Title:
Amendments to regulations governing the process for making changes to Development Consent Orders

Impact Assessment No: RPC14-FT-CLG-2165

Lead department or agency:
Department for Communities and Local Government

Impact Assessment

Date: 25 February 2015

Stage: Final (Fast Track)

Source of intervention: Domestic

Type of measure: Secondary legislation

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Summary: Intervention and Options

RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
£0.21m	£0.21m	£-0.02m	Yes	Out

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

Nationally Significant Infrastructure Projects are granted planning consent through a Development Consent Order made under the Planning Act 2008. The size of such projects means that changes to Development Consent Orders are likely as projects are implemented, but the process for making changes is considered burdensome and disproportionate by developers/business. Given the key importance of infrastructure for economic growth, the Government wants to provide more proportionate and streamlined procedures for making changes to Development Consent Orders. This can only be done by Government intervention as the procedures to make changes are set out secondary legislation.

What are the policy objectives and the intended effects?

The policy objective is to provide simpler and more proportionate procedures for making changes to Development Consent Orders for nationally significant infrastructure projects. This will allow any applications for changes to consents required by developers during implementation to be expedited more quickly. This will bring benefits to developers by providing more certainty that any changes needed when implementing project may be consented more quickly than under the current legislation.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Two options have been considered –a "do nothing" option and an option comprising changes to Regulations (option 1).

Policy option 1 comprises changes to secondary legislation (the 2011 Regulations) that govern the procedures for making non-material and material changes to Development Consent Orders. The regulations set out detailed procedural requirements that need to be followed in order to make a change to an Order. It is not therefore possible to achieve the policy objective of a more streamlined and proportionate process for making changes to Orders without making changes to the regulations governing the process. This is the preferred option.

The "do nothing" option would mean that the existing procedures set out in regulations would continue. Maintaining existing regulation or alternatives to regulation will not deliver the Government's policy objective. This has therefore been discounted without further consideration.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: Brandon Lewis Date: 13th March 2015

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** 0.21

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0.0		0.0	**0.2**

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

Total annual costs are small in scale and relate to the need for an applicant for a non-material change to send out a copy of a notice under their duty to consult. These have been estimated to be approximately £21,000 per annum.

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

No other costs to business have been identified.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0.0		0.0	**0.4**

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

The removal of the requirement to publish a notice in a national newspaper when making an application for a material change for a Development Consent Order will provide a financial benefit to applicants of some £45,000 per annum.

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

There will be time and cost savings to businesses who make applications for changes to their Development Consent Order. These arise from changes to consultation arrangements, not having to produce a statement of community consultation, the possibility of shorter examinations of projects or no examination at all and changes to the requirements on maps if a change is proposed for an offshore project,

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

Key assumptions (i) that there will be 5 non-material change and 3 material change applications made each year and (ii) that the number of parties who need to be consulted on a non-material change will not exceed the numbers who would have to be consulted on the largest scheme that has so far been consented.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:						In scope of OITO?	Measure qualifies as
Costs:	0.0	**Benefits:**	0.0	**Net:**	0.0	Yes	OUT

Evidence Base (for summary sheets)

Background

The Planning Act 2008 ("the 2008 Act") created a new regime for development consent for certain types of nationally significant infrastructure - major energy projects, railways, ports, major roads, airports, water and waste projects. The purpose of this new regime is to simplify and speed up planning consent by reducing the number of applications and permits which were required and enabling decisions to be taken faster.

The process for obtaining consent under the 2008 Act involves a front loaded process where the developer consults on a proposed project before submitting an application. The application is then examined by a panel of inspectors who provide a report to the Secretary of State. Where the Secretary of State proposes to grant consent for a project, this will be through a Development Consent Order, which is normally made as a statutory instrument.

The process for making a change to a Development Consent Order after the consent has been issued by the Secretary of State is governed by the 2008 Act and regulations The Act allows the Secretary of State to make non-material and material changes to an existing Development Consent Order. The detailed procedures for making an application for either a non-material or a material change are set out in regulations - the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 ("the 2011 Regulations"). No definitions are provided in legislation as to what is a material or a non-material change.

For non-material changes, the regulations currently require an application to be made to the Secretary of State, followed by a requirement for the Secretary of State to publicise the application (for example, in local newspapers) and to notify anyone who had been notified of the original application for consent so they can make representations which are considered by the Secretary of State before a decision on the application.

For material changes, the regulations currently reflect the process for a full application for development consent. This includes a full pre-application process of consultation and publicity, the opportunity for anyone to make formal representations on changes, and a full examination of the changes being made followed by a report and recommendation to the Secretary of State before a formal decision is made.

