

<p>Title: The Crossrail (Planning Appeals) (Written Representations Procedure) (England) Regulations</p> <p>PIR No: DfTPIR0086</p> <p>Original IA/RPC No: Click here to enter text.</p> <p>Lead department or agency: DfT</p> <p>Other departments or agencies: Click here to enter text.</p> <p>Contact for enquiries: Rachel Bain</p>	Post Implementation Review
	Date: 07/02/2024
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 01/12/2008
	Recommendation: Keep
RPC Opinion: Choose an item.	

1. What were the policy objectives of the measure?

The policy objectives of the Regulations were to reduce delays in considering planning appeals to minimise costly delays to Crossrail, the project that delivered the Elizabeth line. The Crossrail Act 2008 (the Act) contains provisions for the Nominated Undertaker (see Crossrail (Nomination Order 2008(2008/2036)) to construct and maintain the Elizabeth line, to set out the limits within which works can take place, to remove or realign street works and other utilities. Crossrail Ltd, a wholly owned subsidiary of TfL, was incorporated to be a single purpose delivery body and the Nominated Undertaker on Crossrail. London Underground is also a nominated undertaker but only for the purposes of upgrade works to its existing Bond Street and Tottenham Court Road stations.

Schedule 7 to the Act, provides for the planning regime under which the Nominated Undertaker will carry out works in the areas of affected local councils. This regime is still required now that the scheme is operational for ongoing maintenance. Paragraph 1 of Schedule 7 provides a power for the Secretary of State by order to prescribe Qualifying Authorities. Both Qualifying and Non-Qualifying Authorities have different conditions imposed on them under Schedule 7. A Qualifying Authority is one that has given the Secretary of State sufficient assurances as to how Crossrail works will be treated in their area. Qualifying Authorities are set out in the Crossrail (Qualifying Authorities) Order 2008 (2008/2034). Whether a council is or is not a Qualifying Authority determines the extent of liaison required with Crossrail Ltd over the management and maintenance of Crossrail in their area and the degree to which they can influence the Crossrail scheme.

The Schedule 7 regime includes a right for the nominated undertaker to appeal against a decision of the local planning authority. Schedule 7 disapplies section 78 of the Town and Country Planning Act 1990 (right to appeal against planning decisions, or failure to take such decisions). In its place, the Act provides for nominated undertakers to appeal to the Secretary of State for Transport and the Secretary of State for Housing, Communities and Local Government (the Appropriate Ministers). These Regulations were made by the Appropriate Ministers under the powers set out in Schedule 7. The appeals process gives Appropriate Ministers the power to determine any appeal by the nominated undertaker and to nominate another party to hear the appeal. The appeal regime that has been established by these Regulations was intended to be less time consuming than the regime under the Town and Country Planning Act 1990. Time limits were set for appeals to ensure that where an appeal was made by the Nominated Undertaker, it could be determined by the Appropriate Ministers within a reasonable time. The time limit for the Nominated Undertaker to submit and appeal to the Appropriate Ministers is 42 days from the decision, whereas for appeals under the legislation it replaces, appeals are allowed up to 6 months from the decision. Under the Regulations, councils have 6 weeks from the date of notification of the appeal to respond. Additionally, councils which are subject to an appeal have 7 days to notify interested parties from the date they are served notice of the appeal by the Appropriate Ministers. Under the national legislation, a council would have 5 weeks from the date of the notice of appeal to respond fully to the notice. The person appealing would then have 7 weeks from the notice date to respond to their representations. Under the Regulations the maximum period for a council to send full representations is 21 days. The Nominated Undertaker then has only 7 days to respond to those representations. The Regulations therefore impose considerably shorter time limits ensuring that any maintenance works required to operate the railway are not held up for long periods with increases in costs and delays.

These Regulations were developed by the Department for Transport in consultation with the Local Authorities at the Crossrail Planning Forum.

2. What evidence has informed the PIR?

In preparation for drafting this PIR, we liaised with the Nominated Undertaker, Crossrail Ltd, which was the body charged with delivering the Crossrail project. We obtained relevant information from them on how the Schedule 7 regime has operated and the appeal regime under it. In addition, we contacted and obtained information from two councils, namely Westminster and the City of London. They did not have any specific concerns about the operation of the Schedule 7 planning regime and were able to confirm at the time of responding that no appeals had been made to their decisions. As the above parties provided a relevant and proportionate amount of detail on which to inform this PIR, we did not consider it necessary to canvass the views of other bodies.

3. To what extent have the policy objectives been achieved?

Crossrail Ltd, as Nominated Undertaker, used the appeals regime established by the Act and these Regulations to appeal on one occasion only. This tends to demonstrate that the Schedule 7 regime worked reasonably efficiently. The appeal was against a condition applied by the London Borough of Newham to its decision approving a schedule 7 plans and specifications request for approval in relation to Custom House station. After both parties had submitted their written evidence to the Planning Inspectorate the Inspector declared there should be an inquiry, but prior to that inquiry taking place, an accord was reached between the two parties outside of the appeals process and both subsequently withdrew their submissions.

Westminster Council confirmed that none of their refusals of applications under the Schedule 7 regime was appealed and they tried wherever possible to negotiate with the Nominated Undertaker where difficulties were encountered in applications. The City of London confirmed no appeals had been made against any of their determinations of Schedule 7 requests for approval.

As Schedule 7 applications may still be made in accordance with maintenance of the railway it is necessary to retain these Regulations.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: **Jenna O'Byrne**

Date: 05/04/2024

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

No impact assessment was prepared for this legislation as the costs to business were assessed as nil. Therefore, no analytical assumptions were utilised in the development of this legislation and accordingly we cannot provide a relevant response to this question.

5. Were there any unintended consequences?

To the best of our knowledge there were no unintended consequences as a result of making The Crossrail (Planning Appeals) (Written Representations Procedure) (England) Regulations 2008. The purpose of the Regulations was to establish an expeditious process for the determination of appeals in relation to the Schedule 7 requests for approval and gave the Appropriate Ministers the powers to determine such appeals. The Regulations therefore minimised undue delay to protect the schedule and cost of delivering a mostly public funded large infrastructure project.

However, the competency and experience in the UK for determining planning appeals lies with the Planning Inspectorate and therefore the Appropriate Ministers delegated that power to the Planning Inspectorate. The Planning Inspectorate has its own performance requirements and case resource needs. Those existing resource needs mean that it is not always possible for an Inspector to be available to determine an appeal in the time envisaged by the Regulations and associated guidance, hence the process can turn out to be not as expeditious as intended.

6. Has the evidence identified any opportunities for reducing the burden on business?

There is no impact on business as a result of The Crossrail (Planning Appeals) (Written Representations Procedure) (England) Regulations 2008 and therefore nothing in this review would or has identified any opportunity to reduce any impact on business.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

The Crossrail (Planning Appeals) (Written Representations Procedure) (England) Order 2008 does not transpose European Law and derives from domestic planning law. Accordingly, it is not possible nor relevant to ascertain how member states implement similar measures