

EXPLANATORY MEMORANDUM TO
THE INFRASTRUCTURE PLANNING (FEES) (AMENDMENT)
REGULATIONS 2013

2013 No. 498

1. This Explanatory Memorandum has been prepared by the Department for Communities and Local Government (DCLG) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to provide greater clarity for the users of the nationally significant infrastructure planning regime in relation to fees. The fees for processing applications for nationally significant infrastructure projects are set out in the Infrastructure Planning (Fees) Regulations 2010 (“the 2010 Regulations”). This instrument is designed to provide greater clarity on the fees for the handling of the examination of applications.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 4 of the Planning Act 2008 enables the Secretary of State to make regulations providing for the charging of fees in connection with the performance of his major infrastructure functions under the Act.

4.2 The 2010 Regulations contain a fees regime under which fees are paid in stages, as follows:

- (a) A fee when an application is submitted for acceptance.
- (b) An pre-examination fee once the Examining Authority is appointed. This depends on whether the Examining Authority is a single Inspector or a Panel, and, if a Panel, the size of the Panel.
- (c) An initial payment once the Preliminary Meeting has been held. This fee is based on the number of estimated days required for the examination.
- (d) A final payment, once the Examination is closed, which is based on the actual number of ‘relevant days’.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Planning Act 2008 established a new planning regime for nationally significant infrastructure projects under which certain infrastructure projects above certain specified thresholds require development consent.

7.2 The 2010 Regulations require applicants to pay a final fee for the handling of an application based on the number of ‘relevant days’. The prescribed day rate depends on whether the appointed Examining Authority is a single inspector or a panel, and, if a panel, the size of the panel.

7.3 The Secretary of State considers that the 2010 Regulations enable the prescribed day rates to be applied to each day of the examination. This interpretation also accords with the Department of Communities and Local Government (DCLG) Guidance which indicates that relevant day includes ‘every day in the period from the start of the formal examination to its end, normally excluding weekends and public holidays’¹. The Explanatory Note to the 2010 Regulations also stated that the day rate ‘normally accumulates for each day in the examination period (generally excluding weekends and public holidays)’. The Impact Assessment of fees to be charged by the Infrastructure Planning Commission (February 2010) also indicates that ‘working days’ means ‘the total number of days from examination start to end, normally excluding weekends and public holidays’. The Explanatory Memorandum to the 2010 Regulations sets out that the way the rates are calculated is intended to cover the costs of processing applications rather than funding it through taxation.

7.4 However, some users of the nationally significant infrastructure regime have raised issues about the precise wording of Regulation 9(3) of the 2010 Regulations which defines a ‘relevant day’. The Secretary of State recognises the vital importance of certainty in the infrastructure planning process, including in relation to fees, which can be substantial. These regulations are therefore intended to provide that certainty by providing which days should not be charged for.

7.5 The amendment is not intended or expected to require any change to the current practice, in relation to examination fees, of the Planning Inspectorate. That practice is consistent with that of the (now abolished) Infrastructure Planning Commission which also operated under the 2010 Regulations, and with the documents referred to in paragraph 7.3 above.

¹ DCLG ‘Infrastructure Planning (Fees) Regulations 2010: guidance’ – paragraph 7, footnote

7.6 This instrument will be of interest to users of the nationally significant infrastructure regime.

8. Consultation outcome

8.1 As this is a clarification of existing regulations to provide greater certainty (rather than a change in policy), no consultation has been carried out.

9. Guidance

9.1 The Department of Communities and Local Government published guidance alongside the fees regulations. The guidance sets out how the fees regime for major infrastructure operates and can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8366/2130241.pdf.

10. Impact

10.1 There is no expected impact on business, charities or voluntary bodies, as this change simply clarifies the current regulations to ensure there is no ambiguity in the way fees are charged by the Planning Inspectorate.

10.2 There is no expected impact on the public sector, other than providing greater certainty.

10.3 As this change simply clarifies the current regulations, an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation may apply to a small business if they are taking forward proposals for a nationally significant infrastructure project. However, the vast majority of nationally significant infrastructure projects relate to multi-million pound projects – for example major generating projects – with very significant capital costs. Given the costs associated with such developments, we take the view that only a major developer is likely to submit an application for a development on such a scale that it would be classified as a nationally significant infrastructure project.

12. Monitoring & review

12.1 The Department for Communities and Local Government will continue to keep the fees for major infrastructure under review.

13. Contact

Sue Lovelock at the Department of Communities and Local Government Tel: 0303 444 3759 or email: susan.lovelock@communities.gsi.gov.uk can answer any queries regarding the instrument.