Problem under consideration:

During a review of the Planning Act 2008 regime in 2013, a number of developers expressed concerns over the complicated and disproportionate process for making changes to Development Consent Orders, especially for material changes where the procedures replicate those for a full application. As part of the review, a discussion document published by the Department in December 2013 sought views on the current processes for making non-material and material changes to Development Consent Orders and possible changes to these.

A significant majority of all respondents, and especially those responses from developers, indicated concerns over the current process for making changes In particular, the process of making material changes was seen as overly burdensome and disproportionate as it replicated the consent process for a complete project. The widely held view was that a less burdensome and more proportionate process needed to put in place.

The Government response to consultation on the discussion document made clear that it would bring forward a revised process for making non-material and material changes to Development Consent Orders involving changes to the 2008 Act and the 2011 Regulations. A consultation, setting out proposals for specific changes to the process for making non-material and material changes to Development Consent Orders, was undertaken during in Summer 2014. The Government's response to that consultation was published in November 2014. Amendments are now being brought forward to the 2011 Regulations to implement some of the proposals covered by that consultation.

Rationale for intervention:

Investment in large scale infrastructure is crucial to economic growth. The Government therefore wants to ensure that the procedures for making changes to consents are proportionate and do not impose excessive burdens on businesses making applications for such changes. Given that the current procedures are set out in regulations, the only means of changing those procedures is through de-regulatory amendments to the 2011 Regulations.

Policy Objective:

The Government's policy objective is to provide simpler and more proportionate procedures for making changes to Development Consent Orders for national significant infrastructure projects. But at the same time, the Government recognises that certain key principles of the process for making changes, such as consultation and public participation must be retained.

The changes being proposed will allow any applications for changes to consents required by developers during implementation to be expedited more quickly. This will bring benefits to developers by providing more certainty that any changes needed when implementing project may be consented more quickly than under the current legislation.

Options considered:

Option1:

Option 1 involves a series of changes to the procedures governing non-material and material changes to Development Consent Orders. These changes were consulted on in Summer 2014 and the Government indicated in its response to that consultation its intention to take forward the changes though amendments to the 2011 Regulations.

For non-material changes to consents, the amendments to regulations being made would:

- make the applicant responsible for publicising and consulting on a proposed non-material change rather than the Secretary of State, thereby bringing the process for making non-material changes in line with the process for material changes and for applications for consent under the 2008 Act;

- amend the publication provisions to make clear that, in addition to publishing a notice for at least two successive weeks in one or more local newspapers, the applicant will also need to provide notice in any other publication necessary to ensure that notice is given in the vicinity of the local area;

- amend the consultation requirements so that the applicant must, in addition to consultation with persons or bodies currently specified in the 2011 Regulations, consult persons or bodies who would be directly affected by the proposed change;

- include a requirement for an applicant to send a copy of the notice used in respect of consultation and notice requirements to the Secretary of State, along with a statement outlining how they have met the requirements relating to publicity and consultation;

- amend requirements regarding the scale of maps where changes are proposed for offshore developments, thereby bringing these in line with the recently amended requirements for projects where an initial application for development consent is made;

For material changes to consents, the amendments would:

- require applicants to consult those parties who could be directly affected by the proposed change rather than every person who had been consulted on the original application for a Development Consent Order;

- remove the requirement for the applicant to prepare a statement of community consultation (which sets out how they intend to undertake consultation);
- remove the need for the applicant to advertise an application for change in a national newspaper;
- give the Secretary of State the discretion not to hold an examination into a proposed material change where, on the basis of the application and representations received on it, they consider one not to be necessary;
- reduce the statutory time periods for making a material change to 4 months for the examination (currently 6 months), 2 months for a recommendation to be made (currently 3 months) and 2 months for the Secretary of State to reach a decision (also currently 3 months).

"Do nothing" option

The "do nothing" option would mean that the existing procedures set out in regulations would continue. This would not deliver the Government's policy objective. Given the general support for the proposals for change set out for consultation, the "do nothing" option has now been discounted without further consideration.

Option 1 - Monetised and non-monetised costs and benefits

The 2008 regime is relatively new – the first project was only granted its Development Consent Order in 2011 – so projects are only just being implemented and reaching the stage at which changes to consents might be needed. The consequence is that there is a clear need (expressed by developers of infrastructure) for changes to the regime, but only limited evidence of costs and benefits at this point in time.

Costs - non-material changes

For the amendments to non-material changes, moving responsibility for publicising and consulting on an application to the applicant, will place some small additional costs on the applicant.

