Venue costs – where the applicant does not provide venues for hearings (if hearings are required), the applicant will be required to reimburse the venue costs incurred by the appropriate authority.

No fees are payable where:
(1) a local authority is applying for a material change due to a development being begun but abandoned
(2) the Secretary of State makes an application to the appropriate authority, on the grounds that if the development was carried out in accordance with a granted development consent order, there would be a contravention of Community law or any of the Convention rights, or if there are other exceptional circumstances that would make it appropriate to consent a material change
(3) an application is not required to be submitted

OVERALL BENEFITS

For illustrative purposes, it is estimated that 10 per cent of development consent orders will be the subject of a non-material change application and 10 per cent subject to a material change application. It is also estimated that, for material change applications, 80 per cent of these will need to be examined by a single commissioner and 20 per cent by a normal panel. The development consent order fees impact assessment had estimated the submitting of just one development consent order application per year that would require a large panel and, as it is statistically very unlikely that there would be a material change application that required a large panel in any given year, the large panel case type is omitted from this illustration. However, under a ten year time period, an estimate of one such case would be appropriate. All non-material applications are examined on the basis of a simple flat rate fee, and therefore require no differentiation as a single commissioner will be sufficient for all of those cases. Using the assumption that 45 applications for development consent orders are submitted annually (as set out in the development consent order fees impact assessment), this yields the following annual cost in terms of fees:

Table 3: Estimated gross total cost for non-material changes (p.a.)

Non-material change applications	Single commissioner
Annual applications (rounded)	5
Fee per application	£6,534
Total fees per year (rounded)	£33,000

Table 4: Estimated gross total costs for material changes (p.a.)

Material changes	Single commissioner	Normal panel	Large panel
Annual applications	4	1	-
Typical fee per application	£28,000	£73,000	-
Total fees per case / per year	£112,000	£73,000	-
Total fees per year	£185,000		

Comparing these estimates to the counterfactual, i.e. the likely cost of full re-application allows us to work out the estimated total annual savings to applicants.

Table 5: Estimated savings for non-material changes (p.a.)

Non-material change applications	Single commissioner
Total fees per year (rounded)	£33,000
Total counterfactual fees per year (rounded)	£375,000
Total saving per year (rounded)	£342,000

Table 6: Estimated savings for material changes (p.a.)

Material changes	Single commissioner	Normal panel	Large panel
Annual applications	4	1	-
Total fees per year (rounded)	£112,000	£73,000	-
Total counterfactual fees per year (rounded)	£300,000	£209,000	
Total saving per year (rounded)	£188,000	£136,000	
Overall saving p.a.	£324,000		

The table below provides the overall annual saving (Tables 5 and 6) and the discounted saving over 10 years. For the purposes of the discounted savings the estimates also include the saving (£265,000 - see table 2) that is likely to arise for a large panel material change (estimated at one per ten year period). For the purposes of the calculation it is assumed this saving arises in the middle of the appraisal period (i.e. year 5).

Table 6: Estimated total and average annual and 10 year discounted saving – central

Saving (£)	Central (10%)
Total annual	£666,000
10 year discounted	£5,956,000
Average annual	£693,000

Sensitivity analysis

Finally, the estimates above are subjected to sensitivity analysis to reflect the uncertainty around what proportion of future development consent orders might be subject to a change. We provide a range from 5 per cent to 15 per cent, with the analysis above (based on 10%) representing the central case. The table below shows the 10 year discounted savings for the sensitivity analysis.

Table 7: Estimated total and average annual and 10 year discounted saving sensitivity

Saving (£)	5% scenario	15% scenario
Total annual	£231,000	£897,000
10 year discounted	£2,211,000	£7,946,000
Average annual	£257,000	£924,000

Option 2

Do Nothing – i.e. not make regulations.

Without regulations, there will not be procedures in place that will allow for changes to be made to a development consent order that had been made. This would have significant consequences which would prevent the consent regime from operating as intended, and therefore from meeting policy objectives. The applicant of the original development consent order, or its successor in title, would have to submit an entire new application for a development consent order if it wanted to make any changes. The cost in terms of higher level of fees payable by an applicant if it had to submit a whole new application for a development consent order, rather than being able to submit an application for non-material or material changes, are set out in the following tables.

Table 8: Estimated cost per case in absence of changes

Non-material changes	Single Commissioner	Normal Panel	Large Panel
Development consent order application fee	£75,000	£209,000	£394,000
Non-material change fee	£6,534	£6,534	£6,534
Net higher fee cost per case (rounded)	**£68,500**	**£202,500**	**£387,500**

Material changes	Single Commissioner	Normal Panel	Large Panel
Development consent order application fee cost	£75,000	£209,000	£394,000
Material change fee	£28,000	£73,000	£129,000
Net higher fee cost per case	**£47,000**	**£136,000**	**£265,000**

Other key implications for not making regulations are that (a) other parties prescribed under the Act as having an interest in the land to which the development consent order relates, or any other person for whose benefit the development consent order has effect, would be prevented from exercising their statutorily intended rights of seeking changes, and (b) an inability to make changes to a made development consent order would also risk it being in breach of Community law and Convention rights if these were to change.

Specific impacts

The specific impact tests have yielded the following:

Statutory equality duties

We do not anticipate the policy having any adverse impacts upon statutory equality duties.

Economic impacts

Competition – We do not anticipate the policy having any adverse impacts upon competition.

Small firms – Whilst the majority of infrastructure projects will be undertaken by large firms it is likely that some will be done by small sized firms, such as some renewable energy projects. We do not believe these firms will be disproportionately or in other ways adversely affected by the policy. The procedures and fees have been closely aligned with those that are applicable for a development consent order. Those fees were specifically rebalanced and in favour of less complex projects, such as those that are most likely to be undertaken by small firms, in light of public consultation responses.

Environmental impacts

Greenhouse gas assessment - We do not anticipate the policy having any adverse impacts upon greenhouse gas issues.

Wider environmental issues - We do not anticipate the policy having any adverse impacts upon wider environmental issues.

Social impacts

Health and well-being - We do not anticipate the policy having any adverse impacts upon health and well-being issues.

Human rights - We do not anticipate the policy having any adverse impacts upon human rights issues.

Justice system - We do not anticipate the policy having any adverse impacts upon justice system issues.

Rural proofing - We do not anticipate the policy having any adverse impacts upon rural issues.

Sustainable development

We do not anticipate the policy having any adverse impacts upon sustainable development issues.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; A review could be undertaken 2-3 years after the regulations have come into force.
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] To assess whether the procedures introduced by the regulations are operating as intended, and the fees for the infrastructure applications submitted under these procedures have been set at appropriate levels.
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] A review of the monitoring data and a consideration of stakeholder views - to gain a comprehensive view of the adequacy and frequency of use of the regulations.
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] The changes will be measured against a baseline of what would have happened if the regulations had not been introduced, i.e. the infrastructure applications having to be submitted in accordance with different procedures that had previously been introduced for the regime.
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] Lower costs incurred, and less time needed, for the making and consideration of applications for development consent submitted under the regulations relative to what would have been the otherwise alternative procedures.
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] Monitoring will be undertaken by the regime's sponsorship team currently operating in DCLG, and liaising with the Infrastructure Planning Commission that is tasked with undertaking the consideration of the applications.
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

Add annexes here.

Department for Communities and Local Government

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