Currently the Secretary of State publicises the application (through publication of a statutory notice in a local newspaper, and in any other publication necessary to ensure that notice is given in the vicinity of the local area) and the applicant meets the costs of doing so. Shifting responsibility for this to the applicant will not therefore lead to any additional costs to a developer.

However, the developer does not currently pay the Secretary of State's costs for consultation. The "duty to consult" set out in regulations simply requires the sending of a copy of the notice publicising an application to specified persons who were notified about the original application and to any other persons that the applicant considers may be directly affected by the change.

The number of persons who need to be sent a copy of the notice (and therefore the costs of doing so) will vary significantly depending on the project involved. Only one application for a non-material change to a consent has been made to date, with 350 people and organisations being sent a copy of the statutory notice. The numbers who may need to be notified by an applicant may be as low as 100 on some projects. The largest project so far consented would require 20,000 notifications but this project was exceptional (it involved a very large number of persons with land interests) and it is very unlikely that there will ever be other projects requiring a similar number of notifications. Data from the Planning Inspectorate (covering 26 of the 30 projects so far consented for which data is available, but ignoring the project with 20,000 representations) indicates that the average number of persons who will need to be sent a copy of the notice is 280.

Our current best estimate is that of the 20 applications that are granted consent each year, 5 could seek a non-material change to that consent. Based on a scenario of 5 applications for a change coming forward, one with 20,000 people needing to be notified and a further 4 projects each with 280 persons to be notified, the maximum cost to applicants would be £21,120 per annum based on a cost of £1 per notification (this cost is based on similar costs incurred for such notification exercises). If 7 projects came forward, then the total costs would be £21,680 per annum (based on 6 projects with an average number of notifications and one with 20,000).

The applicant will also be required to send a copy of the notice to Secretary of State together with a statement setting out how they have met the requirements set out in the regulations on consultation and publicity. This will be a new requirement, but the costs involved will be minimal.

Benefits – non-material changes

At present, the process of publicising and consulting on an application can only start once the Secretary of State has received an application. Given the lead-in time necessary for publishing the notice of the application in a local newspaper (and in other publications, as appropriate), the process of seeking representations on the application is likely to be delayed.

Placing responsibility for publicity on an applicant will mean that preparation for publication can be undertaken in advance. Earlier publication of the notice and consultation could then result in earlier receipt of any representations. This, in turn may enable the Secretary of State to make a decision more quickly than would be the case under the current regulations. Given the lack of any evidence base on applications for change, any benefits that arise from this are not quantifiable.

There will also be benefits in terms of cost savings to applicants from the amendment of requirements regarding the scale of maps for offshore developments. The scale of savings is not quantifiable as there is no way of identifying how many offshore projects are likely to apply for changes to their Development Consent Orders, the distance of these projects from the shore (being able to decide the scale will mean applicants will not have to produce substantial numbers of maps simply showing the sea) and the scale of maps chosen by the developer.

Costs - material changes

The proposals for amendments to regulations on making material changes to Development Consent Orders are not expected to result in any additional costs to businesses making such applications - the amendments represent a streamlining of the existing requirements in the regulations.

Benefits – material changes

The requirement for applicants to consult those parties who could be directly affected by the proposed change, rather than every person who had been consulted on the original application for a Development Consent Order, may reduce the numbers who will need to be consulted on a proposed change. This will bring potential benefits in terms of time savings and costs to applicants. However, these benefits are not quantified as they will depend on the nature of any change proposal brought forward, the type of project, and the assessment by the applicant as to who will be, and who won't be affected by the change.

Removal of the requirement for the applicant to prepare a statement of community consultation, setting out how they intend to undertake consultation will save time and reduce costs for applicants. The costs of producing such a statement will vary according to the nature of the change to a project being proposed. However, there have been no examples of applications for change made to date, so it is not possible to estimate what the costs for producing such statements would be. Although such statements are produced when a full application for consent for a new project is made, the scale of these, compared to that for making changes, is not comparable and so does not provide a basis for assessing the benefits of removing the requirement where a change is being made.

The requirement to publicise an application for a change to a Development Consent Order in local newspapers will continue as this is seen as the best means of ensuring that local people are aware of the changes. National newspapers are not considered to be an effective means of notifying local people and so the Government is removing the requirement for an applicant to provide notification of an application for change by advertising in a national newspaper. In consequence, there will be a cost saving to applicants. Although the size of the advertisement currently needed will vary according to the level of detail on the application, a black and white half page advertisement in the Guardian (£7,500) would equate to a saving to applicants of £45,000. This is based on the need for two advertisements per application (at proposed application stage and again when the application is made) and 3 applications per year.

Although it may not be used that frequently, where the Secretary of State decides to use the discretion not to hold an examination into a proposed material change, there will be substantial benefits to the

applicant in terms of time and cost savings. Where an examination is held, a fee is payable to the Secretary of State by the applicant based on the number of persons appointed to run the examination (up to 5) and a daily rate. These fees are set out in the 2011 Regulations. As an example, where a single examiner is appointed, the initial fee would be £8,500 and the daily rate would be £1,230 for each day the examination lasts. However, the lack of any examples of applications for material changes means that there is no evidence base to assess the number of days that an examination may last - this will depend on the nature and extent of the changes to the consent being made. This impact assessment does not therefore quantify these benefits.

Reducing the statutory time periods for making a material change to 4 months for the examination (currently 6 months), 2 months for a recommendation to be made (currently 3 months) and 2 months for the Secretary of State to reach a decision (also currently 3 months) may encourage quicker examinations. However, given the lack of cases to date, there is no evidence to show that examinations into changes to applications under the 2011 regulations would ever have taken the maximum 6 month period. Indeed, this time period replicates that for examination of a full application for development consent so it is possible that examinations into changes would have been quicker than 6 months without the change to regulations. Any benefits resulting from this change have not therefore been quantified in this impact assessment.

Familiarisation Costs

Familiarisation costs for the changes being made are expected to be minimal. Businesses seeking consent through the nationally significant infrastructure planning regime use a relatively small and well connected community of professional advisors (planners, lawyers). The Department has close contact with these advisors in the infrastructure sector and holds regular discussions with them through a sounding board and attendance at events. Guidance on the revised procedures for making applications for changes to consents will be published to accompany the amended regulations. Opportunities will also be sought to explain the new procedures at conferences and other events run by the sector.

Rationale and evidence that justify the level of analysis used in the Impact Assessment

The lack of an evidence base to provide a baseline of current costs and benefits for comparison against the changes has limited the level of analysis that has been possible. Only one application for a non-material change has so far been received and no applications for material changes. This means we have no evidence at this stage that will allow quantification of the benefits. However, the majority of the responses to consultation, many of them from potential applicants for changes, expressed their support for the proposals that form option 1 and agreed that they would streamline existing procedures. They did not express views on the scale of the benefits that would arise from the changes being made.

Risks and assumptions

In assessing the costs to business of the change to procedures on non-material changes, assumptions have had to be made about the number of applications that are likely to be made each year. Although there has only been one application for a non-material change to date, we are aware of a number of applications for non-material and material changes that are now being prepared and which will be submitted once new Regulations are in place. The other key variable in assessing costs is the number of parties who will need to be sent a copy of the notice to meet the requirement to consult. This will vary considerably between schemes (from perhaps only a few hundred up to 20,000 for the largest scheme to date). However, it is not possible to predict which projects will make applications for changes and what those changes will be. We have therefore assumed a situation where the 5 projects comprise one with 20,000 notifications and 4 others with an average number to calculate the additional costs that business might incur. In practice, the actual costs may be less if the schemes that come forward with applications for changes are those where fewer parties need to be notified.

Direct costs and benefits to business calculations (following One-In, Two-Out methodology)

Costs

For non-material changes, there is an additional cost arising for business, the need to send out copies of the notice advertising the change to meet the duty to consult requirement in the regulations.

If 5 projects come forward with an application for a non-material change each year, one with 20,000 parties needed to be notified (worse case) and the other 4 each with 280 parties to be notified (average number for projects, excluding the largest) and the cost of these is £1 per notice (based on costs incurred when sending out similar notices), **the total cost per annum to business would be £21,120.**

Benefits

There will be a direct cost saving to businesses making applications for material changes to consents by not having to advertise their application in a national newspaper. Based on 3 applications per year and the need for each of these to be advertised twice at a cost of £7,500, the **total cost saving per annum for applicants is estimated at £45,000.**

Other benefits arising are the time and cost savings to business resulting from the new procedures for material changes, but these have not been quantified because of the lack of any evidence base in terms of the types of projects that will seek changes and the nature of the changes being made.

Summary and preferred option with description of implementation plan

Option 1 is the preferred option. Given that the current procedures are set out in legislation, delivering a more streamlined and proportionate approach to the process of making changes to Development Consent Orders can only be done by de-regulatory amendments to existing legislation. The Government will therefore implement option 1, as set out in the response to the 2014 consultation by making amendments to the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011.